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House of Representatives, April 20, 2011

An Act To Establish Positive Reentry Parole

Received by the Clerk of the House on April 15, 2011. Referred to the Committee on Criminal Justice and Public Safety pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative TUTTLE of Sanford.

Cosponsored by Senator WHITTEMORE of Somerset and Representatives: BEAVERS of South Berwick, BECK of Waterville, BERRY of Bowdoinham, BICKFORD of Auburn, BLODGETT of Augusta, BOLAND of Sanford, BOLDUC of Auburn, BRIGGS of Mexico, BRYANT of Windham, CAIN of Orono, CASAVANT of Biddeford, CHAPMAN of Brooksville, CLARKE of Bath, CORNELL du HOUX of Brunswick, COTTA of China, CUSHING of Hampden, DILL of Old Town, DION of Portland, DRISCOLL of Westbrook, EBERLE of South Portland, GILBERT of Jay, GOODE of Bangor, HARLOW of Portland, HAYES of Buckfield, HOGAN of Old Orchard Beach, INNES of Yarmouth, KAENRATH of South Portland, KNIGHT of Livermore Falls, KRUGER of Thomaston, KUMIEGA of Deer Isle, LAJOIE of Lewiston, LOVEJOY of Portland, MacDONALD of Boothbay, MAZUREK of Rockland, MITCHELL of the Penobscot Nation, MORRISON of South Portland, NELSON of Falmouth, O'BRIEN of Lincolnville, PEOPLES of Westbrook, PETERSON of Rumford, PRESCOTT of Topsham, ROCHELO of Biddeford, ROTUNDO of Lewiston, RUSSELL of Portland, SANBORN of Gorham, SOCTOMAH of the Passamaquoddy Tribe, STRANG BURGESS of Cumberland, STUCKEY of Portland, THERIAULT of Madawaska, VOLK of Scarborough, WAGNER of Lewiston, WELSH of Rockport, Senators: ALFOND of Cumberland, BARTLETT of Cumberland, BRANNIGAN of Cumberland, COLLINS of York, CRAVEN of Androscoggin, HILL of York, HOBBS of York, JACKSON of Aroostook, MASON of Androscoggin, PATRICK of Oxford, SAVIELLO of Franklin, SNOWE-MELLO of Androscoggin, SULLIVAN of York.

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

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

3 **SUBCHAPTER 6**

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

6 **§5821. Applicability**

7 This subchapter applies to those persons in the custody of the Department of
8 Corrections pursuant to a sentence imposed under the law in effect on or after May 1,
9 1976.

10 **§5822. Parole by board**

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

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

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

25 **§5823. Parole of prisoners; eligibility; process**

26 **1. General provisions regarding eligibility.** A person convicted of one or more
27 crimes who is incarcerated pursuant to a sentence imposed on or after May 1, 1976 and
28 who received a definite sentence or aggregate sentence is eligible for parole upon
29 application if:

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

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

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

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

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

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

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

23 **§5824. Administrative release guidelines**

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

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

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

36 B. Testimony or a written statement of the victim of the crime, a relative of the
37 victim or a designee of the victim or relative of the victim;

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

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

- 1 E. The person's conduct in the correctional facility;
- 2 F. The adequacy of the person's parole plan;
- 3 G. Whether the person while serving the person's sentence has threatened or harassed
4 the victim or victim's family or has caused the victim or the victim's family to be
5 threatened or harassed;
- 6 H. Aggravating or mitigating factors from the person's criminal case;
- 7 I. The testimony or written statement of a prospective parole sponsor, employer or
8 other person who is available to assist the person if released on parole;
- 9 J. Whether the person has previously absconded or escaped or attempted to abscond
10 or escape while on conditional release, including community supervision;
- 11 K. Whether the person completed or worked toward completing a high school
12 diploma, a general equivalency degree or a college degree during the period of
13 incarceration; and
- 14 L. Any factor that the board determines appropriate or necessary.

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

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

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

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

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

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

1 **§5825. Administrative revocation guidelines**

2 The board shall develop administrative revocation guidelines that must be used to
3 evaluate complaints filed for parole revocation. The board shall develop administrative
4 revocation guidelines using evidence-based risk assessment criteria. The following
5 provisions govern administrative revocation guidelines.

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

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

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

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

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

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

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

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

20 **2. Revocation determination for violations of conditions of parole.** In evaluating
21 complaints filed for parole revocation, the board may not revoke parole for violations of
22 conditions of parole unless the board determines on the record that appropriate
23 intermediate sanctions have been used and have been ineffective or that the modification
24 of conditions of parole or the imposition of intermediate sanctions is not appropriate or
25 consistent with public safety and the welfare of society;

26 **§5826. Violations of parole**

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

34 **2. Issuance of warrant for violation; board action.** When a parolee violates a
35 condition of parole or violates the law, a warrant may be issued for the parolee's arrest. A
36 probation and parole officer, or any other law enforcement officer within the State
37 authorized to make arrests, may arrest the parolee on the warrant and return the parolee to
38 the correctional facility from which the parolee was paroled. At its next meeting at that
39 correctional facility, the board shall hold a hearing. The parolee is entitled to appear and
40 be heard. If the board, after hearing, finds that the parolee has violated parole or the law,

1 the board may revoke the parole, set the amount of the unexpired portion of the sentence
2 the parolee must serve before the parolee is again eligible for a parole hearing before the
3 board and remand the parolee to the correctional facility from which the parolee was
4 paroled.

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

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

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

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

20 **§5827. Sentence for violation of law by parolee**

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

25 **§5828. Discharge from parole**

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

32 **§5829. Collection and analysis of data**

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

