

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

NINETY - EIGHTH LEGISLATURE

Legislative Document

No. 1621

S. P. 623

Committee on Judiciary suggested.

In Senate, October 28, 1957.

CHESTER T. WINSLOW, Secretary.

Presented by Senator Silsby of Hancock.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-SEVEN

AN ACT Clarifying Probation Procedure Under Probation and Parole Law.

Emergency preamble. Whereas, the 98th Legislature by appropriate enactment established a uniform state administered probation and parole law; and

Whereas, the judicial probation of persons is an essential and integral component of the correctional rehabilitation program of this State; and

Whereas, because of certain procedural technicalities those provisions providing for the probation of persons by the courts are administratively inoperative; and

Whereas, the following legislation is vitally necessary to correct these technicalities; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine, and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. R. S., c. 27-A, § 5, sub-§ III, amended. Subsection III of section 5 of chapter 27-A of the Revised Statutes, as enacted by section 1 of chapter 387 of the public laws of 1957, is hereby amended to read as follows:

‘III. To supervise the probation or parole of each person placed ~~in his custody, to furnish him a written statement of the conditions of his probation or parole and to instruct him concerning those conditions under his supervision.~~

Sec. 2. R. S., c. 27-A, § 6, repealed and replaced. Section 6 of chapter 27-A of the Revised Statutes, as enacted by section 1 of chapter 387 of the public laws of 1957, is hereby repealed and the following section enacted in place thereof:

'Sec. 6. 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.

I. The Court may continue a case for sentence for not more than 4 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 of not more than \$100 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.

II. The Court may impose a sentence, suspend its execution for not more than 4 years and place the respondent on probation.

A. When a person is convicted of an offense which is punishable by imprisonment and fine, the Court may sentence him to a fine and a term of imprisonment, suspend execution of the imprisonment, and place him on probation as to the imprisonment on condition that he pay the fine within a definite time. In default of payment of the fine, the Court may impose an additional sentence of not more than 6 months.

B. When the probationer pays the fine or part of it to a Probation-Parole Officer, he shall give the probationer a receipt for it.

This section does not deprive a respondent of any existing right of appeal, review or retrial.'

Sec. 3. R. S., c. 27-A, § 7, amended. Section 7 of chapter 27-A of the Revised Statutes, as enacted by section 1 of chapter 387 of the public laws of 1957, is hereby amended to read as follows:

'Sec. 7. Person on probation under jurisdiction of Court. A person on probation is under the sole jurisdiction of the Court which ~~finally tried his case~~ **ordered his probation.** When a person is placed on probation, he shall be committed by the Court to the custody and control of ~~a Probation-Parole Officer~~ **the State Probation and Parole Board. The Board shall designate one or more Probation-Parole Officers to supervise the probationer during the term of his probation.**

The 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 8. In the event the Court refuses to issue an order returning the probationer as provided under section 8, 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 8, 9 and 10 may be taken by any Probation-Parole Officer.

The Court shall fix the duration of the probation, which may not be more than 4 years. The Court shall determine the conditions of the probation and shall give the probationer a written statement containing the conditions of his probation. ~~The probationer shall forthwith report to the Probation-Parole Officer and shall subsequently report to the Probation-Parole Officer as he may direct.~~

Sec. 4. R. S., c. 27-A, § 8, amended. Section 8 of chapter 27-A of the Revised Statutes, as enacted by section 1 of chapter 387 of the public laws of 1957, is hereby amended to read as follows:

'Sec. 8. Person violating probation. ~~When a probationer violates a condition of his probation, the Probation-Parole Officer the State Probation and Parole Board charges a probationer with violation of a condition of his probation the Board 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 if imposition of sentence has been suspended 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.'~~

Sec. 5. R. S., c. 27-A, § 9, sub-§ I, amended. Subsection I of section 9 of chapter 27-A of the Revised Statutes, as enacted by section 1 of chapter 387 of the public laws of 1957, is hereby amended to read as follows:

'I. ~~When it appears to a Probation-Parole Officer the State Probation and Parole Board that a probationer is no longer in need of his supervision, he the Board 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.'~~

Sec. 6. R. S., c. 27-A, § 10, sub-§ II, amended. The next to the last sentence of subsection II of section 10 of chapter 27-A of the Revised Statutes, as enacted by section 1 of chapter 387 of the public laws of 1957, is hereby amended to read as follows:

'When he is brought before the Court, it may accept a similar recognizance for his subsequent production, or may order him committed to the custody and control of a Probation-Parole Officer the State Probation and Parole Board to be kept and produced before the Court at the time appointed.'

Sec. 7. R. S., c. 27-A, § 10, sub-§ III, amended. Subsection III of section 10 of chapter 27-A of the Revised Statutes, as enacted by section 1 of chapter 387 of the public laws of 1957, is hereby amended to read as follows:

'III. When he has been arrested for any offense and confined in a jail or police station, the proper Court, on application of ~~the~~ a Probation-Parole Officer, may issue a written order that he be placed forthwith in the custody of the ~~Probation-Parole Officer~~ **State Probation and Parole Board** pending trial.'

Emergency clause. In view of the emergency cited in the preamble, this act shall take effect when approved.

SUMMARY STATEMENT

This bill amends in some respects the State-wide probation bill passed at the regular session of this Legislature. A brief description of the amendments is as follows:

The amendment permits the State probation and parole board to operate within the intent of the original bill in that the courts place individuals under the control and custody of the board rather than a particular probation and parole officer. This gives the State probation and parole board an area of maneuverability and flexibility without which the entire structure of probation and parole becomes almost inoperative.

This bill also gives to the board the right to transfer supervision of a particular case from one probation-parole officer to another as circumstances may dictate or make necessary. This procedure will provide continuity in the probation service.

This bill further defines the authority given to each probation-parole officer. Under the terms of the original bill duties of the officer were specific but the authority to carry out these duties was not defined. This amendment gives to the individual probation-parole officer the authority to detain, for example, in custody the individual for return to court when it appears that a violation has occurred.

Other amendments as proposed are technical in nature rather than substantive and are designed towards facilitating the administration of this bill.