

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 663

S. P. 228

In Senate, February 7, 1973

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Tanous of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Revise Laws Relating to Violations of Parole.

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

R. S., T. 34, § 1675, amended. The first 2 paragraphs of section 1675 of Title 34 of the Revised Statutes, as amended, are repealed and the following enacted in place thereof:

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. No such arrest and detention pending issuance of a warrant and preliminary hearing shall be made unless the alleged violation shall be commission of a criminal act.

Upon issuance of a warrant for parole violation, the board shall hold a preliminary hearing at or reasonably near the place of the alleged parole violation as close in time to the alleged event as reasonably possible and in no event more than 5 days after the alleged violation. The board shall give the parolee written notice of the time, date, place, and circumstances of the alleged violation, and the time, date and place of the scheduled hearing. At the hearing, the parolee is entitled to appear and present witnesses, confront and cross-examine adverse witnesses and may be represented by counsel. If probable cause for revocation of parole is found at the preliminary hearing, a

parole violation hearing shall be held within 14 days of the preliminary hearing. If the parolee has violated a condition of his parole other than by the commission of a criminal act, he may continue in his current parole program pending a final hearing. The board shall give the parolee written notice of the hearing; the time, date and place of the scheduled hearing; and his rights under this provision. At the hearing, the parolee shall be represented by counsel unless he intelligently waives this right. If the parolee is indigent, the board, within a reasonable time prior to the hearing, shall request the court in which the parolee was originally tried and convicted to appoint counsel at state expense to represent the parolee in the parole proceedings. At the hearing, the parolee or his counsel may subpoena witnesses and present evidence in his own behalf, confront and cross-examine adverse witnesses, examine other evidence or information, and propose alternative dispositions to the board. The parolee is also entitled to a written statement by the board of the evidence relied on and the reasons for the revocation of parole. The board shall not revoke the parolee's parole unless it has substantial reason to believe, based upon the evidence at the hearing, that the parolee will pose a substantial danger to society unless confined. If the board after hearing, revokes parole, it shall 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.

STATEMENT OF FACT

The purpose of this bill is to bring present Maine law in compliance with the United States Supreme Court case of **Morrissey v. Brewer**, 92 S. Ct. 2593 (1972). That case required a preliminary hearing prior to revocation of parole to determine probable cause and also required that certain minimal procedural requirements be observed at the hearing on violation of parole.