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**REVISED STATUTES ANNOTATED**

**Volume 15**  
**Titles 32 to 35**

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*For Use With Main Volume*

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# State of Maine

## Department of State

*I, Joseph T. Edgar, Secretary of State, certify, in pursuance of the authority vested in me by the 1964 Act which enacted the Revised Statutes effective December 31, 1964, that the text of the statutes of Maine contained in this supplement is a correct transcript of the original laws, and is entitled to admission in all courts as prima facie evidence of the law.*



IN TESTIMONY WHEREOF I have caused the Great Seal of the State to be hereunto affixed. GIVEN under my hand at Augusta this 22nd day of August in the year one thousand nine hundred and seventy-three and in the one hundred and ninety-seventh year of the Independence of the United States of America.

*Joseph T. Edgar*

Secretary of State

# PREFACE

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This supplementary pamphlet to Volume 15, Maine Revised Statutes Annotated, covering laws and annotations, was prepared in compliance with 3 M.R.S.A. § 164, subsection 8.

The pamphlet contains all laws of a general and permanent nature covering Titles 32 to 35 enacted through the Regular Session of the 106th Legislature which convened on January 3, 1973, and adjourned on July 4, 1973.

Each section amended is followed by an amendment note indicating the changes made. New text is so labeled and effective dates are set out in the statutory credits following the text if they are other than the usual 90 days after adjournment. Repeals are indicated by section number and where similar provisions have been found elsewhere, an appropriate note is carried. Statutory credits, showing the derivation of the text by reference to the year, chapter and section of the session law, follow each new or amended text. Cross-references to related topics are included.

The annotations from decisions of the State and Federal Courts close with cases reported in :

Maine Reports .....	161 Me. (discontinued)
Maine Reporter .....	299 A.2d
Atlantic Reporter, Second Series .....	305 A.2d 772
Supreme Court Reporter .....	93 S.Ct. 2302
United States Reports .....	410 U.S.
Lawyers' Edition, Second Series .....	36 L.Ed.2d (part)
Federal Reporter, Second Series .....	477 F.2d 600
Federal Supplement .....	357 F.Supp. 888
Federal Rules Decisions .....	58 F.R.D. 499

For subsequent judicial constructions, pending the publication of the next supplementary service, see Table of Statutes Constructed in later permanent volumes and weekly advance sheets of the Reporters listed above.

## PREFACE

Articles of interest appearing in the proceedings of the January and August 1965 meetings of the Maine State Bar Association and through Vol. 24, No. 2 of the Maine Law Review are referred to in appropriate places throughout M.R.S.A.

Distribution tables and a detailed descriptive word index to all laws are found in Volumes 17 and 18.

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October, 1973

PUBLIC INSTITUTIONS, ETC. **34 § 1426**

person of any inmate thereof whenever so required by the operation of the agreement on detainees.

1971, c. 171, § 1, eff. Jan. 1, 1972.

**Amendments:**

—1971. Enacted this section.

**§ 1426. Director of Corrections to make rules and regulations**

The Director of Corrections is designated as the officer provided for in section 1417.

1971, c. 171, § 1, eff. Jan. 1, 1972.

**Amendments:**

—1971. Enacted this section.

PART 3

PROBATION AND PAROLE

<b>New Chapters</b>	<b>Section</b>
125. Preliminary Hearing in Interstate Probation and Parole Violation Cases	1771

CHAPTER 121

STATE PROBATION AND PAROLE BOARD

SUBCHAPTER I

GENERAL PROVISIONS

**Cross References**

Halfway houses, parole for participation in accordance with this chapter, see § 528 of this Title.

§ 1501. Definitions

The listed terms as used in this chapter and chapter 123 are defined as follows, unless a different meaning is plainly required by the context:

1. **Correctional Institution.** "Correctional institution" means the following state institutions: Men's Correctional Center and the Women's Correctional Center.

\* \* \* \* \*

3. **Inmate.** "Inmate" means a person in execution of a sentence to a correctional center.

\* \* \* \* \*

5. **Parole.** "Parole" is a release procedure by which a person may be released from a state penal or correctional institution by the State Parole Board prior to the expiration of his maximum term.

\* \* \* \* \*

8. **Probation.** "Probation" means a procedure under which a person found guilty of an offense is released by the court, without being committed to a state penal or correctional institution, or with or without commitment to jail or fine, subject to conditions imposed by the court.

1967, c. 391, § 26; 1971, c. 172, § 1.

**Amendments:**

—1971. Subsection 5: Deleted "Probation and" from board's name. Subsection 8: Added "or with or without commitment to jail or fine".

—1967. Subsection 1 amended by substituting words "Men's Correctional Center and the Women's Correctional Center" for words "The State Reformatory for Men and the State Reformatory for Women".

Subsection 3 amended by substituting words "correctional center" for word "reformatory".

1. **Purpose**

"Parole" is a legislative program of rehabilitation and restoration of persons convicted of crime to useful membership in society, and the purpose of parole law is to offer the institutionalized convict the opportunity to make good on his own outside the prison walls but under the immediate supervision of the probation-parole officer to whom the parolee must report and whose guidance he may seek at all times. Mottram v. State (1967) Me., 232 A.2d 809.

§ 1502. Probation-parole officer; powers and duties

The general powers and duties of a probation-parole officer are:

1. **Duties prescribed.** To perform the duties which are prescribed for him;

A. Parole duties and general probation duties shall be prescribed by the State Director of Probation and Parole;

B. Special probation duties shall be prescribed by the court having jurisdiction;

\* \* \* \* \*

7. **Arrest violators.** To arrest and return probation and parole violators. 1970, c. 590, § 66-A, eff. Feb. 10, 1970; 1971, c. 172, § 2.

**Amendments:**

—1971. Subsection 1, A: Substituted "general" for "special".  
 Subsection 1, B: Substituted "Special" for "General".  
 —1970. Subsection 7: Deleted reference to warrants.

**3. Duties of officer**

It is the duty of the probation-parole officer not only to keep informed of the conduct and condition of each person placed under his supervision but officer is directed to use suitable methods to encourage such a person to improve his conduct and condition. *Mottram v. State* (1967) Me., 232 A.2d 809.

**Supplementary Index to Notes**

Duties of officer 3

**§ 1503. Abetting violations**

Any person over the age of 17 who willfully obstructs, intimidates or otherwise abets a probationer or parolee under the supervision and control of the Division of Probation and Parole and thereby contributes or causes said probationer or parolee to violate the terms and conditions of his probation or parole, after having been warned in writing by the Division of Probation and Parole to cease and desist in said relationship or association with the probationer or parolee, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both.

This section shall apply in those instances where the probationer or parolee is under the supervision and control of the Division of Probation and Parole at the request of other states under terms of the Uniform Act for Out-of-State Parolee Supervision.

1970, c. 590, § 66-B, eff. Feb. 10, 1970.

**Amendments:**

—1970. Substituted "Division of Probation and Parole" for "State Probation and Parole Board".

SUBCHAPTER II

PAROLE BOARD

**§ 1551. Membership**

A State Parole Board, as heretofore created within the Department of Mental Health and Corrections and in this chapter called the "board" shall consist of 5 members who are citizens and residents of the State, who shall be appointed by the Governor, with the advice and consent of the Council, from persons with special training or experience in law, sociology, psychology or related branches of social science. The term of the members of the board shall be 4 years and until their successors have been appointed and qualified, or during the pleasure of the Governor and Council. A vacancy shall be filled for the unexpired term in the same manner in which an appointment is made. The members of the board shall be paid \$25 per day and necessary expenses for each day actually spent in the work of the board. The members of the board shall elect a chairman who shall preside at all meetings of the board when present. The board shall meet at least once each month and in addition may meet as often as necessary, at such times and places as the chairman may designate. Any 3 members constitute a quorum for the exercise of all powers of the board. The Department of Health and Welfare, Department of Mental Health and Corrections, officers and staffs of the penal and correctional institutions, and law enforcement agencies in the State shall cooperate with the board in exercising its administration.

1971, c. 172, § 3; 1973, c. 611, § 1.

**Amendments:**

—1973. Increased the number of board members from three to five and provided that all members be appointed

by the governor with the advice and consent of the council; deleted the second sentence; deleted "a regular" preceding "appointment" in the present



## 34 § 1551 PUBLIC INSTITUTIONS, ETC.

third sentence; deleted "regularly appointed" preceding "members" in the present second and fourth sentences; and, provided, in the penultimate sen-

tence, that three, rather than two, numbers constitute a quorum.

—1971. In 1st sentence, deleted "Probation and" from board's name.

### § 1552. Powers and duties of the Probation and Parole Board

1. **Administration.** The board shall, in accordance with applicable provisions of this chapter:

- A. Determine the time of parole in the case of each inmate and prisoner;
- B. Revoke parole when warranted due to parole violation;
- C. Determine the time of discharge of parolees from parole supervision;
- D. The board may formulate policies, adopt regulations and establish organizational and operational procedures pertaining to its functions prescribed in this chapter.

2. **Advise; hearings; recommendations.** The board shall, when requested by the Governor and Council, advise concerning applications for pardon, reprieve or commutation, and shall, when so requested, hold hearings and cause an investigation to be made, and collect such records concerning the facts and circumstances of an inmate's or prisoner's crime, his past criminal record, social history, and physical and mental condition as may bear on such application, and make recommendations regarding action by the Governor on the application.

3. **Reports.** The secretary of the board shall annually, after the 30th day of June, transmit to the Director of Corrections a detailed report of the work of the State Parole Board and of the probation and parole activities of the Division of Probation and Parole for the preceding fiscal year. The annual report shall be transmitted by the Director of Corrections to the Governor for submission to the Legislature.

4. **Subpoenas; oaths.** The board, or any member thereof, shall have the power, in the performance of official duties, to issue subpoenas, compel the attendance of witnesses, and the production of books, papers and other documents pertinent to the subject of its inquiry, and to administer oaths and to take the testimony of persons under oath.

1969, c. 319, § 2; 1971, c. 172, § 4.

#### Amendments:

—1971. Subsection 3: Substituted "secretary of the board" for "board", "after the 30th day of June" for "on or before the 30th day of June", "fiscal

year" for "calendar year", "the work" for "its work", and added "of the State Parole Board . . . Division of Probation and Parole".

—1969. Section repealed and replaced.

## SUBCHAPTER III

### DIRECTOR OF PROBATION AND PAROLE

#### New Sections

1593. —Assistant director.

### § 1591. Division of Probation and Parole

The Division of Probation and Parole within the Bureau of Corrections of the Department of Mental Health and Corrections shall be charged with the administration of probation and parole services within the State. The division shall consist of field probation and parole officers and of such other administrative employees as may be necessary in carrying out its functions.

The Division of Probation and Parole shall be under the direction of the Director of Probation and Parole, in this chapter called the "director," who shall be appointed by the Director of Corrections, subject to the Personnel Law.

The Division of Probation and Parole may provide necessary specialized services and procedures for the constructive rehabilitation of juveniles. The division in the exercise of its administration may obtain psychiatric, psychological and other necessary services. The division shall provide necessary investigation of any criminal case or matter including presentence investigation when requested by the court having jurisdiction, and shall provide investigation when requested by the board.

1969, c. 319, § 3; 1971, c. 528, § 4, eff. July 1, 1973.

**Amendments:**

—1971. In first sentence of 1st paragraph, deleted from the end an exception for the Cumberland County juvenile probation services.

**Transfer of records and supervision, employment.** Section 8 of 1971, c. 528, is amended by 1972, c. 576, § 1, provided:

"This Act shall become effective on July 1, 1973 on which date all records of the Cumberland County Juvenile Probation Department shall transfer to the control of the State Division of Probation and Parole and all juvenile probationers under supervision of the Cumberland County Juvenile Probation Department shall come under the supervision of the State Division of Probation and Parole.

"All matters in process by the Cumberland County Juvenile Probation Department on July 1, 1973, in connection with any juvenile, shall become the responsibility of the State Division of Probation and Parole.

"Any employee of the Cumberland County Juvenile Probation Department on July 1, 1973 shall have the opportu-

nity of employment with the State Division of Probation and Parole. Each employee of the Cumberland County Juvenile Probation Department, on July 1, 1973, who exercises the opportunity of employment with the State Division of Probation and Parole, and who, as an employee of the Cumberland County Juvenile Probation Department was a member of the Maine State Retirement System, shall be credited with all such time accrued as such member, and shall be entitled to all benefits of a state employee in the classified service July 1, 1973, and longevity based upon continuous years of service with the Cumberland County Juvenile Probation Department, and prior state service, if such state service immediately preceded employment with the Cumberland County Juvenile Probation Department, and shall be classified in a position comparable to the position held by such employee immediately prior to July 1, 1973.

"The total number of permanent positions authorized within the State Division of Probation and Parole shall be increased by 3 upon July 1, 1973."

—1969. Section repealed and replaced.

**§ 1592. Powers and duties of the director**

The director shall:

1. **Standards and policies.** Establish and administer standards, policies and procedures for the field probation and parole service and institutional parole officers;

2. **Appointees.** Appoint, subject to the Personnel Law, district probation and parole supervisors, field probation and parole officers and such other employees as may be required to carry out adequate supervision of all probationers, and of all parolees from the penal and correctional institutions, and prescribe their powers and duties;

1971, c. 528, § 5, eff. July 1, 1973.

3. **Cooperation.** Cooperate closely with the board, the criminal and juvenile courts, the institutional heads and other institutional personnel;

4. **Recommendations; districts.** Make recommendations to the board in cases of violation of the conditions of parole, issue warrants for the arrest of parole violators; notify the superintendents of the institutions of determinations made by the board. The director shall divide the State into administrative districts and shall staff such districts.

He shall provide instruction and training courses for probation and parole officers. The director shall be the executive officer and secretary of the board, and shall have authority to sign documents, including warrants and extradition papers for the board, when so instructed by the board.

1969, c. 319, § 4; 1970, c. 590, §§ 66-C, eff. Feb. 10, 1970; 1971, c. 172, § 5.

**Amendments:**

—1971. Subsection 2: Chapter 528 deleted "probation and parole" before, and added "all" after, "supervision of", and deleted "except juvenile probationer in Cumberland County" following "probationers".

Subsection 4: Chapter 172 substituted "board" for "division" at beginning of 1st sentence.

**Transfer of records and supervision, employment.** See note with this heading set out under § 1591 of this Title.

—1970. Subsection 4: Substituted "division" for "board" and deleted "when so instructed by the board", in first sentence.

—1969. Section repealed and replaced.

# 34 § 1593 PUBLIC INSTITUTIONS, ETC.

## § 1593. —Assistant director

The assistant director of the Division of Probation and Parole shall have the power, in the absence of the director, to perform the duties and be subject to all the obligations and responsibilities of the director.

1969, c. 326, § 1.

### Amendments:

—1969. Enacted this section.

## SUBCHAPTER IV

### PROBATION

#### § 1631. Probation of person by court

When a person is convicted of an offense which is not punishable by life imprisonment, the court may continue the case for sentence or impose sentence and suspend its execution.

1. **Continue for sentence.** The court may continue a case for sentence for not more than 2 years. While the case is continued for sentence, the court may place the respondent on probation.

A. When a person is convicted of an offense which caused damage to another for which civil liability has been established or admitted, the court may continue the case for sentence and place the respondent on probation for a definite time, and may order that the respondent make restitution to the person injured.

1971, c. 172, § 6.

\* \* \* \* \*

3. **Sentence to county jail.** The court may impose a sentence to a county jail, suspend the execution of all or any part of the sentence for not more than 2 years and place the respondent on probation and such probation shall commence at the time of imposition of sentence.

A. When a person is convicted of an offense which is punishable by imprisonment in a county jail and fine, the court may sentence him to a fine and a term of imprisonment, suspend execution of all or any part of the imprisonment, and place him on probation as to the balance of the imprisonment on condition that he pay the fine within a definite time and such probation shall commence at the time of imposition of sentence. In default of payment of the fine, the court may impose an additional sentence of not more than 6 months.

\* \* \* \* \*

1965, c. 54.

\* \* \* \* \*

4. **Sentence to State Prison.** The court may impose a sentence to the State Prison, suspend execution of a portion of this sentence and order the respondent to serve any number of days provided it shall not be less than 30 days nor more than 60 days of the imposed sentence and place him on probation for a period of 2 years, provided he has not previously served a prison sentence. Such probation shall commence at the time of imposition of sentence.

1971, c. 348.

#### Text of subsections 5 and 5-a added effective Jan. 1, 1974

5. **Sentence to drug abuse treatment facility.** In any case in which the offense relates to violation of any statutes concerning controlled or illegal drugs or the sale or possession of drugs or narcotics, the court may impose sentence and place the person on probation. The court may require as a condition of probation that such person shall participate in, as a resident or nonresident, programs at an approved treatment facility as defined under

Title 22, chapter 1601, provided the Office of Alcohol and Drug Abuse Prevention certifies to the court that such approved treatment facilities, personnel and programs are available and in compliance with all state licensing and certification laws, standards, rules and regulations.

Any person so sentenced to probation shall be required to participate in programs at the facility for a period not to exceed the period of probation ordered by the court. The professional staff of the facility may determine that the person's participation in treatment should be terminated. The supervisor or professional staff of the treatment facility may make such a determination when in their judgment the person:

- A. Has successfully completed treatment or will derive no further significant benefits from such participation, or both, or
- B. Will adversely affect the treatment of other participants by his continued participation, or
- C. Has not conducted himself in accordance with the provisions of his sentence or probation.

When the professional staff of the treatment facility determines that the person's participation should be terminated, the supervisor of the treatment facility or the probation officer shall make a report to the court, which may thereupon make such provision with respect to the person's probation as the court deems appropriate.

**5-A. Definition.** For purposes of this section, "drug abuser" shall mean any person convicted of any violation of any statutes relating to controlled or illegal drugs.

1973, c. 566, § 5, eff. Jan. 1, 1974.

**Amendments:**

—1973. Subsections 5 and 5-A: Added.

**Effective date.** See note set out under § 7101 of Title 22.

—1971. Subsection 1, A: Chapter 172 deleted "of not more than \$100" following "damage to another".

Subsection 4: Added by c. 348.

—1965. Added subsection 3.

**Notes of Decisions**

**Supplementary Index to Notes**

Right to probation 5

**3. Power of court**

The broad powers as to sentence inhering in a court of general jurisdiction were not diminished or curtailed by the passage of the Probation Act of 1909 (P. L. 1909, c. 263) since that act did not take from but added to the authority of the court while affording a new method in the administration of criminal law, tending toward the reformation rather than the punishment of the convicted, and placed a new and oftentimes an ef-

fective instrumentality in the hands of the court the employment of which, however, was not rendered compulsory, but discretionary. *Welch v. State* (1921) 120 Me. 294, 113 A. 737.

**4. Prohibited acts**

The power to suspend execution of sentence imposed upon one convicted of a criminal offense, to grant probation and to subsequently revoke it, is largely statutory matter. *State v. Allen* (1967) Me., 235 A.2d 529.

**5. Right to probation**

There is no right, statutory or constitutional, to probation; it, like parole, is a matter of grace. *Skidgell v. State* (1970) Me., 264 A.2d 8.

**§ 1632. Person on probation under jurisdiction of court**

A person on probation is under the jurisdiction of the court which ordered his probation and such other court which assumes jurisdiction as provided in section 1633. When a person is placed on probation, he shall be committed by the court to the custody and control of the Division of Probation and Parole. The Director of Probation and Parole shall designate one or more probation-parole officers to supervise the probationer during the term of his probation.

A probation-parole officer has the same authority with respect to the probationer as if he were surety upon the recognizance of the probationer. Each probation-parole officer has authority to arrest and charge a probationer with violation of probation and take him into his custody in any place he may be found, to detain the probationer in any jail for a reasonable time in order to obtain an order from the court, or justice of the court in vacation, returning the probationer to court as provided in section 1633. In the event the court

## 34 § 1632 PUBLIC INSTITUTIONS, ETC.

refuses to issue an order returning the probationer as provided under section 1633, the court shall issue an order directing the immediate release of the probationer from arrest and detention. A probationer so arrested and detained shall have no right of action against the probation-parole officer or any other persons because of such arrest and detention. Any action required under sections 1633 and 1634 may be taken by any probation-parole officer.

The court shall fix the duration of the probation, which may not be more than 2 years. The court shall determine the conditions of the probation and shall give the probationer a written statement containing the conditions of his probation.

1965, c. 45, § 1; 1970, c. 590, § 66-D, eff. Feb. 10, 1970; 1971, c. 172, § 7.

### Amendments:

—1971. In 1st paragraph substituted "Director of Probation and Parole" for "board" in 3rd sentence.

—1970. In 2nd sentence substituted "Division of Probation and Parole" for "State Probation and Parole Board".

—1965. First sentence amended by omitting "sole" before "jurisdiction" and adding "and such other court which assumes jurisdiction as provided in section 1633".

tute charge that she had violated condition of probation that she abstain from use of intoxicants and was insufficient basis for order of revocation of probation. *State v. Russo* (1969) Me., 260 A.2d 140.

This subchapter by regulating revocation of probation contemplates making of charge or charges of violation and that violations shall be alleged as preliminary to hearing thereon. *Id.*

State may not compel probationer who is charged with violations of condition of probation to defend against other charges of which no notice has been given. *Id.*

The power to suspend execution of sentence imposed upon one convicted of a criminal offense, to grant probation and to subsequently revoke it, is largely statutory matter. *State v. Allen* (1967) Me., 235 A.2d 529.

### Supplementary Index to Notes

#### Power to revoke probation 2

#### 2. Power to revoke probation

Allegation that probationer had purchased beer for parolee did not consti-

### § 1633. Violation of probation

When the Division of Probation and Parole charges a probationer with violation of a condition of his probation the division shall forthwith report the alleged violation to the court, or to a justice of the court in vacation, which may order the probationer returned. After hearing, the court or justice may revoke the probation and impose sentence if the case has been continued for sentence or may order the probationer to serve the original sentence where its execution has been suspended or may order the probation continued if it appears just to do so.

The Division of Probation and Parole may in its discretion report the alleged violation to any Superior Court or District Court as applicable. When such court deems it to be convenient in the administration of justice to entertain a petition for violation of probation, such court shall request from the clerk of the court in which the probationer was sentenced attested copies of the sentence of the court and any other documents in the case. Upon receipt of such request, it shall be the duty of the clerk to send forthwith the requested attested copies. The court may, after hearing, revoke or continue probation just as if it were the court that originally imposed sentence. The clerk shall thereupon forward to the clerk of the court that originally imposed sentence an attested copy of the petition for revocation and order pursuant thereto.

Whenever a probationer is charged by the division with violation of probation under this section, the running of the probation period shall be interrupted from the date of such charge and shall remain interrupted until the probationer is returned to the court. In the event of the withdrawal of the charge by the division or in the event that the court at the hearing on the alleged violation finds that the probationer did not violate the condi-

tions of his probation, he shall be credited with the time lost by the interruption of the running of his probation period.

1965, c. 45, § 2; 1969, c. 134; 1970, c. 590, §§ 66-E, 66-F, eff. Feb. 10, 1970; 1971, c. 172, § 8.

#### Amendments:

—1971. In 2nd paragraph added "or District Court as applicable." to end of 1st sentence, substituted "court" for "Superior Court" at beginning of 2nd sentence.

In 3rd paragraph substituted "division" for "board".

—1970. Substituted "Division of Probation and Parole" for "State Probation and Parole Board" and "division" for "board".

—1969. Added new paragraph at end.

—1965. Added new paragraph at end of section.

#### Cross References

Nonsupport cases, violation of probation, applicability of this section, see § 481 of Title 19.

### Supplementary Index to Notes

#### Evidence 3

#### Hearing 2

#### Review 4

#### Revocation of probation 1

##### 1. Revocation of probation

Allegation that probationer had purchased beer for parolee did not constitute charge that she had violated condition of probation that she abstain from use of intoxicants and was insufficient basis for order of revocation of probation. *State v. Russo* (1969) Me., 260 A.2d 140.

This subchapter by regulating revocation of probation contemplates making of charge or charges of violation and that violations shall be alleged as preliminary to hearing thereon. *Id.*

The power to suspend execution of sentence imposed upon one convicted of a criminal offense, to grant probation and to subsequently revoke it, is largely statutory matter. *State v. Allen* (1967) Me., 235 A.2d 529.

Probationer remains under supervision of court system and revocation of probation is judicial function exercised in terms of judicial discretion which discretion is reversible only upon clear showing of abuse. *Id.*

Behavior of defendant who was pushed to floor during disturbance and who came off floor in combative mood, even though person who had pushed defendant no longer was paying any active attention to the defendant, and who used vile language, refused to leave lodge at request of manager and resisted manager's request in vicious violent manner which was disorderly and retaliatory rather than defensive, constituted sufficient grounds for ruling revocation of probation. *Id.*

##### 2. Hearing

Parolee has no constitutional right to a hearing on revocation of parole and revocation of parole without notice and hearing does not constitute a denial of due process. *Stubbs v. State* (1971) Me., 281 A.2d 134.

Hearing on revocation of probation is not a criminal trial nor a stage of a criminal proceeding. *Skidgell v. State* (1970) Me., 264 A.2d 8.

Constitutional rights of petitioner, who was indigent, were not violated by reason of his not being represented by counsel at his probation revocation

hearing, in situation where sentence had already been imposed before petitioner was placed on probation. *Id.*

State may not compel probationer who is charged with violations of condition of probation to defend against other charges of which no notice has been given. *State v. Russo* (1969) Me., 260 A.2d 140.

Right to hearing on revocation of probation is statutory and not constitutional and proceeding is not criminal trial. *State v. Oliver* (1968) Me., 247 A.2d 122.

In hearing in which defendant's probation was revoked, violation of probation by breach of curfew and possession of firearms was properly determined within the discretion of the presiding justice. *Id.*

Record established that hearing to determine violation of probation met every test of fairness and impartiality. *Id.*

Hearing which "due process" requires for revocation of probation is statutory; there is no constitutional right to notice and hearing before revocation of probation. *State v. Allen* (1967) Me., 235 A.2d 529.

Purpose of hearing for revocation of probation is to seek determination of whether conditional liberty granted by probation should be terminated or continued. *Id.*

##### 3. Evidence

Evidence at probation revocation hearing warranted finding that defendant possessed firearms and breached curfew in violation of conditions of probation. *State v. Oliver* (1968) Me., 247 A.2d 122.

In probation revocation hearing, evidence bearing upon seriousness of charges against defendant, including nature of his conduct, was properly before presiding justice for consideration in reaching his decision. *Id.*

##### 4. Review

Probation revocation proceeding, although "sui generis" in nature and not a criminal trial, may be likened to a civil proceeding before a justice without a jury and a probationer may, by appeal, raise issue whether court's finding of violation of probation was made in exercise of sound judicial discretion from evidence before it or whether it was result of whim or caprice. *Dow v. State* (1971) Me., 275 A.2d 815.

Finding that defendant, placed on probation after conviction for unlawfully operating junkyard, was in violation of probation was unjustified where record disclosed no evidence which was not before court at previous hearing on identical charge, on which defendant was released due to pendency of eminent domain proceeding. *State v. Smith* (1969) Me., 256 A.2d 580.

Violation of probationary conditions is neither offense in itself nor criminal action and findings of fact by justice sitting without jury in proceeding for revocation of probation are final so long as they are supported by the evidence. *Id.*

Decision at hearing on revocation of probation lies in sound discretion of court, and findings stand under "clearly erroneous" or "any credible evidence" rule. *State v. Oliver* (1968) Me., 247 A.2d 122.

# 34 § 1634 PUBLIC INSTITUTIONS, ETC.

## § 1634. Discharge from probation by court

**1. Probationer no longer needs supervision.** When it appears to the Division of Probation and Parole that a probationer is no longer in need of supervision, the division may so report to the court, or to a justice of the court in vacation, which may order the probationer returned. After hearing, the court or justice may terminate his probation and allow him to go without day.

1970, c. 590, § 66-G, eff. Feb. 10, 1970.

### Amendments:

—1970. Subsection 1: Substituted "Division of Probation and Parole" for "State Probation and Parole Board" and "division" for "board".

### Cross References

Nonsupport cases, discharge from probation, applicability of this section, see § 481 of Title 19.

### Index to Notes

Review 2  
Suspension of probation 1

#### 1. Suspension of probation

Release on charge of probation violation of defendant, convicted of unlaw-

fully operating and maintaining junkyard, was suspension of probationary conditions rather than dismissal of probation itself where release was occasioned by possible difficulties in compliance with probation conditions, due to taking of defendant's property by State under eminent domain power. *State v. Smith* (1969) Me., 256 A.2d 580.

#### 2. Review

Finding that defendant placed on probation after conviction for unlawfully operating junkyard, was in violation of probation was unjustified where record disclosed no evidence which was not before court at previous hearing on identical charge, on which defendant was released due to pendency of eminent domain proceeding. *State v. Smith* (1969) Me., 256 A.2d 580.

## § 1635. Repealed. 1971, c. 528, § 6, eff. July 1, 1973

Transfer of records and supervision, employment. See note with this heading set out under § 1591 of this Title.

**Cumberland County:** With respect to note with this heading, set out in main

volume under § 1635, §§ 34-A to 34-J of 1957, c. 387, were repealed by 1971, c. 528, § 7.

## SUBCHAPTER V

### PAROLE

## § 1671. Parole by board

The board may grant a parole from a penal or correctional institution after the expiration of the period of confinement, less deductions for good behavior, or after compliance with conditions provided for in sections 1672 to 1674 applicable to the sentence being served by the prisoner or inmate. It may revoke a parole when a condition of the parole is violated.

\* \* \* \* \*

**2. Custody and control.** While on parole, the parolee is under the custody of the warden or superintendent of the institution from which he was released but under the immediate supervision of and subject to the rules and regulations of the division or any special conditions of parole imposed by the board.

1967, c. 391, § 27, eff. June 13, 1967; 1971, c. 172, § 9.

### Amendments:

—1971. Subsection 2: Substituted "rules and regulations of the division" for "rules and regulations of the board".

—1967. First sentence repealed and replaced by new provisions relating to parole by board.

Original sentence 3  
Status of parolee 2

#### 1/2. Jurisdiction of board

The granting, revocation or termination of parole are within the exclusive jurisdiction of the parole board subject to procedural restrictions within which the legislature circumscribes the power of the board. *Hartley v. State* (1969) Me., 249 A.2d 38.

### Index to Notes

Conditional parole 4  
Discretion 1  
Eligibility 1.5  
Jurisdiction of board 1/2

#### 1. Discretion

Release to parole is discretionary matter with parole board in light of inmate's conduct while confined and con-

sidered probability of his complying out of confinement, with conditions of parole fixed by board. *Collins v. State* (1965) 161 Me. 445, 213 A.2d 835.

#### 1.5 Eligibility

Proceeding to determine whether time during which defendant was confined in county jail rather than in state prison should be taken into account in determining when defendant first became eligible for parole in service of his sentence to life imprisonment would be treated as one directed to attainment of postconviction remedy through rendition by superior court of a declaratory judgment to be accompanied by such coercive relief as might be found appropriate. *Reed v. State* (1972) Me., 295 A.2d 657.

Where during the approximately 27 months between defendant's conviction of murder and imposition of sentence defendant had been continuously confined in county jail, warden of state prison refused to grant defendant credit toward his parole eligibility for any time spent in county jail, and defendant, claiming that denial of such credit violated his constitutional rights, filed motion in superior court for correction of sentence, Supreme Court would consider proceeding as seeking collateral post-conviction relief notwithstanding that 60-day period of limitation under Criminal Rule 35(a) had long since passed. *Id.*

Where same violation of law which had deprived defendant of his opportunity to have served a part of his life imprisonment time at state prison in satisfaction of sentence and hence of imprisonment period by which he became eligible for parole, likewise denied him opportunity to benefit from "good time" deduction, defendant was entitled to benefit of good time deduction predicated on his behavior during time he was an inmate of county jail from December 22, 1965 when he was eligible for sentencing until September 15, 1967 when he was actually sentenced. *Id.*

"Conviction" for purpose of determining eligibility for parole signifies the effect of a guilty plea or a guilty verdict by a jury or finding by a court if trial by jury had been waived. *Id.*

Where defendant on May 20, 1965 was convicted of murder, because he sought direct review to law court sentencing was postponed until after final decision had been rendered by the law court, and defendant was sentenced on September 15, 1967, and from date of conviction until sentence he served in county jail, but on December 1, 1965 Criminal Rule 32(a) was changed so that defendant was entitled to have sentence imposed without unreasonable delay after a conviction, defendant should be placed, for purposes of determination of eligibility for parole, in a position equivalent to that in which he would actually have been had he been sentenced on December 22, 1965 and had thereupon entered upon service of his sentence at the state prison. *Id.*

#### 2. Status of parole

Parole is matter of grace and parolee receives no vested right to parole itself or to parole under then existing conditions when sentenced to prison. *Still v. State* (1969) Me., 256 A.2d 670.

Parolee is privileged to serve his sentence outside of prison walls, and is accountable with every other citizen for violation of law, and on his violation of law he suffers, or may suffer, loss of privilege state has extended to him. *Libby v. State* (1965) 161 Me. 317, 211 A.2d 586.

#### 3. Original sentence

While on parole, parolee is executing, out of confinement, his original sentence. *Collins v. State* (1965) 161 Me. 445, 213 A.2d 835.

#### 4. Conditional parole

Statute empowering parole board to attach special conditions to convict's parole is demonstrative of Legislature's intention that conditions of parole should be established at time of parole. *Still v. State* (1969) Me., 256 A.2d 670.

Legislature has power to attach conditions to grant of parole and to provide for administration thereof. *Id.*

When convict chose to accept parole, he took it subject to conditions then a part of it including condition imposed by Legislature after his conviction. *Id.*

There is no constitutional guarantee that provisions regarding parole will remain constant during period of sentence. *Id.*

### § 1672. Eligibility for hearing; State Prison

A prisoner at the Maine State Prison or at the Women's Correctional Center becomes eligible for a hearing by the board as follows:

1967, c. 391, § 28.

1. **Expiration of minimum term in 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;

1967, c. 391, § 29, eff. June 13, 1967.

2. **Expiration of ½ of term in certain cases.** Prior to the expiration of ½ 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, sections 1951, 3151, 3152 or 3153. This subsection applies to a prisoner who has been convicted previously of an offense under Title 17, sections 1951, 3151, 3152 or 3153;

1967, c. 391, § 29, eff. June 13, 1967.

3. **Expiration of 15-year term in life imprisonment cases.** Prior to the expiration of a 15-year term of imprisonment, less deduction for good be-



## 34 § 1672 PUBLIC INSTITUTIONS, ETC.

havior, when the prisoner has been convicted of an offense punishable only by life imprisonment;

1967, c. 391, § 29, eff. June 13, 1967; 1969, c. 280; 1971, c. 397, § 8.

**4. 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.

1966, c. 513, § 72-A, eff. Feb. 8, 1966; 1967, c. 391, § 29, eff. June 13, 1967; 1969, c. 280.

### Amendments:

—1971. Subsection 3: Deleted "provided the prisoner has never been convicted of another offense punishable only by life imprisonment" from end.

—1969. Subsections 3, 4: Substituted "15-year" for "30-year" terms.

—1967. First paragraph amended by inserting words "or at the Women's Correctional Center".

Subsections 1, 2, 3 and 4 amended by substituting words "Prior to" for word "After" and words "the prisoner" for word "he".

—1966. Subsection 4: Added.

**Prisoners affected.** 1966, c. 513, § 72-B, provided:

"Sec. 72-B. Intent. It is the intent of the Legislature that the Revised Statutes, Title 34, section 1672, subsection 4, shall apply to all persons incarcerated in the Maine State Prison on the effective date of this Act [Feb. 8, 1966]."

### Supplementary Index to Notes

#### Construction 2

##### 2. Construction

Where during the approximately 27 months between defendant's conviction of murder and imposition of sentence defendant had been continuously confined in county jail, warden of state prison refused to grant defendant credit toward his parole eligibility for any time spent in county jail, and defendant, claiming that denial of such credit violated his constitutional rights, filed motion in superior court for correction of sentence. Supreme Court would consider proceeding as seeking collateral post-conviction relief notwithstanding that 60-day period of limitation under Criminal Rule 35(a) had long since

passed. *Reed v. State* (1972) Me., 295 A.2d 657.

Where same violation of law which had deprived defendant of his opportunity to have served a part of his life imprisonment time at state prison in satisfaction of sentence and hence of imprisonment period by which he became eligible for parole, likewise denied him opportunity to benefit from "good time" deduction, defendant was entitled to benefit of good time deduction predicated on his behavior during time he was an inmate of county jail from December 22, 1965 when he was eligible for sentencing until September 15, 1967 when he was actually sentenced. *Id.*

"Conviction" for purpose of determining eligibility for parole signifies the effect of a guilty plea or a guilty verdict by a jury or finding by a court if trial by jury had been waived. *Id.*

Where defendant on May 20, 1965 was convicted of murder, because he sought direct review to law court sentencing was postponed until after final decision had been rendered by the law court, and defendant was sentenced on September 15, 1967, and from date of conviction until sentence he served in county jail, but on December 1, 1965 Criminal Rule 32(a) was changed so that defendant was entitled to have sentence imposed without unreasonable delay after a conviction, defendant should be placed, for purposes of determination of eligibility for parole, in a position equivalent to that in which he would actually have been had he been sentenced on December 22, 1965 and had thereupon entered upon service of his sentence at the state prison. *Id.*

The 1953 amendment of this section did not alter mandatory life sentence for murder and only added entitlement to parole after service of 30-years' imprisonment for person convicted of murder. *Stone v. State* (1966) Me., 222 A.2d 153.

#### § 1673. Men's Correctional Center

An inmate at the Men's Correctional Center becomes eligible for a hearing by the board as follows:

**1. Inmate reformed.** When it appears to the superintendent that the inmate has reformed;

**2. Suitable employment secured.** When some suitable employment or situation has been secured for him in advance.

If the superintendent does not recommend an inmate for a parole hearing during the first year after commitment, the reasons for not so doing shall be reported to the Director of Corrections at the end of the year and for each 6 months thereafter until the inmate is recommended for a hearing by the board.

1967, c. 391, § 31, eff. June 13, 1967; 1969, c. 192, § 15, eff. April 21, 1969, c. 346, § 9; 1971, c. 172, § 10.

### Amendments:

—1971. Repealed and replaced section.

—1969. Subsection 1: Chapter 192 repealed last sentence of first paragraph.

Subsection 1, A: Chapter 346 provided for additional deduction of 2 days.

Subsection 1 amended by substituting words "Prior to" for word "After" in 2 places.

—1967. First paragraph amended by substituting words "Men's Correctional Center" for words "Reformatory for Men".

§ 1674. —Women's reformatory

An inmate at the Women's Correctional Center becomes eligible for a hearing by the board as follows:

1967, c. 391, § 32.

\* \* \* \* \*

If the superintendent does not recommend an inmate for a parole hearing during the first year after commitment, the reasons for not so doing shall be reported to the Director of Corrections at the end of the year and for each 6 months thereafter until the inmate is recommended for a hearing by the board.

1971, c. 172, § 11.

Amendments:

—1971. In last paragraph substituted "Director of Corrections" for "commissioner".

—1967. First paragraph amended by substituting words "Women's Correctional Center" for words "Reformatory for Women".

§ 1675. Violations of parole

A probation-parole officer has authority to arrest and charge a parolee with violation of parole and take him into his custody in any place he may be found, to detain the parolee in any jail, pending the issuance of a parole violation warrant, which detention shall not extend beyond the next business day of the office of the director. In the event a warrant is not issued in that time, the parolee shall be released from such arrest and detention forthwith. A parolee so arrested and detained shall have no right of action against the probation-parole officer or any other persons because of such arrest and detention.

When a parolee violates a condition of his parole or violates the law, the director may issue a warrant for his arrest. A probation-parole officer, or any other law enforcement officer within the State authorized to make arrests, may arrest the parolee on the warrant and return him to the institution from which he was paroled. At its next meeting at that institution, the board shall hold a hearing. The parolee is entitled to appear and be heard. If the board, after hearing, finds that the parolee has violated his parole or the law, it shall revoke his parole, set the length of time he shall serve of the unexpired portion of his sentence before he can again be eligible for hearing by the board, and remand him to the institution from which he was released; except, that when a parolee from the Men's Correctional Center violates the law and is sentenced by the court to the Maine State Prison, any length of time set by the board to be served of the unexpired portion of his correctional center sentence may be served at the Maine State Prison.

1. Forfeits deductions. Upon revocation of parole by the board the prisoner forfeits any deductions for good behavior earned while on parole.

2. May earn deductions. While serving the unexpired portion of his sentence after parole has been revoked, the prisoner may earn deductions for good conduct.

Whenever a warrant is issued under this section for the arrest of a parolee, the running of the parolee's sentence shall be interrupted and shall remain interrupted until the parolee is returned to the institution from which he was paroled; such interruption of the running of his sentence shall include any time served prior to such return, after conviction for a crime committed while on parole.

In the event of the withdrawal of the warrant by authority of the director, or in the event that the board at the hearing on the alleged violation finds that the parolee did not violate the conditions of his parole, or the law,

## 34 § 1675 PUBLIC INSTITUTIONS, ETC.

he shall be credited with the time lost by the interruption of the running of his sentence.

1966, c. 460, eff. Jan. 27, 1966; 1967, c. 391, § 33; 1969, c. 326, §§ 2, 3; 1971, c. 172, § 13.

### Amendments:

—1971. Subsections 1, 2: Deleted "or inmate" following "the prisoner". In last paragraph substituted "authority of the director" for "authority of the board".

—1969. Added new first paragraph and in first sentence of former 1st paragraph authorized director to issue warrant.

—1967. Last sentence of 1st paragraph amended by substituting words "Men's Correctional Center" for words "Reformatory for Men" and words "correctional center" for word "reformatory".

—1966. Added last 2 paragraphs.

### Index to Notes

Board's powers—Generally 8  
Contents of order 4  
Hearing 6  
Mandatory 3  
Parole warrant 2  
Post-conviction habeas corpus 7  
Retroactive effect  $\frac{1}{2}$   
Right to custody 5  
Status of parolee 1  
—Warrant 9

### $\frac{1}{2}$ . Retroactive effect

Where prisoner was paroled prior to enactment of this section providing in part for the interruption of parolee's sentence upon issuance of arrest warrant and a parole violator's arrest warrant was issued but the maximum sentence had expired prior to his apprehension, sentence had not been interrupted by issuance of warrant so that prisoner was entitled to release from custody. *Champagne v. State* (1970) Me., 262 A.2d 820.

Conditions of prisoner's parole were fixed when he was released on parole at time prior to enactment of this section relating to the interruption of running of parolee's sentence by issuance of arrest warrant, and fact that section was enacted subsequent to parole could not and did not add a new condition retroactively to the terms of parole. *Id.*

### 1. Status of parolee

Rights of parolees are such as the lawmakers intended to establish within the rehabilitation process. *Motttram v. State* (1967) Me., 232 A.2d 809.

Parolee has no property right in the enjoyment of his liberty on parole outside the prison walls, as parole is a matter of grace. *Id.*

A parolee is under custody of warden while on parole as well as after his arrest for parole violation. *Id.*

Parolees who violate their parole are not entitled to the same procedural safeguards constitutionally necessary in case of persons accused of crime. *Id.*

Courts generally are reluctant to interfere with penal control and management or with the administration of the parole law which is but an ameliorated form of the penal system. *Id.*

Parolee is privileged to serve his sentence outside of prison walls, and is accountable with every other citizen

for violation of law, and on his violation of law he suffers, or may suffer, loss of privilege state has extended to him. *Libby v. State* (1965) 161 Me. 317, 211 A.2d 586.

Serving of jail sentence by parolee, who took automobile without consent of owner while parolee was on parole from robbery conviction, did not operate as waiver of any obligation to serve remainder of prison sentence for robbery, nor was it an implied pardon or discharge therefrom. *Id.*

### 2. Parole warrant

If municipal police made arrest at time of assault on one of its officers and before execution of parole warrant for person arrested, they assumed lawful and primary custody of person arrested, and such custody could be retained in face of subsequent parole warrant, and parole warrant would serve only as detainer to be executed when primary custody of municipal authority was relinquished. *Collins v. State* (1965) 161 Me. 445, 213 A.2d 835.

### 3. Mandatory

Word "may" as used in this section providing that when parolee violates condition of parole, member of parole board may authorize director to issue warrant for his arrest is permissive and not mandatory. *Collins v. State* (1965) 161 Me. 445, 213 A.2d 835.

Word "may" as used in this section providing that parole officer may arrest parolee on warrant and return him to institution from which he was paroled means that parole officer must arrest parolee. *Id.*

### 4. Contents of order

Fact that order revoking petitioner's parole and remanding him to custody to serve remaining term of confinement under felony sentence failed to specify date of revocation of parole and failed to include statement as to remaining term of confinement and as to time at which he would again be eligible for parole did not entitle petitioner to release from custody. *Collins v. State* (1965) 161 Me. 445, 213 A.2d 835.

This section, providing that if parole board finds that parolee has violated his parole, it shall revoke his parole, set length of time he shall serve of unexpired portion of sentence before he can again be eligible for hearing by board, and remand him to institution from which he was released does not require that determination of board be recorded in the order. *Id.*

### 5. Right to custody

34 M.R.S.A. § 1676, which requires parolees to complete their first sentence unless terminated by parole board before beginning service of new sentences imposed for crimes committed while on parole applied to reformatory parolee, who was sentenced to prison for crimes committed while on parole, even though first sentence was not to prison. *Kuhn v. State* (1969) Me., 254 A.2d 591.

If parole officer made arrest on parole warrant before execution of assault warrant by municipal police, act of parole officer in permitting municipal court to assume physical custody and to require parolee to answer to charge there pending against him did not con-

stitute waiver by state of its right to retain or thereafter resume his physical custody under subsisting felony sentence. *Collins v. State* (1965) 161 Me. 445, 213 A.2d 825.

**6. Hearing**

Parolee has no constitutional right to a hearing on revocation of parole and revocation of parole without notice and hearing does not constitute a denial of due process. *Stubbs v. State* (1971) Me., 281 A.2d 134.

Parolee who was granted privilege to appear and address probation and parole board in excuse or exculpation of charges made against him respecting violation of his parole was granted the type of hearing required by this section notwithstanding that parolee was not given a formal list of charges, or given opportunity at hearing to present witnesses on his behalf or to have representation by counsel. *Mottram v. State* (1967) Me., 232 A.2d 809.

A parolee has no constitutional right to hearing on revocation of parole, and such a revocation without notice and hearing does not constitute a denial of constitutional due process. *Id.*

A parolee's statutory right to appear before probation and parole board when revocation of his parole is sought is merely a privilege to appear and have opportunity to address in exculpation or excuse. *Id.*

**7. Post-conviction habeas corpus**

Parole board's finding of fact that cause exists for revocation of parole is not subject to judicial review, either by appeal or by habeas corpus. *Stubbs v. State* (1971) Me., 281 A.2d 134.

Finding of parole violation by parole board is not reviewable in a habeas corpus proceeding. *Id.*

Post-conviction habeas corpus is proper remedy to test legality of a parolee's imprisonment on alleged claim that parole board acted illegally in revoking his parole without the hearing required by this section. *Mottram v. State* (1967) Me., 232 A.2d 809.

**8. Board's powers—Generally**

The grant, revocation and reinstatement of parole are within the exclusive jurisdiction of the parole board subject to such procedural restrictions within

which Legislature has circumscribed the board's powers. *Mottram v. State* (1967) Me., 232 A.2d 809.

Legislature can grant to parole board exclusive right to determine if parole shall be revoked, and any such revocation by parole board made within limits of legislative authority given to it cannot be attacked. *Id.*

**9. —Warrant**

Where petitioner knew of the existence of parole violator's warrant and knew that arresting officers were policemen, petitioner's apprehension for parole violation without parole warrant being present at scene of arrest and without its being produced by arresting officer upon petitioner's request was valid. *Stubbs v. State* (1971) Me., 281 A.2d 134.

Subject only to legislatively dictated procedural requirements, it is for parole board alone to determine when and under what circumstances, during period paroled prisoner stands in execution of his sentence, he is to be removed from community and restored to institution there to continue in execution of his sentence. *Id.*

This section, which stops running of parolee's sentence when violator's warrant is issued was not ex post facto legislation as it did not increase punishment nor take any protection or right from parolee, though law was passed after parolee's conviction. *Still v. State* (1963) Me., 256 A.2d 670.

Convict in accepting conditions of parole, including law passed after his conviction and providing that sentence stops running when parole violator's warrant is issued, only accepted new condition deemed necessary by Legislature, and was not consenting to new additional penalty for violation. *Id.*

A warrant issued by parole board for arrest of paroled prisoner for violation of his parole is not to be judged by same standards as a warrant for arrest of a person charged with crime. *Mottram v. State* (1967) Me., 232 A.2d 809.

Warrant for arrest of parolee for violation of his parole serves only to hold the parolee for parole board pending hearing at which he is entitled to appear and be heard. *Id.*

**§ 1676. Sentence for crime committed by parolee**

**Notes of Decisions**

**Supplementary Index to Notes**

Termination during parole 4

**2. Generally**

This section which requires parolees to complete their first sentences unless terminated by parole board before beginning service of new sentences imposed for crimes committed while on parole applied to reformatory parolee, who was sentenced to prison for crimes committed while on parole, even though first sentence was not to prison. *Kuhn v. State* (1969) Me., 254 A.2d 591.

Failure of parole board to execute its violator's warrant and revoke parole before petitioner's commitment on felonious assault sentence did not terminate first sentence for which petitioner had been on parole and execution of sentence imposed for felonious assault began aft-

er completed execution of sentence on which he had been paroled and which was completed after he had been returned to prison following sentence imposed for felonious assault. *Weeks v. State* (1969) Me., 250 A.2d 827.

Failure of parole board to execute parole violator's arrest warrant did not in any way nullify this provision requiring new and unexpired sentences to be served consecutively. *Hartley v. State* (1969) Me., 249 A.2d 38.

Where a parolee was convicted of a crime committed while on parole, unexpired portion of his first sentence could not be served concurrently with new sentence, but new sentence had to be served consecutive to unexpired portion of first sentence even if parole board did not comply with all statutory requirements for revocation of parole. *Id.*

A sentence imposed for a crime committed while on parole would be deemed

## 34 § 1676 PUBLIC INSTITUTIONS, ETC.

to run consecutively to sentence upon which individual was paroled even though court at time of imposing second sentence did not indicate that sentences would run consecutively. *Id.*

Duration of petitioner's imprisonment under only valid subsisting sentence would be directly and substantially affected and increased if date of beginning of service of second sentence was date when petitioner's first sentence was terminated by court's official order of discharge, and such official violation of petitioner's statutory rights sufficiently tainted his confinement that his detention, although arising from legal sentence, would become illegal in the execution thereof within meaning of habeas corpus statute. *Green v. State* (1968) Me., 245 A.2d 147.

### 3. Action by court

Written sentence which imposed upon petitioner, seeking post-conviction relief, a three to eight-year term without judge's oral statement that such sentence was to be executed concurrently with sentence petitioner was then serving was not erroneous as the manner in which petitioner was required to serve his term was prescribed by this section. *Cressey v. State* (1965) 161 Me. 295, 211 A.2d 572.

### 4. Termination during parole

Petitioner commenced service of sentence for offense committed while on parole when he had completed service of prior sentence being served while on parole. *Higgins v. Robbins* (1970) Me., 270 A.2d 81.

## § 1678. Certificate of discharge

### Notes of Decisions

#### 1. Termination of unexpired sentence

This section providing for a certificate of discharge when it appears to the board that a person on parole is no longer in need of supervision provides

the only means by which a parolee's unexpired sentence may be terminated by the parole board. *Hartley v. State* (1969) Me., 249 A.2d 38.

CHAPTER 123

UNIFORM ACT FOR OUT-OF-STATE  
PAROLEE SUPERVISION

SUBCHAPTER I

COMPACT

**Cross References**

Preliminary hearing in interstate probation and parole violation cases, hear-

ing before compact administrator under this chapter, see § 1772 of this Title.

**§ 1721. Conditions for residence in another state—Article I**

**Complementary Laws:**

Ala.—Code 1940, Title 42, §§ 27, 28.  
Alaska—L.1957, c. 138.  
Ariz.—A.R.S. §§ 31-461 to 31-465.  
Ark.—Ark.Stats. §§ 43-2816, 43-2817.  
Cal.—West's Ann.Pen.Code §§ 11175 to 11179.  
Colo.—C.R.S. '53 §§ 74-5-1, 74-5-2.  
Conn.—C.G.S.A. §§ 54-132 to 54-138.  
Del.—11 Del.C. §§ 4358, 4359.  
Fla.—F.S.A. §§ 949.07-949.09.  
Ga.—Code §§ 27-2701a to 27-2702a.  
Hawaii—R.L.H.1955, Supp. 1963, §§ 83-75, 83-76.  
Idaho—I.C. § 20-301.  
Ill.—S.H.A. ch. 38, § 1003-3-11.  
Ind.—I.C.1971, 35-8-6-1 to 35-8-6-3.  
Iowa—I.C.A. § 247.10.  
Kan.—K.S.A. 22-4101 et seq.  
Ky.—Acts 1956, c. 101.  
La.—LSA-R.S. 15:574.14.  
Md.—Code 1957, Art. 41, §§ 129 to 131.  
Mass.—M.G.L.A. c. 127, §§ 151A to 151G.  
Mich.—M.C.L.A. §§ 798.101-798.103.  
Minn.—M.S.A. § 243.16.  
Miss.—Code 1954 Supp. § 4004.5.  
Mo.—V.A.M.S. § 549.310.  
Mont.—R.C.M.1947, §§ 94-7901, 94-7902.  
Neb.—R.R.S.1943, §§ 29-2637, 29-2638.  
Nev.—N.R.S. § 88.010 et seq.

N.H.—RSA § 607.52.  
N.J.—N.J.S.A. 2A:168-14 to 2A:168-17.  
N.Mex.—1953 Comp. § 41-20-8.  
N.Y.—McK. Correction Law § 224.  
N.C.—G.S.1952 §§ 148-65.1, 148-65.2.  
N.D.—NDRC 1943, 12-56.1-01 to 12-56.-1-04.  
Ohio—R.C. §§ 5149.01 to 5149.23.  
Okl.—57 Okl.St. Ann. §§ 347 to 349.  
Ore.—ORS 144.610, 144.620.  
Pa.—61 P.S. §§ 321, 322.  
Puerto Rico—53 L.P.R.A. §§ 637 to 639.  
R.I.—Gen.Laws 1956, §§ 13-9-1 to 13-9-3.  
S.C.—Code 1952 §§ 55-631 to 55-632.  
S.D.—SDCL 23-62-1 to 23-62-5.  
Tenn.—T.C.A. § 40-3626.  
Tex.—Vernon's Ann.C.C.P. art. 42.11.  
Utah—U.C.A.1953, 77-62-39 to 77-62-45.  
Vt.—28 V.S.A. § 1301.  
Virgin Islands—5 V.I.C. §§ 4631 to 4633.  
Va.—Code 1950, §§ 53-288 to 53-290.  
Wash.—RCWA 9.95.270.  
W.Va.—Code 28-6-1, 28-6-2.  
Wis.—W.S.A. 57.13.  
Wyo.—W.S.1957, §§ 7-338 to 7-340.  
U.S.—May 24, 1949, c. 139, § 129(b), 63 Stat. 107; 4 U.S.C.A. § 112.

CHAPTER 125

PRELIMINARY HEARING IN INTERSTATE PROBATION  
AND PAROLE VIOLATION CASES

**New Sections**

1771. Preliminary hearing required, detention.  
1772. Persons authorized to conduct preliminary hearing.

**New Sections**

1773. Procedure at preliminary hearing.  
1774. Reciprocal provisions.

**§ 1771. Preliminary hearing required, detention**

Where supervision of a parolee or probationer is being administered pursuant to chapter 123, the appropriate judicial or administrative authorities in this State shall notify the compact administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this chapter within a reasonable time, unless such hearing is waived by the parolee or proba-