

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 873

S.P. 298

In Senate, March 5, 2013

### An Act To Establish Positive Reentry Parole

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Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator TUTTLE of York.  
Cosponsored by Representative BOLAND of Sanford and  
Senators: MASON of Androscoggin, WHITTEMORE of Somerset.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 34-A MRSA c. 5, sub-c. 6** is enacted to read:

3 **SUBCHAPTER 6**

4 **POSITIVE REENTRY PAROLE FOR CERTAIN MAINE CRIMINAL**  
5 **CODE PRISONERS**

6 **§5821. Applicability**

7 This subchapter applies to those persons in the custody of the Department of  
8 Corrections pursuant to a sentence imposed on or after October 1, 2013.

9 **§5822. Parole by board**

10 The board may grant a parole from a correctional facility after the expiration of the  
11 term of imprisonment, less deductions for good time and meritorious good time, or after  
12 the parolee's compliance with conditions provided in this subchapter applicable to the  
13 sentence being served. The board may revoke a parole when a condition of the parole is  
14 violated.

15 **1. Duration and conditions of parole.** When the board grants a parole, upon  
16 release the parolee shall serve the unexpired portion of the parolee's sentence under  
17 conditions of custody established pursuant to subsection 2, less deductions for good time  
18 and meritorious good time, unless otherwise indicated by the board.

19 **2. Custody and control.** While on parole, the parolee is under the custody of the  
20 warden or chief administrative officer of the correctional facility from which the parolee  
21 was released but under the immediate supervision of and subject to the rules of the  
22 division of probation and parole within the department and any special conditions of  
23 parole imposed by the board.

24 **§5823. Parole of prisoners; eligibility; process**

25 **1. General provisions regarding eligibility.** A person convicted of one or more  
26 crimes who is incarcerated pursuant to a sentence imposed on or after October 1, 2013  
27 and who received a definite sentence or aggregate sentence is eligible for parole upon  
28 application if:

29 A. The person's sentence was imprisonment for life or for any term of not less than  
30 25 years and the person has served at least 20 years of that sentence, or the person's  
31 sentence was imprisonment for a term of at least one year to 25 years and the person  
32 served not less than 1/2 of the aggregate sentence or 1/2 of the most recent sentence  
33 imposed by the court, whichever is greater;

34 B. Based on all available information, including reports that the board may require,  
35 the board determines that there is a reasonable probability that the person will live  
36 and remain at liberty without violating the law; and

1           C. The board determines that the parole is not incompatible with the welfare of  
2           society.

3           **2. Administrative release and revocation guidelines.** The board shall develop  
4           administrative release guidelines for use by the board in evaluating applications for parole  
5           as described in section 5824 and shall develop administrative revocation guidelines as  
6           described in section 5825 for use by the board in considering revocation of parole.

7           **3. Parole hearing.** The board shall hold a hearing, which must be video recorded, to  
8           review an application for parole. The board shall use its administrative release guidelines  
9           and any other information it determines relevant in its review. A person seeking parole  
10          must be represented by legal counsel. The board may hear testimony from both the  
11          person seeking parole and any victims; and the board may hear their testimony separately.

12          **4. Parole granted.** If after a hearing under subsection 3 the board grants parole, the  
13          board shall impose any conditions it determines appropriate to mitigate the risk of the  
14          person's again violating the law.

15          **5. Parole denied.** If after a hearing under subsection 3 the board denies parole, a  
16          subsequent review date must be set for 2 years from the date of the denial. The board  
17          shall inform the person of the reasons parole was denied and what the person needs to  
18          accomplish to be considered again for release on parole. A person denied parole may  
19          appeal the denial within 90 days.

20          **§5824. Administrative release guidelines**

21          The board shall develop administrative release guidelines using evidence-based risk  
22          assessment criteria for use by the board in evaluating applications for parole. The  
23          administrative release guidelines must be used to provide the board with consistent and  
24          comprehensive information relevant to risk factors for parolees. The guidelines must  
25          include a matrix of advisory release decision recommendations for different risk levels.  
26          The following provisions govern administrative release guidelines.

27          **1. Factors.** In developing the administrative release guidelines, the board shall  
28          consider factors including, but not limited to:

29          **A.** The actuarial risk of reoffense. This factor is the central factor for the board in  
30          making its decision related to the timing and conditions of release on parole. Risk  
31          must be assessed using evidence-based actuarial risk assessment tools and  
32          professional judgment;

33          **B.** Testimony or a written statement of the victim of the crime, a relative of the  
34          victim or a designee of the victim or relative of the victim;

35          **C.** The person's assessed criminogenic need level;

36          **D.** The person's program and treatment participation and progress while in custody;

37          **E.** The person's conduct in the correctional facility;

38          **F.** The adequacy of the person's parole plan;

1 G. Whether the person while serving the person's sentence has threatened or harassed  
2 the victim or the victim's family or has caused the victim or the victim's family to be  
3 threatened or harassed;

4 H. Aggravating or mitigating factors from the person's criminal case;

5 I. The testimony or written statement of a prospective parole sponsor, employer or  
6 other person who is available to assist the person if released on parole;

7 J. Whether the person has previously absconded or escaped or attempted to abscond  
8 or escape while on conditional release, including community supervision;

9 K. Whether the person completed or worked toward completing a high school  
10 diploma, a general equivalency degree or a college degree during the period of  
11 incarceration; and

12 L. Any factor that the board determines appropriate or necessary.

13 The board may not use the administrative release guidelines for the consideration of  
14 parole for a person who is serving a sentence for committing a crime under Title 17-A,  
15 chapter 11 or 12. The board shall develop specific sex offender administrative release  
16 guidelines to be used to evaluate parole applications for these cases.

17 **2. Structured decision making.** The board shall adopt standards for evaluating  
18 outcomes of its parole decisions and shall conduct its business in a manner that is  
19 accessible to victims, offenders, other criminal justice professionals and the community.

20 **3. Coordination of risk and needs.** The board shall coordinate supervision  
21 conditions and services with assessed risk and need levels as determined in subsection 1.

22 **4. Risk assessment scale.** The board shall develop a risk assessment scale that  
23 includes evidence-based criteria for reducing the risk of recidivism. The board shall  
24 validate the risk assessment scale at least every 5 years or more frequently if the  
25 predictive accuracy, as determined by data collection and analysis by the board, falls  
26 below an acceptable level.

27 **5. Forms.** The board shall develop forms consistent with an effort to record  
28 information required under this section to capture the rationale for the board's decision in  
29 a parole application case. The department shall print the forms. Victim identity and  
30 input must be protected from display on the form and any board hearing report that may  
31 become part of an applicant's or parolee's record.

32 **6. Training.** The board shall seek regular training for its members to ensure that it is  
33 using best practices in parole application evaluation and applying them effectively in  
34 carrying out its duties.

35 **§5825. Administrative revocation guidelines**

36 The board shall develop administrative revocation guidelines that must be used to  
37 evaluate complaints filed for parole revocation. The board shall develop administrative  
38 revocation guidelines using evidence-based risk assessment criteria. The following  
39 provisions govern administrative revocation guidelines.

1 1. Factors. In developing administrative revocation guidelines, the board shall  
2 consider factors including, but not limited to:

3 A. A determination by the board that a parolee committed a new crime while on  
4 parole;

5 B. The parolee's actuarial risk of reoffense;

6 C. The seriousness of a violation of a condition of parole, if applicable;

7 D. The parolee's frequency of violations of conditions of parole;

8 E. The parolee's efforts to comply with a previous corrective action plan or other  
9 remediation plan required by the board or by the probation and parole officer;

10 F. The imposition of intermediate sanctions by the probation and parole officer in  
11 response to violations of conditions of parole that may form the basis of the  
12 complaint filed for parole revocation; and

13 G. Whether modification of parole conditions is consistent with public safety and  
14 more appropriate than revocation of parole.

15 2. Revocation determination for violations of conditions of parole. In evaluating  
16 complaints filed for parole revocation, the board may not revoke parole for violations of  
17 conditions of parole unless the board determines on the record that appropriate  
18 intermediate sanctions have been used and have been ineffective or that the modification  
19 of conditions of parole or the imposition of intermediate sanctions is not appropriate or  
20 consistent with public safety and the welfare of society.

21 **§5826. Violations of parole**

22 1. Arrest and detention for violation. A probation and parole officer may arrest  
23 and charge a parolee with violation of parole, take the parolee into custody and detain the  
24 parolee, pending the issuance of a parole violation warrant. The detention may not  
25 extend beyond the next business day, and, if a warrant is not issued in that time, the  
26 parolee must be released from arrest and detention. A parolee arrested and detained does  
27 not have a right of action against the probation and parole officer or any other person  
28 because of that arrest and detention.

29 2. Issuance of warrant for violation; board action. When a parolee violates a  
30 condition of parole or violates the law, a warrant may be issued for the parolee's arrest. A  
31 probation and parole officer, or any other law enforcement officer within the State  
32 authorized to make arrests, may arrest the parolee on the warrant and return the parolee to  
33 the correctional facility from which the parolee was paroled. At its next meeting at that  
34 correctional facility, the board shall hold a hearing. The parolee is entitled to appear and  
35 be heard. If the board, after hearing, finds that the parolee has violated parole or the law,  
36 the board may revoke the parole, set the amount of the unexpired portion of the sentence  
37 the parolee must serve before the parolee is again eligible for a parole hearing before the  
38 board and remand the parolee to the correctional facility from which the parolee was  
39 paroled.

1           **3. Forfeits deductions.** Upon revocation of a person's parole by the board under  
2 subsection 2, the person forfeits any deductions for good time and meritorious good time  
3 earned while on parole.

4           **4. May earn deductions.** While a person is serving the unexpired portion of a  
5 sentence after parole has been revoked under subsection 2, the person may earn  
6 deductions for good time and meritorious good time.

7           **5. Tolling of sentence.** Whenever a warrant is issued under this section for the  
8 arrest of a parolee, the running of the parolee's sentence is tolled and remains tolled until  
9 the parolee is returned to the correctional facility from which the parolee was paroled.  
10 Tolling of the running of the sentence must include any time served prior to such return,  
11 after conviction for a crime committed while on parole.

12 In the event of the withdrawal of the warrant, or in the event that the board at the hearing  
13 on the alleged violation finds that the parolee did not violate the conditions of parole or  
14 the law, the parolee must be credited with the time lost by the tolling of the running of the  
15 parolee's sentence.

16 **§5827. Sentence for violation of law by parolee**

17           A parolee who violates the law while on parole, when the violation is punishable by  
18 imprisonment for one year or more, and who is sentenced to the custody of the  
19 department shall serve the 2nd sentence beginning on the date of termination of the first  
20 sentence, unless the first sentence is otherwise terminated by the board.

21 **§5828. Discharge from parole**

22           A parolee who faithfully satisfies all the conditions of parole and completes the  
23 parolee's sentence is entitled to a certificate of discharge to be issued by the warden or  
24 chief administrative officer of the correctional facility to which the parolee was  
25 committed. If it appears to the board that a parolee is no longer in need of supervision,  
26 the board may order the chief administrative officer or warden of the correctional facility  
27 from which the parolee was paroled to issue the parolee a certificate of discharge.

28 **§5829. Collection and analysis of data**

29           **1. Outcome data and analysis.** The board shall develop and implement a process to  
30 collect and analyze data related to the basis for the outcomes of the board's  
31 determinations or decisions for granting, revoking or denying parole. Any data related to  
32 victim identification or victim input that is identifiable to the person convicted or the  
33 person's case must be maintained but kept confidential by the board and may be released  
34 only to other government agencies, pursuant to a nondisclosure agreement, for the  
35 purposes of analysis and reporting only.

36           **2. Recidivism data.** When the board grants parole, the board also shall collect data  
37 related to whether the person has previously violated the law while on parole, the type of  
38 reentry program provided as part of the person's parole plan and whether the person  
39 violates the law while on parole.

