



# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 842

H.P. 610

House of Representatives, March 8, 2021

### An Act To Reestablish Parole

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative EVANGELOS of Friendship.  
Cosponsored by Senator MIRAMANT of Knox and  
Representatives: HARNETT of Gardiner, O'NEIL of Saco, PLUECKER of Warren, RECKITT  
of South Portland, TALBOT ROSS of Portland, WARREN of Hallowell, Senators: BAILEY  
of York, MAXMIN of Lincoln.

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 CODE**  
5 **PRISONERS**

6 **§5821. Applicability**

7 This subchapter applies to persons sentenced to the custody of the Department of  
8 Corrections.

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 pursuant to Title 17-A, section 2307, subsections 2  
12 and 3, or after the parolee's compliance with conditions provided in this subchapter  
13 applicable to the sentence being served. The board may revoke a parole when a condition  
14 of the parole is violated.

15 **1. Duration and conditions of parole.** When the board grants a parole, upon release  
16 the parolee shall serve the unexpired portion of the parolee's sentence under conditions of  
17 custody established pursuant to subsection 2, less deductions pursuant to Title 17-A,  
18 section 2307, subsections 2 and 3, 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 division  
22 of probation and parole within the department and any special conditions of parole imposed  
23 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 sentenced to the custody of the Department of Corrections and who received  
27 a sentence of imprisonment is eligible for parole upon application if:

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

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

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

37 **2. Administrative release and revocation guidelines.** The board shall by rule  
38 develop administrative release guidelines for use by the board in evaluating applications  
39 for parole as described in section 5824 and shall develop administrative revocation  
40 guidelines as described in section 5825 for use by the board in considering revocation of  
41 parole.

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

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

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

14           **6. Rules.** The board shall adopt rules to implement the provisions of this subchapter.  
15 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
16 chapter 375, subchapter 2-A.

17 **§5824. Administrative release guidelines**

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

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

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

30           B. Testimony or a written statement of the victim of the crime or a relative of the  
31 victim or a designee of the victim or relative of the victim;

32           C. The person's assessed criminogenic need level;

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

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

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

36           G. Whether the person while serving the person's sentence has threatened or harassed  
37 the victim or the victim's family or has caused the victim or the victim's family to be  
38 threatened or harassed;

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

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

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

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

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

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

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

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

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

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

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

29 **§5825. Administrative revocation guidelines**

30 The board shall develop administrative revocation guidelines that must be used to  
31 evaluate complaints filed for parole revocation. The board shall develop administrative  
32 revocation guidelines using evidence-based risk assessment criteria. The following  
33 provisions govern administrative revocation guidelines.

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

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

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

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

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

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

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

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

6           **2. Revocation determination for violations of conditions of parole.** In evaluating  
7           complaints filed for parole revocation, the board may not revoke parole for violations of  
8           conditions of parole unless the board determines on the record that appropriate intermediate  
9           sanctions have been used and have been ineffective or that the modification of conditions  
10          of parole or the imposition of intermediate sanctions is not appropriate or consistent with  
11          public safety and the welfare of society.

12          **§5826. Violations of a condition of parole**

13          **1. Arrest and detention for violation.** A probation and parole officer may arrest and  
14          charge a parolee with violation of a condition of parole, take the parolee into custody and  
15          detain the parolee, pending the issuance of a parole violation warrant. The detention may  
16          not extend beyond the next business day, and, if a warrant is not issued in that time, the  
17          parolee must be released from arrest and detention. A parolee arrested and detained does  
18          not have a right of action against the probation and parole officer or any other person  
19          because of that arrest and detention.

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

31          **3. Forfeiting deductions.** Upon revocation of a person's parole by the board under  
32          subsection 2, the person forfeits any deductions pursuant to Title 17-A, section 2307,  
33          subsections 2 and 3 earned while on parole.

34          **4. Earning deductions.** While a person is serving the unexpired portion of a sentence  
35          after parole has been revoked under subsection 2, the person may earn deductions pursuant  
36          to Title 17-A, section 2307, subsections 2 and 3.

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

42          In the event of the withdrawal of the warrant, or in the event that the board at the hearing  
43          on the alleged violation finds that the parolee did not violate the conditions of parole or the

1 law, the parolee must be credited with the time lost by the tolling of the running of the  
2 parolee's sentence.

3 **§5827. Sentence for violation of law by parolee**

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

8 **§5828. Discharge from parole**

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

15 **§5829. Collection and analysis of data**

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

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

27 **3. Record of conformance with or departure from guidelines.** The board shall  
28 determine whether a decision granting, revoking or denying parole conformed with or  
29 departed from the administrative release and revocation guidelines under sections 5824 and  
30 5825. If the decision was a departure from the guidelines, the data collected related to  
31 victim identification or victim input are subject to the same protections as in subsection 1.

32 **4. Reporting.** The board shall provide the data collected pursuant to this section to  
33 the department for analysis. Using the data, the department shall assist the board in  
34 identifying specific factors that are necessary to the board's parole decision-making process  
35 and shall assist the board in securing training to facilitate the board's future decision  
36 making.

37 **5. Report to the Legislature.** By January 15, 2022, the board shall report to the Joint  
38 Standing Committee on Criminal Justice and Public Safety regarding the implementation  
39 of this subchapter. Thereafter, annually by January 15th, the board shall update the report  
40 and make a presentation to the joint standing committee of the Legislature having  
41 jurisdiction over corrections matters regarding the operations of the board pursuant to this  
42 subchapter. Data may be reported only in the aggregate.

1         **6. Cooperation.** The department, the board and other criminal justice agencies shall  
2         cooperate in implementing this subchapter.

3   **SUMMARY**

4         This bill establishes the option of parole for persons sentenced to the custody of the  
5         Department of Corrections. Current law provides that only persons in the custody of the  
6         Department of Corrections pursuant to a sentence imposed under the law in effect before  
7         May 1, 1976 may apply for parole. This bill incorporates the concepts of positive reentry  
8         parole, is modeled in part on a parole law from the State of Colorado and uses some of the  
9         technical aspects of Maine's existing parole law.