

Opportunities to Build a Streamlined, Strong Parole System in Maine
Policy Ideas and Comparisons to inform the Maine Parole Working Group
March 29, 2022

Background: Jon Courtney reached out to REFORM to ask for our support and ideas for reinstating parole in Maine. He represents a collection of currently and recently incarcerated citizens, scholars, legislators, and activists, including the [Maine Prisoner Advocacy Coalition](#), who successfully passed LD 842 to establish a commission to formulate a pathway to earned, effective reentry in Maine. Maine was the first state to abolish parole in 1976, replacing it with an intended system of gubernatorial clemency, though the coalition can find no instance that a governor has ever extended clemency in 45+ years since. They now have an opportunity to not only reinstate parole but also to author a fresh system that adopts many of the reforms that REFORM advocates for at its root.

Since Maine LD 842 passed in early March, it triggered the formation of a study committee (formation required within 90 days) to report back in mid-December on recommendations for reinstating parole in Maine.

Having cleared this hurdle, they're now looking to advocate for integrating parole reform considerations from other states into a fresh parole system here in Maine and welcoming guidance and support from our team. (More info [here](#).) **The information below is in response to that request and should be treated as a cursory overview of REFORM's framework, with state examples meant to illustrate our points and potential priorities.**

Parole in Maine: Current and Recent History

- 1) **Status Quo:** Maine currently uses a system of “supervised community confinement” by which the Commissioner can release certain individuals to the community if they have already served 2/3rds of ½ of their prison term (depending on the length), have at most 2 years left on their sentence (or 30 months if caseloads are low), and meet criteria for release. ¹ In 2021, they only had 18 male placements and 22 female placements in this program; and only 19 active clients as of September 2021.² While Maine also allows people with *severe* medical issues to be released to supervised community confinement, it does *NOT* have a meaningful standard for geriatric release.
- 2) **Previous use of Parole in Maine:** Before parole was abolished in May 1976, an individual in Maine was eligible³ for a parole hearing at the following benchmarks:
 - a) *Expiration of minimum term in a minimum-maximum sentence.* Prior to the expiration of the prisoner's minimum term of imprisonment, less the deduction for good behavior, when the law provides for a minimum-maximum sentence;

¹ ME ST T. 34-A § 3036-A; See <https://www.newscentermaine.com/article/news/local/as-seen-on-tv/maine-updated-supervised-community-confinement-program-helps-prison-residents-to-reenter-society-successfully/97-96865291-c081-4e2c-af6a-b2152758f795>

² See https://www.maine.gov/corrections/sites/maine.gov.corrections/files/inline-files/Aug%202021%20Monthly%20Adult%20Data%20Report_1.pdf page 22, 26

³ 34-A M.R.S.A. § 5803

- b) *Expiration of 1/2 of the term in certain cases.* Prior to the expiration of 1/2 of the term of imprisonment imposed by the court, less the deduction for good behavior, when the prisoner has been convicted of an offense under Title 17, section 1951, 3151, 3152 or 3153. This subsection applies to a prisoner who has been convicted previously of an offense under Title 17, section 1951, 3151, 3152 or 3153
- c) *Expiration of 15-year term in life imprisonment cases.* Prior to the expiration of a 15-year term of imprisonment, less deduction for good behavior, when the prisoner has been convicted of an offense punishable only by life imprisonment; and
- d) *Expiration of 15-year term in other cases.* Prior to the expiration of a 15-year term of imprisonment, less deduction for good behavior, when, following conviction, the prisoner has been sentenced to a minimum term of 15 years or more.

Key Components of an Effective, Meaningful Parole System:

Priority #1: Parole Eligibility: *Allow individuals a meaningful path toward early release without requiring lengthy prison terms.*

1) State Examples of Meaningful Parole Eligibility Standards in this Area:

- a) **General Parole Eligibility:** *While this is often an area of continued debate across the country, the most “progressive” parole eligibility policies grant parole eligibility to at least some individuals after they have served 1/3 of their prison term. The most regressive parole policies mandate that individuals serve 85% of their prison term prior to release.*
 - i) **Delaware:** Pursuant to 11 Del. C. §4346, the Board may release an offender on parole after one-third of the term imposed by the Court has been served, such term to be reduced by such merit and good behavior credits as have been earned, or one hundred and twenty (120) days, whichever is greater if the Board is satisfied that reasonable probability exists that the offender can be released without detriment to the community or to him/her self; and, in the opinion of the Board, parole supervision would be in the best interest of society and aid to the rehabilitation of the offender as a law-abiding citizen.
 - (1) People ineligible for parole may still benefit from a sentence reduction if they have a level V sentence with 1 year + of incarceration.** The court may only modify the sentence if the DOC submits an application for modification showing good cause for a reduction and demonstrates that releasing the person does not pose a risk to society. The “good cause” may include a showing of rehabilitation, serious medical illness, and prison overcrowding.⁴
 - ii) **Georgia:** This state generally provides that people are eligible for parole for a misdemeanor after serving the greater of 6 months or 1/3 of their sentence; for most felonies this changes to 9 months or 1/3 (whichever is greater). People

⁴ 11 Del. C. § 4217

serving sentences of 21+ years / some people convicted of violent felonies are eligible after 7 years.⁵

b) Nonmedical/Expanded Medical Parole

- i) **Massachusetts:** A pregnant woman in prison, will immediately become eligible for parole with a certification from a physician that states that a release is in the best interest of a mother and her unborn child.⁶
- ii) **Colorado:** Medical parole is available for people at least 55 years old, diagnosed as suffering from a chronic condition (physical or mental) **OR** any age, diagnosed as suffering chronic condition (physical or mental) that requires costly care or treatment.⁷
- iii) **Wisconsin:** Medical parole is available when there is an extraordinary health condition afflicting an inmate such as advanced age, infirmity or disability of the person or a need for medical treatment or services not available within a correctional institution.⁸

c) Geriatric Parole

- i) **Alabama:** People can qualify for geriatric parole at age 55.⁹
- ii) **Virginia and Wisconsin** both allow for geriatric parole at 65 years if you have served 5 years behind bars at 60 if the person has served 10 years behind bars.¹⁰

Priority #2: Create a Clear Path to Parole. *Ensure people on parole have a meaningful opportunity to prove their progress during incarceration, a reasonably-timed and meaningful parole decision, and an understanding of future benchmarks that they need to meet if denied.*

We recommend advocates consider the following questions when creating parole policy:

- **Is there a presumption of parole in any circumstances?** *A presumption of parole would mean that continued time in prison is not the default option for those with a track record of rehabilitation unless immediate public safety concerns (not a simple decision rooted in the current conviction) are found.*

⁵ O.C.G.A. § 42-9-45 (general) parole eligibility; O.C.G.A. § 16-13-30(d) (eligibility for drug offenses eligible if given longer than 12 yr. sentences); O.C.G.A. § 17-10-7(c) (eligibility for people with 4+ felony sentences); O.C.G.A. § 42-9-45(f) (eligibility for people convicted of violent felonies eligible after 7 yrs. good behavior or 1/3 sentence)

⁶ 120 Mass. Reg. 200.11, <https://casetext.com/regulation/code-of-massachusetts-regulations/departments-120-cmr-parole-board/title-120-cmr-20000-parole-eligibility/section-20011-early-parole-for-pregnant-females>.

⁷ Colorado Code §§ 17-1-102, 17-22.5-403.5

⁸ Wisconsin Code § 302.113

⁹ Alabama Code §14-14-1 et seq.

¹⁰ <https://www.ncsl.org/research/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws.aspx>

- **Alabama:** Under a new 2021 law, parole is to be granted *unless* the board finds that there is a current and unreasonable risk the prisoner will violate the law if released and the risk cannot be mitigated by parole supervision.¹¹ *This is an example of a positive presumption.*
- **California:** The hearing panel must grant parole "unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual."¹² *This is a decidedly less positive example; the factors upon which the presumption is based are static criminal history markers, not dynamic factors.*
- **Are their stated guidelines on parole board composition; if so, do they include representation from directly impacted individuals, behavioral health providers, and avoid solely law enforcement experience?**
 - **Delaware:** Board members must include those with a demonstrated interest in correctional treatment, social welfare, or victim advocacy. Chairperson must have experience in probation, parole, or other related areas of corrections.¹³
 - **California:** Commissioners are to reflect a cross section of racial, sexual orientation, gender identity, economic and geographic features of the state.¹⁴
- **Are factors for parole consideration meaningful and dynamic?**
 - **Delaware:** The board considers an individual's job skills, progress towards or completion of GED, substance abuse treatment, anger management, conflict resolution when determining whether release is in the best interests of society.¹⁵
 - **Massachusetts:** The board considers a risk and needs assessment, participation in work, education, and treatment programs, and good behavior behind bars when considering an individual's release. They may also consider recommendations of correctional staff, nature of crime, psychiatric and medical exams, and testimony from incarcerated person.¹⁶
- **Are parole decisions made in a timely, regular fashion with rationales for denying parole articulated in the written record?** *It is also important to assess when individuals should be reassessed for parole eligibility. Ideally, someone is NOT prevented from reapplying for parole for several years. Additionally, a parole denial should include a case action plan or a clear articulation of what steps the individual must or should take in order to be granted parole at a later date.*

¹¹ Ala. Code § 15-22-26 (parole standards) will be amended in line with this 2021 bill (AL HB 579: http://alisondb.legislature.state.al.us/Alison/SESSBillStatusResult.aspx?BILL=HB579&WIN_TYPE=SELECTED_STATUS); Ala. Code § 15-22-26.2 (mandatory supervision)

¹² Cal. Pen. Code § 3041(b)(1)

¹³ 11 Del. C. § 4341

¹⁴ Cal. Pen. Code § 5075

¹⁵ 11 Del. C. § 4347(c)

¹⁶ MGL § c. 127 § 130 (parole factors); 120 CMR 300.05

<https://www.mass.gov/doc/120-cmr-300-parole-hearings-and-decision-making-general-provisions/download>

- **Florida:** Parole hearing officer makes a recommendation to the commission within 10 days of the interview, and the defendant is notified of the final decision within 90 days of their interview.¹⁷
- **Mississippi:** An incarcerated individual is informed in writing of the board's decision within 10 days of their deliberation; the "ration sheet" will include the reasons why parole was denied, as appropriate.¹⁸
- **Arkansas:** The person is notified of the decision within 21 days of their hearing.¹⁹
- **Maine:** Historically parole decisions have been made within the same day; within 10 days of a denial, the incarcerated individual is to receive a detailed memo with the rationale for the denial.²⁰

Priority #3: Making Parole Meaningful and Effective. *Parole should be a pathway toward employment and wellbeing, not a trapdoor back to prison.*

- 1) **Goal: Set hard parole caps and avoid extensions of parole past these caps.** *Additionally, do NOT allow extensions of parole for unpaid fines, fees, or restitution. Allow unpaid restitution to be converted to a civil judgment or payment plan at the when there is a remaining balance.*
 - a) Typically, parole caps should be set at 1-2 years (or 3 years if politically necessary) or at the remaining incarceration term, less good time (whichever is less). Extensions within those time frames may be allowed for technical violations.
 - i) **California:** Caps parole at 2 years (determinate sentences) or 3 years (lifers) for people released on or after July 1, 2020.²¹
 - ii) **Indiana:** Generally have a 2-year cap or a 1-year cap (the latter is reserved for first-time parolees without violent or sex conviction/rule violations).²²
 - iii) **Nevada:** Instead of extending parole for unpaid restitution, the Division grants an "honorable discharge" at the end of the person's term if they have fulfilled their conditions and shown that any unpaid restitution is because of economic hardship. A person may earn a "dishonorable discharge" if they have failed to make restitution without a verified showing of economic hardship. Regardless, any remaining restitution following discharge from parole becomes a civil liability.²³
- 2) **Goal: Include incentives for people on parole.** *Incentives can provide people on parole with a source of hope and a meaningful benchmark for progress. They can also work to reduce*

¹⁷ Fla. Stat. § 947.16

¹⁸ 29 Miss. Code R. § 201-2.4. <https://casetext.com/regulation/mississippi-administrative-code/title-29-prisons-and-parole/part-201-mississippi-state-parole-board-policies-procedures/chapter-2-parole/rule-29-201-24-parole-hearing>.

¹⁹ <https://casetext.com/regulation/arkansas-administrative-code/agency-158-arkansas-parole-board/rule-1580015-002-arkansas-parole-board-manual> See § 2.17

²⁰ 03-208 CMR Ch. 1, § II (c)(3)

²¹ Cal. Pen. Code 3000.01 (sex offenders excluded from these caps).

²² Ind. Code § 35-50-6-1 Exclusions for lifers and more serious crimes exist.

²³ [NRS § 213.154](#)

supervision caseloads and free up time and resources for officers to have more meaningful interactions with those under their supervision.

- a) Compliance/earned time credits:
 - i) **Utah**: 30 days per 30 days of compliance/progress toward the case action plan.²⁴
 - ii) **Arkansas**: 30 days per 30 days of compliance.²⁵
 - b) Create a streamlined, clear, pathway to early termination with a presumption of termination. *Note: Whenever possible, this review process should include a presumption of early termination when certain factors are met and avoid requiring a full board hearing (unless the Government, board or other interested parties object to the termination) to award termination.*
 - i) **Alabama**: Parole board conducts a discharge review at least once every 2 years for people not convicted of a violent offense, who have paid their financial obligation and have not had their parole revoked.²⁶
 - ii) **Nevada**: There is not a set timeline for review, but the Division is to recommend early discharge for people who have served at least twelve calendar months of supervision with less than a year remaining, have not violated parole in the last twelve calendar month, are current on fees, have paid restitution in full if able to pay, have completed any ordered substance abuse or mental health program, etc.²⁷
 - iii) **Montana**: After someone on parole has served one year of active supervision, their parole officer must review their file and *may* recommend them for conditional discharge (under a conditional discharge, the individual is no longer under the department's supervision for the remainder of their sentence and does not have to pay supervision fees; yet they are still vulnerable to revocation).²⁸
- 3) Goal: Limit conditions of parole to only those necessary and beneficial to that individual's case and limit incarceration for technical violations.**
- a) **Problematic Standard Conditions.** As possible, do not provide for broad association bans, curfews, mandatory drug testing, any possession of alcohol, and travel restrictions within a standard list of conditions. These types of restrictions should be narrowly tailored when imposed and should only be imposed if necessary for public safety in THAT individual's case. For example, a restriction on interacting with a co-defendant may make sense in certain circumstances as could travel restrictions preventing someone from visiting a neighborhood where a victim lives. Otherwise, these broad standard conditions can result in numerous, technical violations and distract from the purpose of supervision: rehabilitation.
 - i) **Indiana**: Conditions in Indiana regulations mandate that a person on parole get permission from an officer to own or lease a car or getting a license (or

²⁴ [U.C.A. 1953 § 64-13-21\(7\)\(a-b\)](#)

²⁵ A.C.A. § 16-90-1303)

²⁶ See Ala. Code §§ 15-22-37(6) (discharge regulations) and 15-22-23 (authority to discharge)

²⁷ N.R.S. 213.1543

²⁸ Montana Admin. Rule 20.25.704. <https://bopp.mt.gov/AdminRules/AdminRule2025704>

renewing) a license to get a car. *This directly undermines any attempt to find employment, get to treatment, etc.*²⁹

- ii) **Idaho:** The person on parole must get written permission to willfully change employment, change residence, or leave the assigned district. They must also abstain from the use of alcohol beverages as a condition of parole.³⁰ *The latter conditions, particularly permission to leave the district, can overburden parole officers with requests and undermine the person's ability to find new employment, meet family obligations, and connect with reentry providers.*
 - b) **Fines and Fees.** If possible, don't require payment of supervision fees during a term of parole and don't allow nonpayment of fines and fees to be a technical violation of supervision; at a minimum, assess the ability to pay BEFORE imposing fines and fees.
 - i) **California³¹ and Oregon³²** have enacted legislation to end the practice of imposing fees for supervision services.
 - ii) **Illinois:** You cannot be revoked for failure to pay unless the failure was willful. Ability to pay is considered when imposing a fine.³³
 - c) **Graduated Sanctions.** Establish a presumption or strictly limit incarceration for technical violations and implemented a graduated response system to technical violations featuring non-carceral alternatives or incarceration caps. *We suggest referencing Pew Charitable Trusts' recent 50-state overview of revocation/incarceration limits for technical violations for further ideas (available [here](#)).*
 - i) **Tennessee:** The department is authorized to create a system of graduated sanctions to respond to community supervision violations, with such sanctions taking into account the severity of the current violation.³⁴
 - ii) **Virginia:** As part of Virginia's graduated sanctions regime, incarceration is not allowed for the first technical violation and there is a presumption against incarceration for a second technical violation with a 14-day cap on incarceration if the presumption is overcome. Certain exceptions apply.³⁵
- 4) **Create Strong Due Process Protections for Probation Violations:**
- a) **Probable Cause for Reporting Violation; Search of Seizure.** Specify that parole officers must have probable prior to reporting a technical violation or conducting a search or seizure.
 - b) **Speedy Revocation Process.** Put clear deadlines in place for a bail hearing following a warrant and detention, preliminary and final revocation hearing.
 - i) **Mississippi:** Preliminary hearing is to occur within 72 hours of an individual's arrest. The final hearing to decide upon sanctions (i.e. revocation hearing) must

²⁹ 220 Ind. Admin. Code § 1.1-3-4 (cars)

³⁰ Idaho Admin. Code r. 50.01.01.250

³¹ AB 1869. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1869

³² See SB 620 (2021 Regular Session).

<https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB0620>.

³³ 730 ILCS 5/3-3-9 (revocation); 730 ILCS 5/5-9-1 (ability to pay)

³⁴ Tenn. Code Ann. § 40-28-305; Tenn. Code Ann. § 40-28-303

³⁵ [Va. Code § 19.2-306.1](#)

occur within 21 days if the person is arrested or detained unless good cause exists for a delay.³⁶

- ii) **New York:** A recognizance hearing is to occur within 24 hours. A preliminary hearing is to occur within five or ten days of an executed warrant (depending on the arrest/release status), and a revocation hearing is to occur within 30 days of a sustained violation at the preliminary hearing or within 45 days following the issuance of a notice of violation or release on recognizance.³⁷
- c) **Create a presumption of release on recognizance** barring a finding that the individual presents a substantial risk of willfully failing to appear or an imminent, specific risk of harm to an individual or property.
 - i) **New York:** New York has created such a presumption of release through the Less is More Act passed in 2021.³⁸
- d) **Allow for the use of written notice and summons for a technical violation in lieu of a warrant.**
 - i) **Delaware:** Board may issue a warrant or notice to appear.³⁹
 - ii) **Arkansas:** Parole board may issue a notice to appear.⁴⁰
- e) **Ensure revocation hearings are meaningful** and that the supervisee has the right to present evidence, witnesses, etc. and has the right to counsel. Specify that the court must note their rationale for revoking parole in the written record.
 - i) **Florida:** Commissioners have to make a written statement of the evidence relied upon and the reasons for revoking parole.⁴¹ People on supervision can cross-examine and present witnesses and evidence.
 - ii) **Kentucky:** The person under supervision has the right to present evidence, witnesses, etc. and the board has to make a written decision regarding probable cause for the violation and following the final revocation.⁴²
- f) **Raise the standard of proof for preliminary and final revocation hearings** to the preponderance of the evidence for the preliminary hearing and clear and convincing for the final revocation hearing. *Traditionally, a preliminary hearing seeks to find probable cause and a revocation hearing focuses on the preponderance of the evidence.*
 - i) **New York:** A preponderance of the evidence is the standard for the preliminary hearing; a revocation requires clear and convincing proof of a violation.⁴³

³⁶ Miss. Code Ann. § 47-7-27

³⁷ NY Executive Law § 259-i

³⁸ NY Executive Law § 259-i

³⁹ Del. Co. § 4352(a)

⁴⁰ A.C.A. § 16-93-705

⁴¹ Fla. Stat. § 947.23

⁴² See [501 KAR 1:040](#)

⁴³ NY Executive Law § 259-i