

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINTH LEGISLATURE

AT THE

SECOND REGULAR SESSION

January 2, 1980 to April 3, 1980

AND AT THE

THIRD SPECIAL SESSION

May 22, 1980

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
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PUBLIC LAWS
OF THE
STATE OF MAINE
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2. **Procedure.** An appeal shall be filed within 10 days of entry of judgment. It shall be filed with the District Court that heard the case. The clerk shall transmit to the Superior Court all documents relating to the case and any recording of the hearing.

§ 7475. **Effect of judgment**

Any fact found or issue adjudicated in a proceeding under this chapter, may not be deemed found or adjudicated for the purpose of any other cause of action. While the doctrine of collateral estoppel may not apply to facts found or issues adjudicated, the judgment obtained shall be res judicata as to the amount in controversy. The only recourse to an adverse decision shall be appeal.

Effective July 3, 1980

CHAPTER 701

S. P. 750 — L. D. 1925

AN ACT Amending Criminal Laws and Procedures.

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

Sec. 1. 4 MRSA § 1051, first sentence, as last amended by PL 1979, c. 541, Pt. A, § 15, is repealed and the following enacted in its place:

No court may be held on Sunday or any day designated for the annual Thanksgiving; or for the choice of Presidential Electors; New Year's Day, January 1st; Washington's Birthday, the 3rd Monday in February; Patriot's Day, the 3rd Monday in April; Memorial Day, the last Monday in May, but if the United States Government designates May 30th as the date for observance of Memorial Day or in 1985, whichever occurs first in time, the 30th of May; the 4th of July; Labor Day, the first Monday of September; the day of a statewide primary, general or special election; Columbus Day, the 2nd Monday in October; Veterans Day, November 11th; or on Christmas Day.

The Chief Justice of the Supreme Judicial Court may order that court be held on a legal holiday when he finds that the interests of justice and judicial economy in any particular case will be served.

Sec. 2. 14 MRSA §§ 5502 to 5508, as amended, are repealed.

Sec. 3. 15 MRSA § 210, 2nd and 3rd sentences, as repealed and replaced by PL 1977, c. 671, § 9, are repealed and the following enacted in their place:

If the prisoner or his counsel state that the prisoner may or will contest

extradition, the judge shall fix a reasonable time, not to exceed 7 days, to be allowed him within which to file a petition contesting extradition. The petition shall be filed in Superior Court and shall state the grounds upon which extradition is contested. When the petition is filed, notice of it and of the time and place of hearing shall be given to the prosecuting attorney of the county in which the arrest is made and in which the accused is in custody, to the Attorney General and to the agent of the demanding state.

Sec. 4. 15 MRSA § 210, 2nd ¶, first sentence, as repealed and replaced by PL 1977, c. 671, § 9, is amended to read:

A person arrested upon the warrant of the Governor of this State may be admitted to bail, in the discretion of the presiding justice, **only after the filing of the petition contesting extradition and** pending decision of the petition for a writ of habeas corpus on it.

Sec. 5. 15 MRSA § 210, sub-§ 3, as enacted by PL 1979, c. 274, § 3, is amended to read:

3. **Escape status.** Any person whose extradition is being sought on the ground that he has been convicted of a crime in the demanding state and:

A. Has escaped from confinement; or

B. Is under sentence of imprisonment **imposed following the denial of an appeal or other review of a conviction or revocation of probation or parole, the person** having been released on bail pending **that** appeal or other review ~~which has been denied.~~

Sec. 6. 15 MRSA § 210-A, first sentence, as enacted by PL 1977, c. 671, § 10, is amended to read:

At the hearing on the petition for a writ of habeas corpus **contesting extradition**, if the Governor's warrant and the demand comply with the provisions of this chapter, the petitioner shall have the burden of proving by clear and convincing evidence that he has not been charged with a crime in the demanding state and that he is not a fugitive from justice.

Sec. 7. 15 MRSA § 210-A, 3rd ¶, last sentence, as enacted by PL 1977, c. 671, § 10, is repealed and the following enacted in its place:

An appeal after the issuance of a certificate of probable cause to the petitioner or an appeal taken by the State, in which case no certificate of probable cause is necessary, shall be taken in the same manner as an appeal of a criminal conviction by a defendant. The provisions of section 2115-A shall not apply.

Sec. 8. 15 MRSA § 210-A, last ¶, as enacted by PL 1977, c. 671, § 10, is repealed as follows:

~~If an appeal is taken by the State, a certificate of probable cause shall not be required but the appeal shall be in accordance with the civil rules~~

Sec. 9. 15 MRSA § 216, as repealed and replaced by PL 1979, c. 274, § 6, is amended to read:

§ 216. Bail permitted in discretion of court except in certain cases

Except as otherwise provided, the judge or magistrate may admit the person arrested to bail by bond or undertaking, with sufficient sureties and in such sum as he deems proper, for his appearance before him at a time specified in that bond or undertaking and for his surrender to be arrested upon the warrant of the Governor of this State **or waiver of it**. The following persons shall not be admitted to bail pursuant to this section:

1. **Death or life imprisonment sentence.** Any person charged with an offense for which a sentence of death or life imprisonment is possible under the laws of the demanding state:

2. **Crime of escape.** Any person who is charged with or has been convicted of the crime of escape in the demanding state; or

3. **Escape status.** Any person whose extradition is being sought on the ground that he has been convicted of a crime in the demanding state and:

A. Has escaped from confinement; or

B. Is under sentence of imprisonment **imposed upon the denial of an appeal or other review of a conviction or revocation of probation or parole, the person having been released on bail pending appeal or other review which has been denied.**

Sec. 10. 15 MRSA § 226, first ¶, last sentence is amended to read:

Before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of his rights to **await** the issuance and service of a warrant of extradition and to ~~obtain a writ of habeas corpus~~ **contest extradition following issuance of the warrant of the Governor** as provided for in section 210. **Following waiver of extradition, the person shall be placed in custody without bail to await delivery to the agent of the demanding state. The agent of the demanding state need not be present at the waiver.**

Sec. 11. 15 MRSA § 709, sub-§ 4, as enacted by PL 1973, c. 561, is amended to read:

4. **Intercept.** ~~“Intereception”~~ **“Intercept”** means to hear, record or aid another to hear or record the contents of any wire or oral communication through the use of any intercepting device by any person other than:

- A. The sender or receiver of ~~such~~ **that** communication;
- B. A person within the range of normal unaided hearing or subnormal hearing corrected to not better than normal; or
- C. A person given prior authority by ~~such~~ **the sender or receiver**.

Sec. 12. 15 MRSA § 712, 2nd ¶, as amended by PL 1973, c. 788, § 61, is repealed.

Sec. 13. 15 MRSA § 713 is enacted to read:

§ 713. Evidence

The contents of an interception shall not be admissible in court.

Sec. 14. 15 MRSA § 2115-A, sub-§ 6, as enacted by PL 1979, c. 343, § 2, is amended to read:

6. **Liberal construction.** The provisions of this section shall be liberally construed to effectuate its purpose, or purposes of insuring that the State is able to proceed to trial with all the evidence it is legally entitled to introduce, in view of the limited ability of the State to have error reviewed after trial.

Sec. 15. 15 MRSA c. 305-A is enacted to read:

CHAPTER 305-A

POST-CONVICTION REVIEW

§ 2121. Definitions

As used in this chapter, the following terms have the following meanings.

1. **Criminal judgment.** "Criminal judgment" means a judgment of conviction of a crime or the orders of adjudication and disposition in a juvenile case.

2. **Post-sentencing proceeding.** "Post-sentencing proceeding" means a court proceeding or administrative action occurring during the course of and pursuant to the operation of a sentence which affects whether there is incarceration or its length, including revocation of probation, revocation of parole or entrustment of a juvenile, failure to grant parole or an error of law in the computation of a sentence. It does not include administrative disciplinary proceedings resulting in a loss of time deductions under Title 17-A, section 1253, subsection 5.

3. **Sentence.** "Sentence" means a sentence pursuant to Title 17-A, section 1152, or a juvenile disposition entered pursuant to section 3314.

§ 2122. Purpose

This chapter shall provide a comprehensive and, except for direct appeals from a criminal judgment, the exclusive method of review of those criminal judgments and of post-sentencing proceedings occurring during the course of sentences. It is a remedy for illegal restraint and other impediments specified in section 2124 which have occurred directly or indirectly as a result of an illegal criminal judgment or post-sentencing proceeding. It replaces the remedies available pursuant to post-conviction habeas corpus, to the extent that review of a criminal conviction or proceedings were reviewable, the remedies available pursuant to common law habeas corpus, including habeas corpus as recognized in Title 14, sections 5501 and 5509 to 5546, coram nobis, writ of error, declaratory judgment and any other previous common law or statutory method of review, except appeal of a judgment of conviction or juvenile adjudication and remedies which are incidental to proceedings in the trial court. The substantive extent of the remedy of post-conviction review shall be as defined in this chapter and not as defined in the remedies which it replaces; provided that this chapter shall provide and shall be construed to provide such relief for those persons required to use this chapter as is required by the Constitution of Maine, Article I, Section 10.

§ 2123. Jurisdiction and venue

1. Jurisdiction. Jurisdiction shall be in the Superior Court.
2. Venue. Venue shall be in the county in which the conviction took place. Venue may be transferred by the assigned justice at his discretion.

§ 2124. Jurisdictional prerequisite of restraint or impediment

An action for post-conviction review of a criminal judgment of this State or of a post-sentencing proceeding following the criminal judgment, may be brought at any time, subject to the requirements of this section and the restrictions of section 2128, subsections 3 and 5. The person seeking relief must demonstrate that the challenged criminal judgment or post-sentencing proceeding is causing a present restraint or other specified impediment as follows:

1. Present restraint by criminal judgment. Present restraint or impediment as a direct result of the challenged criminal judgment, including:
 - A. Incarceration pursuant to the sentence imposed as a result of the criminal judgment which is challenged;
 - B. Other restraint, including probation, parole, other conditional release or a juvenile disposition other than incarceration or probation, imposed as a result of the sentence for the criminal judgment which is challenged;
 - C. A sentence of unconditional discharge resulting from a criminal judgment, for a period of 2 years following the date of sentence;
 - D. Incarceration, other restraint or an impediment specified in paragraphs A,

B and C which is to be served in the future, although the convicted or adjudicated person is not in execution of the sentence either because of release on bail pending appeal of the criminal judgment or because another sentence must be served first; or

E. A fine imposed by the challenged criminal judgment which has not been paid;

2. Post-sentencing proceeding. Incarceration or increased incarceration imposed pursuant to a post-sentencing proceeding following a criminal judgment, although the criminal judgment itself is not challenged; or

3. Present indirect impediment. Present restraint or impediment resulting indirectly from the challenged criminal judgment of this State, including:

A. Incarceration imposed in this State, in another state or in a Federal Court pursuant to a sentence for a subsequent criminal judgment for a crime punishable by a year or more, the length of the incarceration being greater than it would otherwise have been in the absence of the challenged criminal judgment of this State. The criminal judgment which is challenged must be for a crime punishable by a year or more. This requirement is not satisfied by a showing only that the court imposing the present sentence was aware of the challenged criminal judgment or if it appears from the length or seriousness of the person's total criminal record that the challenged criminal judgment, taking into account its seriousness and date, could have little or no effect on the length of incarceration under the subsequent sentence;

B. A pending trial or incarceration pursuant to a sentence following a criminal judgment in this State, in another state or in a Federal Court for a crime, the degree of which or the potential penalty of which is increased as a result of the challenged criminal judgment of this State. This requirement is not satisfied unless:

(1) The subsequent crime, as enhanced, is, in the case of a crime in this State, punishable by incarceration of one year or more or, in the case of a crime in another jurisdiction, is a felony or an infamous crime; and

(2) If a sentence for the subsequent crime has been imposed, the length of that sentence actually exceeds the amount of incarceration which could have been imposed for the subsequent crime had its potential penalty not been enhanced by the challenged criminal judgment; or

C. A pending trial or any of the restraints or impediments specified in subsection 1 following a criminal judgment in this State, another state or in a Federal Court for a crime for which proof of the criminal judgment of this State that is challenged constitutes an element of the subsequent crime.

A person who satisfies the prerequisites of section 2124 may show that the challenged criminal judgment or sentence is unlawful or unlawfully imposed, or that the impediment resulting from the challenged post-sentencing procedure is unlawful, as a result of any error or ground for relief, whether or not of record, unless the error is harmless or unless relief is unavailable for a reason provided in section 2126, 2127 or 2128.

§ 2126. Exhaustion

A person under restraint or impediment specified in section 2124 must also demonstrate that he has previously exhausted remedies incidental to proceedings in the trial court, on appeal or administrative remedies. A person who has taken an appeal from a judgment of conviction or a juvenile adjudication shall not be precluded from utilizing the remedy of this chapter while the appeal is pending, provided that post-conviction review shall be limited to those issued which may not be raised on appeal. The court before which the direct appeal is pending in its discretion may order that either the appeal or portions of this action be held in abeyance while the other action proceeds or that both actions proceed simultaneously.

§ 2127. Mootness

1. Termination of restraint or impediment under section 2124, subsection 1. If a person is under the restraint or impediment specified in section 2124, subsection 1, that is imposed by the criminal judgment which is challenged at the time of the filing of the petition for post-conviction review, the termination of the restraint or impediment shall not render the pending action moot except in the case of payment of a fine or the death of the petitioner.

2. Termination of restraint or impediment under section 2124, subsection 2 and 3. In the case of a person under a restraint specified in section 2124, subsection 2 or 3, termination of the restraint or impediment during the pendency of the action for post-conviction review shall render the action moot; provided that if the action raises an important question of law about the validity of a procedure or other matter, which is likely to recur often, but which, because of the usual length of the restraint or impediment or otherwise, will usually avoid review, the court in its discretion may decide the action.

§ 2128. Waiver of grounds for relief

1. Errors claimable on direct appeal. Errors at the trial which have been or could have been raised on a direct appeal, whether or not such an appeal was taken, may not be raised in an action for post-conviction review under this chapter; provided that if the failure of the convicted or adjudicated person to take an appeal or to raise certain issues on appeal is excusable and the errors not appealed may result in reversal of the criminal judgment, the court may order that an appeal be taken as provided in section 2130.

2. Errors claimable in federal habeas corpus. The assertion of a right under the Constitution of the United States shall not be held waived by its nonassertion at trial or on appeal if the assertion of the right would be held not waived in a federal habeas corpus proceeding brought by the convicted or adjudicated person, pursuant to the United States Code, Title 28, sections 2241 to 2254.

3. Waiver of grounds not raised. All grounds for relief from a criminal judgment or from a post-sentencing proceeding shall be raised in a single post-conviction review action and any grounds not so raised are waived unless the State or Federal Constitution otherwise require or unless the court determines that the ground could not reasonably have been raised in an earlier action.

4. Prior challenges. A person who has previously challenged a criminal judgment or a post-sentencing proceeding under Title 14, sections 5502 to 5508 or its predecessors shall not challenge the criminal judgment or post-sentencing proceeding by post-conviction review unless the court determines that a ground claimed in the action for post-conviction review could not reasonably have been raised in the earlier action.

5. Delay. If the court finds that delay in the bringing of an action for post-conviction review or delay in raising certain grounds for relief has caused it to be seriously hindered in its ability to determine necessary facts, it shall deny relief unless it finds that the delay caused by the person seeking relief is excusable.

§ 2129. Petition and procedure

1. Nature of proceeding; burden of proof. An action for post-conviction review is a criminal proceeding. The Maine Rules of Criminal Procedure and the Maine Rules of Civil Procedure, to the extent that they are not inconsistent with the provisions of this chapter, may be applied in the discretion of the court to proceedings commenced under this chapter. The Supreme Judicial Court may by rule prescribe further procedures for post-conviction proceedings. The admissibility of evidence shall be governed by the Maine Rules of Evidence, and, except as otherwise provided, by decision of the Law Court, the burden shall be upon the petitioner to prove facts essential to the claim for relief by a preponderance of the evidence.

2. Form of petition. The following apply to petitions for post-conviction review.

A. A petition shall be limited to the assertion of a claim for review of one or more criminal judgments arising from a single trial or from a single proceeding for the entry of one or more pleas of guilty or nolo contendere, or of a single post-sentencing proceeding under section 2124, subsection 2. If a petitioner desires to attack the validity of separate criminal judgments arising from 2 or more trials, plea proceedings or separate post-sentencing proceedings arising out of one or more criminal judgments, he shall do so by separate petitions. The court in its discretion may order separate consideration of criminal judgments

challenged in the same petition or may order consideration together of criminal judgments or post-sentencing proceedings which are challenged in separate petitions.

B. The petition shall be in the form prescribed by the Supreme Judicial Court. Blank petitions shall be made available without charge by the clerks of the Superior Court upon request. The petition shall be typewritten or legibly handwritten.

C. The petition shall be signed by and shall be verified by the petitioner. The verification shall be subscribed and either sworn to or affirmed by the petitioner before a person authorized to take oaths. The verification shall reflect that the petitioner has read the petition or, if he is unable to read, that the petition and verification have been read to him and that he understands them and that all matters within his personal knowledge are true.

D. The petition shall designate the State as the respondent.

E. The petition shall identify the criminal judgment which is challenged. If the petition challenges a post-sentencing proceeding, it shall identify both the post-sentencing proceeding and the original criminal judgment which generated the post-sentencing proceeding. It shall identify the court and its county or division in which the criminal judgment was entered, the docket number, the crime for which the criminal judgment was entered and the date of entry and the sentence.

F. The petition shall identify any previous proceedings the petitioner has taken to secure relief from the criminal judgment or post-sentence order which is challenged, including: Any direct appeal, any post-trial motion or other proceeding incidental to the trial in the trial court; any proceedings for post-conviction review, including a proceeding for post-conviction habeas corpus under former Title 14, sections 5502 to 5508; any petition for federal habeas corpus relief; any petition for executive clemency; any appeal from sentence pursuant to sections 2141 to 2144; or any proceeding for review of action by the administrative agency which entered the post-sentence order being challenged. Identification of previous proceedings shall include the type of action, the court and its county or division or the administrative body in which the proceeding was brought, the result, the date of the result and the disposition of any appeal taken from the result.

G. The petition shall briefly identify the incarceration, other restraint or impediment under section 2124 which affects the petitioner. It shall briefly state each reason for relief and the essential facts in support of each reason. Argument and discussion of legal authorities shall be omitted from the petition, but may be filed as separate documents.

H. The petition shall specify the relief requested. Failure to specify the precise relief requested or failure to specify the appropriate relief available shall not preclude the court from granting any relief to which the petitioner may be entitled.

I. The petition shall be accompanied by the following documents, if available: Docket entries, indictment, information or complaint or juvenile petition, judgment of conviction or juvenile adjudication and disposition; the order resulting from the challenged post-sentencing proceeding; and any other documents relating to the criminal or juvenile prosecution or post-sentencing proceeding which may assist the court in its determination of the issues.

J. Failure of the petitioner or the petition to comply with paragraphs A to G shall be grounds for dismissal pursuant to subsection 5. Amendment of the petition shall be available as provided in subsection 6.

3. Filing of petition. Petitions shall be filed as follows.

A. A proceeding for post-conviction review shall be commenced by filing a petition in the Superior Court in the county specified in section 2123.

B. If the petitioner desires to have counsel appointed, he shall file an affidavit of indigency in the form prescribed by the Supreme Judicial Court. If the petitioner is incarcerated, the affidavit shall be accompanied by a certificate of the appropriate officer of the institution in which the petitioner is incarcerated as to the amount of money or securities on deposit to the petitioner's credit in any account in the institution. The failure to include an affidavit of indigency with the petition shall not bar the court from appointing counsel upon a subsequent filing of an affidavit of indigency.

C. Once the petition has been filed, the clerk shall forward a copy of the petition and any separate documents filed with it to the Chief Justice of the Supreme Judicial Court and to the Attorney General.

4. Assignment of case. On receipt of a copy of the petition, the Chief Justice shall assign the case to any Justice of the Supreme Judicial Court or to a regional presiding Justice of the Superior Court, who may in turn assign the case to another Superior Court Justice.

5. Review of petition by assigned justice; summary dismissal; order to respond. The assigned justice shall promptly examine the petition.

A. If it plainly appears from the face of the petition and any exhibits annexed to it that the petition fails to meet the requirements of subsection 2, paragraphs A to G, or that the petition fails to show subject matter jurisdiction or to state a claim upon which post-conviction relief can be granted, the justice shall enter an order for the summary dismissal of the petition, stating the reasons for the dismissal. He shall cause the petitioner to be notified of the dismissal and the reasons for it.

B. If the assigned justice determines that summary dismissal is not required, he may order the respondent to file a response pursuant to subsection 8 within 10 days of the date the order is received, or he may appoint counsel to represent an indigent petitioner. If counsel is appointed, respondent shall not file a response

until 10 days after the filing of an amended petition is served upon it or 10 days after the period for filing an amended petition as of right has expired as provided in subsection 6. If counsel is not appointed for an indigent petitioner, the court shall wait until after the respondent has filed its response before deciding whether to appoint counsel.

6. Amendment to petition. If the petitioner is not represented by counsel at the time of the filing of the petition and counsel is subsequently retained or is appointed by the court, counsel may cause the petition to be amended within 10 days of appointment or retention. In all other cases, the petition may be amended at any time upon permission of the court for good cause shown. The amended petition shall be filed with the clerk of the Superior Court as provided in subsection 3, paragraph A, and the clerk shall forthwith forward a copy to the assigned justice and to the Attorney General or district attorney representing the respondent.

The filing of an amended petition as of right or a motion to amend a petition shall interrupt the running of the time in which a response by the respondent must be filed. The 10-day period for filing a response shall be computed from the receipt by the respondent of the amended petition or of the order denying the motion to amend the petition.

If a petition is amended after the filing of the response, the respondent may file an additional response within 10 days of receipt of the amended petition.

7. Representation of respondent. In all proceedings for post-conviction review, the State shall be represented by the Attorney General, except that, in any post-conviction review of a revocation of probation, the prosecutorial office which represented the State at the revocation hearing shall represent the State in the proceeding for post-conviction review. On agreement between the Attorney General and a district attorney, a district attorney may represent the State.

8. Response. When a response is ordered under subsection 5, the response shall be by answer, motion to dismiss or notice that the respondent does not contest the petition. If an answer is filed, it shall respond to the allegations of the petition. The respondent may in an answer or motion present argument and cite and discuss authorities or may present this material in a separate document. The respondent may annex to its answer or file with its answer whatever further documents it believes may assist the court in determining the issues raised by the petition. On motion and good cause shown, the court may allow the respondent additional time to file a response.

9. Discovery. A party shall not be entitled to discovery in a proceeding for post-conviction review, unless, and to the extent that, the assigned justice, upon motion and for good cause shown, grants leave for discovery.

10. Determination by court; hearing. The assigned justice shall, after a review of the pleadings and any other material of record, determine whether an evidentiary hearing is required. If the justice determines that an evidentiary

hearing is required, the hearing may be ordered held in any place open to the public in any county.

11. **Bail pending disposition of petition.** Pending final disposition and after he has ordered the respondent to respond to the petition, the assigned justice may order the release of the petitioner on bail, under circumstances and conditions the justice deems appropriate, upon a showing by the petitioner of a reasonable likelihood of prevailing on the petition.

§ 2130. **Relief**

If the court determines that relief should be granted, it shall order appropriate relief, including: Release from incarceration or other restraint; reversal of the criminal judgment, including one entered upon a plea of guilty or nolo contendere; entry of judgment for a lesser included offense; reversal of another order or decision, with or without affording the State or other party a new hearing; granting the right to take an appeal from the criminal judgment; correction of errors appearing as a matter of record; resentencing or a new sentence; and entry of an order altering the amount of time that a person incarcerated under a sentence has served or must serve. The judgment making final disposition shall be a final judgment for purposes of review by the Law Court. When relief is granted to the petitioner and release is appropriate, the justice may release a petitioner on bail pending the proceedings specified in section 2131.

§ 2131. **Review of final judgment**

A final judgment entered under section 2130 may be reviewed by the Law Court.

1. **Appeal by petitioner.** An appeal by the petitioner may not proceed unless the Law Court issues a certificate of probable cause. The filing of the notice of appeal shall be deemed to constitute a request for a certificate. The clerk of the Superior Court, upon receipt of a notice of appeal, shall forward to the Law Court the complete record of the proceedings. The record so forwarded shall be returned to the clerk of the Superior Court with the order of the Law Court. Denial of the certificate constitutes finality of the proceedings. An appeal after the issuance of a certificate of probable cause shall be in the same manner as a criminal appeal from a judgment of conviction.

2. **Appeal by State.** If an appeal is taken by the State, a certificate of probable cause shall not be required. The appeal shall be taken in the same manner as other criminal appeals by the State. No certificate of approval of the Attorney General shall be necessary.

3. **Notice of appeal.** The notice of appeal by any party shall be filed within 20 days after entry of judgment of further time as the Supreme Judicial Court by rule may provide.

§ 2132. **Applicability**

Both the substantive and procedural provisions of this chapter shall apply to any action for post-conviction review commenced after the effective date of this chapter. In the case of any action under Title 14, sections 5502 to 5508 or any other action for collateral review of a conviction or of consequences resulting from a criminal judgment which was commenced prior to the effective date of this chapter and which is pending on the effective date, the petition may be amended to assert any basis for jurisdiction under section 2124 or any grounds for relief not available under prior law; provided that failure to do so shall not constitute waiver pursuant to section 2128, subsection 3. In any pending action brought under prior law, the court in its discretion may apply any of the procedural provisions of this chapter.

Sec. 16. 17 MRSA § 1609-A, sub-§ 1, last sentence, as repealed and replaced by PL 1975, c. 623, § 18-E, is repealed and the following enacted in its place:

An intentional violation of any provision of this subsection by any person, corporation, organization or other legal entity is a Class D crime.

Sec. 17. 17 MRSA § 1609-A, sub-§ 2, as repealed and replaced by PL 1975, c. 623, § 18-F, is repealed and the following enacted in its place:

2. Misrepresentation. A person or corporation, organization or other legal entity is guilty of misrepresentation if:

A. He disconnects, changes or tampers with the odometer of any motor vehicle with the intent to misrepresent or change the number of miles indicated thereon; or

B. He intentionally offers or exposes for sale a motor vehicle if the odometer reading differs from the number of miles the vehicle has been driven, without disclosing that the actual vehicle mileage is unknown.

Misrepresentation is a Class D crime.

Sec. 18. 17 MRSA § 1609-A, sub-§ 3, last sentence, as repealed and replaced by PL 1973, c. 178, is amended to read:

Any failure to attach such notice to the left door frame or any removal or alteration of such notice so affixed ~~shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both~~ is a Class D crime.

Sec. 19. 17-A MRSA § 108, sub-§ 2, ¶ A, sub-¶ (2), as repealed and replaced by PL 1975, c. 740, § 34, is amended to read:

(2) Committing or about to commit a kidnapping, robbery or a ~~forcible sex~~ offense violation of section 252, subsection 1, paragraph B, or section 253, subsection 1, paragraph A, against himself or a 3rd person; or

Sec. 20. 17-A MRSA § 202, sub-§ 1, as repealed and replaced by PL 1977, c. 510, § 39, is amended to read:

1. A person is guilty of felony murder if acting alone or with one or more other persons in the commission of, or an attempt to commit, or immediate flight after committing or attempting to commit murder, robbery, burglary, kidnapping, ~~aggravated arson~~ arson, rape, gross sexual misconduct, or escape, he or another participant in fact causes the death of a human being, and such death is a reasonably foreseeable consequence of such commission, attempt or flight.

Sec. 21. 17-A MRSA § 253, sub-§ 2, ¶C, as enacted by PL 1975, c. 499, § 1, is amended to read:

C. The other person suffers from mental ~~illness or defect~~ **disability** that is reasonably apparent or known to the actor ~~and~~ which in fact renders the other substantially incapable of appraising the nature of the contact involved; or

Sec. 22. 17-A MRSA § 255, sub-§ 1, ¶D, as enacted by PL 1975, c. 499, § 1, is amended to read:

D. The other person suffers from a mental ~~disease or defect~~ **disability** that is reasonably apparent or known to the actor which in fact renders the other person substantially incapable of appraising the nature of the contact involved; or

Sec. 23. 17-A MRSA § 402, as last amended by PL 1977, c. 510, § 53, is repealed and the following enacted in its place:

§ 402. Criminal trespass

1. A person is guilty of criminal trespass if, knowing that he is not licensed or privileged to do so:

A. He enters any dwelling place;

B. He enters any structure that is locked or barred;

C. He enters any place from which he may lawfully be excluded and which is posted in a manner reasonably likely to come to the attention of intruders or which is fenced or otherwise enclosed in a manner designed to exclude intruders;

D. He remains in any place in defiance of a lawful order to leave, which was personally communicated to him by the owner or other authorized person; or

E. He enters any place in defiance of a lawful order not to enter, which was personally communicated to him by the owner or other authorized person.

2. Violation of subsection 1, paragraph A, is a Class D crime. Violation of subsection 1, paragraph B, C, D or E, is a Class E crime.

Sec. 24. 17-A MRSA § 755, sub-§ 3, first sentence, as enacted by PL 1975, c. 499, § 1, is amended to read:

As used in this section, "official custody" means arrest, custody in, or on the way to or from a jail, police station, house of correction, or any institution or facility under the control of the Bureau of Corrections, or under contract with the bureau for the housing of persons sentenced to imprisonment, the custody of any official of the bureau, **the custody of any institution in another jurisdiction pursuant to a sentence imposed under the authority of section 1253, subsection 1-A** or any custody pursuant to court order.

Sec. 25. 17-A MRSA § 755, sub-§ 3-A, 2nd sentence, as enacted by PL 1975, c. 740, § 83, is amended to read:

Prosecution for escape or attempted escape of a person who has been transferred from one institution to another shall be in the county in which the institution the person was **either transferred from or transferred to** is located.

Sec. 26. 17-A MRSA § 755, sub-§ 3-A, as enacted by PL 1975, c. 740, § 83, is amended by adding at the end the following new sentence:

In all cases of escape, prosecution may be in the county or division in which the person who has escaped was apprehended.

Sec. 27. 17-A MRSA § 1203-B is enacted to read:

§ 1203-B. Suspension; probation

The court, at the time of imposing a term of imprisonment for 4 years or more for a Class A or Class B crime, may suspend any portion of the last 2 years with probation. The term of probation shall not exceed one year and shall commence on release from the unsuspended term of imprisonment. The total of the unsuspended term of imprisonment and the suspended term of imprisonment shall not exceed the maximum term authorized for the crime.

Sec. 28. 17-A MRSA § 1205, sub-§ 7, last 2 sentences, as enacted by PL 1977, c. 510, § 71, are amended to read:

~~The running of the period of probation shall cease to be tolled upon a finding of no probable cause under section 1205-A, subsection 4, or upon a disposition of the charges of probation violation pursuant to section 1206~~ If there is a finding of no probable cause, or if the person is found not to have violated his court **does not revoke** probation, the running of the period of probation shall be deemed not to have been tolled.

Sec. 29. 17-A MRSA § 1207 is enacted to read:

§ 1207. Review

Review of a revocation of probation pursuant to section 1206 shall be by post-conviction review as provided in Title 15, sections 2121 to 2132.

Sec. 30. 17-A MRSA § 1252, sub-§ 5, first sentence, as enacted by PL 1975, c. 740, § 118-A, is amended to read:

Notwithstanding any other provision of this code, if the State pleades and proves that a Class A, B or C ~~or D~~ crime was committed with the use of a firearm against a person, the minimum sentence of imprisonment, which shall not be suspended, shall be as follows: When the sentencing class for such crime is Class A, the minimum term of imprisonment shall be 4 years, when the sentencing class for such crime is Class B, the minimum term of imprisonment shall be 2 years and when the sentencing class for such crime is Class C, the minimum term of imprisonment shall be one year.

Sec. 31. 17-A MRSA § 1253, sub-§ 1-A is enacted to read:

1-A. When a person who has been previously sentenced in another jurisdiction has not commenced or completed that sentence, the court, subject to section 1155, may sentence the person to a term of imprisonment which shall be treated as a concurrent sentence from the date of the sentencing although the person is incarcerated in an institution of the other jurisdiction. In the absence of an order pursuant to this subsection requiring concurrent sentences, any sentence of imprisonment in this State shall commence as provided in subsection 1 and shall run consecutively to the sentence of the other jurisdiction. Subsections 3-A, 3-B and 4 shall apply and shall be administered by the supervising officer of this state's institution to which the person is sentenced. If the person is released from imprisonment under the sentence of the other jurisdiction prior to the termination of this state's sentence, the remainder of this state's sentence shall be served in the institution in this State to which the person was sentenced.

Sec. 32. 29 MRSA § 1312, sub-§§ 1, 2 and 3, as repealed and replaced by PL 1971, c. 547 and as amended, are repealed and the following enacted in their place:

1. Prerequisites to tests. Before any test specified is given, the law enforcement officer shall inform the arrested person that if he revokes his implied consent to a chemical test by refusing to permit a test at the direction of the law enforcement officer, his license will be suspended for 90 days or more, and the revocation of consent shall be admissible in evidence against him at any trial for operating under the influence of intoxicating liquor.

No test results shall be excluded as evidence in any proceeding before any administrative officer or court of this State as a result of the failure of the law enforcement officer to comply with this prerequisite. The only effects of the

failure of the officer to comply with this prerequisite shall be as provided in subsections 2 and 8.

2. **Hearing.** If a person under arrest revokes his implied consent to a chemical test by refusing upon the request of a law enforcement officer to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, none shall be given. The Secretary of State, upon the receipt of a written statement under oath, within 20 days of the date, of the arrest of a person for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, and that such person had revoked his consent by refusing to submit to a chemical test to determine this blood-alcohol level by analysis of his blood or breath, shall immediately notify the person, in writing, as provided in section 2241, that his license or permit and his privilege to operate have been suspended. Such suspension shall be for a period of 3 months for a first refusal or revocation of consent under this or any prior implied consent provision under Maine law. If such refusal or revocation of consent is a 2nd or subsequent refusal or revocation of consent under this or any prior implied consent provision under Maine law, such suspension shall be for a period of 6 months.

If such person desires to have a hearing, he shall notify the Secretary of State within 10 days, in writing, of such desire. Any suspension shall remain in effect pending the outcome of such hearing, if requested.

The scope of such a hearing shall cover whether the individual was lawfully placed under arrest and whether he revoked his prior implied consent by refusing to submit to one of the tests upon the request of a law enforcement officer. Any suspension in effect shall be removed if, after hearing, it is determined that the arrested person who refused to permit the test would not have refused but for the failure of the law enforcement officer to give either or both of the warnings required by subsection 1.

If it is determined, after hearing when such is requested, that such person was not arrested or did not revoke his implied consent to permit a chemical test to determine his blood-alcohol level by analysis of his blood or breath, any suspension in effect shall be removed immediately.

3. **Review.** Any person, whose license, permit or privilege to operate is suspended for revoking his implied consent to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath at the direction of a law enforcement officer after having been arrested for operating or attempting to operate while under the influence of intoxicating liquor, shall have the right to file a petition in the Superior Court in the county where he resides, or in Kennebec County, to review the order of suspension by the Secretary of State by the same procedure as is provided in section 2242.

Sec. 33. 29 MRSA § 1312, sub-§ 8, last ¶, as enacted by PL 1979, c. 422, § 1, is repealed and the following enacted in its place:

The revocation of a person's implied consent to a chemical test by refusing to

allow the taking of a sample specimen as authorized by this section shall be admissible in evidence on the issue of whether that person was under the influence of intoxicating liquor. If the arresting law enforcement officer fails to give either of the warnings required under subsection 1, the revocation of the person's implied consent by refusing to submit to a chemical test shall not be admissible. If a revocation of consent is not admitted into evidence, the court may inform the jury of the fact that no test result is available.

If a test result is not available for a reason other than revocation of consent, the unavailability and the reason shall be admissible in evidence.

Sec. 34. 36 MRSA § 5334, as amended by PL 1973, c. 567, § 20, is repealed and the following enacted in its place:

§ 5334. Venue

The failure to do any act required by or under this Part shall be deemed an act committed in part at the principal office of the assessor. Any prosecution under this Part may be conducted in any county where the person or corporation to whose liability the proceeding relates resides or has a place of business, or in any county, in which such crime is committed.

Effective July 3, 1980

CHAPTER 702

H. P. 1771 — L. D. 1891

AN ACT to Establish a Modified Procedure on Matters before the Public Utilities Commission Relating to Contract Carrier Permits and Special and Charter Bus Licenses.

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

Sec. 1. 35 MRSA § 1554, 1st sentence is amended to read:

Every holder of a certificate of public convenience and necessity shall file with the commission a schedule or schedules showing its rates or charges for service rendered or furnished or to be rendered or furnished within the State, including rates or charges established jointly with other such holders to the extent authorized by the commission ~~over routes not served by a single common carrier.~~

Sec. 2. 35 MRSA § 1555, sub-§ 3, first sentence, as repealed and replaced by PL 1977, c. 46, is repealed and the following enacted in its place:

The commission shall hold a hearing on an application for a permit if a hearing is