

## Commission to Examine the Intersection of Parole and Current Sentencing Practices

### Meeting Agenda

Monday, September 21, 2026

10:00a.m. – 4:00p.m.

Maine State House, Room 438 (JUD) and via Zoom

Streaming: <https://legislature.maine.gov/Audio/#438>

1. Welcome and Introductions
  - Senator Rachel Talbot Ross, Senate Chair
  - Representative Adam Lee, House Chair
2. Review of Committee Duties and Interim Study Process
  - Office of Policy and Legal Analysis, Staff
3. Legislative history on parole related bills and prior study
  - Office of Policy and Legal Analysis, Staff
4. Background information on Maine sentencing codes, including earned good time
  - Maine Prosecutors Association
  - Department of Corrections
5. Lunch
6. Background information on SCCP and Probation
  - Department of Corrections
7. Conflict/impact between probation and parole
  - Maine Prosecutors Association
  - Maine Defense Bar
8. Discussion and Planning for Next Meeting

#### Future Meetings

- Monday, October 26 10:00 a.m., (State House Room 438)
- Thursday, October 29 10:00 a.m., (State House Room 438)
- 

*Additional information and materials are available on the Committee's webpage at:*  
<https://legislature.maine.gov/intersection-of-parole-and-current-sentencing-practices-commission>

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-SIX

H.P. 1300 - L.D. 1941

**Resolve, Establishing the Commission to Examine the Intersection of Parole  
and Current Sentencing Practices**

**Sec. 1. Commission established. Resolved:** That the Commission to Examine the Intersection of Parole and Current Sentencing Practices, referred to in this resolve as "the commission," is established.

**Sec. 2. Commission membership. Resolved:** That, notwithstanding Joint Rule 353, the commission consists of 16 members as follows:

1. Two members of the Senate appointed by the President of the Senate, including one member from each of the 2 parties holding the largest number of seats in the Legislature;
2. Three members of the House of Representatives appointed by the Speaker of the House, including at least one member from each of the 2 parties holding the largest number of seats in the Legislature;
3. The Commissioner of Corrections or the commissioner's designee;
4. The Attorney General or the Attorney General's designee;
5. A district attorney, designated by an association representing prosecutors in the State;
6. A representative of an organization advocating for the interests of persons who are incarcerated, appointed by the President of the Senate;
7. A member who is an expert in criminal procedure, appointed by the President of the Senate;
8. A member with experience in the fields of criminal sentencing or criminology or with experience in administering parole, appointed by the Speaker of the House;
9. A representative of an organization advocating for the interests of racial minorities, appointed by the Speaker of the House;
10. A member who is currently incarcerated in a correctional facility in this State, appointed by the Speaker of the House;

11. A member who is a criminal defense attorney, appointed by the Speaker of the House;

12. A member who is a member of Maine Pretrial Services, Inc., appointed by the Speaker of the House; and

13. An active or retired judge or justice, designated by the Chief Justice of the Supreme Judicial Court.

The membership of the commission must reflect the diversity of the State, including, but not limited to, diversity in geographic location, cultural and ethnic background, sexual orientation, gender identity and professional experience.

**Sec. 3. Chairs. Resolved:** That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the commission.

**Sec. 4. Appointments; convening of commission. Resolved:** That all appointments must be made no later than 120 days following the adjournment of the Second Regular Session of the 132nd Legislature. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the commission. If 120 days or more after the adjournment of the Second Regular Session of the 132nd Legislature a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the commission to meet and conduct its business.

**Sec. 5. Duties. Resolved:** That the commission shall examine parole as it currently operates in this State and in other states and shall consider:

1. How parole fits in with the overall sentencing framework of the Maine Revised Statutes, including the intersection of parole with probation and the supervised community confinement program operated by the Department of Corrections pursuant to Title 34-A, section 3036-A;

2. The consequences of reestablishing retrospective or prospective parole, including an exploration of the laws and experience of any other states that have recently established or reestablished parole; and

3. The decision-making process that should be employed by the State Parole Board, including any training required to ensure parity between sentencing decisions made by the courts and parole decisions made by the board.

**Sec. 6. Staff assistance. Resolved:** That the Legislative Council shall provide necessary staffing services to the commission, except that the Legislative Council staff support is not authorized when the Legislature is in regular or special session.

**Sec. 7. Consultants. Resolved:** That the commission may request that individuals with specific expertise in parole and the logistics of parole systems, including but not limited to current employees of the Department of Corrections and members of the State Parole Board, serve as consultants to the commission.

**Sec. 8. Report. Resolved:** That, no later than November 4, 2026, the commission shall submit a report that includes its findings and recommendations, including suggested

legislation, to the joint standing committee of the Legislature having jurisdiction over judiciary matters. The joint standing committee may report out legislation based on the recommendations of the commission to 133rd Legislature in 2027.

**Commission to Examine the Intersection of Parole and Current Sentencing Practices**  
 Established by Resolve 2026, Chapter 176

**Membership List - 2026**

| <b>Name</b>                                                                          | <b>Representation</b>                                                                                                  |
|--------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| <b>Members appointed by the President of the Senate and the Speaker of the House</b> |                                                                                                                        |
| Senator Rachel Talbot Ross                                                           | Senate Chair                                                                                                           |
| Representative Adam Lee                                                              | House Chair                                                                                                            |
| Senator Dick Bradstreet                                                              | Member of the Senate                                                                                                   |
| Representative Nina Milliken                                                         | Member of the House                                                                                                    |
| Representative Steven Bishop                                                         | Member of the House                                                                                                    |
| Brandon Brown                                                                        | Representative of an organization advocating for the interests of persons who are incarcerated                         |
| Kate Marshall                                                                        | Expert in criminal procedure                                                                                           |
| Richard Harburger                                                                    | Member with experience in the fields of criminal sentencing or criminology or with experience in administering parole, |
| Athena Bryce                                                                         | Representative of an organization advocating for the interests of racial minorities                                    |
| Christopher Laliberte                                                                | Member who is currently incarcerated in a correctional facility in this State                                          |
| Frayla Tarpinian                                                                     | Member who is a criminal defense attorney                                                                              |
| Elizabeth Simoni                                                                     | Member who is a member of Maine Pretrial Services, Inc.                                                                |
| <b>Members designated by Resolve 2026, Chapter 176</b>                               |                                                                                                                        |
| Anthony Cantillo                                                                     | Designee of the Commissioner of Corrections                                                                            |
| Laura Yustak                                                                         | Designee of the Attorney General                                                                                       |
| Shira Burns                                                                          | District Attorney, designee of an association representing prosecutors in the State                                    |
| Justice Julia Lipez                                                                  | Designee of the Chief Justice of the Supreme Judicial Court                                                            |

# Maine's Freedom of Access Act and the Conduct of the Business of the Legislature

Prepared for the Right to Know Advisory Committee  
by the Office of Policy and Legal Analysis and the Office of the Attorney General  
Updated January 2025

*The Maine Freedom of Access Act requires governmental entities to conduct public business in the open and to provide access to public records. Legislative meetings and records are subject to the law and must be open to the public, with some limited exceptions set forth in the law.*

## **Intent of the Freedom of Access Law**

The Maine Freedom of Access Act provides that it is the intent of the Legislature that "actions [involving the conduct of the people's business] be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly." The Freedom of Access Act, found in Title 1 of the Maine Revised Statutes, chapter 13, applies to all governmental entities, including the Legislature.

## **Public Proceedings**

Under state law, all meetings of the Legislature, its joint standing committees, joint select committees and legislative subcommittees are public proceedings. A legislative subcommittee is a group of 3 or more committee members appointed for the purpose of conducting legislative business on behalf of the committee.

The public must be given notice of public proceedings and must be allowed to attend. Notice must be given in ample time to allow the public to attend and in a manner reasonably calculated to notify the general public. The public is also allowed to record the proceedings as long as the activity does not interfere with the orderly conduct of the proceedings.

Party caucuses are not committees or subcommittees of the Legislature, so their meetings do not appear to be public proceedings. Similarly, informal meetings of the members of a committee who are affiliated with the same party are not public proceedings as these members are not designated by the committee as a whole to conduct business of the committee. However, committee members should be careful when they caucus not to make decisions or otherwise use the caucus to circumvent the public proceeding requirements.

## **Limited Exception to Public Proceedings (Executive Sessions)**

In very limited situations, joint standing committees may hold executive sessions to discuss certain matters. State law is quite specific as to those matters that may be deliberated in executive sessions. The executive session must not be used to defeat the purpose of the Act, which is to ensure that the people's business is conducted in the open.

The permitted reasons for executive session are set forth in the law, Title 1, section 405 and Title 3, section 156. The reasons most relevant to legislative work are discussion of confidential records and pre-hearing conferences on confirmations.

An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of the committee. The motion to go into executive session must indicate the precise nature of the business to be discussed and no other matters may be discussed. A committee may not take any votes or other official action in executive sessions.

If a committee wants to hold an executive session, the committee should discuss the circumstances with a nonpartisan legislative analyst from the Office of Policy and Legal Analysis or the Office of Fiscal and Program Review who can provide the committee with guidance about whether an executive session is permitted and, if so, how to proceed.

## **Public Records**

The Freedom of Access Act defines “public records” broadly, to include all material in possession of public agencies, staff and officials if the materials were received or prepared for use in, or relate to, the transaction of public or governmental business. The scope of the definition means that most, if not all, papers and electronic records relating to legislative business are public records. This includes records that may be stored on an individual legislator’s personal computer, tablet or smartphone if they relate to or were prepared for use in the transaction of public business, e.g., constituent inquiries, emails, text messages or other correspondence about legislative matters. Information contained in a communication between a constituent and a legislator may be confidential if it meets certain narrow requirements.

## **Time-limited Exception from Public Disclosure for Certain Legislative Records**

The Freedom of Access Act contains exceptions to the general rule that public records must be made available for public inspection and copying. One exception that is relevant to legislative work allows certain legislative papers to be withheld from public disclosure until the end of the legislative session in which they are being used. The exceptions are as follows:

- ❑ Legislative papers and reports (e.g. bill drafts, committee amendments and the like) are not public records until signed and publicly distributed; and
- ❑ Working papers, drafts, records and memoranda used to prepare proposed legislative papers or reports are not public records until the end of the legislative session in which the papers or reports are prepared or considered or to which they are carried over.

The Legislative Council’s Confidentiality Policy and the Joint Rules provide guidance to legislative staff about how such records are to be treated before they become public records.

## **Confidential Records in the Possession of Committees**

Committees may also need to be prepared to deal with other types of non-public records, such as individual medical or financial records that are classified as confidential under state or federal law.

If the committee comes into possession of records that are declared confidential by law, the Freedom of Access Act allows the committee to withhold those records from the public and to go into executive session to consider them (see discussion above for the proper process).

In addition, the committee should also find out whether there are laws that set specific limitations on, and penalties for, dissemination of those records. The Office of the Attorney General or a nonpartisan legislative analyst from the Office of Policy and Legal Analysis or the Office of Fiscal and Program Review can help the committee with these records.

Joint Rule 313 also sets forth procedures to be followed by a committee that possesses confidential records.

## **Legislative Review of Public Record Exceptions**

All exceptions to the public records law are subject to a review process. A legislative committee that considers a legislative measure proposing a new statutory exception must refer the measure to the Judiciary Committee if a majority of the committee supports the proposed exception. The Judiciary Committee will review and evaluate the proposal according to statutory standards, then report findings and recommendations to the committee of jurisdiction. The Judiciary Committee regularly seeks input from the Right to Know Advisory Committee on public records, confidentiality and other freedom of access issues.

## **Public Access Ombudsman**

The Public Access Ombudsman, an attorney located in the Department of the Attorney General, is available to provide information about public meetings and public records, to help resolve complaints about accessing proceedings and records and to help educate the public as well as public agencies and officials. Legislators may contact the Public Access Ombudsman, Brenda Kiely, at [Brenda.Kiely@maine.gov](mailto:Brenda.Kiely@maine.gov), or (207) 626-8577 for assistance.

**Commission to Examine the Intersection of Parole  
and Current Sentencing Practices**

**COMMISSION RULES OF PROCEDURE**

Legislative studies allow for the examination of topics and issues beyond what is possible during a legislative session. Legislative studies allow for in-depth review and discussion by incorporating a wide range of input from those with direct experience or knowledge of the issue. Adopting procedures to guide the conduct of legislative study proceedings provides a structure for the orderly conduct of meetings that will best achieve the prescribed duties of the study in a manner that is efficient and effective and ensures the transparency of proceedings.

**1. Attendance and quorum**

- A. **Quorum.** A quorum is required to convene a meeting of the Commission to Examine the Intersection of Parole and Current Sentencing Practices (the “Commission”). A quorum consists of 9 members appointed or named to the Commission and must include at least one legislative member.
- B. **Attendance.** It is the duty of each voting and nonvoting member of the Working Group to notify the chairs (via staff) in advance if they will not be present at a meeting of the legislative study by sending an email to both [Will.Tew@legislature.maine.gov](mailto:Will.Tew@legislature.maine.gov) and [Elias.Murphy@legislature.maine.gov](mailto:Elias.Murphy@legislature.maine.gov).
- C. **Hybrid meetings.** If a meeting is in hybrid format (with attendance in-person and electronically), voting members attending remotely are counted towards a quorum.
  - o A member wishing to attend a meeting remotely shall provide advance notice to the chairs and staff.
  - o The legislative member serving as presiding chair must be physically present in the room for hybrid meetings.

**2. Scheduling**

- A. **Chairs determine schedule.** The chairs of the legislative study shall jointly determine the schedule of meetings.
- B. **Authorized meetings.** Requests for additional meetings (beyond those budgeted in the fiscal note of the authorizing legislation) are subject to the approval of the Legislative Council pursuant to Joint Rule 353.

**3. Notice and conduct of meetings**

- A. **Notice provided.** As soon as practicable after the date of meeting has been determined by the chairs, notice of the meeting must be posted on the legislative events calendar, the Working Group webpage<sup>1</sup> and delivered by email to members and interested parties.
- B. **All proceedings public.** Actions of the membership, including but not limited to presentations, discussion, determination of findings and proposing recommendations, must be conducted openly as part of a public proceeding.
- C. **Meeting agenda.** The chairs determine the agenda for each meeting of the Commission. Requests for presentations or speakers must be made through the chairs.
- D. **Conduct of meeting; public comment.** All questions must be addressed through the chair. If a Commission meeting includes an opportunity for the public to provide comment the chairs shall announce the format and manner by which public comment will be received.
- E. **Electronic devices.** Personal electronic devices must be silenced during meetings and may only be used in a way that is not disruptive to members or those in attendance at the meeting.

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<sup>1</sup> <https://legislature.maine.gov/intersection-of-parole-and-current-sentencing-practices-commission>

**Commission to Examine the Intersection of Parole  
and Current Sentencing Practices**

**4. Voting**

- A. **Quorum required.** Other than a vote on a motion to adjourn, a quorum is required for a vote of the Commission.
- B. **Absent members.** Except for procedural votes such as a motion to table, to adjourn or to reconsider, members who are absent at the time of a vote may register their position in support of or opposition to the motion with staff in accordance with the timeframe specified by the chairs.
- C. **Abstention.** In order to abstain from a vote, a member must first obtain approval from the chairs.

**5. Review of legislative study report**

- A. **Purpose of review.** The purpose of review is to ensure that the draft report accurately reflects the information received by the legislative study, member discussion and decision-making that took place during public meetings of the legislative study.
- B. **Review procedure.** The chairs, with the assistance of staff, shall establish the procedures for member review of the draft report of the legislative study. Members shall review the draft report and as necessary provide feedback to staff within the established timeframe set by the chairs.

To: Commission to Examine Reestablishing Parole  
From: Legislative Staff  
Date: September 8, 2022  
Re: Timeline of Parole in Maine

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In 1913 the Maine Legislature passed Public Law 1913, Chapter 60, establishing parole, the State's first parole board, and replacing the State's "definite" sentencing system with what has now become known as "indeterminate" sentencing.<sup>1</sup> For those receiving and serving sentences, this change meant receiving a baseline sentence defined by a range between a minimum and a maximum number of years to serve, rather than a single baseline number of years.

At the time, the statutory minimum for sentences of more than two years was one-half of the sentence maximum (a 10 year maximum would have a 5 year minimum) and the statutory minimum for sentence of less than two years was set at one year (a 1.5 year maximum would have a 1 year minimum).

With the exception of those who had been convicted of two prior felonies, all inmates (the term used at the time) were eligible for parole after serving their minimum sentence, as adjusted for "good-time."<sup>2</sup> Parole was also not available to those serving life sentences.

As it was established at the time, that system worked in the following way:

1. During the sentencing stage the judge, if having decided incarceration was warranted, set a minimum and maximum term of confinement.
2. Once a person had served their minimum sentence, as adjusted for good-time credits, they would become eligible for review by the parole board.<sup>3</sup>
3. If, upon review of a person's application for parole, it was determined that parole was appropriate, the parolee would be released under the expectation of compliance with a number of conditions.<sup>4</sup>

A person released on parole was considered to still be serving their sentence and remained "in the legal custody and under the control of the warden or superintendent of the prison from which he is paroled and shall be subject at any time to be taken back within the enclosure of said prison for any reason that may be satisfactory to the warden or superintendent."<sup>5</sup>

Despite undergoing many modifications, the basic structure of parole in Maine remained the same through the recodification that resulted in the creation of MRS Title 34, in 1965.<sup>6</sup> By that time numerous provisions had been added to the structure of parole in Maine, including the provision of parole for

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<sup>1</sup> This coincided with the creation of the State Board of Charities and Corrections, which became Department of Public Welfare and the Bureau of Institutional Services in 1931, then the Department of Institutional Services in 1939, and then the Department of Mental Health and Corrections in 1959. The Bureau of Corrections was created in 1967, and it was not until 1981 that the Legislature created the Department of Corrections. See Maine State Archives webpage.

<sup>2</sup> "Good time" is the practice of reducing the number of days a person is required to serve by meeting certain conditions, like good behavior or participation in rehabilitation programs.

<sup>3</sup> For certain cases the authority to grant parole was conferred exclusively on the Governor. See Section 6 of Public Law 1913, Chapter 60.

<sup>4</sup> See sections 7-14 of Public Law 1913, Chapter 60.

<sup>5</sup> Public Law 1913, Chapter 60, section 9.

<sup>6</sup> However, the parole statutes are now located in Title 34-A, Chapter 5.

certain life sentences.<sup>7</sup> The Legislature had also distinguished parole from the Governor's pardon and commutation power in statute,<sup>8</sup> and further outlined the parameters of how parole functioned.<sup>9</sup>

In 1971, Maine's 104th Legislature passed an "Act to Create a Commission to Prepare a Revision of the Criminal Laws" (Private and Special Law 1971, Chapter 147). The Commission completed its work in 1975, a time during which there was a nationwide movement toward determinate sentencing.<sup>10</sup> The commission's work eventually lead to the establishment of the criminal code in 1975 (Public Law 1975, Chapter 499),<sup>11</sup> which included a requirement that persons sentenced to imprisonment be confined for a definite period of time, rather than an indeterminate period. The preamble of the bill stated that release "will no longer depend on parole board decisions but on the willingness of the prisoner to earn the "good time" deductions authorized by law."<sup>12</sup>

This marked the end of parole in Maine for sentences issued after the effective date of that law. Parole remains for those sentenced prior to 1976,<sup>13</sup> it is governed by the provisions of Title 34-A, Chapter 5 and administered through the State Parole Board Rules and Policy ([accessible on the bottom of the page at this link](#)).

Since 1976 and prior to the consideration of <sup>130<sup>th</sup></sup> LD 842, the bill that ultimately created this commission, there have been a number of proposals to reinstate or change parole in various ways including, but not limited to, the following:

| Legislature       | LD Number | Title                                                                            |
|-------------------|-----------|----------------------------------------------------------------------------------|
| 115 <sup>th</sup> | 2224      | An Act to Reinstate a System of Parole                                           |
| 116 <sup>th</sup> | 901       | An Act to Reinstate a System of Parole                                           |
| 119 <sup>th</sup> | 2531      | An Act to Institute a System of Parole for Certain Maine Criminal Code Prisoners |
| 125 <sup>th</sup> | 1500      | An Act To Establish Positive Reentry Parole                                      |
| 126 <sup>th</sup> | 873       | An Act To Establish Positive Reentry Parole                                      |

There have also been a number of court cases relevant to parole in Maine including, but not limited to, the following:

- **Gilbert v. State**, 505 A.2d 1326 (Me.1986)
- **Bossie v. State**, 488 A.2d 477 (Me.1985)
- **Mottram v. State**, 232 A.2d 809 (Me.1967)
- **Collins v. State**, 161 Me. 445 (Me.1965)
- **Lewis v. Robbins**, 150 Me.121 (Me.1954)
- **Ex parte Mullen**, 146 Me.191 (Me.1951)
- **Smith v. Lovell**, 146 Me.63 (Me.1950)

<sup>7</sup> See page 629 in document titled: "Title 34 as of 1965 Recodification."

<sup>8</sup> See page 617 in document titled: "Title 34 as of 1965 Recodification."

<sup>9</sup> See Subchapter V, beginning on page 628 in document titled: "Title 34 as of 1965 Recodification."

<sup>10</sup> Maine Rejects Indeterminacy: A Case Study of Flat Sentencing and Parole Abolition – Final Report, 1983, Page 20.

<sup>11</sup> See also, <https://www.maine.gov/legis/lawlib/lldl/criminalcode/index.html>.

<sup>12</sup> Preamble to LD 314 from 1975.

<sup>13</sup> MRSA Title 34-A, section 5801.

## List of Bills related to the issue of Parole

| Legislature | LD Number | Chapter Number | Title                                                                                                                                                                                                                                                                                                                             |
|-------------|-----------|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1984        | 112       | 858            | 203 AN ACT TO CLARIFY SENTENCES PERMISSIBLE FOR A CRIME COMMITTED BY A PAROLEE                                                                                                                                                                                                                                                    |
|             | 112       | 899            | 0 AN ACT TO ESTABLISH A PILOT INDIGENCY SCREENING UNIT FOR COURT APPOINTED COUNSEL<br>An Act to Appropriate Funds Necessary to Implement an Intensive Supervision Program, to Develop Community Corrections and Treatment Programs and to Address Needs of the Department of Corrections for the Fiscal Year Ending June 30, 1987 |
|             | 112       | 2410           | 0 and Treatment Programs and to Address Needs of the Department of Corrections for the Fiscal Year Ending June 30, 1987                                                                                                                                                                                                           |
|             | 113       | 299            | 61 An Act Concerning Good Time and Meritorious Good Time Relative to Parole Eligibility                                                                                                                                                                                                                                           |
|             | 113       | 1582           | 315 An Act to Clarify the Powers of Arrest of a Probation and Parole Officer                                                                                                                                                                                                                                                      |
|             | 113       | 1971           | 0 An Act to Authorize a Probation Officer to Bring an Ex Parte Motion to Change the Conditions of Probation                                                                                                                                                                                                                       |
|             | 113       | 2515           | 0 An Act to Substantially Revise the Driver Education Evaluation Program<br>An Act to Make Technical Changes to Provisions Related to the Probation and Parole and Intensive Supervision Program                                                                                                                                  |
|             | 114       | 539            | 113 Functions                                                                                                                                                                                                                                                                                                                     |
|             | 115       | 2224           | 0 An Act to Reinstate a System of Parole                                                                                                                                                                                                                                                                                          |
|             | 116       | 590            | 147 An Act to Amend the Statutory Provisions Governing the Time and Method of Paying Restitution                                                                                                                                                                                                                                  |
|             | 116       | 833            | 170 An Act to Amend the Provisions Related to the Supervised Community Confinement Program                                                                                                                                                                                                                                        |
|             | 116       | 901            | 0 An Act to Reinstate a System of Parole                                                                                                                                                                                                                                                                                          |
|             | 116       | 1243           | 717 An Act Concerning Sexual Abuse Laws                                                                                                                                                                                                                                                                                           |
|             | 116       | 1941           | 0 An Act to Make Additions to the Department of Corrections Budget                                                                                                                                                                                                                                                                |
|             | 117       | 1506           | 0 An Act Regarding the Registration and Publication of Residences of Released Persons Convicted of Sexual Abuse of a Minor                                                                                                                                                                                                        |
|             | 118       | 522            | 0 An Act to Clarify the Need and Time Frame for Presentence Investigations<br>An Act to Amend the Law to Be Consistent with the Organizational Structure of the Department of Corrections and for Other                                                                                                                           |
|             | 118       | 1467           | 464 Purposes                                                                                                                                                                                                                                                                                                                      |
|             | 118       | 1806           | 422 An Act to Amend Maine's Involuntary Commitment Laws                                                                                                                                                                                                                                                                           |
|             | 118       | 2080           | 0 An Act to Enhance the Bail Requirements for Persons Charged with Murder                                                                                                                                                                                                                                                         |
|             | 118       | 2180           | 0 An Act to Increase the Number of Probation Officers and Corrections Support Staff                                                                                                                                                                                                                                               |
|             | 118       | 2185           | 124 Resolve, to Provide Accountability in the Probation System<br>An Act to Make Public the Records of the Department of Corrections Relating to Inmate Furloughs and Requests under the                                                                                                                                          |
|             | 118       | 2257           | 714 Uniform Act for Out-of-State Parolee Supervision                                                                                                                                                                                                                                                                              |
|             | 119       | 1803           | 0 An Act to Revoke Probation and Require Incarceration for Repeated Domestic Abuse                                                                                                                                                                                                                                                |
|             | 119       | 2531           | 0 An Act to Institute a System of Parole for Certain Maine Criminal Code Prisoners                                                                                                                                                                                                                                                |
|             | 119       | 2612           | 0 An Act to Adopt a New Interstate Compact Regarding Adults Who are on Probation or Parole                                                                                                                                                                                                                                        |
|             | 120       | 1081           | 0 An Act to Adopt a New Interstate Compact Regarding Adults Who are on Probation or Parole                                                                                                                                                                                                                                        |

## List of Bills related to the issue of Parole

|     |      |                                                                                                                                                                                                                                                                                                       |
|-----|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 120 | 1159 | An Act to Increase Effectiveness within the Department of Corrections when Serving Warrants of Arrest for Persons Charged<br>0 with Probation and Parole Violations                                                                                                                                   |
| 121 | 311  | 495 An Act to Adopt a New Interstate Compact Regarding Adults Who are on Probation and Parole                                                                                                                                                                                                         |
| 121 | 1023 | 158 An Act To Criminalize Noncompliance with an Interstate Compact for Adult Offender Supervision                                                                                                                                                                                                     |
| 121 | 1323 | 500 An Act To Adopt an Interstate Compact for Juveniles on Probation and Parole                                                                                                                                                                                                                       |
| 125 | 1500 | 0 An Act To Establish Positive Reentry Parole                                                                                                                                                                                                                                                         |
| 125 | 1754 | 515 An Act To Amend Certain Provisions of Law Governing the Department of Corrections                                                                                                                                                                                                                 |
| 126 | 873  | 0 An Act To Establish Positive Reentry Parole                                                                                                                                                                                                                                                         |
| 128 | 1458 | 149 An Act To Amend the Law Relating to the Crime of Hindering Apprehension or Prosecution<br>An Act Requiring the Department of Corrections To Fully Fund County Jails for Individuals Sentenced to County Jails for More<br>0 Than 6 Months and Individuals Held for Probation or Parole Violations |
| 129 | 925  | 126 Resolve, To Create the Commission To Examine Reestablishing Parole                                                                                                                                                                                                                                |
| 130 | 842  | 0 An Act to Support Reentry and Reintegration into the Community<br>An Act to Expand Eligibility for Supervised Community Confinement for Prisoners with a Prognosis Likely to Result in an<br>399 Incapacitating Medical Condition                                                                   |
| 131 | 720  | 525 An Act to Establish Training and Certification Standards for Probation and Parole Officers                                                                                                                                                                                                        |
| 131 | 2045 | 176 Resolve, Establishing the Commission to Examine the Intersection of Parole and Current Sentencing Practices                                                                                                                                                                                       |
| 132 | 1941 |                                                                                                                                                                                                                                                                                                       |

## OPLA PAROLE BACKGROUND MEMO

To: Commission to Examine Reestablishing Parole  
From: Julia MacDonald and Sam Prawer, OPLA  
Date: September 8, 2022  
RE: Parole Background

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### I. History

The Division of Probation and Parole was created in 1967 as an alternative to incarceration and with the purpose of integrating incarcerated residents back into society.<sup>1</sup> Maine became the first State in the nation to eliminate Parole in 1976 as part of the Maine Criminal Code. Parole was ended after the Criminal Code Commission examined the issue, which included hearings before the Judiciary committee. "Determinate" sentencing was put in its place.<sup>2</sup> Currently, only those sentenced prior to introduction of the Criminal Code (1976) are eligible for parole.<sup>3</sup> See LD 842.

### II. Current System:

Crimes are assigned one of five sentencing classes, all of which have a cap on the amount of time a person can serve. A judge then assigns a specific sentence.

#### A. Good Time Reduction

This is subject to reduction by good time reduction. 17-A M.R.S. §2307.

#### B. Supervised Community Confinement Program

"The purpose of the Supervised Community Confinement Program (SCCP) is to provide a means of successful reentry of adult facility residents into the community. Residents transferred to supervised community confinement are still considered to be in the legal custody of the Department while in the program. The place of confinement is in the community, rather than in a Department facility. Participation in this program is a privilege which may be afforded to eligible residents who meet the criteria."<sup>4</sup>

#### C. Probation system

After release (not during sentence, so not really relevant, could add).

### III. Other States

#### A. States that abolished and then reinstated parole.<sup>5</sup>

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<sup>1</sup> See *Final Report of the STUDY GROUP TO REVIEW PROCEDURES AND CONSIDER IMPROVEMENTS IN JUVENILE AND ADULT PROBATION SERVICES*. December 1999, Maine State Legislature.

<sup>2</sup> See *Fernald v. Maine State Parole Bd.*, 447 A.2d 1236, 1238 (Me. 1982).

<sup>3</sup> See LD 842

<sup>4</sup> SCCP Policy Overview, Maine DOC.

<sup>5</sup> Policy Memo written by Darlene Shorlene of the Office of Policy and Legal Analysis, Maine. August, 2022.

- **California** eliminated most discretionary release decisions by the parole board in 1977. In 2016, voters passed Proposition 57, which gave the parole board more discretion in granting parole for non-violent offenders who had served the full-term of their sentence for their primary offense and who demonstrated their release would not be a threat to the community.
- **Colorado** - Discretionary parole release was abolished in Colorado in 1979, but reestablished in 1985 in legislation that doubled the maximum authorized sentences for most felonies. In 1993, House Bill 93-1302 created mandatory parole for all inmates released from prison who committed a crime on or after July 1, 1993. Depending on the type of felony the inmate was convicted of, mandatory parole can last either one to five years.

Under current Colorado law, any person sentenced for a class 2, class 3, class 4, class 5, or class 6 felony, or a level 1, level 2, level 3, or level 4 drug felony, or any unclassified felony is eligible for parole after such person has served fifty percent of the sentence imposed upon such person, less any time authorized for earned time granted. Any person convicted and sentenced for second degree murder, first degree assault, first degree kidnapping unless the first-degree kidnapping is a class 1 felony, first or second-degree sexual assault, first degree arson, first degree burglary, or aggravated robbery is eligible for parole after such person has served seventy-five percent of the sentence imposed upon such person, less any time authorized for earned time granted.

- **Connecticut** - Connecticut ended discretionary parole release in 1981, but reestablished parole in 1993 for those individuals sentenced to at least three years in prison. Under current law, inmates who are sentenced to more than two years in prison can generally be considered for release from prison on parole. Inmates convicted of non-violent crimes are generally eligible for parole after serving 50% of their sentence less any risk reduction credits. Inmates who committed violent crimes, home invasion, or 2nd degree burglary are generally eligible for parole after serving 85% of their sentence less any risk reduction credits. Those convicted of the following crimes are not eligible for parole: capital felony, murder with special circumstances, felony murder, arson murder, murder, and 1st degree aggravated sexual assault (CGS § 54-125a(a), (b)). For further explanation of Connecticut's parole law, please see Office of Legislative Research Report, Laws Governing Parole, November 2018.
- **Mississippi** - Mississippi eliminated discretionary parole release in 1995, but reestablished parole in 2000. The Legislature adopted an "85 percent rule" which mandated that all state prisoners must serve at least 85 percent of their sentences before being eligible for parole, even for individuals who had committed a violent offense. In 2014, the legislature passed House Bill 585, bill which requires individuals convicted of a violent offense to serve at least 50 percent of a sentence, and anyone convicted of a nonviolent offense to serve at least 25 percent of a sentence before being eligible for parole. (Please also see "Practitioner Guide to HB 585 Mississippi Corrections and Criminal Justice Task Force").

In 2021, Mississippi enacted SB 2795, the "Mississippi Earned Parole and Eligibility Act", which took effect on July 1, 2021. This law amended the parole law to change the eligibility requirement for nonviolent offenders to 25% of the sentence served or a maximum of 10 years, whichever is less. Violent offenders are required to serve at least 50 percent of their sentence or a maximum of 20 years, whichever is less. The law also allows people convicted of armed robbery to become eligible for a parole hearing after serving 60% of their sentences.

#### **IV. Relevant Case Law**

We could include case law, it would need to include *Gilbert*, which feels a little hot button to include. Open to thoughts

Date:

(Filing No. H- )

# JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

## STATE OF MAINE HOUSE OF REPRESENTATIVES 132ND LEGISLATURE SECOND REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 1300, L.D. 1941, "An Act to Implement Recommendations of the Commission to Examine Reestablishing Parole"

Amend the bill by striking out everything after the enacting clause and inserting the following:

### PART A

Sec. A-1. 5 MRSA §12004-G, sub-§7, as enacted by PL 1987, c. 786, §5, is amended to read:

7.

|             |                                 |                 |           |
|-------------|---------------------------------|-----------------|-----------|
| Corrections | State <u>Maine</u> Parole Board | Legislative Per | 34-A MRSA |
|             |                                 | Diem            | §5201     |

Sec. A-2. 34-A MRSA §5001, sub-§1, as enacted by PL 1983, c. 459, §6, is amended to read:

1. Board. "Board" means the State Maine Parole Board.

Sec. A-3. 34-A MRSA §5201, as amended by PL 1989, c. 503, Pt. B, §160, is further amended to read:

### §5201. Establishment

There is established, by Title 5, section 12004-G, subsection 7, within the Department of Corrections, a State the Maine Parole Board, consisting of 5 7 members.

Sec. A-4. 34-A MRSA §5202, as enacted by PL 1983, c. 459, §6, is amended to read:

### §5202. Appointment

The Governor shall appoint as the 5 7 members of the board persons who: meet the requirements of this section, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature.

1        The Governor shall appoint an executive director who is the chief executive officer of  
2        the board. In addition to responsibilities as chief executive officer, the executive director is  
3        responsible for assisting the board with creating and maintaining parole guidelines for  
4        parole evaluations and assessments consistent with section 5826 and up-to-date evidence-  
5        based best practices. The executive director serves at the pleasure of the Governor. Except  
6        as otherwise provided, the executive director shall, at the direction of the board, hire  
7        personnel as necessary to administer this subchapter.

8        **1. Citizens and residents.** ~~Are citizens~~ Each member of the board must be a citizen  
9        and residents a resident of the State; and.

10       ~~2. Training or experience.~~ Have special training or experience in law, sociology,  
11       psychology or related branches of social science.

12       **3. Demographics, training and experience.** Beginning on the effective date of this  
13       subsection, the Governor shall make every effort to ensure that:

14       A. At least one member of the board is a mental health professional;

15       B. At least one member of the board is an attorney licensed to practice law in this  
16       State;

17       C. At least one member of the board has expertise and experience in the clinical  
18       treatment of individuals who commit sexual violence offenses;

19       D. At least one member of the board is a member of a historically disadvantaged racial  
20       population of the State;

21       E. At least one member of the board is a woman; and

22       F. At least one member of the board is a formerly incarcerated individual.

23       All other members of the board must have special training or experience in law, sociology,  
24       psychology or a related branch of social science.

25       **Sec. A-5. 34-A MRSA §5203,** as enacted by PL 1983, c. 459, §6, is amended to  
26       read:

27       **§5203. Terms**

28       The terms of the members of the board are: governed by the provisions of this section.

29       **1. Four years; reappointment.** ~~Four~~ Members are appointed for terms of 4 years  
30       plus the time period until their successors have been appointed and qualified; or and may  
31       be reappointed. A member may not be appointed to serve more than 2 consecutive 4-year  
32       terms. A member continues to serve until that member has been reappointed or a successor  
33       has been appointed and qualified.

34       **2. Pleasure of Governor.** ~~During the pleasure of the Governor.~~

35       **Sec. A-6. 34-A MRSA §5206,** as enacted by PL 1983, c. 459, §6, is amended to  
36       read:

37       **§5206. Meetings**

38       **1. Chairman Chair.** ~~The members of the board shall annually elect a chairman chair~~  
39       who shall preside at all meetings of the board when he is present.

1       **2. Frequency.** The board shall meet at least once every ~~2 months~~ month and may  
2 meet as often as necessary, at such times and places as the ~~chairman~~ board may designate  
3 by a majority vote.

4       **3. Quorum.** Any ~~3~~ 5 members constitute a quorum for the exercise of all powers of  
5 the board.

6       **Sec. A-7. 34-A MRSA §5208**, as amended by PL 1995, c. 502, Pt. F, §32, is further  
7 amended to read:

8       **§5208. Annual report**

9       **1. Preparation of report.** ~~After June 30th of each year, the~~ The commissioner shall  
10 prepare a detailed report of the work of the board and of probation and parole activities for  
11 the preceding fiscal calendar year and send the report to the Governor as required by  
12 subsection 2. Beginning January 2026, the report must include an update on the  
13 implementation of subchapter 6 and any data collected and data analysis performed  
14 pursuant to section 5832.

15       **2. Commissioner's duty** Submission of report. The commissioner shall send the  
16 annual report to the Governor for submission to the joint standing committee of the  
17 Legislature having jurisdiction over criminal justice and public safety matters by January  
18 15, 2026, and annually thereafter.

19       **Sec. A-8. 34-A MRSA §5211, sub-§1**, as enacted by PL 1983, c. 459, §6, is  
20 amended to read:

21       **1. Rules.** The board may ~~promulgate~~ adopt rules, ~~in accordance with the~~  
22 ~~Administrative Procedure Act, Title 5, chapter 375,~~ pertaining to its functions set out in  
23 this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined  
24 in Title 5, chapter 375, subchapter 2-A.

25       **Sec. A-9. 34-A MRSA §5212** is enacted to read:

26       **§5212. Annual training**

27       The board shall arrange for annual training of board members from experts in the field  
28 regarding best practices in evaluating applications for parole, in interpreting the results of  
29 the evaluations and in designing appropriate conditions of parole.

30       **Sec. A-10. Maine Revised Statutes amended; revision clause.** Wherever in  
31 the Maine Revised Statutes the words "State Parole Board" appear or reference is made to  
32 that entity or those words, those words are amended to read or mean, as appropriate, "Maine  
33 Parole Board" or "board" and the Revisor of Statutes shall implement this revision when  
34 updating, publishing or republishing the statutes.

35       **Sec. A-11. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title  
36 34-A, section 5203, subsection 1, the Governor shall, for the first 7 appointments made to  
37 the Maine Parole Board after the effective date of this Act, specify the calendar year in  
38 which each member's term expires in a manner that ensures that the terms of no more than  
39 3 members of the board are scheduled to expire in any one calendar year. In no event may  
40 the Governor appoint a member to the board for a term exceeding 4 years.

41       **Sec. A-12. Reappointment.** Notwithstanding the Maine Revised Statutes, Title  
42 34-A, section 5203, subsection 1, an individual who is a member of the Maine Parole Board

on the effective date of this Act may be reappointed by the Governor. After a single reappointment of the member, the term of office for that member must comply with the requirements of Title 34-A, section 5203, subsection 1.

## PART B

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

### SUBCHAPTER 6

#### PAROLE

##### **§5821. Applicability**

This subchapter applies to all persons in the custody of the Department of Corrections, except for persons in the custody of the department pursuant to a sentence imposed under the law in effect prior to May 1, 1976.

##### **§5822. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Abscond.** "Abscond" means, with respect to an individual on parole, the failure to remain within the jurisdiction of the court, unless permission to leave temporarily is granted in writing by the individual's probation and parole officer.

**2. Applicant.** "Applicant" means an individual who has applied for parole pursuant to section 5824.

**3. Comprehensive assessment of risk and suitability.** "Comprehensive assessment of risk and suitability" means an assessment of an individual that is designed to predict the likelihood that, given a certain decision pertaining to parole in an individual's case based on a thorough review of the totality of relevant factors and circumstances pertaining to the individual's conviction, incarceration, application for parole and, if applicable, the individual's activities and behavior since release, the individual will pose a threat to others or engage in criminal behavior, including violent criminal behavior. The assessment must include an assessment of the individual's ability to meet the physical, mental and moral qualifications for parole.

**4. Evidence-based programming.** "Evidence-based programming" means strategies and interventions that have been evaluated using empirical research and have been proven to increase the likelihood of achieving desired outcomes.

**5. Parole plan.** "Parole plan" means an explanation submitted as part of an applicant's application for parole detailing any plans or arrangements made to ensure that the applicant will successfully remain at liberty without violating the law or the conditions of the applicant's parole upon release, which may include details of any housing; employment; treatment; training; and any programs, services or opportunities of which the applicant intends to make use, or any other steps the applicant intends to take in order to support the applicant's successful reintegration upon release.

1 6. Parolee. "Parolee" means an individual who has been released on parole and is at  
2 liberty pursuant to the conditions of the parole.

3 7. Victim. "Victim" means a victim of the underlying crime for which a specific  
4 applicant or parolee was sentenced to the term of imprisonment for which a period of parole  
5 has been requested or has been granted.

6 **§5823. Parole by board**

7 1. Authority to grant or revoke parole. With respect to an individual sentenced after  
8 the effective date of this subchapter, the board may, by a majority vote, grant or revoke  
9 parole as provided in this subsection. With respect to individuals sentenced between May  
10 1, 1976 and the effective date of this subchapter, the board may by a vote of 5 or more  
11 members of the board grant parole as provided in this subsection and by a majority vote  
12 revoke parole as provided in this subsection.

13 A. The board may grant parole from a correctional facility and impose conditions of  
14 parole on an applicant who satisfies the eligibility requirements set forth in section  
15 5824, subsections 1 and 2.

16 B. The board may revoke parole or modify the conditions of parole in accordance with  
17 section 5827 when a parolee violates a condition of that parolee's parole.

18 2. Duration of parole. When the board grants a parole, upon release, the parolee shall  
19 serve the unexpired portion of the parolee's sentence, less deductions as provided in Title  
20 17-A, chapter 81, subject to the conditions of parole set forth in subsection 3.

21 3. Custody and conditions. While on parole, the parolee is under the custody of the  
22 chief administrative officer of the correctional facility from which the parolee was released  
23 but under the immediate supervision of, and subject to the rules of, the department and any  
24 conditions of parole imposed by the board pursuant to section 5825, subsection 5.

25 **§5824. Application and eligibility for parole; rulemaking**

26 1. General provisions regarding eligibility. Except as provided in subsection 2 and  
27 as specified by the board in a parole revocation order, an individual convicted of one or  
28 more crimes who is incarcerated and in the custody of the department is eligible for parole  
29 upon application if the applicant has completed a parole preparation program offered by  
30 the department within 90 days prior to applying for parole and if:

31 A. The individual's sentence was imprisonment for life and the individual has served  
32 at least 20 years of that sentence; or

33 B. The individual's aggregate sentence was for a definite term of not less than 10 years,  
34 and the individual has served no less than 1/2 of the aggregate, unsuspended portion of  
35 that sentence or at least 20 years of that sentence, whichever is less.

36 2. Additional eligibility requirements. In addition to meeting the requirements of  
37 subsection 1, paragraph A or B, an applicant who is serving a sentence imposed, at least in  
38 part, on the basis of the applicant's conviction for:

39 A. One or more offenses in Title 17-A, chapter 11 or 12 is not eligible for parole unless  
40 the applicant has completed intensive, evidence-based programming for sex offenders  
41 while incarcerated;

1 B. One or more offenses in which the victim was a family or household member, as  
2 defined in Title 19-A, section 4102, subsection 6, is not eligible for parole unless the  
3 applicant has completed intensive, evidence-based programming for domestic violence  
4 offenders while incarcerated; and

5 C. One or more offenses in Title 17-A, chapter 11, 12 or 35 in which at least one victim  
6 was a minor at the time of the offense is not eligible for parole until all of the minor  
7 victims have attained 25 years of age.

8 **3. Parole and parole revocation guidelines; rulemaking.** The board shall, by rule,  
9 develop parole guidelines for use by the board in evaluating applications for parole as  
10 described in section 5826 and parole revocation guidelines as described in section 5828 for  
11 use by the board in considering revocation of parole.

12 **§5825. Procedure**

13 **1. Maine Administrative Procedure Act.** Except as provided in this subchapter, the  
14 Maine Administrative Procedure Act, Title 5, chapter 375 governs all actions taken under  
15 this chapter.

16 **2. Preliminary review.** Upon a preliminary review and determination that an applicant  
17 is eligible for parole as described in section 5824, subsections 1 and 2, the board shall  
18 schedule a hearing to be held within 60 days after the date that the application was  
19 submitted or within 60 days after the date that the applicant appears to have met the  
20 eligibility requirements of section 5824, subsections 1 and 2, whichever is later.

21 **3. Mandatory discovery.** No later than 30 days before the date of the hearing, the  
22 department shall provide copies to the applicant or to the applicant's counsel, if any, of all  
23 documents that the department submitted to the board in response to the application. The  
24 department may withhold the current address or location of a victim from the applicant or  
25 the applicant's counsel if the department has a good faith belief that such disclosure may  
26 compromise the safety of the victim.

27 **4. Decision.** The board shall notify the applicant and the department in writing of its  
28 final decision on the application within 45 days after the date of the hearing.

29 **5. Parole granted; conditions of parole.** If, after the hearing, the board grants the  
30 parole application, the board shall impose conditions of parole in accordance with the  
31 provisions of this subsection.

32 A. The conditions imposed by the board must include each of the mandatory conditions  
33 that would apply to release on supervised community confinement set forth in section  
34 3036-A, subsection 3, paragraphs A to I.

35 B. In addition to the mandatory conditions under paragraph A, if the board determines  
36 based on the nature and circumstances of the offense that led to the parolee's  
37 incarceration and the individual characteristics and criminal history of the parolee that  
38 a condition in subparagraphs (1) to (3) is necessary to mitigate the risk that the parolee  
39 will again violate the law, the conditions imposed by the board may include the  
40 following:

41 (1) To the extent that the board determines that the parolee has financial resources,  
42 a requirement that the parolee pay part or all of the costs to the State of the parolee's  
43 parole;

(2) Any condition that may be imposed as a condition of probation pursuant to Title 17-A, section 1807; and

(3) Any condition that the board determines would be appropriate for the parolee.

**6. Parole denied.** If, after the hearing, the board denies the parole application, the board shall notify the applicant and the department, in writing, of the reasons for the denial and specify the date, which must be between one and 5 years after the date of the denial, after which the applicant may submit a new application for parole. In fixing this date, the board shall consider the input from the victim, if any, and the application of the parole guidelines. The board shall specify in the written notice of the denial the parole guideline factors that weighed against the applicant and the specific programs the applicant must complete or other activities the applicant must undertake to succeed in a subsequent parole application.

**§5826. Parole guidelines**

**1. Parole guidelines.** In accordance with the requirements of this section, the board shall, by rule, develop parole guidelines describing the risk assessment criteria that the board must consider in evaluating an application for parole.

**2. Comprehensive assessment of risk and suitability.** The parole guidelines must require that each applicant be evaluated through a comprehensive assessment of risk and suitability. The guidelines must direct that the outcome of the comprehensive assessment of risk and suitability is the central factor that the board must consider in making decisions related to parole. The board shall use the members' expertise and discretion in establishing these guidelines and shall develop the guidelines for the purposes of evaluating each applicant with respect to at least the following criteria:

A. Whether there is a reasonable probability that, if the applicant is released at a specific time, the applicant will live and remain at liberty without violating the law;

B. Whether the release of the applicant at a specific time is incompatible with the welfare of society;

C. Whether there is a substantial risk that the applicant will not conform to the conditions of parole;

D. Whether the applicant has demonstrated good behavior and significant efforts to rehabilitate or otherwise contribute to the likelihood of the applicant's successful reintegration with society, including by having participated in available work or educational opportunities or treatment programs or through other efforts as may be recognized by the board;

E. Whether the release of the applicant at a specific time would be likely to depreciate the seriousness of the applicant's crime or promote disrespect for the law;

F. Whether the applicant's continued incarceration is necessary to sufficiently ensure the applicant's ability to lead a law-abiding life when released at a later date;

G. Whether the release of the applicant at a specific time would be likely to have an adverse effect on institutional discipline;

I. The applicant's conduct while in custody, including the performance of any community service;

J. The adequacy of the applicant's parole plan;

1 K. Whether, while the applicant has been in custody, the applicant has threatened or  
2 harassed the victim or the victim's family or has caused the victim or the victim's family  
3 to be harassed by another person;

4 L. Whether the applicant has previously absconded or escaped or attempted to abscond  
5 or escape while on conditional release;

6 M. Whether the applicant completed or worked toward completing a high school  
7 diploma, a high school equivalency diploma, a college degree or a graduate degree  
8 while the applicant was in custody; and

9 N. Any other factor the board determines appropriate or necessary to achieve a  
10 comprehensive understanding of the applicant's risk and suitability for parole.

11 The board has the discretion to determine the extent to which each criterion listed in this  
12 subsection contributes to the board's ultimate decision in an applicant's case.

13 **3. Other factors.** In addition to the comprehensive risk and suitability assessment  
14 described in subsection 2, the parole guidelines must require that the board consider at least  
15 the following additional criteria in making its decision regarding the timing of and  
16 conditions of release on parole:

17 A. Any testimony or written statement from the victim, the victim's designee or a  
18 relative of the victim;

19 B. The testimony or written statement of a prospective parole sponsor, employer or  
20 other person who is available to assist the applicant if the applicant is released on  
21 parole; and

22 C. Any aggravating or mitigating factors from the conviction leading to the applicant's  
23 current incarceration, including whether the applicant was under 18 years of age at the  
24 time of the crime.

25 **4. Parole guidelines for applicants convicted of sex offenses.** The board shall, by  
26 rule, develop separate parole guidelines that the board must consider in evaluating an  
27 application for parole from an applicant who is serving a sentence imposed, at least in part,  
28 on the basis of the applicant's conviction for one or more offenses in Title 17-A, chapter  
29 11, 12 or 35.

30 **5. Parole guidelines for applicants convicted of domestic violence offenses.** The  
31 board shall, by rule, develop separate parole guidelines that the board must consider in  
32 evaluating an application for parole from an applicant who is serving a sentence imposed,  
33 at least in part, on the basis of the applicant's conviction for one or more offenses in which  
34 the victim was a family or household member as defined in Title 19-A, section 4102,  
35 subsection 6.

36 **6. Guidelines for board to adopt standards and conduct business.** The board shall  
37 adopt standards for evaluating outcomes of its parole decisions and shall conduct its  
38 business in a manner that is accessible to victims, applicants, criminal justice professionals  
39 and the community. The board shall develop and use forms for recording a decision  
40 whether to grant or to deny parole and, if parole is granted, identifying the conditions of  
41 parole, that accurately capture the board's rationale, including how the board applied the  
42 parole guidelines. The board shall ensure that the identity of any victim and any input

received from the victim is confidential and protected from display during any board hearing and on any form that may become part of an applicant's record.

**7. Coordination of risk and needs.** The board shall coordinate parole conditions and services with the assessed risk and needs as determined under the parole guidelines.

**§5827. Violation of conditions of parole**

**1. Summons for violation.** If a probation and parole officer has probable cause to believe that a parolee has violated a condition of parole and the officer does not believe there is a direct threat to public safety, the officer shall serve a summons on the parolee directing the parolee to appear before the board for a parole revocation hearing and shall provide a copy of the summons to the board.

**2. Arrest and detention for violation.** If a probation and parole officer has probable cause to believe that a parolee has violated a condition of parole and the officer believes there is a direct threat to public safety, the officer may arrest and charge the parolee with a violation of a condition of parole, take the parolee into custody and detain the parolee.

**3. Parole revocation hearing.** Upon notification of a summons issued pursuant to subsection 1 or an arrest under subsection 2, the executive director shall determine whether a probation revocation proceeding, administrative release revocation proceeding or supervised release revocation proceeding has also been initiated with respect to the parolee pursuant to Title 17-A, chapter 67. If at any point during a parole revocation proceeding under this section the executive director determines a revocation proceeding pursuant to Title 17-A, chapter 67 has been initiated with respect to the parolee, the board shall inform the court of the revocation. If no revocation proceeding pursuant to Title 17-A, chapter 67 has been initiated with respect to the parolee, the board shall schedule a parole revocation hearing to be held within 30 days of the date that the board is notified of a summons issued pursuant to subsection 1 or an arrest issued pursuant to subsection 2. Upon motion of the parolee, the department or the board, the board may extend the date of the hearing once, for no more than 30 days, for good cause shown. If the board extends the hearing date as provided in this subsection, it shall send a notice of the new hearing date and the reason for the extension to the department, to the parolee and, if counsel has entered an appearance for the parolee before the board, to the parolee's counsel.

**4. Deductions forfeited upon revocation.** If the board revokes a parolee's parole, the parolee forfeits any deductions under Title 17-A, section 2305 or 2307 earned while on parole.

**5. Earning deductions.** While an individual is serving the unexpired portion of a sentence after parole has been revoked, the individual may earn deductions pursuant to Title 17-A, chapter 81.

**6. Jurisdiction.** A court of competent jurisdiction in which a probation revocation proceeding, administrative release revocation proceeding or supervised release revocation proceeding pursuant to Title 17-A, chapter 67 has been initiated with respect to a parolee has exclusive jurisdiction over any parole revocation proceeding regarding the parolee.

**7. Counsel.** A parolee who has been arrested for an alleged violation of parole has the right to be represented by counsel at the parole revocation hearing, and if requested, the court shall appoint counsel for an indigent party if the party is not already represented.

**§5828. Parole revocation guidelines**

1 **1. Parole revocation guidelines.** In accordance with the requirements of this section,  
2 the board shall, by rule, develop parole revocation guidelines describing the criteria that  
3 the board must consider during a parole revocation hearing.

4 **2. Comprehensive assessment of risk and suitability.** The parole revocation  
5 guidelines must require that each parolee subject to a parole revocation hearing be  
6 evaluated through a comprehensive assessment of risk and suitability and that the outcome  
7 of the assessment is the central factor that the board must consider, after finding that a  
8 parolee violated a condition of the parolee's parole, in deciding whether to revoke parole  
9 or to modify the conditions of the parolee's parole. Through the assessment, the board shall  
10 evaluate the parolee with respect to whether public safety and respect for the law can  
11 adequately be protected by modifying the conditions of the parolee's parole or whether  
12 revocation of the parolee's parole is necessary. The board shall use the members' expertise  
13 and discretion in establishing these guidelines and shall develop the guidelines for the  
14 purposes of evaluating each parolee with respect to, at least, the following criteria:

15 A. The seriousness and frequency of the parolee's violations of the conditions of parole;

16 B. Whether the parolee has been charged with or convicted of committing a crime while  
17 released on parole;

18 C. The parolee's efforts to comply with any sanctions imposed under section 5827 for  
19 a technical violation of a condition of parole and with any modified conditions of parole  
20 imposed by the board under section 5827 for a previous violation of a condition of  
21 parole;

22 D. Any mitigating factors, including substance use disorder or mental health  
23 conditions, that may have contributed to the parolee's violation of a condition of parole;  
24 and

25 E. Any other factor that the board determines appropriate or necessary.

26 The board has the discretion to determine the extent to which each criterion listed in this  
27 subsection contributes to the board's ultimate decision to revoke or to modify the conditions  
28 of a parolee's parole.

29 **3. Time before reapplying for parole.** The parole revocation guidelines must include  
30 guidelines for the board to apply when deciding the time that must expire before a parolee  
31 whose parole has been revoked may reapply for parole in accordance with section 5824.

32 **§5829. Sentence for crime committed by parolee**

33 Except as otherwise specified by a court imposing the sentence for a new crime, a  
34 parolee who commits a new crime while on parole and who is sentenced to the custody of  
35 the department for the new crime must serve the sentence for the new crime concurrently  
36 with the unexpired portion of the sentence that was the subject of the parolee's parole.

37 **§5830. Discharge from parole**

38 A parolee who faithfully satisfies all of the conditions of parole and who completes the  
39 parolee's sentence is entitled to a certificate of discharge to be issued by the chief  
40 administrative officer of the correctional facility to which the parolee was committed.

41 **§5831. Victim rights**

1 1. Notice. The Office of Victim Services, established in section 1214 and referred to  
2 in this section as "the office," shall make reasonable efforts to notify each victim of the  
3 following with respect to the relevant applicant or parolee:

4 A. That the applicant has applied for parole;

5 B. The date of each parole hearing or parole revocation hearing;

6 C. The outcome of each parole hearing, including information on any conditions of  
7 parole imposed by the board if parole was granted, and the outcome of each parole  
8 revocation hearing;

9 D. The fact that the applicant has submitted a petition under Title 5, chapter 375,  
10 subchapter 7 for judicial review of a board decision denying parole; and

11 E. The outcome of any petition for judicial review of a board decision denying parole.

12 2. Rights. When providing a notice under subsection 1, the office shall provide a victim  
13 with a pamphlet that summarizes in everyday language the provisions of this subchapter;  
14 informs the victim of any services or supports available to the victim and clearly explains  
15 how to access these services and supports, including any restorative justice programs,  
16 victim advocacy services and counseling for victims provided either by the department or  
17 by independent victim support organizations; and informs the victim that the victim has the  
18 following rights:

19 A. The victim may testify in person at the parole hearing or have another person of the  
20 victim's choosing read the victim's testimony at the parole hearing. If the victim  
21 testifies in person at or attends the parole hearing, the victim may be accompanied by  
22 a support person and may, with the assistance of the office, request that the board  
23 conduct the hearing outside of a correctional facility and request that the board exclude  
24 the applicant from the room during the victim's testimony; and

25 B. If the victim does not wish to testify at the parole hearing or have another person  
26 read the victim's testimony at the parole hearing, the victim may, prior to the parole  
27 hearing, submit to the office written or recorded testimony or may revise or retract any  
28 written or recorded testimony previously submitted to the office. The office shall  
29 submit to the board the most recent written or recorded testimony received from the  
30 victim under this paragraph for consideration during the parole hearing.

31 3. Records. Any written or recorded testimony received by the board or by the office  
32 under this section may not be included in the applicant's or the parolee's records maintained  
33 by the department or a correctional facility.

34 **§5832. Collection and analysis of data**

35 1. Outcome data and analysis. The board shall develop and implement a process to  
36 collect and analyze data related to the board's determinations or decisions for granting,  
37 denying or revoking parole. Any data related to victim identification or victim input that  
38 is personally identifiable to the applicant or parolee or the applicant's or parolee's case must  
39 be maintained and kept confidential by the board and may be released only to other  
40 government agencies, pursuant to a nondisclosure agreement, for purposes of analysis and  
41 reporting only.

42 2. Recidivism data. When the board grants parole, the board shall collect data related  
43 to the type of reentry programs provided as part of the parolee's parole plan and whether

1 the parolee is rearrested or returned to the correctional facility for a violation of a condition  
2 of parole or for a new criminal conviction.

3 **3. Record of conformance with or departure from guidelines.** The board shall  
4 determine whether a decision granting or denying parole conformed with or departed from  
5 the parole guidelines developed under section 5826 and whether a decision revoking or not  
6 revoking parole conformed with or departed from the parole revocation guidelines  
7 developed under section 5828.

8 **4. Reporting.** The board shall provide the data collected pursuant to this section to the  
9 commissioner for inclusion in the annual report required by section 5208, subsection 1.  
10 Using the data collected pursuant to this subsection, the department shall assist the board  
11 in identifying specific factors that are necessary to the board's parole decision-making  
12 process and shall assist the board in securing training to facilitate the board's future decision  
13 making.

14 **5. Notice to correctional facility.** The board shall provide a copy of any decision to  
15 grant or deny parole and of any decision to revoke or not to revoke parole to the correctional  
16 facility from which a parolee was paroled or in which an applicant resides, as applicable.

## 17 PART C

18 **Sec. C-1. 17-A MRSA §1603, sub-§1,** as enacted by PL 2019, c. 113, Pt. A, §2, is  
19 amended to read:

20 **1. Sentence.** A person convicted of the crime of murder must be sentenced to  
21 imprisonment for life, with or without the possibility of parole, or for any term of years that  
22 is not less than 25. The sentence of the court must specify the length of the sentence to be  
23 served and must commit the person to the Department of Corrections.

24 **Sec. C-2. 17-A MRSA §1604, sub-§2, ¶A,** as enacted by PL 2019, c. 113, Pt. A,  
25 §2, is amended to read:

26 A. In the case of the Class A crime of aggravated attempted murder, the court shall set  
27 a term of imprisonment under section 152-A, subsection 2 of life, with or without the  
28 possibility of parole, or a definite period of any term of years;

## 29 PART D

30 **Sec. D-1. Applicability.** Notwithstanding the Maine Revised Statutes, Title 34-A,  
31 section 5824, a person who is incarcerated and in the custody of the Department of  
32 Corrections on the effective date of this Act is not eligible for parole until at least 5 years  
33 after the effective date of this Act.

## 34 PART E

35 **Sec. E-1. Appropriations and allocations.** The following appropriations and  
36 allocations are made.

### 37 CORRECTIONS, DEPARTMENT OF

#### 38 Administration - Corrections 0141

39 Initiative: Establishes one Secretary Specialist position and related All Other costs to  
40 establish parole for individuals sentenced to the custody of the Department of Corrections  
41 after May 1, 1976.

|   |                               |                |                  |
|---|-------------------------------|----------------|------------------|
| 1 | <b>GENERAL FUND</b>           | <b>2025-26</b> | <b>2026-27</b>   |
| 2 | POSITIONS - LEGISLATIVE COUNT | 0.000          | 1.000            |
| 3 | Personal Services             | \$0            | \$102,341        |
| 4 | All Other                     | \$0            | \$12,806         |
| 5 |                               |                |                  |
| 6 | <b>GENERAL FUND TOTAL</b>     | <b>\$0</b>     | <b>\$115,147</b> |

7 **Adult Community Corrections 0124**

8 Initiative: Establishes 18 Probation Officer positions and related All Other costs to establish  
9 parole for individuals sentenced to the custody of the Department of Corrections after May  
10 1, 1976.

|    |                               |                |                  |
|----|-------------------------------|----------------|------------------|
| 11 | <b>GENERAL FUND</b>           | <b>2025-26</b> | <b>2026-27</b>   |
| 12 | POSITIONS - LEGISLATIVE COUNT | 0.000          | 18.000           |
| 13 | Personal Services             | \$0            | \$719,384        |
| 14 | All Other                     | \$0            | \$153,103        |
| 15 |                               |                |                  |
| 16 | <b>GENERAL FUND TOTAL</b>     | <b>\$0</b>     | <b>\$872,487</b> |

17 **Office of Victim Services 0046**

18 Initiative: Establishes one Advocate position and related All Other costs to establish parole  
19 for individuals sentenced to the custody of the Department of Corrections after May 1,  
20 1976.

|    |                               |                |                  |
|----|-------------------------------|----------------|------------------|
| 21 | <b>GENERAL FUND</b>           | <b>2025-26</b> | <b>2026-27</b>   |
| 22 | POSITIONS - LEGISLATIVE COUNT | 0.000          | 1.000            |
| 23 | Personal Services             | \$0            | \$101,613        |
| 24 | All Other                     | \$0            | \$12,806         |
| 25 |                               |                |                  |
| 26 | <b>GENERAL FUND TOTAL</b>     | <b>\$0</b>     | <b>\$114,419</b> |

27

|    |                                     |                |                    |
|----|-------------------------------------|----------------|--------------------|
| 28 | <b>CORRECTIONS, DEPARTMENT OF</b>   |                |                    |
| 29 | <b>DEPARTMENT TOTALS</b>            | <b>2025-26</b> | <b>2026-27</b>     |
| 30 |                                     |                |                    |
| 31 | <b>GENERAL FUND</b>                 | <b>\$0</b>     | <b>\$1,102,053</b> |
| 32 |                                     |                |                    |
| 33 | <b>DEPARTMENT TOTAL - ALL FUNDS</b> | <b>\$0</b>     | <b>\$1,102,053</b> |

34

35 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
36 number to read consecutively.

37 **SUMMARY**

38 This amendment replaces the bill and clarifies provisions of the bill in the following  
39 ways.

40 1. It requires the executive director of the Maine Parole Board to create and maintain  
41 parole guidelines for parole evaluations and assessments consistent with the Maine Revised

1 Statutes and up-to-date evidence-based best practices in the field of parole evaluations and  
2 assessments.

3 2. It requires that at least one member of the board be a member of a historically  
4 disadvantaged racial population of the State and that at least one member be a woman.

5 3. It adds a definition for “comprehensive assessment of risk and suitability” and  
6 clarifies that the parole guidelines require a comprehensive assessment of risk and  
7 suitability evaluation as part of an application for parole and for revocation of parole.

8 4. It clarifies that, in the absence of specific procedural provisions, the Maine  
9 Administrative Procedure Act governs all procedures of the board.

10 **FISCAL NOTE REQUIRED**

11 (See attached)

# Excerpt from 2022 Parole Report

Corrections, to hear directly from the people who would be most directly affected by the reestablishment of parole. A full list of presentations, written testimony, and submissions to the commission can be found in Appendices E and K.

In its examination of the prison system in Maine, the commission found the disparities in the racial demographics between those incarcerated in Maine and the general population of the State to be staggering. The disparities are clearly represented in the Maine Department of Corrections Year-End Adult Data Reports from 2021 and 2020,<sup>2</sup> which include data showing that 18% of the male prison population and 12% of the female prison population is non-white, whereas only 5.8% of the state population is non-white, as of the last census.<sup>3</sup> These disparities are further reflected in the length of sentences received, and access to currently provided pathways for early release, such as the Supervised Community Confinement Program. This is a glaring injustice that must be addressed in order to ensure a criminal justice system that is fair and just.

Resolve 2021, chapter 126, charged the commission with submitting a report of its findings and recommendations, including any suggested legislation, to the Joint Standing Committee on the Judiciary by December 1, 2022. The following sections provide a brief history and background of parole in Maine, a brief overview of Maine's current systems for early release, and an outline of the commission's process over the course of its five meetings. The commission's findings and recommendations are discussed in Section IV.

## II. BACKGROUND & HISTORY

### A. The Establishment of Parole in Maine

The history of parole in Maine dates back to 1913 when the Maine Legislature passed Public Law 1913, chapter 60, establishing a system of parole, the State's first parole board,<sup>4</sup> and replacing the State's "determinate" sentencing system, where a person would receive a sentence for a fixed period of time, with what would later become known as "indeterminate" sentencing, which generally refers to systems where a person's sentence is open for reevaluation by corrections administrators.<sup>5</sup> For those issued and serving sentences, this change meant they

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<sup>2</sup> Me. Dep't of Corrections, (2021) *Year End Data Report 2021*.

<sup>3</sup> U.S. Census Bureau (2020). *Quick Facts*. Retrieved from: <https://www.census.gov/quickfacts/ME>.

<sup>4</sup> This coincided with the creation of the State Board of Charities and Corrections, which became Department of Public Welfare and the Bureau of Institutional Services in 1931, then the Department of Institutional Services in 1939, and then the Department of Mental Health and Corrections in 1959. The Bureau of Corrections was created in 1967, and it was not until 1981 that the Legislature created the Department of Corrections. See Maine State Archives webpage: <https://www.maine.gov/sos/arc/>.

<sup>5</sup> Prior to the establishment of parole, Maine's system was referred to as a "definite" sentencing system, however the features of that system are encompassed with what later became known as "determinate" sentencing. As applied to sentencing "determinate" and "indeterminate" are terms that refer to general theories of sentencing, rather than specific systems. "Determinate" sentencing models aim to provide a clearly set amount of time that a person will serve their sentence. "Indeterminate" sentencing models create flexibility to reevaluate and adjust time served based

would receive a range of time to be served, set between a minimum and a maximum length, and become eligible for parole at the expiration of their minimum sentence. For example, a person who would have previously been sentenced to a fixed term of 10 years in prison, not open for reevaluation, would instead receive a sentence with a minimum and a maximum length of time as determined appropriate by the sentencing judge, and receive a hearing by the parole board at the expiration of the minimum term.

At the time, the statutory minimum for sentences of more than two years was one-half of the sentence maximum. This meant a sentence with a 10-year maximum would have a 5-year minimum, and the statutory minimum for a sentence of less than two years was set at 1 year, meaning that a sentence with a 1.5 year maximum would have a 1 year minimum.

With the exception of those convicted of two or more prior felonies, and those convicted of life sentences, all people imprisoned by the State were eligible for parole after serving their minimum sentence, as adjusted for “good-time” credits.<sup>6</sup> As it was established in 1913, the following is a basic outline of Maine’s system of parole.

1. During the sentencing stage, the judge, if having decided incarceration was appropriate, would set a minimum and maximum term of confinement.
2. Once a person had served their minimum sentence, as adjusted for good-time credits, they would become eligible for review by the parole board.<sup>7</sup>
3. If, upon review of a person’s application for parole, it was determined that parole was appropriate, the person would be released on parole under the expectation of compliance with a number of conditions.<sup>8</sup>
4. The person would serve the remainder of their term on parole, as long as they did not violate the conditions set by the parole board. If a person violated the conditions, the parole board had the authority to return the person to prison.

A person released on parole was still considered to be serving their sentence and remained “in the legal custody and under the control of the warden or superintendent of the prison from which he is paroled and shall be subject at any time to be taken back within the enclosure of said prison

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on the individual circumstances of each person sentenced. *For further discussion of these sentencing models see Donald F. Anspach, Peter M. Lehman & John H. Kamer, Maine Rejects Indeterminacy: A Case Study of Flat Sentencing and Parole Abolition*, 1-7, 34-37 (University of Southern Maine, funded by Dep’t of Justice 1983). Accessible at: <https://www.ojp.gov/pdffiles1/Digitization/94367NCJRS.pdf>; Melvyn Zarr, *Sentencing*, 28 ME. L. REV. 117 (1976). For further discussion regarding how sentencing worked prior to the establishment of the Maine Criminal Code see also Zarr, *Sentencing*, 135-143 (1976).

<sup>6</sup> “Good time” is the term used to describe the practice of reducing the number of days a person is required to serve by meeting certain conditions, such as good behavior or participation in rehabilitation programs. Maine’s statutory provisions regarding the deduction of time from sentences are located in Title 17-A M.R.S. §2305 (2022).

<sup>7</sup> For certain cases the authority to grant parole was conferred exclusively on the Governor, see P.L. 1913, ch. 60, §6.

<sup>8</sup> P.L. 1913, ch. 60, §§7-14; for a further outline of how parole operated prior to the establishment of the Maine Criminal Code, see also Zarr, *Sentencing*, 135-143 (1976).

for any reason that may be satisfactory to the warden or superintendent.”<sup>9</sup> This aspect of parole distinguished it from the Governor’s pardon power, since a person on parole was still under the custody of the State and could be brought back to prison for violating the conditions of release.

## **B. The Distinction Between Parole and Pardon**

The distinction between parole and the Governor’s pardon power, as set forth in Article V. Section 11 of the Maine Constitution, has been a recurring issue over the history of parole in Maine. By 1965 the Legislature included a provision explicitly distinguishing parole from the Governor’s pardon and commutation power.<sup>10</sup> Later, in 1986, the distinction was further addressed by the Supreme Judicial Court of Maine in the seminal case *Gilbert v. State* when the Court noted that parole “does not shorten the length of a sentence. Instead, parole is a change in the manner in which a sentence is served in that the parolee remains under the custody of the institution from which he is released but executes the unexpired portion of his sentence outside of confinement.”<sup>11</sup> Concerns regarding the possibility that reestablishing parole in Maine could potentially infringe on the Governor’s pardon power were even expressed in testimony at the public hearing for the bill that eventually became the establishing Legislation for this commission, LD 842, as considered by the Joint Standing Committee on Judiciary during the 130<sup>th</sup> Legislature.<sup>12</sup>

## **C. The Eligibility of Life Sentences for Parole**

The Maine Revised Statutes underwent a recodification in 1964 which resulted in the creation of the Maine Revised Statutes Title 34, in 1965. This title contained the laws regarding parole in Maine and would eventually be replaced by Title 34-A in 1976, with the establishment of the Criminal Code and the abolition of parole in Maine for sentences issued moving forward.<sup>13</sup> Despite undergoing many modifications, the basic structure of parole in Maine remained the same through the 1965 recodification and up until 1976. However, by 1965 numerous provisions had been added to the structure of parole in Maine, including permitting parole for certain life sentences.<sup>14</sup>

As originally established in Maine, parole excluded persons “convicted of an offense the only punishment for which prescribed by law is imprisonment for life” from eligibility.<sup>15</sup> That

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<sup>9</sup> P.L. 1913, ch. 60, §9.

<sup>10</sup> 34 M.R.S.A. §1551 (1965).

<sup>11</sup> *Gilbert v. State*, 505 A.2d 1326, at 1328 (Me.1986).

<sup>12</sup> Attorney General, Letter to Judiciary Committee Re: LD 842 (April 22, 2021). Available at: <https://legislature.maine.gov/testimony/resources/JUD20210422Frey132635724255775862.pdf>; Criminal Law Advisory Commission, Memo to Committee on Judiciary Re: LD 842 (April 19, 2021). Available at: <https://legislature.maine.gov/testimony/resources/JUD20210422Pelletier132633358310883534.pdf>; for a full list of written testimony *see also* [http://www.mainelegislature.org/legis/bills/display\\_ps.asp?id=842&PID=1456&snum=130#](http://www.mainelegislature.org/legis/bills/display_ps.asp?id=842&PID=1456&snum=130#); Maine 130 - H.P. 610, Item 1 (LD 842) is available in Appendix J.

<sup>13</sup> The parole statutes are now located in 34-A M.R.S.A. Chapter 5 (2022).

<sup>14</sup> 34 M.R.S.A. §1672 (1965).

<sup>15</sup> P.L. 1913 ch. 60, §3.

provision remained until 1953, when the 96th Legislature reversed course and explicitly made parole available for persons convicted of life sentences.<sup>16</sup> By the time of the 1964 recodification, the Legislature had included provisions further specifying how parole would apply to life sentences.<sup>17</sup> A person serving a life sentence would only become eligible for a hearing by the parole board after serving 30 years of imprisonment, less deductions for good behavior,<sup>18</sup> and the parole board was prohibited from discharging a parolee convicted of a life sentence until that person had been on parole for at least 10 years.<sup>19</sup> Immediately prior to the 1976 enactment of the Criminal Code, and the elimination of parole in Maine, the minimum time of incarceration for a person serving a life sentence to be eligible for a hearing by the parole board had been reduced from 30 years to 15 years.<sup>20</sup>

Currently, for those convicted prior to the enactment of the Criminal Code in 1976, the relevant provisions are located in Title 34-A, Chapter 5. A person serving a life sentence only becomes eligible for a hearing by the parole board after serving 15 years of imprisonment, less deductions for good behavior.<sup>21</sup> The parole board is prohibited from discharging a parolee convicted of a life sentence until that person has been on parole for at least 10 years.<sup>22</sup>

#### **D. Establishment of the Criminal Code and Abolition of Parole**

Commenters have noted that the underlying design of Maine's indeterminate sentencing system and system of parole was an attempt at a rehabilitative model of justice.<sup>23</sup> The efficacy of rehabilitative models came under scrutiny during the 1970s, alongside a nationwide reevaluation of the criminal justice system that resulted in a move toward determinate sentencing.<sup>24</sup> Driving this reevaluation was a broad range of concerns regarding the criminal justice system, influenced by changing attitudes about the possibility of rehabilitating offenders. Also present were concerns around the amount of discretion available to corrections administrators and concerns

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<sup>16</sup> P.L. 1953 ch. 382.

<sup>17</sup> 34 M.R.S.A. §§181-195 (1965).

<sup>18</sup> 34 M.R.S.A. §1672, sub-§3 (1965).

<sup>19</sup> 34 M.R.S.A. §1678 (1965).

<sup>20</sup> 34 M.R.S.A. §1672 (Supp. 1973). This citation is based on the M.R.S.A. Volume 15, 1973 Supplementary Pamphlet. Staff worked with the Law and Legislative Reference Library to locate this provision. The 1973 Supplementary Pamphlet was the closest record staff could locate. The 1974 Supplementary Pamphlet, does not include these sections and the 1975 Supplementary Pamphlet shows these sections as repealed. As discussed in footnote 41, the Criminal Code was passed in 1975 and became effective in 1976. The reduction to 15 years for cases of life imprisonment shown in the 1973 Supplementary Pamphlet is consistent with the current provisions for those sentenced prior to the establishment of the Criminal Code in 1976, under 34-A M.R.S.A. §5803 (2022).

<sup>21</sup> 34-A M.R.S.A. § 5803, sub-§3 (2022).

<sup>22</sup> 34-A M.R.S.A. § 5809 (2022).

<sup>23</sup> Anspach et al, *Maine Rejects Indeterminacy*, 19 (1983).

<sup>24</sup> Michael Kebede, American Civil Liberties Union of Maine, presentation to the commission titled "The History and Constitutionality of Parole in Maine", Sept 8, 2022. Appendix L.

regarding predictability, transparency, and fairness in sentencing.<sup>25</sup> One commenter noted additional complicating pressures as follows:

“Prison officials were exerting pressure to release prisoners as a means of reducing prison crowding. Opposing pressures came from the media, victims, and elected officials to keep more offenders incarcerated, especially those involved in violent or sensational crimes. Parole boards were also attempting, in some states, to use parole release as a means of reducing the disparity of sentences handed down by criminal courts. And despite pressure to base parole decisions on objective criteria, many paroling officials resisted in order to permit some flexibility to balance interests of the diverse pressure groups in their decisions. But such subjectivity and the inability to articulate a clear mission complicated and weakened the ability of parole proponents to defend it.”<sup>26</sup>

It is in this context that in 1971, Maine’s 104th Legislature passed an “Act to Create a Commission to Prepare a Revision of the Criminal Laws.” This law created the Criminal Law Revision Commission (the “Revision Commission”), which was tasked with drafting a complete revision of the criminal laws in Maine to create “a fully modern, integrated and consistent criminal code.”<sup>27</sup> The Revision Commission began meeting in April 1972 and, over the course of 45 meetings, completed its work in 1975.<sup>28</sup> The Revision Commission’s work focused on numerous aspects of Maine’s criminal laws and provided major changes such as: uniformity of definitions; the decriminalization of offenses deemed “not of sufficient threat to public order” to require criminal penalties; and the creation of the offense classification system currently used in Maine.<sup>29</sup> The preamble to the Criminal Code also noted that while the commission’s work was the result of much compromise and the need to make difficult choices, ultimately “the revision as a whole represented a reasonable balance between compassion for the offender and a concern for the interests of society.”<sup>30</sup>

Some of the Revision Commission’s work was handled by designated subcommittees that focused on particular areas of the criminal law. The Revision Commission’s Subcommittee on Sentencing (the “Sentencing Subcommittee”) was tasked with restructuring Maine’s sentencing provisions.<sup>31</sup> The Sentencing Subcommittee considered two separate sentencing models for incorporation into the Criminal Code. The first model limited the discretion of the judicial branch and expanded Maine’s system of parole, providing greater discretion to what was then the

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<sup>25</sup> Anspach et al, *Maine Rejects Indeterminacy*, 1-7, 23-26 (1983); Barbara Krauth, *Parole: Controversial Component of the Criminal Justice System*, Observations on Parole: A Collection of Readings from Western Europe, Canada, and the United States, Association of Paroling Authorities International, 51 (1987).

<sup>26</sup> Krauth, *Parole*, 52 (1987).

<sup>27</sup> P.S.L. 1971, ch. 147.

<sup>28</sup> Maine Criminal Law Revision Commission, Preamble to Accompany Proposed Maine Criminal Code, 3 (1975). Accessible at: [http://lldc.mainelegislature.org/Open/LDs/107/107-LD-0314\\_Preamble.pdf](http://lldc.mainelegislature.org/Open/LDs/107/107-LD-0314_Preamble.pdf), for a full list of those who served on the Criminal Law Revision Commission, see Preamble to Criminal Code, 6-7 (1975).

<sup>29</sup> Preamble to Criminal Code, 4 (1975).

<sup>30</sup> *Id.*, at 3.

<sup>31</sup> Anspach et al, *Maine Rejects Indeterminacy*, 23 (1983).

Department of Mental Health and Corrections, and setting limits on the amount of time a person could serve in prison before being released on parole.<sup>32</sup> By contrast, the second model provided more authority to the judicial branch and replaced Maine's system of parole with the split sentencing regime that now exists in Maine,<sup>33</sup> empowering judges to issue sentences with "unsuspended" portions served in prison and "suspended" portions served on probation.

There were several factors that likely led the Revision Commission to recommend the split sentencing model to the Legislature along with the abolition of parole, addressed in numerous sources cited below.<sup>34</sup> A few of the major factors noted by commenters include: The nationwide movement away from indeterminate sentencing, which had been criticized for the lack of certainty it created, both for victims and those serving sentences;<sup>35</sup> The report of the 1974 Governor's Task Force on Corrections, that was largely critical of the Department of Mental Health and Correction's ability to effectuate rehabilitation for criminal offenders;<sup>36</sup> and, the increasing criticism of Maine's parole board for lacking transparency in its decision making.<sup>37</sup>

One of the major changes included in the enactment of the Criminal Code was the establishment of the crime classes used in Maine today. As noted in the 1976 Maine Law Review article *Sentencing* by Melvyn Zarr:

"Under the pre-Code law, each crime carried its own penalty. This led to a situation where there were more than sixty distinctive sentencing provisions in the statutes. Since each sentencing provision represented an ad hoc judgment expressing the mood of the legislature at the time, the scheme of penalties reflected a lack of coherence. The Maine Criminal Code has set about to rectify this incoherence by establishing a classification system along the lines advanced by the Model Penal Code."<sup>38</sup>

At the time the sentencing classifications were as follows:

- A. In the case of a Class A crime, the court shall set a definite period not to exceed 20 years;
- B. In the case of a Class B crime, the court shall set a definite period not to exceed 10 years;
- C. In the case of a Class C crime, the court shall set a definite period not to exceed 5 years;
- D. In the case of a Class D crime, the court shall set a definite period of less than one year;
- E. In the case of a Class E crime, the court shall set a definite period not to exceed 6 months.<sup>39</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*; Preamble to Criminal Code, 4-5 (1975); see also Anspach et al, *Maine Rejects Indeterminacy*, 21-26 (1983) for an analysis of the different models considered by the subcommittee.

<sup>34</sup> Anspach et al, *Maine Rejects Indeterminacy*, 23-26 (1983).

<sup>35</sup> *Id.*, at 20; see also Donald F. Anspach and S. Henry Monsen, *Determinate Sentencing, Formal Rationality, and Khadi Justice in Maine. An Application of Weber's Typology*, Journal of Criminal Justice Vol. 17, 471 (1989).

<sup>36</sup> Anspach et al, *Maine Rejects Indeterminacy*, 24 (1983).

<sup>37</sup> *Id.* at 25; Anspach and Monsen, *Determinate Sentencing*, 473 (1989).

<sup>38</sup> Zarr, *Sentencing*, 118 (1976).

<sup>39</sup> 17-A M.R.S.A. §1252 (Supp. 1975).

Only two crimes were left outside of this classification system. First degree homicide, which carried a mandatory sentence of life imprisonment; and second degree homicide, which carried a mandatory sentence of not less than 20 years.<sup>40</sup>

The Revision Commission's work eventually led to the establishment of the Criminal Code in 1976,<sup>41</sup> which included a requirement that persons sentenced to imprisonment be confined for a definite period of time, rather than an indeterminate period. The preamble to the bill stated that release "will no longer depend on parole board decisions but on the willingness of the prisoner to earn the 'good time' deductions authorized by law."<sup>42</sup> Under the new system, which was based on the approach in the Model Penal Code,<sup>43</sup> a judge issues a sentence deemed appropriate based on the class of the crime and the underlying facts. That sentence has a set length, and the only reduction of time served would be through earned "good time" credits outlined in statute.<sup>44</sup>

This marked the end of parole in Maine for sentences issued after the effective date of that law, making Maine one of the first states in the nation to abolish parole.<sup>45</sup> However, parole remains for those sentenced prior to 1976.<sup>46</sup> It is governed by the provisions of Title 34-A, Chapter 5 and administered through the State Parole Board Rules and Policy.<sup>47</sup>

Following Maine's abolition of parole and adoption of the reformed sentencing structure, many commenters have weighed in on the results of the new system and the efficacy of that system in achieving the goals stated by its proponents. Debates surrounding the levels of predictability and fairness, the efficacy of judicial discretion versus that of corrections officials,<sup>48</sup> and the amount of actual determinacy in Maine's criminal sentencing system have been especially prominent.<sup>49</sup> There has also been some level of debate surrounding the underlying assumptions about national public attitudes on parole in the time period during and immediately following its abolition in Maine.<sup>50</sup>

## **E. Sentencing Post-Enactment of the Criminal Code**

Following the enactment of the Criminal Code and the abolition of parole in Maine, there have been a number of attempts to revisit Maine's sentencing model and the availability of community supervision alternatives to probation. Criticisms regarding predictability in sentencing and the

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<sup>40</sup> 17-A M.R.S.A. §1251 (Supp. 1975); *see also* Preamble to Criminal Code, 4 (1975).

<sup>41</sup> P.L. 1975, ch. 499, passed in 1975, but became effective in 1976 under 17-A M.R.S.A. §1, sub-§2 (1976); *see also*, Maine Criminal Code Revision 1975-1976. Available at: <https://www.maine.gov/legis/lawlib/lldl/criminalcode/index.html>.

<sup>42</sup> Preamble to Criminal Code, 5 (1975).

<sup>43</sup> Preamble to Criminal Code, 4 (1975).

<sup>44</sup> Anspach and Monsen, *Determinate Sentencing*, 472-473 (1989); *see also* Zarr, *Sentencing*, 143-147 (1976).

<sup>45</sup> Anspach et al, *Maine Rejects Indeterminacy*, iii, 23 (1983); Krauth, *Parole*, 52 (1987).

<sup>46</sup> 34-A M.R.S.A. §5801 (2022).

<sup>47</sup> 03-208 C.M.R. ch. 1 (2022). Accessible at: <https://www.maine.gov/sos/cec/rules/03/chaps03.htm>.

<sup>48</sup> Zarr, *Sentencing*, 135-136, footnote 68 (1976).

<sup>49</sup> Anspach et al, *Maine Rejects Indeterminacy*, 34-37 (1983); Anspach and Monsen, *Determinate Sentencing*, 473-485 (1989); *see also* Zarr, *Sentencing*, 118, 121, 143-147 (1976).

<sup>50</sup> Krauth, *Parole*, 55-56 (1987).

amount of judicial discretion in Maine's system<sup>51</sup> have led to a number of attempts at reform. One such attempt came from the Maine Sentencing Guidelines Commission, established by the 111th Legislature,<sup>52</sup> which recommended that Maine implement advisory, rather than mandatory, sentencing guidelines.<sup>53</sup> The need for sentencing guidelines was a continuous topic of debate following the establishment of the Criminal Code, particularly in reference to the question of whether or not there was demographic disparity in sentences issued in Maine.<sup>54</sup>

In 1988 during the 113<sup>th</sup> Legislature, the Joint Select Committee on Corrections, in its final report, discussed the perception that with 53% of sentences utilizing probation, it had become a replacement system for parole in Maine.<sup>55</sup> The committee noted in its report two concerns with this use of the split sentencing system:

"First, when judges sentence an offender to a split sentence, there is no control in the system which allows a determination of the offender's readiness for release. In some cases as much as five years pass before the probation term begins automatically, with no review. Secondly, since there is no policy standard for the use of the split sentence, the amount of time required on probation varies sharply among offenders and offense types."<sup>56</sup>

Maine's current system for sentencing is codified in Title 17-A, Chapter 63, and is discussed in further detail in the following section on Maine's current system.

There have also been numerous attempts to reestablish parole in Maine. The first, in 1981 when "the perception of prison overcrowding led to a move, supported by corrections officials, to reinstate the parole board."<sup>57</sup> Commenters noted that "the bill was supported by advocates of determinacy because release decisions of the new parole board would be based on guidelines" but opponents argued that "reinstating parole would undermine a major objective of Maine's sentencing policy: the certainty of sentences would be reduced by increasing the diffusion of sentencing power."<sup>58</sup>

Since 1981 and prior to the consideration of LD 842 by the 130<sup>th</sup> Legislature, the bill that ultimately created this commission, there have been at least five bills introduced to reinstate parole in Maine, many of which bear a similar structure to the original version of LD 842.<sup>59</sup>

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<sup>51</sup> Anspach and Monsen, *Determinate Sentencing*, 473 (1989).

<sup>52</sup> P.S.L. 1983, ch. 53.

<sup>53</sup> Final Report of the Maine Sentencing Guidelines Commission, established by P.S.L. 1983, ch. 53, 3 (1984).

<sup>54</sup> Anspach and Monsen, *Determinate Sentencing*, 474-475 (1989).

<sup>55</sup> Final Report of the 113<sup>th</sup> Legislature's Joint Select Committee on Corrections, 34 (1988). This report also noted that Maine's percentage of offenders on probation was 10% above the national average in 1988.

<sup>56</sup> Joint Select Committee on Corrections Report, 34 (1988).

<sup>57</sup> Anspach and Monsen, *Determinate Sentencing*, 474 (1989).

<sup>58</sup> *Id.*

<sup>59</sup> See "Timeline of Parole in Maine" in Appendix C for a list of bills introduced regarding parole; see also Appendix I for a chart of bills since 1976 that reference parole. Staff worked with the Law and Legislative

Concerns around prison overcrowding in Maine continued through the 1980s and eventually led to the establishment of the Maine Corrections Summit, in May 1991.<sup>60</sup> The summit was created in response to the confluence of the State's prison overcrowding crisis and a funding crisis that limited the State's ability to respond to it.<sup>61</sup> The final report of the summit opened with the following "[t]he Maine Correctional System is in crisis. Prisoners are continuing to flow in. But money for facilities, staff, and programs is declining. As a result, facilities like the central Maine Pre-Release Center... are threatened with closure."<sup>62</sup> The summit was held at the Augusta Civic Center on May 7, 1991, it met for one day and it included judges, district attorneys, corrections officials, legislators, police, and concerned citizens.<sup>63</sup> The recommendations in the final report of the summit included, in the short term, the expansion of alternatives to incarceration and that the State begin planning to reestablish parole.<sup>64</sup>

The solution reached by the State was the creation of Maine's Supervised Community Confinement Program, established by Public Law 1991, Chapter 845, in the 115<sup>th</sup> Legislature. May 1991 articles from the Portland Press Herald and Bangor Daily News noted that the cost of monitoring individuals on supervised community confinement would be in the range of \$10-\$15 per day, instead of \$55 per day within a correctional facility, and provided the Department of Corrections with an effective means to address the issue of overcrowding.<sup>65</sup>

#### **F. Current Systems that Alter the Length or Manner in Which a Sentence is Served**

As discussed above, Maine abolished parole in 1976 when it established the Criminal Code. While Maine continues to have statutes governing parole, and an active parole board, only those sentenced prior to the enactment of the Criminal Code are eligible for parole.<sup>66</sup> There are currently 11 people serving on parole, and 5 remaining who could theoretically become eligible, although 4 of those people are serving consecutive sentences.<sup>67</sup> Maine's system of parole is governed by Title 34-A, Chapter 5, subchapter 5. Parole generally becomes available after the expiration of half a person's sentence, or at the expiration of a 15 year term in cases of life imprisonment.<sup>68</sup> The term and conditions of parole are set by the parole board established under Title 34-A, subchapter 2.<sup>69</sup> Supervision of persons on parole is administered by probation officers under the Department of Corrections. Probation officers and caseworkers provide input

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Reference Library to identify legislative proposals regarding parole, the list provided is a list of bills that staff identified. There may be additional proposals not covered in this document.

<sup>60</sup> Final Report of the Maine Corrections Summit, 1 (1991).

<sup>61</sup> See news clippings in Appendix G.

<sup>62</sup> Final Report of the Maine Corrections Summit, 1 (1991).

<sup>63</sup> *Id.*

<sup>64</sup> Final Report of the Maine Corrections Summit, 2-3 (1991).

<sup>65</sup> Appendix G.

<sup>66</sup> See LD 842. Appendix J.

<sup>67</sup> Testimony from Richard Harburger at third commission meeting is available at: [Maine Legislature Video Archive, SH 437, 10-14-22.](#)

<sup>68</sup> 34-A MRSA §5803 (2022).

<sup>69</sup> 34-A MRSA §5802 (2022).

in the parole hearing process, but the outcome is ultimately left up to the parole board. Maine's current parole board is made up of five members, appointed by the Governor, they are required to be citizens of the state and "have special training or experience in law, sociology, psychology or related branches of social science."<sup>70</sup>

#### i. An Overview of Sentencing in Maine

Maine's current sentencing system is codified in Title 17-A, Chapter 63, with the basic procedure set forth in §1602, sub-§1, as follows:

**"1. Class A, Class B or Class C crimes.** In imposing a sentencing alternative pursuant to section 1502 that includes a term of imprisonment for a Class A, Class B or Class C crime, in setting the appropriate length of that term as well as any unsuspended portion of that term accompanied by a period of probation or administrative release, the court shall employ the following 3-step process.

A. First, the court shall determine a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the individual.

B. Second, the court shall determine the maximum term of imprisonment to be imposed by considering all other relevant sentencing factors, both aggravating and mitigating, appropriate to the case. Relevant sentencing factors include, but are not limited to, the character of the individual, the individual's criminal history, the effect of the offense on the victim and the protection of the public interest.

C. Third, the court shall determine what portion, if any, of the maximum term of imprisonment under paragraph B should be suspended and, if a suspension order is to be entered, determine the appropriate period of probation or administrative release to accompany that suspension."

The process set forth in §1602, sub-§1, is the codification of the sentencing process determined by the Supreme Judicial Court of Maine in the seminal case *State v. Hewey*,<sup>71</sup> and operates alongside the other provisions of Title 17-A, Chapter 63 to govern criminal sentencing in Maine.

Maine's current classification system defining maximum terms of imprisonment is outlined in Title 17-A §1604 as follows:

A. In the case of a Class A crime, 30 years;

B. In the case of a Class B crime, 10 years;

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<sup>70</sup> 34-A MRSA §5202 (2022).

<sup>71</sup> *State v. Hewey*, 622 A.2d 1151, 1154-1155 (1993).

- C. In the case of a Class C crime, 5 years;
- D. In the case of a Class D crime, less than one year; or
- E. In the case of a Class E crime, 6 months.<sup>72</sup>

The crime of murder is not included within this classification system. Murder is addressed separately under §1603, which requires that a “person convicted of the crime of murder must be sentenced to imprisonment for life or for any term of years that is not less than 25.” That provision also includes sentencing considerations regarding domestic violence, the victim's age, and pregnancy status, and includes requirements regarding specificity in sentence length.

However, the process described in §1602 and the maximum terms set forth in §1604, sub-§1 are merely starting points, as additional subsections in §1604 describe mandatory minimums for specific sentences, circumstances that elevate the class of a crime, and special weight for aggravating factors. Title 17-A, Chapter 63, also contains provisions governing other aspects of sentencing including, but not limited to, imprisonment for the crime of murder, how to handle concurrent and consecutive sentences, and a prohibition on imprisonment for failure to pay a fine.

A wide range of authorized sentences and sentencing alternatives is provided under Title 17-A, Chapter 61. Among those sentencing alternatives is the option to impose a suspended term of imprisonment with probation, or a split sentence of imprisonment with probation.<sup>73</sup> Probation is established under Title 17-A §1807 and is one key component of the split sentencing model referenced above. For split sentences, time that must be served in a correctional facility is referred to as the unsuspended portion of the sentence, and time served on probation is referred to as the suspended portion of the sentence.<sup>74</sup> The length of each portion of the sentence is determined by the court at the sentencing stage.<sup>75</sup> While on probation, a person may serve their remaining sentence outside of a correctional facility, subject to any number of specific conditions, outlined in §1807, sub-§2, which are determined by the court at the sentencing stage. If a person violates any of the conditions of probation, that person can be required to serve the remainder of their sentence in a correctional facility.<sup>76</sup>

Maine currently has two primary post-conviction mechanisms that either shorten the amount of time served or change the manner in which a sentence is served: earned time deductions; and the Supervised Community Confinement Program.

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<sup>72</sup> 17-A M.R.S.A. §1604, sub-§1 (2022).

<sup>73</sup> 17-A M.R.S.A. §1502 (2022).

<sup>74</sup> 17-A M.R.S.A. Chapter 67 (2022).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

## ii. Statutory Deductions from Sentences

Under Maine's current system, once a person has received a sentence the only mechanism for adjusting the length of the sentence outside the of the judicial process is through sentence deductions outlined in statute. The most commonly discussed way this happens is through what are referred to as "good-time" deductions, which are outlined in statute under Title 17-A, chapter 81. There are three separate codes that are applicable based on when a sentenced was issued. The 1983 code is located under 17-A §2310, the 1995 code is under 17-A §2309, and the 2004 code is under 17-A §2307-2308. The specifics of how each code is applied are outlined in the Department of Corrections' presentation in Appendix D. Those serving life sentences are not eligible for good-time deductions.

There are also other applicable deductions available in Chapter 81, such as deductions for time detained while awaiting trial under §2305 and certain special circumstances outlined in §2306. Good time deductions are applied based on a resident's good behavior. The criteria for good behavior include, but are not limited to: engaging in work, participation in vocational programing, receiving education and consistently exemplifying compliance with rules.<sup>77</sup> Good time is calculated based on the unsuspended portions of a sentence only.<sup>78</sup>

## iii. Supervised Community Confinement Program

Community supervision is a general term used to refer to different programs offered by jurisdictions for persons to serve their sentences outside the confinements of a corrections facility. The National Conference of State Legislatures has a number of useful resources regarding community supervision, which includes a database of significant enactments across the United States.<sup>79</sup> Maine currently has two primary community supervision mechanisms: probation and supervised community confinement.

The Supervised Community Confinement Program (SCCP) is administered by the Department of Corrections, and is meant to provide a means of successful reentry of adult facility residents into the community. Residents transferred to the program are still considered to be in the legal custody of the Department, but they are able to serve the remainder of their sentences at an approved residence, rather than in a department facility. SCCP is administered at the discretion of the Department of Corrections, pursuant to its statutory authority under Title 17-A §3036-A and its program rule.<sup>80</sup> Participation in the program is a privilege which may be afforded to residents who meet the eligibility criteria including, but not limited to: being classified as minimum or community custody (low-risk status); no discipline within the last 90 days; and

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<sup>77</sup> Department of Corrections Presentation Slides and Handouts. Appendix M.

<sup>78</sup> *Id.*

<sup>79</sup> See "Information Requests" in Appendix C.

<sup>80</sup> See Appendix D.

satisfactory participation in programs offered by the department.<sup>81</sup> Residents are responsible for working with their case manager to develop and submit an individualized plan for their participation in the program.<sup>82</sup>

There are also baseline criteria for the remaining time on a person's sentence in order to qualify for the program. A person must have no more than 30 months remaining on their sentence after deductions are made for good time.<sup>83</sup> If a resident is sentenced to a period of 5 years or less, that person must have served at least half of their sentence after deductions are made for good time.<sup>84</sup> If a resident is sentenced to a period of more than 5 years, that person must have served at least two thirds of their sentence after deductions are made for good time.<sup>85</sup>

Finally, in order to be approved for SCCP there are a number of behavioral and programmatic considerations. A resident must at have:

- The ability to abide by mandatory conditions and expectations of conduct;
- The ability to abide by expectations related to work, education, or rehabilitation as dictated in the resident's case plan;
- Demonstrated change in behavior toward evident rehabilitation; and
- Examples of personal and service-oriented accomplishments (tutoring, mentoring, service to facility, others).
- A completed review of victim sentiment, conducted by the Department of Corrections (strong oppositional victim sentiment doesn't automatically preclude approval, but it is taken into consideration).

Residents transferred to SCCP are placed in suitable locations, approved by the department, such as a treatment facility, support oriented transitional home (for persons in recovery, or veterans, etc.), housing associated with an employer or educational program, nursing facility or other hospital-type care setting.<sup>86</sup> Similar to probation, a person who is serving the remainder of their sentence outside of a correctional facility while on SCCP are subject to a number of restrictions, that can also include any of the restrictions applicable under probation.<sup>87</sup> A person who violates the conditions of their enrollment in the program can be transferred back to a correctional facility for the remainder of their sentence.

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<sup>81</sup> *Id.*

<sup>82</sup> See Department of Corrections Presentation Slides and Handouts; *see also* 03-201 C.M.R. ch. 27.2 (2022). Accessible at: <https://www.maine.gov/sos/ccc/rules/03/chaps03.htm>.

<sup>83</sup> See Appendix D.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Department of Corrections; *Brief on Supervised Community Confinement* (2022). Appendix J.

<sup>87</sup> *Id.*; *see also* 03-201 C.M.R. ch. 27.2 (2022). Accessible at: <https://www.maine.gov/sos/ccc/rules/03/chaps03.htm>.

## Summary of Maine Sentencing Code

### **1. Purposes of Maine's General Sentencing Provisions (17-A M.R.S. § 1501)**

The general purposes of sentencing are:

1. **Prevent Crime.** Prevent crime through the deterrent effect of sentences, the rehabilitation of persons and the restraint of individuals when required in the interest of public safety;
2. **Encourage restitution.** Encourage restitution in all cases in which the victim can be compensated and other purposes of sentencing can be appropriately served;
3. **Minimize correctional experiences.** Minimize correctional experiences that serve to promote further criminality;
4. **Provide notice of nature of sentences that may be imposed.** Give fair warning of the nature of the sentences that may be imposed on the conviction of a crime;
5. **Eliminate inequalities in sentences.** Eliminate inequalities in sentences that are unrelated to legitimate criminological goals;
6. **Encourage just individualization of sentences.** Encourage differentiation among persons with a view to a just individualization of sentences;
7. **Elicit cooperation of individuals through correctional programs.** Promote the development of correctional programs that elicit the cooperation of convicted individuals;
8. **Permit sentences based on factors of crime committed.** Permit sentences that do not diminish the gravity of offenses, with reference to the factors, among others, of:
  - A. The age of the victim, particularly of a victim of an advanced age or of a young age who has a reduced ability to self-protect or who suffers more significant harm due to age;
  - B. The selection by the person of the victim or of the property that was damaged or otherwise affected by the crime because of the race, color, religion, sex, ancestry, national origin, physical or mental disability, sexual orientation, gender identity or homelessness of the victim or of the owner or occupant of that property; and
  - C. The discriminatory motive of the person in making a false public alarm or report or an aggravated false public alarm in violation of section 509; and
9. **Recognize domestic violence and certified domestic violence intervention programs.** Recognize domestic violence as a serious crime against the individual and society and to recognize domestic violence intervention programs certified pursuant to Title 19-A, section 4116 as the most appropriate and effective community intervention in cases involving domestic violence.

## **2. Sentences of Imprisonment (17-A M.R.S. § 1604)**

The maximum terms of imprisonment are based on the class of crime. In general,

- A. Class A crime, 30 years;
- B. Class B crime, 10 years;
- C. Class C crime, 5 years;
- D. Class D crime, less than one year; or
- E. Class E crime, 6 months.

There are a handful of exceptions to this including aggregated attempted murder, repeat sexual offenders and some gross sexual assaults.

## **3. Basic Sentencing Structure**

The Law Court established a three-step process for sentencing in felony level cases (Class A, B and C). This process is outlined in cases such as *State v. Michaud*, 590 A.2d 538 (Me. 1991); *State v. Hewey*, 622 A.2d 1151 (Me. 1993); and *State v. Shackelford*, 634 A.2d 1293 (Me. 1994). The Legislature codified this process in 17-A M.R.S. § 1602.

**Step 1- Basic Sentence** (17-A M.R.S. § 1602(1)(A)): In its sentencing analysis, the Court must first determine a basic term of imprisonment by considering the particular nature and seriousness of the offense as committed by the offender and by comparing it to all possible means of committing the offense. This is done without considering this particular defendant or any victim impact.

**Step 2- Maximum Period of Incarceration** (17-A M.R.S. § 1602(1)(B)): In arriving at the maximum period of incarceration, the sentencing Court must look beyond the nature and seriousness of the offense and examine the factors which are unique to the Defendant. *Hewey*, 622 A.2d 1151, 1154-55; *State v. Roberts*, 641 A.2d 177, 179 (Me. 1994). These circumstances may include both aggravating and mitigating factors. 17-A M.R.S. § 1602(1)(B). Relevant sentencing factors include “the character of the individual, the age of the individual at the time the conduct forming the basis for the conviction occurred, the individual’s criminal history, the effect of the offense on the victim, the effect of the potential term of imprisonment on those relying on the individual as a primary caregiver and the protection of the public interest.” *Id.*

**Step 3- Final Sentence** (17-A M.R.S. § 1602(1)(C)): The final step of the sentencing analysis is the determination of what, if any, portion of the maximum period of incarceration should be suspended and accompanied by a period of probation. A person “may be sentenced to a sentencing alternative that includes a period of probation if that person is in need of the supervision, guidance, assistance or direction that probation can provide.” 17-A M.R.S. § 1802(2).

**Place of Imprisonment for Class A, B, or C crimes** 17-A M.R.S. § 1610(2)(B): The court shall *commit the individual to the Department of Corrections* if the term of imprisonment is more than 9 months.

**Example:** A defendant has been convicted of Class A Elevated Aggravated Assault (17-A M.R.S. § 208-B(1)(A)). Step 1, Judge found the basic sentence to be 20 years. Step 2, Judge found the aggravating factors outweighed the mitigating factors and set the maximum sentence at 25 years. Step 3, the Judge suspends 15 years of the sentence and orders a final sentence of **25 years, all but 10 years, with 4 years probation.**

- 25 years is the maximum amount of time the person would serve for this crime.
- 10 years is the unsuspended portion of the sentence. This part of the sentence would be served in prison, less good time or time in the community on supervised community confinement program, by the DOC.
- 4 years of probation is how long they are supervised on probation. While on probation, the 15 years (25-10=15) that was suspended is the maximum the defendant could go back to prison if they violate during the 4 years of probation.

#### **4. Multiple Sentences of Imprisonment**

At sentencing, the court shall state whether a sentence must be served concurrently with or consecutively to any other sentence previously imposed or to another sentence imposed on the same date. 17-A M.R.S. § 1608(1). Sentences must be concurrent except they can be consecutive after considering factors listed in 17-A M.R.S. § 1608(1)(A)-(D). The statute limits the imposition of a consecutive sentence for crimes in the same criminal episode. 17-A M.R.S. § 1608(2). If the court imposes a consecutive sentence, the court shall state its reasons on the record during sentencing. If any counts run consecutive to each other, “the court must engage in separate *Hewey* analysis.” *State v. Downs*, 2009 ME 3, ¶ 14, 962 A.2d 950.

The court needs to make its decision regarding imposing concurrent or consecutive sentences before analyzing the final sentence under *Hewey*. *State v. Stanislaw*, 2013 ME 43, ¶ 16, 65 A.3d 1242. In imposing consecutive sentences, the court must conduct a two-part test to determine that the unsuspended portion of the consecutive sentence is not excessive and is proportionate to the offense. The first step is to compare “the gravity of the offense [with] the severity of the sentence.” *State v. Ward*, 2011 ME 74, ¶ 20 n.5, 21 A.3d 1033 (quoting *Graham v. Florida*, 130 S. Ct. 2011, 2022 (2010)). Step two is to “compare the defendant’s sentence with the sentences received by other offenders in the same jurisdiction” only if step one led to “an inference of gross disproportionality.” *Id.* (quoting *Graham*, 130 S. Ct. at 2022).

**Example:** A defendant has been convicted of Class A Elevated Aggravated Assault (17-A M.R.S. § 208-B(1)(A)) and Class B Domestic Violence Aggravated Assault (17-A M.R.S. § 208-D). The judge conducted separate *Hewey* analysis for each count and ordered the sentence on each count to run consecutive to one another. The sentence on Count 1 Elevated Aggravated Assault is 10

years straight and the sentence on Count 2 Domestic Violence Aggravated Assault is 7 years, all suspended, 4 year probation consecutive to Count 1.

- 17 years is the maximum amount of time the person would serve for this crime.
- 10 years is the unsuspended portion of the sentence. This part of the sentence would be served in prison, less good time. This sentence would then be complete.
- The defendant would then start their sentence on count 2. 4 years of probation is how long they are supervised on probation. While on probation, the 7 years that was suspended is the maximum the defendant could go back to prison if they violate during the 4 years of probation.
- When consecutive sentences are ordered, the first sentence cannot be wholly or partially suspended if the subsequent sentence requires an unsuspended term of imprisonment. 17-A M.R.S. § 1608(7).

## **5. Sentencing Structure for Certain Crimes**

**Crime of Murder (17-A M.R.S. § 1602(2)):** In imposing a sentence pursuant to section 1603 for the crime of murder, the court shall employ only the first 2 steps of the sentencing process as specified in subsection 1, paragraph A and B.

- No probation on murder sentences.
- Sentences will always be straight time sentences with a minimum mandatory of 25 years.
- There is no unsuspended portion of the sentence.

**Certain Crimes of Gross Sexual Assault (17-A M.R.S. § 1602(3)).** The court employs the first 2 steps of the sentencing process and then determines an appropriate period of supervised release to follow the maximum term of imprisonment.

- On certain gross sexual assaults, supervised release has to be ordered, not probation.
- The sentence will be a straight time sentence followed by supervised release.
- There is no unsuspended portion of the sentence.

## **6. Revocations**

### **Probation Revocation:**

17-A M.R.S. § 1805(1)(A) The court may revoke probation for any criminal conduct committed during that unsuspended portion of the term of imprisonment.

17-A M.R.S. § 1805(1)(C) The court may revoke probation if, during any unsuspended portion of the term of imprisonment, an individual sentenced as a repeat sexual assault offender refuses to actively participate in a sex offender treatment program when requested by the DOC.

17-A M.R.S. § 1805(1)(D) The court may revoke probation if, during an unsuspended portion of the term of imprisonment:

1. The individual has contact with a victim with whom the individual has been ordered not to have contact as a condition of probation.
2. The individual has contact with any victim with whom the individual has been prohibited to have contact by the DOC or county jail.

17-A M.R.S. § 1805(1)(E) As to both the suspended and unsuspended portions of the sentence, the place of imprisonment must be as follows:

- (2) For a Class A, Class B or Class C crime, the court must:
  - a. Specify a county jail as the place of imprisonment for any portion of the sentence that is 9 months or less; and
  - b. *Commit the individual to the Department of Corrections* for any portion of the sentence that is more than 9 months (same language as in 17-A M.R.S. § 1610(2)(B)).

**Example:** Defendant was sentenced to 25 years, all but 10 years, with 4 years probation. Part of the probation conditions are no contact with the victim. While serving the unsuspended portion of the sentence (10 years), the defendant contacts the victim. State files a motion to revoke probation and the Judge finds the defendant violated the probation. The Judge can impose any portion of the suspended sentence. If less than the full amount of the suspended sentence is imposed, probation will continue.

**Supervised Release** 17-A M.R.S. § 1881(7) If the court revokes a period of supervised release, the *court shall require the person to serve time in prison under the custody of the DOC*. This time in prison may equal all or part of the period of supervised release. The remaining portion of the period of supervised release that is not required to be served in prison, if any, may not run during the time in prison and must resume again after the person's release and is subject to revocation at a later date.

- **Example:** Defendant was sentenced to 25 years with 20 years of supervised release with a condition not to contact the victim. While serving the 25 years the defendant contacts the victim. State files a motion to revoke the supervised release and the Judge finds the defendant violated the supervised release. Judge sentences the Defendant on the supervised release violation for 2 years with supervised release to continue. The 2 years is now added to the 25 year portion of the sentence.

### **Revocations with Consecutive Sentences**

If a defendant is on probation or supervised release pursuant to a previously imposed sentence and the court determines that the sentence in a new case will be consecutive, the court shall revoke probation or terminate supervised release. 17-A M.R.S. § 1608(4).

# Introduction to Deductions, Probation, and SCCP

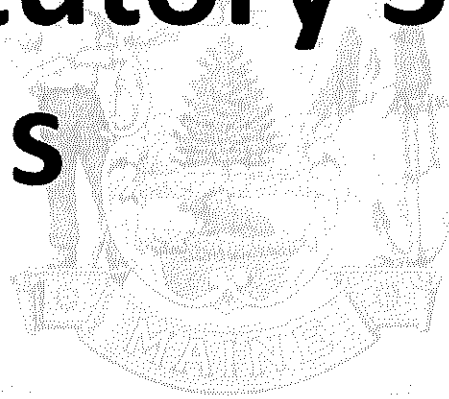
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# Part I: Statutory Sentence Deductions



# Statutory Deductions

-In Maine, there are 3 basic types of “good time” deductions under current statutes:

1. For good conduct;
  2. For satisfactory **facility program** participation (work, education, rehabilitation programs);
  3. For satisfactory **community-related program** participation (work, education, rehabilitation programs in the community).
- 68 residents are ineligible for deductions due to life sentences.



# Statutory Deductions

Three different codes dictate deductions based on date of and type of crime:

**1983 Code** (17-A MRSA § 2310): approx. 30 residents

**1995 Code** (17-A MRSA § 2309): approx. 804 residents

**2004 Code** (17-A MRSA §§ 2307 - 2308): approx. 1,413 residents, vast majority and growing proportion



# 1983 Code (30 residents, or 1.4%)

- For crimes committed on or after May 1, 1976 but before October 1, 1995 (if sentenced on or after October 1, 1983).
- 10 days per month “up front” for the entire length of the prison term (awarded in anticipation of good conduct)
- Credited days only lost as a penalty after formal disciplinary process.
- Residents *can* have lost time restored for later positive conduct.
- Additionally, can earn 3 days per month for participating in an approved facility program, such as work, education, or treatment. Awarded each month and cannot be lost once awarded.
- Minimum or community custody residents only can also earn an additional 2 days per month, which also cannot be lost once awarded.
- Thus, a resident in a minimum or community custody program can earn both the 3 facility program days and the 2 minimum/community days for program participation, in addition to the 10 days up front.



## 1995 Code (804 residents, or 38%)

- For all crimes committed on or after October 1, 1995 but before August 1, 2004, and certain crimes committed after the latter date.
- Residents can earn 2 days per month for conduct on an “earn as you go” basis. Both past and future awards can be lost through disciplinary process.
- Can also earn 3 facility program days per month on an “earn as you go” basis. Both past and future awards can be lost for disciplinary reasons.
- There is no provision for community-related program deductions under the 1995 Code, so the total days per month people can earn are 5.
- All earned days are subject to removal through the disciplinary process, but days lost can be restored for later good conduct and program participation.



## 2004 Code (1,413 residents or 67%)

- On an “earn as you go” basis.
- Past and future awards subject to removal through the disciplinary process, but days lost can be restored for later positive conduct and program participation.
- Individuals can earn 4 days per month for positive conduct, 3 days for satisfactory participation in a facility program, and 2 extra days if they are involved in a community-related program.
- Total days per month people sentenced under this code can earn is 9.
- MDOC interprets the 2004 Code to allow awarding community program days for participation in a community-based education program in which the resident participates through video conferencing as a full-time student.
- Thus, residents who are full-time college students can earn 9 days per month.



# 2004 Code

- The 2004 code excludes certain crimes (17-A MRSA § 2307), so the 1995 code still applies to residents serving those sentences, even if the crimes were committed on or after August 1, 2004:
  - Murder
  - Ch. 11 (sexual assaults)
  - Section 556 (incest)
  - Certain indecent conduct
  - Ch. 12 (sexual exploitation of minors)
  - Certain crimes against family or household member or dating partner



## Best-Case Scenarios

- Under the 1983 Code, time off the sentence would accrue at the rate of 13 days per month and then towards the end of the sentence at the rate of 15 days per month (due to going to a minimum facility or housing unit and participating in their programs). In a year at the rate of 13 days per month, this would be 156 days (in a best case scenario). At the rate of 15 days a month, it would be 180 days in a year.
- Under the 1995 Code, time off the sentence would accrue at the rate of 5 days per month, or 60 days per year.
- Under the 2004 Code, time off the sentence would accrue at the rate of 7 days per month and, if participating in a community program, including college full-time, at the rate of 9 days per month. 7-days per month is 84 days per year, and 9 days per month is 108 days per year.



# **Part II: Supervised Community Confinement**



# SCCP Numbers

- Currently, 65 clients on SCCP (as of 9/1/26)
  - 48 men, 17 women
  - 85 placements in 2026 to date
  - 3% of total adult population

Current Participants by Region

|          |    |
|----------|----|
| Region 1 | 14 |
| Region 2 | 21 |
| Region 3 | 30 |
| Total    | 65 |

- 80% success rate in 2026 to date
- 700 residents since 1/1/21 benefited from the program (5.5 years)
- SCCP demographic data available on MDOC website



# 34-A M.R.S. § 3036-A: SCCP

## Statutory Language:

- Community release to a residence approved by MDOC under conditions set by statute (§ 3036-A(3))
- Similar but sometimes more stringent terms as probation, monitored by probation officers
- To be eligible, must have served 1/2 of sentence if sentence is 5 years or less (§ 3036-A(2)(B))
- For sentence over 5 years, must have served 2/3 of sentence
- Can be on SCCP for up to 30 months (§ 3036-A(2)(C-1))
- Must be classified at least “minimum custody” (§ 3036-A(2)(D))



## 34-A M.R.S. § 3036-A: SCCP

- “Minimum custody”
  - Defined by MDOC Policy 23.1 as having “prosocial, pre-release appropriate behavior for an extended period of time and have completed or are actively participating in core programs and otherwise case plan compliant.”
  - Eligible to apply for furloughs and community transition programs such as work release and education release.
  - Factors considered for custody level include program compliance, work, disciplinary history, crime, and risk.
  - Policy 23.1 (Classification System), available online.



# 34-A M.R.S. § 3036-A: SCCP

## Mandatory Statutory Conditions (paragraph 3(A)-(K)):

- Involvement in approved work, education, or full-time treatment
- Approved residence
- Curfew, travel restrictions
- Searches of residence, person, effects without probable cause or warrant
- No possession/use of drugs or alcohol (subsection F)
- Drug testing
- Notify probation officer of law enforcement contact
- Obey state and federal laws
- Pay outstanding restitution



# 34-A M.R.S. § 3036-A: SCCP

## Process for MDOC Residents

- At intake residents are provided written information about SCCP, including eligibility requirements, the review and approval process, and conditions.
- Residents work with their case manager on an individualized plan that includes the goal of transferring to SCCP if/when eligible.
- Residents learn about suitable living options for SCCP clients and program requirements and expectations.



# 34-A M.R.S. § 3036-A: SCCP

## Process for Residents, Part 2

- The application process requires that residents:
  - Are classified as minimum or community custody
  - Have no pending warrants, detainers, etc.
  - Be participating satisfactorily in programs
  - Have no Class A or B discipline within the last 90 days
  - Meet sentence length criteria, which includes: Having a current release date of no more than 30 months after sentence deductions are taken into account, **and**:
- If a resident has 5 years or less, the individual must have served  $\frac{1}{2}$  of the sentence after good time is taken into account.
- If the sentence is more than 5 years, the individual must have served  $\frac{2}{3}$  of the sentence after good time is taken into account.



# 34-A M.R.S. § 3036-A: SCCP

## Process for Residents, Part 3

- When it's the appropriate time, a resident fills out an application which asks about the resident's housing, employment, treatment, and community-based supports. Assisted by their case manager.
- The facility unit team reviews documentation and works with the resident on necessary changes/improvements.
- SCCP application is then sent to the facility CAO, adult community corrections, and the Director of Classification for review.



## 34-A M.R.S. § 3036-A: Statutory Language

- “The criteria must be evidence-based and designed to evaluate the likelihood of a prisoner’s completion of SCCP if transferred.” (2-A)(A)
- Criteria include “fulfillment of expectations as to conduct[,] ... work, education and rehabilitation programs . . . Other rehabilitation efforts and accomplishments, arrangements for suitable housing in the community, taking into consideration the proximity of this housing to the victim, and the existence of support systems and resources in the community.” (2-A)(A)) (emphasis added)
- Community sentiment and victim input (2-A)(B)
- Appeal right (2-A)(B)



# SCCP Policy (27.2)

- Per APA policy, the primary determining factor is “the likelihood that the resident will successfully complete the program”

5. All decisions relating to whether an eligible resident is recommended for approval or is approved to transfer to SCCP shall have as the primary determining factor the likelihood that the resident will successfully complete the program, considering, but not limited to, the following criteria:
  - a. the fulfillment of:
    - 1) expectations as to conduct;
    - 2) expectations as to work, education, and rehabilitation programs assigned in the resident's individualized case plan;
    - 3) other rehabilitative efforts, including the resident's demonstration of positive change; and
    - 4) other accomplishments (e.g., volunteering, mentoring other residents, etc.);
  - b. arrangements for suitable housing in the community, taking into consideration the proximity of housing to any victim, including a victim's housing, place of employment, or educational institution being attended, if applicable;
  - c. the existence of support systems and resources in the community; and
  - d. if applicable, participation in community programs during the current time in custody (e.g., furloughs, work release, etc.).



## 34-A M.R.S. § 3036-A: SCCP

- Barriers to applying: housing (biggest), transportation to employment, community supports, anxiety about reentry

### Types of Placements Suitable for SCCP

- Home
- MDOC Transitional Program (Leading the Way, Waypoint)
- Treatment facility (SUD, or MH)
- Support oriented transitional home (for persons in recovery, or veterans, etc.)
- Housing associated with an employer or educational program
- Nursing facility or other hospital-type care setting



## SCCP Applications (as of 9/1/26)

|                              |    |
|------------------------------|----|
| SCCP Applications in Process | 50 |
|------------------------------|----|

### SCCP Reviews Completed

|            |     |
|------------|-----|
| 2024 Total | 257 |
| 2025 Total | 276 |
| 2026 YTD   | 181 |



# **Part III: Community Corrections (Probation and Parole)**



# Probation & Parole

## Some Former Residents Are Still on Parole:

- 34-A MRSA ch. 5
- Parole by Board of 5 members (34-A MRSA § 5802)
- Approximately 8 residents are still on parole for life, so those statutes still apply and must remain in place
- 2-3 meetings per year, a parole revocation hearing set for this fall
- New parole legislation cannot alter those sentences
- New parole scheme should be new chapter



# Probation (8/31/26 data)

## Residents Supervised by Adult Community Corrections:

"Active" clients are any probationer on community supervision that requires direct contact on a regular basis.

"Passive" clients require less contact on a regular basis. Clients on a passive status can be placed on active status at any time.

Active:

| Client Status |                                  | Reg I | Reg II | Reg III | Grand Total |
|---------------|----------------------------------|-------|--------|---------|-------------|
| Active        | Probation                        | 1010  | 1585   | 1296    | 3891        |
|               | Parole                           | 2     | 5      | 1       | 8           |
|               | SCCP                             | 14    | 21     | 30      | 65          |
|               | Interstate Compact In            | 73    | 74     | 88      | 235         |
|               | Pending Violation                | 128   | 169    | 156     | 453         |
|               | Pending Violation - Incarcerated | 83    | 143    | 178     | 404         |
| Passive       | County Jail                      | 41    | 28     | 37      | 106         |
|               | Partial Revocation - County Jail | 8     | 12     | 11      | 31          |
|               | Interstate Active Detainer       | 9     | 2      | 0       | 11          |
|               | Interstate Compact Out           | 100   | 83     | 37      | 220         |
|               | Warrant Absconded                | 212   | 354    | 344     | 910         |
| Grand Total   |                                  | 1680  | 2476   | 2178    | 6334        |



# Probation

-3 Adult Community Corrections Regions, each with Regional Correctional Administrator & Managers

- Region 1: Cumberland & York County

- Region 2: Androscoggin, Franklin, Kennebec, Lincoln, Oxford, Sagadahoc, Somerset

- Region 3: Aroostook, Hancock, Knox, Penobscot, Piscataquis, Waldo, Washington

-77 authorized PO positions

-Filled positions: 68 POs, 6 POAs (as of Sept. 2026)

-Caseload: POs average 70 active probationers each on their caseloads. Some POs have smaller caseloads for higher risk clients (i.e., sex offender and DV specialists)

-Varies by region, with Region II having highest number of clients on active probation.



# Probation Violations

- Court sets conditions of probation but probation officer can impose graduated sanctions (17-A MRSA § 1814)
- ACC staff provide connections to resources, coaching, counseling, and planning
- New criminal conduct and serious non-criminal violations result in probation revocation proceedings
- Right to an attorney in court
- Preponderance standard
- New criminal conduct often results in longer term of probation
- May result in full or partial revocation (incarceration)



# Probation & SCCP

- SCCP clients are serving out the rest of their sentence in the community.
- Some have probation following that sentence, some do not, as was determined by the Court at time of sentencing.
- SCCP and Probation supervised by the same officers.
- SCCP termination determined by MDOC.
- Probation revocation determined by the Courts.



# Probation and Parole Proposal

- Resident with probation after prison sentence is released
  - Start probation after parole?
  - Or simultaneous?
- New crime could result in simultaneous probation and parole revocation processes
- Right to attorney for probation revocation process.
- Right to attorney for parole process? Ramifications on probation.
- Victim participation in both? Onerous, repetitive, needing support
- What if parole is revoked and probation is not, or vice versa?
- Board decision vs. Court decision, which controls?



# Questions?

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