

MAINE STATE LEGISLATURE

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December 1, 1961

John J. Shea, Director

Div. of Probation & Parole

Courtland D. Perry, II, Ass't. Atty. Gen'l.

Mental Health and Corrections

Procedures Relative to Arrest, Return, and Hearing of Alleged Probation Violators

Research into the questions which you raised has produced very little material useful in the analysis and solution of such questions. My opinions, therefore shall be based on interpretations of pertinent sections of the Maine Revised Statutes and on a consideration of the questions with a view to the administration of the probation-parole law.

- 1. **IS THE PROBATION-PAROLE OFFICER VESTED WITH THE SOLE AUTHORITY TO ARREST AND RETURN FOR HEARING ANY ALLEGED PROBATION VIOLATORS?** Sections 2, 5, and 7 of Chapter 27-A, Maine Revised Statutes, 1954, set out below, provide a basis for an opinion as to this question.

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Sec. 2. The Department of Health and Welfare, Department of Mental Health and Corrections, officers and staff of the penal and correctional institutions and law enforcement agencies in the state shall cooperate with the Board in exercising its administration.

Sec. 5. Powers of Officers, Sub. Sec. 7. To arrest and return probation and parole violators on warrants issued by the appropriate authorities.

Sec. 7. Each Probation-Parole Officer has authority to arrest and charge a probationer with violation of probation and take him into his custody at any time he may be found, to detain such probationer in a 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 8.

Reading these sections together, it is seen that the Probation-Parole Officer is given the power to arrest and return alleged probation violators and that law enforcement agencies in the state shall cooperate with the Probation-Parole Board. The language of Sec. 5, Sub. Sec. 7 and of Sec. 7 does not appear to be mandatory providing exclusive authority but appears to be merely enabling giving the authority to arrest and return alleged probation violators which otherwise would not exist without such language.

Since Probation and Parole was not known in the common law, creation of such system necessarily entailed enumeration of the powers and duties of Probation-Parole Officers. Had the legislature, in enumerating such powers and duties, intended that Probation-Parole Officers be vested with the sole authority to arrest and return alleged violators, the language of the sections in question would have so indicated. A consideration of the composition and functions of the Probation-Parole system strengthens this opinion. There are some 3,000 probationers in the State of Maine and less than thirty (30) Probation-Parole Officers supervising the activities and behavior of those persons. A Probation-Parole Officer's duties are mainly supervisory and he

or who is not trained in the techniques familiar to a police officer and is not trained in the use of and does not carry firearms. If such officers have the sole responsibility for the arrest of alleged probation violators, such arrest would occur in many instances by mere chance, considering the numbers involved and in many instances the responsibility for such arrest would jeopardize the safety of such untrained and unarmed officers. I, therefore, conclude on this point that the combination of factors, being the enabling nature of the authority of Probation-Parole Officers the mandatory nature of the section prescribing for the cooperation of law enforcement agencies in the state and the composition and function of the Board and its staff provides sufficient basis for the opinion that the authority to arrest and return for hearing any alleged probation violator is concurrent with Probation-Parole Officers and law enforcement agencies in the state.

II. SHOULD A DATE AND TIME CERTAIN FOR HEARING BE FIXED IN THE ORDER ISSUED BY THE COURT FOR THE ARREST AND RETURN OF AN ALLEGED PROBATION VIOLATOR?

In many instances of alleged probation violation the whereabouts of the alleged violator is not known at the time of filing a probation violation report. This being true it would appear that the proper time for fixing a date and time for hearing would be after the alleged violator is in custody. If a date were set at the time of issuance of the order and the alleged violator's whereabouts is not known upon that date, it would be necessary at that time to issue a new order setting a new date. Considering the frequently crowded dockets of the courts and considering the time and paper-work involved in continuously obtaining new orders until the whereabouts of an alleged violator is known, it would appear that pursuit of such a procedure would be burdensome for the courts and for the officers concerned. It is my opinion that the order issued for the arrest and return of an alleged probation violator should be treated as is a warrant issued for the initial apprehension of an alleged offender and should continue in effect until withdrawn, or if not withdrawn, until the probationer is apprehended, at which time the date and time for hearing should be set.

III. SHOULD THE TERM OF PROBATION BE TOLLED UPON ISSUANCE OF THE ORDER FOR THE ARREST OF AN ALLEGED VIOLATOR?

Without interrupting the running of the period of probation at the time of issuance of the order for the arrest of an alleged violator, the probationer could abscond from the state, remain without the state for the duration of the maximum probationary period of two (2) years and then return to this state free from the further control of the court and free from the further supervision of the Probation-Parole Board. Surely the law was not intended to provide the probationer with such a medium through which to thwart the administration of the Probation-Parole law. Such an incongruous result would indeed hamstring and defeat the objectives of the Probation-Parole Board.

The State of Wisconsin has reached a solution to this problem by the following legislation:

Vol. 1, Wisconsin Statutes, G. 57, Sec. 57.072, Period of Probation or Parole tolled, "the period of probation or parole ceases running upon the offenders' absconding or committing a crime or some other violation of the terms of his probation or parole, which is sufficient in the opinion of the court or the department to warrant revocation of probation or parole, and remains tolled until the happening of one of the following events:

1. Receipt of the offender at the penal institution to which he has been sentenced or from which he has been paroled.
2. In cases supervised by the department, reinstatement of the offenders' parole or probation by order of the department.
3. In cases of misdemeanants and in cases under Section 57.085, reinstatement of probation by order of the court. The date of order of reinstatement is the date on which the period of probation or parole again begins to run.

It would be well to consider enacting like legislation in this state, but until that time it is my hope that the courts, by judicial ruling, will reach a similar result.

GSP/ans

cc: Office of the Attorney General

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