

# MAINE STATE LEGISLATURE

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**ONE HUNDRED AND SECOND LEGISLATURE**

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**Legislative Document**

**No. 1547**

S. P. 548

In Senate, May 14, 1965

Reported by Senator Violette of Aroostook from Committee on Judiciary  
and printed under Joint Rules No. 10.

EDWIN H. PERT, Secretary

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**STATE OF MAINE**

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-FIVE

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**AN ACT Providing for Appeal of Sentence in Criminal Cases.**

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

**Sec. 1. R. S., T. 15, c. 306, additional.** Title 15 of the Revised Statutes is amended by adding a new chapter 306 to read as follows:

**‘CHAPTER 306**

**APPELLATE REVIEW OF CERTAIN SENTENCES**

§ 2141. **Appellate division of the Supreme Judicial Court for review of certain sentences**

There shall be an appellate division of the Supreme Judicial Court for the review of sentences to the State Prison imposed by final judgments in criminal cases, except in any case in which a different sentence could not have been imposed. The appellate division shall consist of 3 Justices of the Supreme Judicial Court to be designated from time to time by the Chief Justice of said court, and shall sit in Rockland or at such other place as may be designated by the Chief Justice, and at such times as he shall determine. No justice shall sit or act on an appeal from a sentence imposed by him. Two justices shall constitute a quorum to decide all matters before the appellate division.

A designation by the Chief Justice of the members of the appellate division shall be recorded by the clerk for criminal business in Kennebec County who shall forthwith send copies thereof to the several clerks of the Superior Court.

§ 2142. **Procedure for appeal; hearing and determination**

A person aggrieved by a sentence which may be reviewed may after imposition thereof and within such time as the Supreme Judicial Court shall by rule

provide, notwithstanding any partial execution of such sentence, file with the clerk of the court in which the sentence was imposed an appeal to the appellate division for the review of such sentence. Upon the imposition of such a sentence to the State Prison, the clerk of the court shall notify the person sentenced of his right to request such appeal. An appeal shall not stay the execution of a sentence. The clerk shall forthwith notify the Chief Justice, the justice who imposed the sentence appealed from and the appellate division of the filing of such an appeal. Such justice may transmit to the appellate division a statement of his reasons for imposing the sentence and shall make such a statement within 7 days if requested to do so by the appellate division.

The appellate division shall have jurisdiction to consider the appeal with or without a hearing, review the judgment so far as it relates to the sentence imposed, and also any other sentence imposed when the sentence appealed from was imposed, notwithstanding the partial execution of any such sentence, and shall have jurisdiction to amend the judgment by ordering substituted therefor a different appropriate sentence or sentences or any other disposition of the case which could have been made at the time of the imposition of the sentence or sentences under review, but no sentence shall be increased without giving the defendant an opportunity to be heard. If the appellate division decides that the original sentence or sentences should stand, it shall dismiss the appeal. Its decision shall be final. The clerk shall forthwith notify the Chief Justice and the justice who imposed the sentence appealed from of the final action by the appellate division on the appeal. The appellate division may require the production of any records, documents, exhibits or other things connected with the proceedings; if a presentence investigation has not previously been made, the appellate division may refer the matter to the State Probation and Parole Board for investigation and report. The Supreme Judicial Court shall by rule establish forms for requests for appeals and for leave to appeal hereunder and may by rule make such other regulations of procedure and notice relative thereto, consistent with law, as justice may require.

#### § 2143. Notice of dismissal of appeal; procedure on amendment of judgment

If an appeal is dismissed, the clerk for the county where the judgment was rendered shall forthwith notify the appellant and the Warden of the State Prison in which the appellant is confined. If the judgment is amended by an order substituting a different sentence or sentences or disposition of the case, any Justice of the Superior Court when in Knox County shall resentence the defendant or make any other disposition of the case ordered by the appellate division. Time served on a sentence appealed from shall be deemed to have been served on a substituted sentence.

#### § 2144. Duty of clerk when appeal heard in another county

When an appeal is considered or heard in a county other than that in which the judgment was rendered, or when a defendant is brought before the court for resentence or other disposition in such a county, the clerk for such county or an assistant clerk shall act as clerk for the county in which the judgment was rendered and shall issue any process required, and shall transmit copies thereof with a statement of the proceedings to the last mentioned clerk.'

**Sec. 2. Temporary provision for review of certain sentences in criminal cases.**

A person who, on the effective date of this Act, is imprisoned under a sentence to State Prison imposed prior to the effective date of this Act and who is not eligible for parole may, notwithstanding the partial execution of such sentence, appeal to the appellate division of the Supreme Judicial Court for a review of such sentence and of any other sentence imposed when the sentence appealed from was imposed; provided at the time of such appeal such person shall execute a written consent to such sentence as may be imposed by said appellate division on such review. No such appeal shall be considered if taken later than 2 years after the effective date of this Act nor in any case in which a different sentence could not have been imposed. The appellate division shall have jurisdiction of any such appeal and may consider the appeal with or without a hearing, review the judgment insofar as it relates to the sentence imposed, and if in its opinion any appeal should not be considered, it may refuse to consider the same and its decision shall be final.

The justice who imposed the sentence appealed from, if still acting as such justice, and the county attorney of the county wherein the case was prosecuted shall be notified of the appeal, and may appear and make a statement regarding the case and sentence.

If the appellate division considers the appeal, Revised Statutes, Title 15, sections 2141 to 2144 shall, so far as pertinent, apply.

The Commissioner of Mental Health and Corrections shall, as soon as may be after the effective date of this Act, cause a printed notice containing a copy of this Act and the pertinent provisions of said sections 2141 to 2144 to be delivered in hand to each person entitled to appeal hereunder, and a record of such delivery shall be made.

**Sec. 3. Effective date.** This Act shall take effect on December 1, 1965.