Approved for reprint 11 June 1984.

WESTERN AUSTRALIA.

OFFENDERS PROBATION AND PAROLE ACT 1963-1983.

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WESTERN AUSTRALIA.

OFFENDERS PROBATION AND PAROLE.

12° Elizabeth II., No. XXIII.

No. 23 of 1963.[1]

[As amended by Acts:
No. 34 of 1964, assented to 3 November 1964;
No. 73 of 1965,[2] assented to 25 November 1965;
No. 3 of 1969,[3] assented to 21 April 1969;
No. 40 of 1970, assented to 23 September 1970;
No. 16 of 1971, assented to 4 October 1971;
No. 57 of 1976,[4] assented to 16 September 1976;
No. 39 of 1977, assented to 7 November 1977;
No. 96 of 1980, assented to 9 December 1980;
No. 116 of 1981,[5] assented to 14 December 1981;
No. 89 of 1982,[6] assented to 17 November 1982,
No 68 of 1983,[7] assented to 22 December 1983,
and reprinted pursuant to the Amendments Incorporation Act 1938.]

AN ACT relating to the Release of Offenders on Probation or Parole or under Community Service Orders.

Long title Amended by No. 57 of 1976, s. 3.

[*Assented to 13 November 1963.*]

BE it enacted—

PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as the *Offenders Probation and Parole Act 1963-1983.*

Commencement.

2. (1) This Act shall come into operation on a day to be fixed by proclamation[1].

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[1] See footnote on p. 2.
[2] Came into operation on 17 December, 1965; see *Gazette* 17/12/1965, p. 4191.
[3] Came into operation on 1 July, 1969; see *Gazette* 27/6/1969, p. 1874.
[4] Came into operation on 1 February, 1977; see *Gazette* 28/1/1977, p. 186.
[5] Came into operation on 1 August, 1982; see section 2.
[6] Came into operation on 10 December, 1982; see *Gazette* 10/12/1982, p. 4779.
[7] All of the provisions other than sections 8, 9 and 10 came into operation on 6 April 1984; see *Gazette* 6/4/84, p. 925.

Note: as at the date of this reprint sections 8, 9 and 10 of Act No. 68/83 had not been proclaimed and the relevant amendments made by those sections of the Act are not included in this reprint.

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(2) It shall not be necessary to proclaim that the whole Act shall come into operation on one day, but the several Parts of this Act and sections may be proclaimed to come into operation on such days as are respectively fixed by proclamation.[1]

[*Section 3 repealed by No. 89 of 1982, s. 3.*]

Interpretation.
Amended by No. 3 of 1969, s. 4; No. 57 of 1976, s. 5; No. 116 of 1981, s. 11; No. 89 of 1982, s. 3.

4. In this Act unless the contrary intention appears—

"another State" means any State of the Commonwealth other than this State;

"authority", in relation to a probation or parole order made in another State or a Territory, means the Governor, Governor in Council, Court, Board, committee, person or other authority duly authorized to make the order in question;

"children's court" means a children's court established under the Child Welfare Act 1947;

"community service order" means an order made under section twenty B of this Act;

"Director" means the Director, Probation and Parole Services referred to in section 5A of this Act;

"Director of Prisons" means the Director of the Western Australia Prisons Department referred to in section 6 of the Prisons Act 1981;

"District Court" means The District Court of Western Australia;

"member" means member of the Board, and includes the Chairman of the Board;

"minimum term" in relation to a sentence of imprisonment means that part of the sentence, fixed in accordance with this Act, during which the offender is not eligible to be released on parole;

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[1] Parts I, III and IV came into operation on 1/10/64, see G.G. 25/9/64, p. 3325. Part II came into operation 1/1/65, see G.G. 11/12/64, p. 3995.

"offence" means an offence that is triable—

(a) on indictment: or

(b) summarily and which is punishable in the first instance by a term of imprisonment;

"parole officer" means a parole officer appointed under this Act and includes the Director and Deputy Director, Probation and Parole Services, an honorary parole officer and a person deemed to be a parole officer under subsection (5a) of section thirty-five of this Act;

"parole order" means an order made under this Act directing that a prisoner be released from prison on parole;

"prison" has the same meaning as that expression has in section 3 of the Prisons Act 1981;

"probationer" means a person in respect of whom a probation order is made;

"probation officer" means a probation officer or honorary probation officer appointed under this Act and includes the Director and Deputy Director, Probation and Parole Services and a person deemed to be a probation officer under subsection (5a) of section six of this Act;

"probation order" means an order made under section nine of this Act;

"term" in relation to imprisonment, includes the aggregate of two or more terms, whether cumulative or concurrent;

"the Board" means the Parole Board established under this Act;

"the parole period" means the period during which a prisoner is released from a prison on parole under the supervision of a parole officer pursuant to a parole order;

"the probation period" means the period specified in a probation order during which the probationer to whom the order relates is required to be under the supervision of a probation officer;

"Territory" means a Territory of the Commonwealth.

Application and construction of Act. Amended by No. 34 of 1964, s. 2; No. 40 of 1970, s. 2; No. 57 of 1976, s. 6.

5. (1) Part II of this Act—

(a) does not apply to or with respect to a person under the age of seventeen years who is convicted of an offence by a children's court unless that person is committed to the Supreme Court or the District Court for sentence pursuant to section twenty of the Child Welfare Act 1947; and

(b) shall be read and construed so as not to limit or otherwise affect the provisions of that Act as respects the release on probation of a child convicted of an offence by a children's court.

(2) Except where expressly provided, nothing in this Act shall be construed as taking away or in any way derogating from or diminishing any power or jurisdiction conferred by any Act or otherwise by law upon any court or person acting judicially.

(3) Nothing in this Act in any way affects Her Majesty's royal prerogative of mercy.

(4) This Act shall be construed so as not to prejudice or affect any civil liability incurred by any probationer in respect of an act or omission that constitutes an offence.

(5) In Part II or IIA of this Act a reference to the court by which a probation order or community service order was made shall be deemed to include a reference—

(a) where the order was made by the Supreme Court—to any sitting of the Supreme Court in its criminal jurisdiction at any place in the State;

(b) where the order was made by the District Court—to any sitting of the District Court in its criminal jurisdiction at any place in the State;

(c) where the order was made by a court of petty sessions—to any court of petty sessions sitting at the place at which the order was made,

notwithstanding that the judge, stipendiary magistrate or justices, as the case may be, constituting the court may not be the same as made the order originally.

Director and Deputy Director. Inserted by No. 89 of 1982, s. 5.

5A. (1) Under and subject to the Public Service Act 1978 the Governor may appoint, for the purposes of this Act—

(a) a person to be Director, Probation and Parole Services; and

(b) a person to be Deputy Director, Probation and Parole Services, who during the absence from duty of the Director on account of illness, leave of absence or other cause or during any vacancy in the office of Director, has the duties, powers and authorities of Director.

(2) The functions, powers and duties of the Director shall be as prescribed by or under this Act and by rules made in that behalf by the judges.

PART II.—PROBATION OF OFFENDERS.

Appointment of probation officers. Amended by No. 73 of 1965, s. 3; No. 3 of 1969, s. 5; No. 89 of 1982, s. 6.

6. (1) Under and subject to the Public Service Act 1978, the Governor may appoint, for the purposes of this Act,

[*Paragraphs (a) and (b) deleted by No. 89 of 1982, s. 6.*]

(c) such number of persons of either sex, as he thinks necessary for the purpose of giving effect to this Act, to be probation officers; and

(d) such other officers as he thinks necessary for that purpose.

(2) A person may be appointed under this Act to hold one or more offices under this Act.

(3) The Governor may, on such terms and conditions as may be prescribed, appoint any person, not being a member of the police force to be an honorary probation officer for the purposes of this Act, and may at any time remove any person so appointed.

[*Subsection (4) repealed by No. 73 of 1965, s. 3.*]

(5) Any appointment of an honorary probation officer under subsection (3) of this section may be made by the appointment of the holder for the time being of an office, specifying the office but without naming the holder, and in any such case each successive holder of that office and each person who, for the time being, occupies or performs the duties of that office shall, without further appointment or other authority, and while he holds or occupies or performs the duties of that office, be an honorary probation officer under this Act in terms of such appointment.

(5a) A person who holds or occupies—

(a) the office of probation officer; or

(b) any office that is prescribed for the purposes of this Act, to be an office similar to that of probation officer,

in another State or a Territory shall, by virtue of his office and without further appointment or other authority than this subsection, be deemed to be a probation officer for the purposes of a probation order that permits or requires a probationer to reside in that State or Territory.

(6) The functions, powers and duties of a probation officer shall be as prescribed by or under this Act and by rules made in that behalf by the judges.

(7) A probation officer is not liable in an action or in proceedings in respect of anything done or omitted in good faith in the exercise or purported exercise of any power or duty conferred or imposed on the probation officer by or under this or any other Act.

Direction and control of probation officers. Amended by No. 89 of 1982, s. 26.

7. Each probation officer is, in relation to a probation order, subject to direction by the court that made the order, but otherwise the Director is under the control of the Minister or such other person as the Minister shall from time to time in writing determine and all other probation officers are under the immediate control of the Director.

Reports to courts. Amended by No. 89 of 1982, s. 26.

8. The Director shall—

(a) when and as often as he is required by any court to do so, cause to be prepared and submitted to that court such reports and information with respect to any convicted person as the court requires, including notwithstanding the provisions of section one hundred and twenty-six of the Child Welfare Act 1947, the fact that the convicted person has been committed to the care of the State or to an institution, or convicted under that Act, as the case may be; and

(b) in each year, before the first day of October in that year, prepare and submit to the Minister an annual written report as to—

(i) the number of persons placed on probation under this Part of this Act during the year ending on the thirtieth day of June last preceding, the number of probation orders discharged during that year and the number of persons sentenced during

that year on account of breaches of probation orders, including convictions for offences committed during the probation period; and

(ii) the operation of this Act in relation to probation and the proceedings of probation officers generally during that year.

Power of courts to make probation orders. Amended by No. 73 of 1965, s. 4; No. 3 of 1969, s. 6; No. 57 of 1976, s. 7; No. 89 of 1982, ss. 7 and 26.

9.[1] (1) Subject to section five of this Act, when a person is convicted by a court of any offence punishable by a term of imprisonment otherwise than in default of payment of a fine, if the court is of opinion that, having regard to the circumstances, including the nature of the offence, the character and personal history of the offender, his home surroundings and other environment, it is expedient to do so, the court may, instead of sentencing him, make an order requiring him to be under the supervision of a probation officer for such period, being not less than six months and not more than five years, as is specified in the order.

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[1] Sections 24 and 25 of Act No. 89 of 1982 reads as follows:—

Transitional. 24. (1) Section 9 of the principal Act, as amended by section 7 of this Act, applies to a person who, having been convicted of an offence referred to in section 9 (1) before the date of the coming into operation of section 7 of this Act, has not been sentenced for that offence before that date.

(2) Section 20B of the principal Act, as amended by section 10 of this Act, applies to a person who, having been convicted of an offence referred to in section 20B (1) before the date of the coming into operation of section 10 of this Act, has neither been sentenced for that offence nor dealt with under section 9 or section 20B of the principal Act before that date.

(3) The person holding office as Chief Probation Officer immediately before the coming into operation of this Act shall continue in office and be deemed to have been appointed to the office of Director, Probation and Parole Services referred to in section 5A of the principal Act.

(4) The person holding office as Deputy Chief Probation Officer immediately before the coming into operation of this Act shall continue in office and be deemed to have been appointed to the office of Deputy Director, Probation and Parole Services referred to in section 5A of the principal Act.

References in other Acts etc. 25. (1) A reference in any law of the State to the Chief Probation Officer shall, unless the context otherwise requires, be read and construed as a reference to the Director, Probation and Parole Services and on a reprint of an Act or regulation pursuant to statutory authority the reference may be altered accordingly.

(2) A reference in any law of the State to the Chief Parole Officer shall, unless the context otherwise requires, be read and construed as a reference to the Director, Probation and Parole Services and on a reprint of an Act or regulation pursuant to statutory authority the reference may be altered accordingly.

(3) For the purposes of this section the term "law of the State" means—

(a) an Act;

(b) any regulation or rule having effect by virtue of an Act; or

(c) any instrument having effect by virtue of an Act or of any regulation or rule referred to in paragraph (b).

(1a) Where a court has convicted a person of an offence and requires a report from the Director under paragraph (a) of section eight of this Act, before sentencing the person for the offence or making a probation order with respect to him, the court may, without prejudice to any other powers that the court may exercise, adjourn the hearing of the proceedings with respect to the offence and release the person on bail, with or without sureties to appear on the adjourned hearing.

(2) Subsection (1) of this section applies to a person who, having been so convicted of such an offence before the date of the coming into operation of this Part of this Act, has not been sentenced for that offence before that date.

(3) The court that makes an order pursuant to subsection (1) of this section shall specify therein a court of petty sessions, being the court of petty sessions nearest to the place where the probationer intends to reside, or being the court of petty sessions that the court making the order deems most convenient in the circumstances, to be the supervising court in respect of the order, and the court of petty sessions so appointed, or such other court of petty sessions as is substituted therefor as provided in this Act, shall for the purposes of this Act be the supervising court in respect of that order.

(4) A court of petty sessions when acting as a supervising court shall be constituted by a stipendiary magistrate.

(5) A probation order shall require the probationer to report himself in person where directed in the order within twenty-four hours after his release pursuant to the order or as otherwise so directed.

(6) (a) A probation order may, in addition to the requirement referred to in subsection (5) of this section, require the probationer named therein to comply during the whole or any part of the probation period with such requirements

including, without limiting the generality of the expression, a requirement that the probationer submit himself to medical, psychiatric or psychological treatment, and for the purpose of receiving the treatment, if the court is satisfied that arrangements have been made or can be made for his reception, that he reside for such period, not exceeding twelve months as may be specified in the order, in an institution or place so specified,

as the court making the order considers necessary for securing the good conduct of the probationer or for preventing a repetition by him of the same offence in respect of which he was placed on probation or the commission by him of other offences.

(b) A probation order may in addition to any other requirement permitted by this Act to be included therein, require the probationer to pay, on such terms and conditions as the Court thinks fit, such damages for injury or compensation for loss, caused by or arising out of the act or omission that constitutes the offence in respect of which the order is made, as the Court thinks reasonable.

(7) Without prejudice to the generality of subsection (6) of this section, a court may include in a probation order requirements relating to the residence, whether in this State or another State or a Territory of the probationer named therein but, before making an order containing any such requirement, the court shall consider the home surroundings of the probationer and, if the order requires the probationer to reside in an institution, and arrangements have been made or can be made for his reception therein, the name of the institution and the period for which he is so required to reside shall be specified in the order.

(7a) Unless the probation order, whether as initially made or as amended, permits or requires the probationer to reside in another State or Territory, it is a requirement of the probation order that the

probationer shall not leave or remain out of this State except in compliance in every respect with the terms and conditions of a permit issued pursuant to subsection (7b) of this section.

(7b) Where a probation order requires that the probationer shall not leave or remain out of this State, the supervising court, or the Director, may permit the probationer to leave and remain out of the State for such time and upon such terms and conditions, as it or he thinks fit.

(7c) A permit under subsection (7b) of this section shall be in writing under the hand of the clerk of the supervising court or the Director, as the case requires, and to the extent necessary to give effect to the permit, the probation order to which the permit relates shall be deemed to be amended and shall apply accordingly.

(8) Where a court proposes to make a probation order it shall, before making the order, explain or cause to be explained to the offender in respect of whom it is proposed to make the order, in language likely to be readily understood by him—

(a) the effect of the order, including any additional requirement proposed to be inserted in the order pursuant to subsection (6) or (7) of this section; and

(b) that if he fails to comply with the requirements of the order or commits another offence during the probation period, he will, in addition to being liable to be dealt with for that offence, be liable to be sentenced for the offence for which he is then before the court;

and the court shall not make the order unless the offender expresses his willingness to comply with the requirements of the order.

(9) The Court by which a probation order is made shall forthwith after the order is made cause a copy of it to be given to the probationer named therein

and to be sent to the Director and to the person in charge of any institution in which the probationer is required by the order to reside; and the court shall, except where the court is itself the supervising court, also cause to be sent to the clerk of the supervising court a copy of the probation order and such documents and information relating to the probationer and the offence with which he was charged before the court as it considers likely to be of assistance to the supervising court.

(9a) Where a probationer is permitted or required to reside in another State or Territory, the Director shall forthwith cause to be sent to the Chief or Principal Probation Officer, or other prescribed officer, of that State or Territory, on being requested by that officer so to do, a copy of the probation order certified under the hand of the Director as a true copy thereof together with such other documents and information relating to the case as the Director considers likely to be of assistance to any court, authority or person in the State or Territory with respect to the order.

(10) The Director shall assign a probation officer to be the probation officer in respect of the probation order and to supervise the probationer during the period the order is operative and the Director may from time to time so assign another probation officer in respect of the order in place of the probation officer previously so assigned.

(11) Nothing in this section shall be construed as preventing a court that makes a probation order in respect of any offence from also making a community service order in respect of that offence.

Recognisances under ss. 19, 656 and 669 of Criminal Code not to be used when probation appropriate.

10. A person convicted of an offence shall not be released upon his entering into a recognisance pursuant to the provisions of subsection (8) of section nineteen, section six hundred and fifty-six or paragraph (b) of subsection (1) of section six

hundred and sixty-nine of The Criminal Code, if, in the opinion of the court, he could properly and conveniently be released on probation pursuant to this Act.

[*Section 11 repealed by No. 57 of 1976, s. 8.*]

Discharge of probation order. Amended by No. 3 of 1969, s. 7.

12. (1) The court by which a probation order was made may, upon application made by a probation officer or by the probationer, discharge the order.

(1a) Where pursuant to a probation order, a probationer is residing in another State or a Territory and a court of that State or Territory having jurisdiction similar to that of the court by which the probation order was made upon application made by a probation officer, or a person holding an office similar to that of probation officer, of that State or Territory, or by the probationer makes an order for the discharge of the order, the probation order shall be deemed to be discharged accordingly.

(2) If during the probation period the probationer complies with the requirements of the probation order and during that period does not commit any offence, whether in or outside the State, the order on the expiration of the probation period is by force of this section discharged, without further action by any court.

(3) Subject to subsection (4) of section five of this Act, where a probation order is discharged or is deemed to be discharged either by the order of a court or by the operation of subsection (2) of this section, the probationer is released from any further obligation or liability in respect of the order and of the offence in respect of which the order was made.

(4) Where under the provisions of section sixteen or seventeen of this Act a probationer is sentenced for the offence in respect of which he was placed on probation under a probation order, that order is of no further force or effect.

Substitution of new supervising court.

13. (1) Where the supervising court is satisfied that a probationer has changed or proposes to change his place of residence, so that some other court of petty sessions is or will be the nearest court of petty sessions to the new place of residence of the probationer, or the most convenient in the circumstances of the case, the supervising court may, by order, amend the probation order that relates to the probationer by substituting that other court of petty sessions as the supervising court in place of the court originally appointed as such.

(2) Where a probation order is amended as provided in subsection (1) of this section the court making the amending order shall send to the new supervising court referred to in the amending order a copy of the order together with such documents and information relating to the probationer and the offence in respect of which he was released on probation, as it considers likely to be of assistance to that court.

Amendment of probation order. Amended by No. 3 of 1969, s. 8.

14. (1) Subject to subsection (2) of this section, the supervising court may at any time upon the application of—

(a) a probation officer under whose supervision a probationer has been placed pursuant to a probation order; or

(b) the probationer,

by order amend the probation order by cancelling any of the requirements thereof, or by inserting therein, either by way of addition or substitution, any requirement that the court could have included in that probation order, if it were then being made by the court in accordance with the provisions of this Act.

(2) The supervising court shall not—

(a) amend a probation order by reducing the probation period or by extending that period beyond the end of five years from the date of the original order; and

(b) except with the consent of the probationer to whom the probation order relates, so amend the probation order that the probationer is thereby required to reside in an institution.

(3) Where the supervising court makes an amending order pursuant to this section, the clerk of the court shall, as soon as practicable thereafter, give copies of that order to the probation officer under whose supervision the probationer has been placed, and the probation officer shall give one copy to the probationer and a copy to the person in charge of the institution in which the probationer is or was required by the order to reside, if such is the case.

(4) Where pursuant to the provisions of a law of another State or a Territory corresponding to section fifty F of this Act, an order amending a probation order is made, the probation order shall be deemed to be amended as specified in the amending order and as so amended the probation order shall apply accordingly.

Probationer's consent to amendment of order.

15. (1) Subject to subsection (2) of this section, where the supervising court proposes to amend a probation order otherwise than on the application of the probationer to whom it relates, the court shall summon the probationer to appear before the court and the court shall not amend the probation order unless the probationer expresses his willingness to comply with the requirements of the order amended as proposed.

(2) Subsection (1) of this section does not apply to an order cancelling any requirement of the probation order or reducing the period of any such requirement or substituting one supervising court for another.

Breach of requirements of probation order otherwise than by conviction.
Substituted by No. 3 of 1969, s. 9.
Amended by No. 57 of 1976, s. 9; No. 89 of 1982, s. 8.
See ss. 49 and 50 Act No. 11 of 1902.

16. (1) A probationer who at any time during the probation period fails to comply, whether in this State or elsewhere, with any express or implied requirement of a probation order made with respect to him, is guilty of an offence against this section.

(2) If at any time during the probation period it appears on complaint in writing to a justice that a probationer has failed to comply with an express or implied requirement of a probation order, the justice may issue a summons requiring the probationer to appear at a court of petty sessions at the time and place specified in the summons, or may, if the complaint is in writing and on oath, issue a warrant for his arrest directing that he be brought before a court of petty sessions at the place specified as soon as practicable after his arrest.

(2a) The court of petty sessions before which the probationer is required to appear or is directed to be brought pursuant to subsection (2) of this section may exercise the jurisdiction and powers conferred on it by this section notwithstanding any provision of any other Act.

(3) If the court of petty sessions before which a probationer appears or is brought pursuant to subsection (2) of this section, convicts the probationer of an offence against subsection (1) of this section, that court may—

(a) without prejudice to the continuation of the probation order, impose on him a fine not exceeding One hundred dollars; or

(b) if the probation order was made by a court of summary jurisdiction—deal with the probationer for the offence in respect of which the probation order was made in any manner in which the court by which the order was made could deal with him if it had just convicted him of that offence; or

(c) in any other case—commit him to custody or release him on bail, with or without sureties, to be brought or to appear before the court by which the probation order was made.

(4) (a) Where a court of petty sessions exercises the power referred to in paragraph (c) of subsection (3) of this section, that court shall as soon as practicable thereafter send to the Crown Solicitor, a certificate signed by a justice certifying that the probationer has failed to comply with the requirement of the probation order specified in the certificate, together with such other particulars of the case as the court thinks desirable.

(b) A certificate given pursuant to and in accordance with paragraph (a) of this subsection is admissible as evidence before any court of the failure of the probationer to comply with the requirement of the probation order and of the other particulars specified in the certificate.

(5) A certificate purporting to be signed by the proper officer of a court of another State or a Territory before which a probationer is brought pursuant to a law of that State or Territory corresponding to Division 1 of Part IIIA of this Act certifying that the probationer has failed to comply with the requirement of the probation order specified in the certificate and any other particulars of the case as that officer thinks desirable is admissible as evidence before any court of such failure and of the other particulars so specified.

(6) Where a probationer is brought or appears before the Supreme Court or the District Court and it is proved to the satisfaction of the court before which he is brought or appears that the probationer has failed to comply with a requirement of the probation order that court may deal with him for the offence in respect of which the probation order was made in any manner in which that court could deal with him if he had just been convicted of that offence and was before the court for sentencing.

(7) Without prejudice to the provisions of section seventeen of this Act, a probationer who is convicted of an offence, other than an offence against subsection (1) of this section, committed during the

probation period is not on that account liable to be dealt with under this section for failing to comply with a requirement of the probation order.

(8) A probationer who has been dealt with under the provisions of a law of another State or a Territory corresponding to sections fifty G and fifty H of this Act for failing to comply with a requirement of the probation order is not liable to be dealt with under this section for the act or omission that constituted the failure to comply for which he was so dealt with.

Breach of probation order by conviction. Substituted by No. 3 of 1969, s. 10. Amended by No. 57 of 1976, s. 10; No. 89 of 1982, s. 9. See ss. 49 and 50 Act No. 11 of 1902.

17. (1) If it appears on complaint in writing to a justice that a person in whose case a probation order has been made has been convicted in this State or elsewhere of an offence, other than an offence against section sixteen of this Act or against a law of another State or a Territory corresponding to section fifty G of this Act, committed during the probation period and has been dealt with in respect of that offence, the justice may issue a summons requiring that person to appear at the time and place specified in the summons or, where the complaint is in writing and on oath, may issue a warrant for his arrest.

(2) A summons or warrant issued under this section shall require or direct the person so convicted to appear or to be brought before—

(a) a court of petty sessions, if the probation order was made by a children's court or a court of petty sessions; or

(b) the court by which the probation order was made, if the order was made by the Supreme Court or the District Court.

(2a) Where a warrant issued under this section directs a person to be brought before the Supreme Court or the District Court and he cannot forthwith be brought before that court because it is not then in session, the warrant has effect as if it directed him to be brought before a court of petty sessions and

that court shall commit him to custody or release him on bail, with or without sureties, to be brought or to appear before the Supreme Court or District Court, as the case requires.

(3) If a person in whose case a probation order has been made by any court is convicted and dealt with by another court in respect of an offence, other than an offence against section sixteen of this Act or against a law of another State or a Territory corresponding to section fifty G of this Act, committed during the probation period, that other court may commit him to custody or release him on bail, with or without sureties, to appear or be brought before—

(a) a court of petty sessions, if the probation order was made by a children's court or a court of petty sessions; or

(b) the court by which the probation order was made, if the order was made by the Supreme Court or the District Court,

and if it does so that other court shall send to the Crown Solicitor or the appropriate Clerk of the Court, as the case may require, a certificate of the conviction signed by the proper officer of that court.

(4) A certificate given under and in accordance with subsection (3) of this section is admissible as evidence before any court that the probationer has been convicted and dealt with in respect of the offence therein specified committed in this State during the probation period.

(5) A certificate purporting to be signed by the proper officer of a court of another State or a Territory before which a probationer appears or is brought pursuant to a law of that State or Territory certifying that the probationer has been convicted and dealt with in respect of an offence, other than an offence against a law of that State or Territory corresponding to section fifty G of this Act, committed during the probation period, is admissible

as evidence before any court that the probationer has been convicted and dealt with in respect of the offence therein specified committed in the other State or the Territory during the probation period.

(6) Where—

(a) a probationer is convicted of and dealt with in respect of an offence, other than an offence against section 16 of this Act or against a law of another State or Territory corresponding to section 50G of this Act, committed during the probation period, by a court of the same jurisdiction as the court by which the probation order was made; or

(b) it is proved to the satisfaction of—

(i) a court of petty sessions, if the probation order was made by a children's court or a court of petty sessions; or

(ii) the court by which the probation order was made, if the order was made by the Supreme Court or the District Court,

that the probationer has been convicted of and dealt with in respect of an offence, other than an offence against section 16 of this Act or against a law of another State or Territory corresponding to section 50G of this Act, committed in this State or elsewhere during the probation period,

such court may deal with a probationer for the offence for which the order was made in any manner in which the court by which the order was made could deal with him if he had just been convicted by or before that court of that offence.

(7) If a probationer in whose case the probation order was made by a court of summary jurisdiction is convicted before the Supreme Court or the District

Court of an offence committed during the probation period, the Supreme Court or District Court may deal with him for the offence for which the order was made in any manner in which the court of summary jurisdiction could deal with him if it had just convicted him of that offence, and any sentence imposed shall be regarded as the sentence of the court of summary jurisdiction except that for the purposes of any appeal against that sentence it shall be regarded as a sentence imposed on a conviction on indictment and the provisions of Chapter LXIX of The Criminal Code, so far as applicable, apply accordingly.

(8) If a probationer in whose case the probation order was made by the District Court is convicted before the Supreme Court of an offence committed during the probation period, the Supreme Court may deal with him for the offence for which the probation order was made in any manner in which the District Court could deal with him if he had just been convicted of that offence and was before that court for sentencing, and any sentence imposed by the Supreme Court shall, for all purposes, be regarded as the sentence of the District Court.

(8a) A court may exercise the powers conferred on it by this section notwithstanding any provision of any other Act.

(9) A probationer who has been dealt with under the provisions of a law of another State or a Territory corresponding to sections fifty J and fifty K of this Act for that he has been convicted of, and dealt with for, an offence committed during the probation period is not liable to be dealt with under this section for that conviction.

Judge to decide questions as to breach of probation. Amended by No. 57 of 1976, s. 11.

18. In proceedings before the Supreme Court or the District Court under the foregoing provisions of this Act, any question whether a probationer has failed to comply with the requirements of the probation order or whether a probationer has been convicted of an offence committed during the probation period shall be determined by the judge and not by the verdict of a jury.

Application of Justices Act 1902, to complaints, summonses and warrants under this Act. Amended by No. 116 of 1981, s.12.

19. (1) The provisions of the Justices Act 1902, so far as applicable, and subject to such adaptations as are necessary, extend and apply to and with respect to all complaints, summonses and warrants referred to in the foregoing provisions of this Act and for the purposes of such application each of those complaints shall be regarded as a complaint for an offence and each of those summonses shall be regarded as a summons to answer a complaint.

(2) The provisions of sections one hundred and fifteen to one hundred and twenty-three, both inclusive, of the Justices Act 1902, so far as they are applicable, with such adaptations as are necessary, extend to and apply to and with respect to the admission of probationers to bail pursuant to the foregoing provisions of this Act, and for the purposes of so applying those provisions every such probationer shall be regarded as a person charged with an indictable offence and directed to be tried therefor.

(3) The provisions of section 21 of the Prisons Act 1981, extend and apply to and with respect to the case of a prisoner who is in custody as mentioned in that section and who is charged with the breach of a probation order.

Power to make certain averments in complaint alleging breach of probation order. Inserted by No. 73 of 1965, s. 5.

19A. (1) A complaint for breach of a probation order made under this Part of this Act may aver—

(a) that the defendant is the person in respect of whom the probation order was made; and

(b) that the defendant was convicted by the court specified in the complaint on the day so specified of an offence committed during the probation period.

(2) In any proceedings under this Part of this Act upon a complaint averring the facts referred to in paragraphs (a) and (b) of subsection (1) of this

section, the person charged with breach of probation may be asked by the court before which he appears or is brought whether—

(a) he was convicted of the offence in respect of which the probation order was made; and

(b) he was convicted of an offence during the probation period,

and if he admits either or both of those convictions, no further proof of the conviction or convictions so admitted, is necessary.

(3) Where a person charged with breach of probation is asked by the court pursuant to subsection (2) of this section concerning a conviction averred in the complaint and the person does not admit that conviction, the court may, without making any order as to costs,—

(a) adjourn the hearing of the proceedings for proof of that conviction; and

(b) commit the person charged to custody or release him on bail, with or without sureties to appear on the adjourned hearing.

Conviction on which probation granted to be disregarded for certain purposes. Amended by No. 3 of 1969, s. 11; No. 57 of 1976, s. 12.

20. (1) Subject to the following paragraphs of this section, a conviction for an offence in respect of which a probation order is made under this Act shall be deemed not to be a conviction for any purpose, including without limiting the generality of the foregoing, the purposes of any enactment imposing or authorizing or requiring the imposition of any disqualification or disability on convicted persons, except in relation to—

(a) the making of the order;

(aa) the making of a community service order;

(b) any subsequent proceedings that may be taken against the offender under the provisions of this Act;

(c) any proceedings against the offender for a subsequent offence.

(2) Where an offender is subsequently dealt with under this Act or under a law of another State or a Territory corresponding to Division 1 of Part IIIA of this Act for the offence in respect of which the probation order was made, the provisions of subsection (1) of this section cease to apply to the conviction.

(3) The foregoing provisions of this section do not affect the right of an offender to appeal against his conviction or to rely thereon in bar of any subsequent proceedings for the same offence or the revesting or restoration of any property in consequence of the conviction.

(4) A person who feels himself aggrieved by a summary conviction of a court of summary jurisdiction for an offence in respect of which a probation order is made may, pursuant to those provisions of Part VIII of the Justices Act 1902, that relate to an ordinary appeal under that Act, appeal against that conviction notwithstanding that no imprisonment is adjudged thereby without the option of a fine.

Heading. Inserted by No. 57 of 1976, s. 13.

PART IIA.—COMMUNITY SERVICE ORDERS.

Interpretation of this Part. Inserted by No. 57 of 1976, s. 13.

20A. (1) In this Part unless the contrary intention appears—

"advisory committee" means a community service advisory committee appointed under section twenty R of this Act;

"approved work" means work that is declared by an advisory committee to be approved work for the purposes of this Part;

"offender" means a person in respect of whom a community service order is made;

"prescribed requirement" means a requirement imposed by this Part or the regulations on a person in respect of whom a community service order is made;

"relevant officer" in relation to a community service order means the probation officer for the time being assigned under section twenty B of this Act to be the relevant officer in respect of that order;

"supervisor" means a supervisor appointed under and in accordance with the regulations;

"work" includes any form of work, service or activity.

(2) A reference in this Part to the number of hours of work specified in a community service order shall, where that number has been varied pursuant to section twenty H or twenty K of this Act, be construed as a reference to that number as so varied.

Community service orders in respect of convicted persons. Inserted by No. 57 of 1976, s. 14. Amended by No. 89 of 1982, ss. 10 and 26.

20B. (1) Subject to sections twenty D and twenty E of this Act, when a person of or over seventeen years of age is before a court for sentencing after being convicted of any offence punishable by a term of imprisonment otherwise than in default of payment of a fine, the court may, instead of sentencing him, make an order requiring him to perform unpaid work in accordance with this part and the regulations for such number of hours (being in the aggregate not less than forty nor more than two hundred and forty) as may be specified in the order.

(2) Without limiting the generality of subsection (1) of this section, that subsection applies to a person who has been convicted of an offence referred to therein before the date of the coming into operation of section fourteen of the Offenders Probation and Parole Act Amendment Act 1976 if he has neither been sentenced for that offence nor dealt with under section nine of this Act before that date.

(3) The court that makes a community service order shall specify in the order a court of petty sessions being the court of petty sessions nearest to the place where the offender intends to reside, or being the court of petty sessions that the court making the order deems most convenient in the circumstances, to be the supervising court in respect of the order, and the court of petty sessions so appointed, or such other court of petty sessions as is substituted for that court pursuant to section twenty C of this Act, shall for the purposes of this Act be the supervising court in respect of that order.

(4) A court of petty sessions when acting as a supervising court shall be constituted by a stipendiary magistrate.

(5) A community service order shall require the offender to report himself in person at a place or to a person specified in the order within such time (if any) as is so specified.

(6) A community service order may require the offender to pay, on such terms and conditions as the court making the order thinks fit, such damages for injury or compensation for loss, caused by or arising out of the act or omission that constitutes the offence in respect of which the order is made, as the court thinks reasonable.

(6a) Subject to section 20D (1a) of this Act, a community service order may require the offender to attend such educational programme as the Director directs.

(6b) Where a community service order contains a requirement under subsection (6a) of this section—

(a) the Director shall direct the offender to attend such educational programme as the Director considers suitable for such number of hours (being in the aggregate not more than one-quarter of the number of hours of work that the offender is required to perform under the order) as the Director thinks fit; and

(b) hours during which the offender attends an educational programme in accordance with the requirement and section 20F (1) (ca) of this Act shall for the purposes of sections 20F and 20G of this Act, be regarded as hours for which the offender has performed approved work.

(7) The court by which a community service order is made shall forthwith after the order is made cause the order to be reduced to writing in the prescribed form and—

(a) cause a copy of it to be given to the offender;

(b) cause a copy of it to be sent to the Director; and

(c) except where the court is itself the supervising court, cause a copy of it to be sent to the clerk of the supervising court together with such documents and information relating to the offender and the offence in respect of which the order was made as it considers likely to be of assistance to the supervising court.

(8) The Director shall assign a probation officer to be the relevant officer in respect of the community service order and may from time to time so assign another probation officer in place of the officer previously assigned.

(9) Nothing in this section shall be construed as preventing a court that makes a community service order in respect of any offence from also making a probation order in respect of that offence or imposing any disqualification on the offender.

(10) A person who feels himself aggrieved by a summary conviction of a court of summary jurisdiction for an offence in respect of which a community service order is made may, pursuant to those provisions of Part VIII of the Justices Act 1902, that relate to an ordinary appeal under that Act, appeal against that conviction notwithstanding that no imprisonment is adjudged thereby without the option of a fine.

Substitution of new supervising court.
Inserted by No. 57 of 1976, s. 15.

20C. (1) Where the supervising court is satisfied that an offender has changed or proposes to change his place of residence, so that some other court of petty sessions is or will be the nearest court of petty sessions to the new place of residence of the offender or the most convenient in the circumstances of the case, the supervising court may, by order, amend the community service order that relates to the offender by substituting that other court of petty sessions as the supervising court in place of the court originally appointed as such.

(2) Where a community service order is amended as provided in subsection (1) of this section the court making the amending order shall send to the new supervising court referred to in the amending order a copy of the amending order together with such documents and information relating to the offender and the offence in respect of which the community service order was made, as it considers likely to be of assistance to that court.

Circumstances in which a community service order may be made.
Inserted by No. 57 of 1976, s. 16.
Amended by No. 89 of 1982, s. 11.

20D. (1) A court shall not make a community service order in respect of a person unless the person consents and the court—

(a) has been notified by a probation officer that arrangements exist for persons who reside in the area in which that person intends to reside to perform work under such an order;

(b) is satisfied, after considering a report from a probation officer about the person and his circumstances, and, if the court thinks necessary, hearing a probation officer,—

(i) that the person is a suitable person to perform work under such an order; and

(ii) that, if such an order is made, work of a suitable nature can be provided for the person under the arrangements mentioned in paragraph (a) of this subsection.

(1a) A court shall not include a requirement under section 20B (6a) of this Act in a community service order made in respect of a person unless the court—

(a) has been notified by a probation officer that arrangements exist for persons who reside in the area in which that person intends to reside to attend an educational programme of a suitable nature; and

(b) is satisfied, after consideriing a report from a probation officer about the person and his circumstances, and, if the court thinks necessary, hearing a probation officer,—

(i) that the person is a suitable person to attend an educational programme;

and

(ii) that, if such a requirement is made, an educational programme of a suitable nature can be provided for the person under the arrangements mentioned in paragraph (a) of this subsection.

(2) Without prejudice to any other powers that the court may exercise, where a person is before a court for sentencing the court may, in order to obtain any notification, report or information from a probation officer for the purposes of subsection (1) or (1a) of this section, adjourn the hearing of the proceedings and release the person on bail, with or without sureties to appear at the adjourned hearing.

(3) Where a court proposes to make a community service order it shall, before making the order, explain or cause to be explained to the person in respect of whom it is proposed to make the order in language likely to be readily understood by him—

(a) the purpose and effect of the order;

(b) the consequences that may follow if he fails to comply with the order or with any of the prescribed requirements;

(c) that the order may be reviewed on his application or on the application of the relevant officer.

Maximum hours of service in case of multiple or subsequent orders. Inserted by No. 57 of 1976, s. 17.

20E. (1) Where a court makes community service orders in respect of two or more offences of which a person has been convicted, the court shall not order the person to perform work under those orders for a number of hours that, in the aggregate, exceeds two hundred and forty.

(2) Where a court makes a community service order in respect of a person and there is or are in force in respect of that person one or more other such orders, the court shall not order the offender to perform work for a number of hours that would require him, after the making of the first-mentioned order, to perform work under that order and the previous order or orders for a number of hours that, in the aggregate, exceeds two hundred and forty.

Obligations of offender. Inserted by No. 57 of 1976, s. 18. Amended by No. 89 of 1982, s. 12.

20F. (1) A person in respect of whom a community service order is in force shall—

(a) perform for the number of hours specified in the order such approved work as the relevant officer directs at such times as the relevant officer directs;

(b) perform that work in a satisfactory manner;

(c) while performing that work comply with any reasonable direction of a supervisor;

(ca) if the order contains a requirement under section 20B (6a) of this Act, attend such educational programme for such number of hours as is directed by the Director at such times as the relevant officer directs;

and

(d) inform the relevant officer of any change in his address.

(2) In giving directions to a person under subsection (1) of this section the relevant officer shall, so far as practicable, avoid—

(a) any conflict with the person's religious beliefs; and

(b) any interference with the times, if any, at which the person normally works or attends a school or other educational establishment.

(3) Subject to sections twenty H and twenty J of this Act a person in respect of whom a community service order is in force shall perform the number of hours of work specified in the order, and, if the order contains a requirement under section 20B (6a) of this Act, attend an educational programme for the number of hours directed by the Director, during the period of twelve months beginning with the date of the order.

20G. A community service order shall remain in force until—

Duration of community service order.
Inserted by No. 57 of 1976, s. 19.
Amended by No. 89 of 1982, s. 13.

(a) the offender has—

(i) performed approved work in accordance with section 20F of this Act for the number of hours specified in the order; and

(ii) if the order contains a requirement under section 20B (6a) of this Act, attended such educational programme as the Director has directed for the number of hours the Director has directed;

(b) the order is discharged pursuant to section twenty K of this Act; or

(c) the offender is sentenced for the offence in respect of which the order was made.

Breach of requirements of, or relating to community service order. Inserted by No. 57 of 1976, s. 20. Amended by No. 89 of 1982, s. 14.

20H. (1) If at any time while a community service order is in force the offender fails to comply with any requirement of the order or with any prescribed requirement he is guilty of an offence against this section.

(2) If at any time while a community service order is in force it appears on complaint in writing to a justice that the offender has failed to comply with the order or with any prescribed requirement, the justice may issue a summons requiring the offender to appear at a court of petty sessions at the time and place specified in the summons, or may, if the complaint is in writing and on oath, issue a warrant for his arrest directing that he be brought before a court of petty sessions as soon as practicable after his arrest.

(3) The court of petty sessions before which the offender is required to appear or is directed to be brought pursuant to subsection (2) of this section may exercise the jurisdiction and powers conferred on it by this section notwithstanding any provision of any other Act.

(4) If the court of petty sessions before which an offender appears or is brought pursuant to subsection (2) of this section, convicts the offender of an offence against subsection (1) of this section, that court may—

(a) without prejudice to the continuation of the community service order, impose on him a fine not exceeding two hundred dollars;

(b) subject to subsection (5) of this section, and with his consent, increase the number of hours for which he is required to perform work under the community service order;

(c) if the community service order was made by a court of summary jurisdiction deal with the offender for the offence in respect of which the community service order was made in any manner in which the court by

which the order was made could deal with him if it had just convicted him of that offence; or

(d) in any other case—commit him to custody or release him on bail, with or without sureties, to be brought or to appear before the court by which the community service order was made.

(5) Where a court of summary jurisdiction exercises the power referred to in paragraph (b) of subsection (4) of this section, that court—

(a) may, if it thinks necessary, extend, in relation to the community service order, the period of twelve months specified in subsection (3) of section twenty F of this Act;

(b) shall not increase the number of hours for which the offender is required to perform work under the community service order to such an extent as would require him, after the making of that increase, to perform work under that order and all other such orders in force in respect of him (if any) for a number of hours that, in the aggregate, exceeds two hundred and forty.

(6) Where a court of summary jurisdiction exercises the power referred to in paragraph (d) of subsection (4) of this section, that court shall as soon as practicable thereafter send to the Crown Solicitor a certificate signed by a justice certifying that the offender has failed to comply with such requirement of the community service order, or prescribed requirement, as is specified in the certificate, together with such other particulars of the case as the court thinks desirable.

(7) A certificate given pursuant to and in accordance with subsection (6) of this section is admissible as evidence before any court of the failure of the offender to comply with the requirement specified in the certificate and of the other particulars (if any) specified in the certificate.

(8) Where an offender is brought or appears before the Supreme Court or the District Court and it is proved to the satisfaction of the court before which he is brought or appears that the offender has failed to comply with a requirement of the community service order, or with a prescribed requirement, that court may deal with him for the offence in respect of which the community service order was made in any manner in which that court could deal with him if he had just been convicted of that offence and was before the court for sentencing.

(9) In proceedings before the Supreme Court or the District Court under this section, any question whether an offender has failed to comply with a requirement of a community service order, or with a prescribed requirement, shall be determined by the judge and not by the verdict of a jury.

(10) A complaint under this section for failure to comply with a requirement of a community service order, or with a prescribed requirement, may aver that the defendant is the person in respect of whom the relevant community service order was made.

(11) In any proceedings under this section upon a complaint averring the fact referred to in subsection (10) of this section the person charged with failure to comply with a requirement of a community service order, or with a prescribed requirement, may be asked by the court before which he appears or is brought whether he was convicted of the offence in respect of which the relevant community service order was made and if he admits that conviction no further proof of the conviction so admitted is necessary.

Extension of time for performing work.
Inserted by No. 57 of 1976, s. 21.

20J. Where a community service order is in force and, on the application of the offender or the relevant officer, it appears to the supervising court that it would be in the interests of justice to do so having regard to circumstances that have arisen since the order was made, the court may extend, in relation to the order, the period of twelve months specified in subsection (3) of section twenty F of this Act.

Discharge and amendment of community service orders and substitution of other penalties or orders. Inserted by No. 57 of 1976, s. 22.

20K. (1) Where a community service order is in force and, on the application of the offender or the relevant officer made—

(a) in the case of an order made by a court of summary jurisdiction—to the supervising court; or

(b) in any other case—to the court by which the order was made,

it appears to the court to which the application is made that it would be in the interests of justice to do so having regard to circumstances that have arisen or become known since the order was made, the court may—

(c) discharge the order; or

(d) reduce the number of hours for which the offender is required to perform work under the order.

(2) Where a community service order is in force and, on the application of the relevant officer, it appears to the supervising court that it would be in the interests of justice to do so having regard to circumstances that have arisen or become known since the order was made, the court may—

(a) if the order was made by a court of summary jurisdiction—deal with the offender for the offence in respect of which the order was made in any manner in which the court by which the order was made could deal with him if it had just convicted him of that offence; or

(b) in any other case—commit the offender to custody or release him on bail, with or without sureties, to be brought or to appear before the court by which the order was made,

and where the court exercises the power referred to in paragraph (b) of this subsection it shall as soon as practicable thereafter send to the Crown Solicitor such particulars of the case as it thinks desirable.

(3) A supervising court may exercise the powers conferred on it by this section notwithstanding any provision of any other Act.

(4) Where an offender is brought or appears before the Supreme Court or the District Court and it appears to that court that it would be in the interests of justice to do so having regard to circumstances that have arisen or become known since the community service order was made, that court may deal with the offender for the offence in respect of which the order was made in any manner in which that court could deal with him if he had just been convicted of that offence and was before the court for sentencing.

Notice of applications etc.
Inserted by No. 57 of 1976, s. 23.

20L. (1) Where an application is made to a court under section twenty J or subsection (1) or (2) of section twenty K of this Act by the relevant officer, the court shall summon the offender to appear before it on the hearing of the application and, if he does not appear in answer to the summons, may issue a warrant for his arrest.

(2) Where an application is made to a court under section twenty J or subsection (1) of section twenty K of this Act by the offender, the court shall cause notice of the application and of the time and place fixed for the hearing to be served on the relevant officer.

Notification of discharge, amendment of orders etc.
Inserted by No. 57 of 1976, s. 24.

20M. Where, pursuant to section twenty H, twenty J or twenty K of this Act, a court—

(a) discharges a community service order;

(b) varies the number of hours for which an offender is required to perform work under a community service order; or

(c) extends the period of twelve months specified in subsection (3) of section twenty F of this Act,

the court shall cause notice in writing of the discharge, variation or extension to be given to the offender, the relevant officer and (if that court is not the supervising court) the supervising court.

Order to be taken into account in sentencing.
Inserted by No. 57 of 1976, s. 25.

20N. Where a person in respect of whom a community service order has been made is subsequently sentenced by a court for the offence in respect of which the order was made the court, in sentencing the person, shall take into account—

(a) that the order was made; and

(b) anything done under the order.

Application of certain provisions of Justices Act 1902 and Prisons Act 1981.
Inserted by No. 57 of 1976, s. 26.
Amended by No. 116 of 1981, s. 13.

20P. (1) The provisions of the Justices Act 1902, so far as applicable, and subject to such adaptations as are necessary, extend and apply to and with respect to all complaints, summonses and warrants referred to in this Part and for the purposes of such application each of those complaints shall be regarded as a complaint for an offence and each of those summonses shall be regarded as a summons to answer a complaint.

(2) The provisions of sections one hundred and fifteen to one hundred and twenty-three, both inclusive, of the Justices Act 1902, so far as they are applicable, with such adaptations as are necessary, extend to and apply to and with respect to the admission of offenders to bail pursuant to the foregoing provisions of this Act, and for the purposes of so applying those provisions every such offender shall be regarded as a person charged with an indictable offence and directed to be tried therefor.

(3) The provisions of section 21 of the Prisons Act 1981, extend and apply to and with respect to the case of a prisoner who is in custody as mentioned in that section and in respect of whom a summons is issued pursuant to section twenty H or twenty L of this Act.

Compensation for injury. Inserted by No. 57 of 1976, s. 27.

20Q. An offender shall in respect of—

(a) work performed by him under a community service order; and

(b) travelling done by him in order to perform work under a community service order,

be deemed to be a worker employed by the Crown for the purposes of the Workers' Compensation Act 1912[1] and where, for the purpose of calculating the compensation payable under that Act in respect of a compensable injury suffered by an offender, reference to weekly earnings is necessary, the offender shall be deemed to have had weekly earnings equal to the estimate published by the Commonwealth Statistician of the average weekly earnings per employed male unit (or female unit in the case of a female offender) for the last preceding June quarter in this State.

Advisory committees. Inserted by No. 57 of 1976, s. 28.

20R. (1) The Minister may appoint one or more community service advisory committees for the purposes of this Act.

(2) An advisory committee shall consist of three, four or five persons one of whom shall have been nominated for membership of the committee by the body known as the Trades and Labor Council of Western Australia.

(3) An advisory committee may declare any form of work it thinks fit to be approved work for the purposes of this Part.

Regulations under this Part. Inserted by No. 57 of 1976, s. 29. Amended by No. 89 of 1982, s. 15.

20S. Without limiting the generality of section fifty-two of this Act regulations made for the purposes of this Part may—

(a) provide for the appointment of supervisors to supervise offenders in the performance of work under community service orders;

(b) regulate the conduct of supervisors and of offenders;

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[1] Repealed by the Workers' Compensation and Assistance Act 1981.

(c) provide for the health and safety of supervisors and offenders;

(d) prescribe the maximum number of hours of work that an offender may be required to perform under a community service order on any one day;

(e) provide for travelling and transport arrangements to be made for offenders performing work or attending educational programmes under community service orders;

(f) prescribe the effect of injury and sickness in relation to community service orders;

(g) prescribe periods to be taken into account in computing the number of hours of work performed by an offender under a community service order;

(h) regulate the holding of meetings of advisory committees and the procedure to be observed at such meetings.

PART III.—PAROLE OF OFFENDERS.

Establishment of Parole Board. Amended by No. 57 of 1976, s. 30; No. 89 of 1982, s. 16; No. 68 of 1983, s. 3.

21. (1) For the purposes of this Act, there shall be a Board by the name of the Parole Board.

(2) Where a general matter or a matter affecting a male prisoner is to be dealt with by the Board, the Board shall consist of seven members, namely—

(a) a judicial member appointed by the Governor on the recommendation of the Minister;

(b) the Director of Prisons; and

(c) three men and two women appointed by the Governor.

(2a) Where a matter affecting a female prisoner is to be dealt with by the Board, the Board shall consist of five members, namely—

(a) the judicial member appointed under paragraph (a) of subsection (2) of this section;

(b) the Director of Prisons;

(c) the two women appointed under paragraph (c) of subsection (2) of this section; and

(d) one of the men appointed under paragraph (c) of subsection (2) of this section nominated by the Governor at the time of his appointment as member.

(2b) The persons holding office under paragraph (c) of subsection (2) of this section immediately before the coming into operation of section thirty of the Offenders Probation and Parole Act Amendment Act 1976 shall be deemed to have been appointed under that paragraph as re-enacted by that section and, subject to this Act, each of them shall hold office for the unexpired portion of the term for which he or she was appointed to office.

(3) References in this Act to—

(a) the Board, shall be construed as references to the Board as constituted from time to time in accordance with subsection (2) or (2a) of this section, as the case may require; and

(b) to an appointed member, shall be construed as references to a man or a woman appointed by the Governor under paragraph (c) of subsection (2) of this section, as the case requires.

Judicial member. Inserted by No. 68 of 1983, s. 4.

21A. A person shall not be recommended for appointment to the Board as judicial member under section 21 (2) (a) of this Act unless—

(a) he holds office as a judge of the Supreme Court or District Court or has retired from such an office;

(b) if he holds an office specified in paragraph (a) of this section, the Chief Justice of the Supreme Court or the Chairman of Judges of the District Court, as the case requires, and the judge concerned have consented to the recommendation; and

(c) if he does not hold an office specified in paragraph (a) of this section, he has not attained the age of 70 years.

Chairman of the Board. Amended by No. 89 of 1982, s. 17; No. 68 of 1983, s. 5.

22. (1) The judicial member shall be the Chairman of the Board.

(2) The Chairman, or in his absence the longest-serving appointed member of the Board present, shall preside at all meetings of the Board.

(3) Where more than one member is eligible to preside at a meeting of the Board in the absence of the Chairman, the other members shall appoint one of the eligible members to preside.

Filling of vacancy on death or resignation. Amended by No. 57 of 1976, s. 31; No. 89 of 1982, s. 18. No. 68 of 1983, s. 6.

23. (1) Subject to subsection (8) of this section, if the judicial member of the Board dies, retires or resigns his office as member and the office becomes vacant the Governor may appoint an eligible person to be the judicial member.

(2) Subject to subsection (8) of this section, if the person appointed to be judicial member is incapacitated by illness, absence or other sufficient cause, from performing the duties of his office of member, or is unwilling to act in a particular case, or if there is a temporary vacancy in that office the Minister may appoint an eligible person to act for the member during his incapacity or during such vacancy in the office, or in that particular case, and the person, when so acting, has all the powers and functions of, and shall be deemed to be, the judicial member.

(2aa) The provisions of section 21A of this Act apply to and in relation to an appointment under subsection (2) of this section as though the appointment were a recommendation under that section.

(2a) If the Director of Prisons is unable to attend a meeting of the Board he may nominate an officer of his Department to attend that meeting on his behalf, and that officer while so attending has all the powers and functions of, and shall be deemed to be, a member.

(3) If the member referred to —

(a) in paragraph (a) of subsection (2) of section twenty-one of this Act, being a person holding an office as judge of the Supreme Court or District Court at the time of his appointment as member, ceases to hold office of judge; or

(b) in paragraph (b) of that subsection, ceases to hold the office of Director of Prisons,

that member shall be deemed to have vacated his office as member.

(4) An appointed member holds office as member for such period, not exceeding three years, as the Governor determines when so appointing him, but is eligible for re-appointment.

(5) The appointment of a member is not invalidated and shall not be called in question by reason of a defect or irregularity in or in connection with his appointment.

(6) The Governor may, at any time, remove an appointed member from office and thereupon, or upon the death or resignation of an appointed member, the Governor may appoint, for the remainder of the term of office of the appointed member in whose place he is appointed, a person of the same sex as that appointed member to fill the vacancy arising from such removal, death or resignation.

(7) If an appointed member is incapacitated by illness, absence, or other sufficient cause, from performing the duties of his office of member, or if there is a vacancy in that office of an appointed member, the Governor may appoint a person of the same sex as that member to be an acting member to

act for that member during his incapacity or during the vacancy in the office and the person, when so acting, has all the powers and functions of and shall be deemed to be a member.

(8) Where the person appointed to be judicial member of the Board does not hold office as a judge of the Supreme Court or District Court the provisions of subsections (4), (5), (6) and (7) apply to and in relation to the terms and conditions of his appointment as though he were an appointed member.

Validity of acts of persons acting as members.

24. A person shall not be concerned to inquire whether or not any occasion had arisen requiring or authorizing a person to act in the place of a member or as to the necessity or propriety of any appointment of an acting member, and all acts or things done or omitted by person when so acting are as valid and effectual and have the same consequences as if they had been done or omitted by the member in whose place the person is or was acting.

Remuneration and allowances of members and acting members. Amended by No. 89 of 1982, s. 19. No. 68 of 1983, s. 7.

25. (1) The several members and acting members, other than a person holding office as judge of the Supreme Court or District Court, as the case may be, shall be paid such remuneration, travelling and other allowances as the Governor severally determines.

(2) The payment pursuant to subsection (1) of this section of any remuneration, travelling and other allowances to a member who is a retired judge of the Supreme Court or District Court does not affect any entitlement of that person under the Judges Salaries and Pensions Act 1950.

Leave of absence.

26. The Minister may grant leave of absence to a member upon such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation of members.

27. A member may resign his office by writing under his hand addressed to the Governor.

Meetings of the Board. Amended by No. 89 of 1982, s. 20.

28. (1) The Board shall hold such meetings at such times and places as the Chairman determines.

(2) At a meeting of the Board—

(a) the Chairman or member presiding and two other members constitute a quorum;

(b) a question arising at the meeting shall be determined by a majority of the members present and voting, but the Chairman alone shall determine any question of law arising before the Board;

(c) the Chairman or member presiding, in the event of an equality of votes upon any question arising before the Board, has a second or casting vote; and

(d) the Board may, subject to this Act, regulate its own procedure.

Vacancy or defect in appointment not to invalidate functions of Board.

29. (1) Subject to paragraph (a) of subsection (2) of section twenty-eight of this Act, the performance or exercise of the powers, duties and functions of the Board is not affected by reason only of there being a vacancy in the office of a member.

(2) All acts and proceedings of the Board are, notwithstanding a defect in the appointment of a member, or that a member was disqualified or disentitled to act, as valid as if every member had been duly appointed and was qualified and entitled to act and had acted as a member, and as if the Board had been properly and fully constituted.

Judicial notice. Amended by No. 3 of 1969, s. 12.

30. (1) All courts, judges and persons acting judicially shall—

(a) take judicial notice of the signature of every person who is a member or the secretary to the Board attached or appended to any document by virtue of this or any other Act;

(b) until the contrary is proved, presume that the signature was properly attached or appended thereto.

(2) A certificate signed by the secretary to the Board purporting to record a determination or decision of the Board is evidence of the making of that determination or decision by the Board.

Powers, duties and functions of Board.

31. (1) The powers, duties and functions of the Board are such as are prescribed by or under this or any other Act.

(2) The Board may do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its powers, duties and functions.

(3) A person who is or has been a member or acting member is not personally liable to any action or suit whatsoever in respect of any act done or omitted to be done in the exercise or performance or purported exercise or purported performance of any power, duty or function conferred or imposed on the Board or on any member or members by or under this or any other Act.

Powers of Indeterminate Sentences Board exercisable by Parole Board.

32. The Board is the successor of the Indeterminate Sentences Board constituted under the Prisons Act 1903,[1] and any act, matter or thing done or commenced by or in relation to the Indeterminate Sentences Board or any member or members thereof before the date of the coming into operation of this Act may be carried on and continued by or in relation to the Board or any member or the corresponding number of members of the Board, as the case may be, so far as may be necessary to give effect to the provisions of this Act.

Powers of Board as of Royal Commission.

33. For the purpose of carrying out its powers, duties and functions under this Act, the Board and the Chairman thereof and other members respectively have and may exercise the powers conferred by the Royal Commissions Act 1968, upon a Royal Commission and upon the chairman and other members of a Royal Commission, and the provisions of that Act have effect as if they were enacted in this Act and in terms made applicable to the Board and the members.

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[1] Repealed by the Prisons Act 1981.

Annual report of Board. Amended by No. 34 of 1964, s. 3; No. 73 of 1965, s. 6; No. 3 of 1969, s. 13; No. 16 of 1971, s. 2; No. 96 of 1980, s. 12; No. 116 of 1981, s. 14.

34. (1) Before the first day of October in each year, the Board shall make a written report to the Minister as to—

(a) the operations of the Board under this and the Prisons Act 1981, up to the last preceding thirtieth day of June;

(b) the number of persons released on parole during the year ending on the last preceding thirtieth day of June, and the number returned to gaol upon cancellations of parole during that year; and

(c) the operation of this Act so far as it relates to the parole of offenders and the activities of parole officers generally during that year.

(2) The Board shall—

(a) once in every year and also whenever requested in writing by the Minister so to do, furnish to him a written report and recommendation with respect to each person who was ordered, pursuant to section six hundred and fifty-two or six hundred and fifty-three or subsection (4) of section six hundred and ninety-three of The Criminal Code to be kept in strict custody until Her Majesty's pleasure is known or who is for the time being in safe custody during the pleasure of the Governor;

(b) whenever so requested in writing by the Minister, furnish to him a written report and recommendation with respect to—

(i) every prisoner for the time being undergoing a sentence of strict security life imprisonment or a sentence of life imprisonment;

(ii) such prisoner as the Minister may in his request specify; and

(ba) whether so requested by the Minister or not with respect to each prisoner—

(i) undergoing a sentence of life imprisonment commuted pursuant to section six hundred and seventy-nine of The Criminal Code from a sentence of death, furnish to the Minister, as soon as practicable after a period of ten years has elapsed from the date the sentence was so commuted and thereafter as soon as practicable after each period of five years;

(ii) undergoing a life sentence that has not been so commuted, furnish to the Minister, as soon as practicable after a period of five years has elapsed since the prisoner was sentenced to life imprisonment and thereafter as soon as practicable after the expiration of each period of five years;

(iii) undergoing a sentence of strict security life imprisonment commuted pursuant to section six hundred and seventy-nine of The Criminal Code from a sentence of death, furnish to the Minister, as soon as practicable after and not before a period of twenty years has elapsed from the date the sentence was so commuted and thereafter as soon as practicable after each period of three years,

a written report with or without a recommendation with respect to that prisoner;

(c) whenever so requested in writing by the Minister, furnish to him a written report upon any special matter relating to the operation of this Act or to the exercise of any power or function of the Board as the Minister may, in his request, specify;

(d) whenever the Board has, pursuant to section thirty-four A of this Act, made an order that any person be returned to the custody of the person or authority from which he was released by the Governor under that section, furnish to the Minister within one month after making the order, a report setting out the reasons for the order.

(3) Notwithstanding subparagraph (iii) of paragraph (ba) of subsection (2) of this section, the Board may, at any time in circumstances which appear to the Board to be exceptional, furnish to the Minister a written report with respect to a prisoner undergoing a sentence of strict security life imprisonment.

Power to release certain persons in custody subject to conditions including supervision. Inserted by No. 73 of 1965, s. 7. Amended by No. 89 of 1982, s. 26.

34A. (1) Where any person ordered pursuant to section six hundred and fifty-three or subsection (4) of section six hundred and ninety-three of The Criminal Code to be kept in safe custody during the pleasure of the Governor is released from custody by order of the Governor, the Governor may in that order specify such conditions as he thinks fit, subject to which the person shall be released, including a condition that during the period specified in the order he be under the supervision of a parole officer.

(2) Where a person is so released subject to a condition that he be under the supervision of a parole officer for a period the Board may in respect of that person—

(a) direct the Director to assign a parole officer to supervise that person during that period and from time to time as occasion arises to assign another parole officer instead of the parole officer previously assigned;

(b) in its discretion at any time during the period of such supervision, order that the person be returned to the custody of the person or authority from which he was released by the Governor; and

(c) after making any such order by warrant signed by any two members, authorize any member of the police force or other officer to apprehend the person and deliver him to the custody of the person or authority specified in the warrant at a place so specified.

(3) A warrant issued under this section is sufficient authority to the member of the police force or other officer to whom it is directed for the apprehension of the person to whom it relates and for his being delivered into detention at the place specified in the warrant.

(4) Where a person is delivered at a place of detention pursuant to a warrant issued under this section, the order of the Governor for the detention of that person during the pleasure of the Governor that was previously in force shall continue to be in force.

Power to release certain children and young persons in custody subject to conditions including supervision. Inserted by No. 16 of 1971, s. 3.

34AA. (1) Where any child or young person under the age of eighteen years ordered pursuant to paragraph (a) of subsection (6a) of section nineteen of The Criminal Code to be detained in strict custody until the Governor's pleasure is known and, thereafter, in safe custody in such place or places as the Governor may, from time to time, direct is released from custody by order of the Governor, the Governor may in that order specify such conditions as he thinks fit, subject to which the offender shall be released, including a condition that during the period specified in the order he be under the supervision of a parole officer.

(2) Where an offender is so released subject to a condition that he be under the supervision of a parole officer for a period the provisions of this Act apply to him as if he were a person ordered pursuant to section six hundred and fifty-three of The Criminal Code to be kept in safe custody during the pleasure of the Governor and released from custody in accordance with section thirty-four A of this Act.

Application of this Act to certain prisoners released pursuant to s. 705 of The Criminal Code.
Inserted by No. 3 of 1969, s. 14.

34B. When the Governor extends the Royal mercy to an offender pursuant to section seven hundred and five of The Criminal Code, upon condition of the offender submitting to his release on parole under this Act, for any period not exceeding five years, the provisions of this Act relating to the parole of offenders apply, with such modifications as circumstances require, to the offender, as if the Board had by order under this Act directed his release from prison on parole for such period.

Application of this Act where an order is made under s. 48 of the Mental Health Act 1962.
Inserted by No. 16 of 1971, s. 4.

34C. (1) When the Governor makes an order pursuant to section forty-eight of the Mental Health Act 1962, that a person be admitted as a patient to an approved hospital the provisions of this Act cease to apply to that person.

(2) When the Governor makes an order pursuant to subsection (2) of section forty-eight of the Mental Health Act 1962, that a person be returned to strict custody the provisions of this Act again apply to that person.

Appointment of officers of the Board and parole officers.
Amended by No. 73 of 1965, s. 3; No. 3 of 1969, s. 15; No. 89 of 1982, s. 21.

35. (1) Under and subject to the Public Service Act 1978, the Governor may appoint, for the purposes of this Act,—

[*Paragraphs (a) and (b) deleted by No. 89 of 1982, s. 21.*]

(c) such number of persons of either sex, as he thinks necessary for the purpose of giving effect to this Act, to be parole officers; and

(d) a person to be secretary to the Board and such other officers as he thinks necessary for the purpose of giving effect to this Act.

(2) A person may be appointed under this Act to hold one or more offices under this Act.

(3) The Governor may, on such terms and conditions as may be prescribed, appoint any person, not being a member of the police force, to be an honorary parole officer for the purposes of this Act and may at any time remove any person so appointed.

[*Subsection (4) repealed by No. 73 of 1965, s. 8.*]

(5) Any appointment of an honorary parole officer under subsection (2) of this section may be made by the appointment of the holder for the time being of an office, specifying the office but without naming the holder, and in any such case each successive holder of that office and each person who, for the time being, occupies or performs the duties of that office is, without further appointment or other authority, and while he holds or occupies or performs the duties of that office, an honorary parole officer under this Act in terms of the appointment.

(5a) A person who holds or occupies—

(a) the office of parole officer; or

(b) any office that is prescribed for the purposes of this Act to be an office similar to that of a parole officer,

in another State or Territory shall, by virtue of his office and without further appointment or other authority than this subsection, be deemed to be a parole officer for the purposes of a parole order, that permits or requires a prisoner to reside in that State or Territory.

(6) The functions, powers and duties of a parole officer are as prescribed by or under this Act and by rules made in that behalf by the judges.

(7) A parole officer is not personally liable in any action or suit whatsoever in respect of anything done or omitted in good faith in the exercise or purported exercise of any power or duty conferred or imposed on the parole officer by or under this or any other Act.

Direction and control of parole officers. Amended by No. 89 of 1982, s. 22.

36. The Director and parole officers are, in relation to any parole order, subject to the direction of the Board, but otherwise parole officers are under the immediate control of the Chief Parole Officer.

Fixing minimum term to be served to be eligible for parole.
Amended by No. 73 of 1965, s. 9; No. 3 of 1969, s. 16; No. 116 of 1981, s. 15.

37. (1) Subject to subsection (2) of this section—

(a) where a person is convicted by a court of an offence and sentenced to be imprisoned for the offence; or

(b) where a person who has been so convicted before the date of the coming into operation of this Part of this Act is, after that date, sentenced to be imprisoned for the offence,

if the term of imprisonment imposed is not less than twelve months, the court shall, and if that term is less than twelve months the court may, as part of the sentence fix a minimum term, being a lesser term than the term of imprisonment imposed, during which minimum term the convicted person is not eligible to be released on parole.

(2) The court—

(a) is not required to fix a minimum term if the court considers that the nature of the offence and the antecedents of the convicted person render the fixing of a minimum term inappropriate; and

(b) shall not fix a minimum term in respect of a term of imprisonment imposed—

(i) on an habitual criminal if, at the expiration of that term of imprisonment, he is to be detained during the Governor's pleasure in a prison; or

(ii) on a person if, on the expiration of that term of imprisonment, he is to be so detained otherwise than as an habitual criminal; or

(iii) on a person, for life whether with or without hard labour.

(3) Where a person is before a court to be sentenced upon convictions of two or more offences that court, notwithstanding that it sentences the person to be imprisoned in respect of all or any of those offences for which he is convicted and is then

to be sentenced, shall not fix a minimum term in respect of each of the offences for which he is sentenced to be imprisoned but if the court is of opinion that a minimum term should be fixed in respect of those offences, it shall fix a minimum term in respect of the aggregate period of imprisonment the person shall be liable to serve under all the sentences then imposed.

(4) Where a person is convicted by a court of one or more offences and is sentenced to be imprisoned by the court for the offence or offences, if—

(a) the court directs that the term or terms of imprisonment then imposed by it in respect of the offence or offences shall take effect cumulatively with a term or terms of imprisonment that the person is then undergoing or liable to undergo and in respect of which no minimum term has been fixed; and

(b) the aggregate period of imprisonment that consequently remains to be cumulatively served by the person after the court so directs, amounts to not less than twelve months,

the court, subject to subsection (2) of this section, shall fix a minimum term in respect of the aggregate of the terms of imprisonment that the court so directs are to take effect cumulatively.

(5) Where a person is convicted of one or more offences by a court of petty sessions and is sentenced by the court to a term of imprisonment for the offence or offences and the court is required under this Act, subject to paragraph (a) of subsection (2) of this section, to fix a minimum term as part of such sentence, or the aggregate of such sentences if the court decides not to fix a minimum term pursuant to that paragraph, the court shall endorse the appropriate court record accordingly.

(6) Where a court of petty sessions fails to comply with the provisions of subsection (5) of this section, the court shall be deemed to have fixed a minimum term of one-half of the term of imprisonment

referred to in that subsection or one-half of the aggregate of the period or terms of imprisonment referred to in subsection (3) or (4) of this section, as the case requires.

Service of several sentences with minimum terms.
Amended by No. 3 of 1969, s. 17.

38. (1) Where a person is sentenced to a term of imprisonment in respect of which a minimum term is fixed and, before the expiration of that minimum term, is sentenced by a court for an offence to a further term of imprisonment in respect of which a minimum term is fixed, then the minimum term fixed in respect of the subsequent sentence is cumulative upon or concurrent with that fixed in respect of the prior sentence according as the term of imprisonment imposed is cumulative upon or concurrent with the term imposed by the prior sentence.

(2) Where an offender has been sentenced, whether before or after the coming into operation of this Part of this Act, to several terms of imprisonment in respect of any of which a minimum term was fixed, those sentences shall be served in the following order—

(a) firstly, any term or terms in respect of which no minimum term has been fixed;

(b) secondly, the minimum term or the aggregate of the several minimum terms in accordance with subsection (1) of this section; and

(c) thirdly, unless and until released on parole, the balance of any term or terms after the expiration of the minimum term or the aggregate of the minimum terms fixed in respect thereof,

and where during the service of any sentence a further sentence is imposed that service shall, if necessary, be suspended in order that the sentences may thereafter be served in the foregoing order.

(3) Notwithstanding section twenty of The Criminal Code, where a person who has been released on parole is sentenced to another term of

imprisonment in respect of an offence committed during the parole period, that term of imprisonment shall be served cumulatively upon the unexpired portion of the term of imprisonment in respect of which he was released from prison on parole, unless the court imposing the firstmentioned term otherwise orders.

Regulations for remission of portion of sentence not to apply where minimum term fixed.
Amended by No. 3 of 1969, s. 18; No. 116 of 1981, s. 16.

39. (1) Subject to subsection (3) of this section, section 29 of the Prisons Act 1981 does not apply to or with respect to a term of imprisonment in respect of which a minimum term is fixed under this Part of this Act.

(2) Regulations may be made under this section providing for the reduction of minimum terms fixed in accordance with this Act, as an incentive to or reward for good conduct or industry.

(3) Where a prisoner who—

(a) is eligible to be released on parole in respect of part of a term of imprisonment; and

(b) has not been previously released on parole in respect of that term of imprisonment,

is not so released before the date that he would have been released from prison, having regard to the part, if any, of that term of imprisonment that would have been remitted pursuant to section 29 of the Prisons Act 1981 if that section had been duly applied to, or with respect to, him, the prisoner shall be released from prison on that date or as soon thereafter as is practicable unless he is then liable to serve any other term of imprisonment or part thereof.

Court failing to fix or incorrectly fixing minimum sentence.
Amended by No. 3 of 1969, s. 19; No. 57 of 1976, s. 32.

40. (1) A term or terms of imprisonment imposed after the coming into operation of this Part of this Act by any court, is or are not invalidated by reason only of the failure of the court to fix a minimum term as required by this Part of this Act or by the purported fixation by the court of a minimum term not in accordance with this Part of this Act.

(2) Subject to section thirty-seven of this Act, in the case of such a failure or such a purported fixation of a minimum term—

(a) The Court of Criminal Appeal in respect of a sentence by the Supreme Court or the District Court; or

(b) the Supreme Court in respect of a sentence by any other court,

may, on the application of the Director, fix a minimum term in accordance with this Part in any manner in which that term might have been fixed by the court that imposed the sentence.

(3) Rules of Court may be made for regulating the practice and procedure in respect of applications under this section.

Release on parole. Amended by No. 73 of 1965, s. 10; No. 3 of 1969, s. 20; No. 116 of 1981, s. 17; No. 89 of 1982, s. 26.

41. (1) The Board may in its discretion by order in writing direct that—

(a) a prisoner undergoing a sentence of imprisonment in respect of which a minimum term has been fixed, be released from prison on parole at the time specified in the order, being a time that is after the expiration of the minimum term;

(b) a prisoner, being an habitual criminal who is being detained in a prison during the Governor's pleasure pursuant to the direction, whether given before or after the coming into operation of this Part of this Act, of a court under section six hundred and sixty-one of The Criminal Code, be so released on parole at the time specified in the order, being any time after the prisoner has been so detained during a period of two years or such lesser period as the Governor, having regard to the circumstances of the case, on the recommendation of the Board, orders;

(c) a prisoner who is being detained otherwise than as an habitual criminal in a prison during the Governor's pleasure pursuant to a direction, whether given before or after the coming into operation of this Part of this Act, of a court under paragraph (a) of section six hundred and sixty-two of The Criminal Code, be so released on parole at the time specified in the order, being any time after the prisoner has been so detained for any period; and

(d) a prisoner detained in a prison otherwise than as an habitual criminal pursuant to a sentence, whether imposed before or after the coming into operation of this Part of this Act, of a court under paragraph (b) of section six hundred and sixty-two of The Criminal Code, be so released on parole at the time specified in the order, being any time after the prisoner has been so detained for any period,

and the prisoner shall be released accordingly.

(1a) Notwithstanding the provisions of section six hundred and sixty-five of The Criminal Code, where a prisoner is undergoing or has been sentenced to undergo, a term of imprisonment in respect of which a minimum term has been fixed and has also been sentenced to an indeterminate sentence under The Criminal Code, for the purposes of this section the indeterminate sentence shall be deemed to commence on the expiration of the minimum term.

(2) The Board may, by order signed by any two members, cancel, amend or vary any parole order before the prisoner has been released pursuant to the order, and, if a parole order is so amended or varied, it applies accordingly.

(3) Where, pursuant to a parole order, a prisoner to whom—

(a) paragraph (a) of subsection (1) of this section refers, is released on parole, he shall,

during the period from his release until the expiration of his term of imprisonment, be under the supervision of a parole officer;

(b) paragraph (b), (c) or (d) of subsection (1) of this section refers, is released on parole, he shall, during such parole period, not exceeding two years, as may be fixed by the Board, be under the supervision of a parole officer,

and shall comply with such requirements as are specified in the parole order in accordance with the regulations and with such other requirements as the Board considers necessary in any particular case and specifies in the order, but in every parole order there shall be inserted a requirement that the prisoner named therein shall not frequently consort with reputed criminals or persons of ill repute.

(3a) Without limiting the generality of subsection (3) of this section, the parole order may include requirements relating to the residence of the prisoner in this State or if the prisoner consents, in another State or a Territory.

(3b) Unless the parole order otherwise permits or requires the prisoner to reside in another State or Territory, it is a requirement of every parole order that the prisoner shall not leave or remain out of this State except in compliance in every respect with the terms and conditions of a permit in writing of the Board or of the Director.

(3c) Where a parole order requires that the prisoner shall not leave or remain out of this State, the Board or the Director may permit the prisoner to leave and remain out of the State for such time and upon such terms and conditions, as it or he thinks fit.

(3d) A permit under subsection (3c) of this section shall be in writing under the hand of a member of the Board or the Director as the case requires, and to the extent necessary to give effect to the permit the parole order shall be deemed to be amended and shall apply accordingly.

(3e) Where a permit is issued by the Director under subsection (3c) of this section, that officer shall forthwith cause to be sent to the Secretary to the Board a copy of the permit together with a report setting out the facts and circumstances under which the permit was issued.

(3f) Where pursuant to a parole order, a prisoner is required or permitted to reside in another State or a Territory, the Director shall send to the Chief or Principal Parole Officer, or other prescribed officer, in that State or Territory, on being requested by that officer so to do, a copy of the parole order certified in writing under his hand as a true copy, and such documents and information relating to the case as he considers likely to be of assistance to any authority or officer in the State or Territory with respect to the order.

(4) The Director shall assign a parole officer to supervise the prisoner to whom a parole order relates during the parole period and may from time to time assign another parole officer in place of the parole officer previously so assigned.

Breach of parole order otherwise than by conviction. Inserted by No. 3 of 1969, s. 21. Amended by No. 89 of 1982, s. 26.

41A. (1) A prisoner who at any time during the parole period whether in this State or elsewhere fails to comply with a requirement of the parole order is guilty of an offence against this section.

(2) (a) If at any time during the parole period it appears on complaint in writing to a justice that a prisoner has failed to comply with a requirement of a parole order, the justice may issue a summons requiring the prisoner to appear at a court of petty sessions at the time and place specified in the summons or may, if the complaint is in writing and on oath, issue a warrant for his arrest directing that he be brought before a court of petty sessions at the place specified as soon as practicable after his arrest.

(b) The court of petty sessions before which the prisoner is so required to appear or is directed to be brought, as the case may be, has jurisdiction to hear and determine the complaint.

(3) If the court of petty sessions before which the prisoner appears or is brought pursuant to subsection (2) of this section, convicts the prisoner of an offence against this section, the court may, without effecting the continuation of the parole order, impose on him a fine not exceeding one hundred dollars.

(4) The conviction of a prisoner of an offence against this section does not limit the power of the Board to cancel, suspend, amend or vary his parole pursuant to section forty-four of this Act.

(5) Without limiting the provisions of subsection (2) of section forty-four of this Act, a prisoner who is sentenced to another term of imprisonment in respect of an offence committed during the parole period whether in this State or elsewhere, is not on account of the commission of that offence liable to be dealt with under this section.

(6) A prisoner who has been dealt with under the provisions of a law of another State or a Territory corresponding to section fifty R of this Act for failing to comply with a requirement of the parole order is not liable to be dealt with under this section for the act or omission that constituted the failure to comply for which he was so dealt with.

(7) Where any breach of the requirements of a parole order comes to the knowledge of the Director, he shall give forthwith notice in writing of the breach to the Board and shall submit such reports upon and information with respect to the breach as the Board requires.

Release on parole of prisoner serving life sentence.
Amended by No. 73 of 1965, s. 11; No. 3 of 1969, s. 22; No. 39 of 1977, s. 2; No. 96 of 1980, s. 13.

42. (1) Subject to subsection (2) of this section, the Governor may by order in writing, direct the release from prison on parole at the time specified in the order on such terms and conditions and for such parole period, not exceeding five years, as the Governor thinks fit a prisoner undergoing a sentence of strict security life imprisonment or imprisonment,

either with or without hard labour, for life and the provisions of this Act relating to release of prisoners on parole, with such adaptations as are necessary, apply to a prisoner released upon parole under this section.

[*Previous subsection (2) repealed by No. 73 of 1965, s. 11.*]

(2) In the case of a prisoner undergoing a sentence of strict security life imprisonment, an order under subsection (1) of this section shall not be made earlier than twenty years after the date of commutation of sentence except where the Governor is of the opinion that special circumstances exist and the Minister shall cause every order made under that subsection in respect of such a prisoner, together with an explanatory note as to the circumstances, to be tabled in each House of Parliament within fifteen sitting days of that House after the making of the order.

(3) Notwithstanding the provisions of section forty-five of this Act, whenever a prisoner is released from prison on parole pursuant to this section and his parole is thereafter cancelled he shall not be further released on parole otherwise than in accordance with the provisions of subsection (1) of this section.

Persons on parole deemed still under sentence. Amended by No. 3 of 1969, s. 23; No. 116 of 1981, s. 18.

43. If during the parole period—

(a) the Board does not make an order cancelling the prisoner's parole; or

(b) the prisoner does not commit, either in this State or elsewhere, an offence other than an offence against section forty-one A of this Act or a law of another State or a Territory corresponding to section fifty R of this Act, for which he is sentenced to imprisonment, whether during or after the parole period,

the prisoner—

(c) shall be regarded as having served his term of imprisonment or his detention during the Governor's pleasure in a prison, as the case may be, to which the parole period relates; and

(d) by force of this section is wholly discharged therefrom and in the case of an habitual criminal ceases to be such,

but until the prisoner is in any way discharged from his sentence of imprisonment or detention the prisoner, while released on parole, shall be regarded as being still under sentence for the offence in respect of which he was so released or under detention during the Governor's pleasure, as the case requires, and as not having suffered the punishment to which he was sentenced or as not having undergone detention during the Governor's pleasure and, in the case of an habitual criminal, as being an habitual criminal and liable to be further detained during the Governor's pleasure.

Power to Board to cancel parole.
Amended by No. 73 of 1965, s.12; No. 3 of 1969, s. 24.

44. (1) Where a prisoner, including a prisoner to whom section forty-two of this Act applies, is released on parole under this Act, the Board may at any time, before the expiration of the parole period, by order in writing signed by any two members cancel, amend, suspend or vary the parole order relating to the prisoner and the parole order as so varied applies to the prisoner accordingly.

(1a) Any suspension of a prisoner's parole under subsection (1) of this section may be for a fixed or an indeterminate period as the Board thinks fit.

(1b) The Board may at any time by order in writing, cancel an order suspending a prisoner's parole.

(1c) Where a prisoner's parole has been suspended and during the period of suspension the prisoner's parole has not been cancelled—

(a) by order of the Board under subsection (1) of this section; or

(b) by operation of subsection (2) of this section,

then at the expiration of the period of suspension of the prisoner's parole, or if the order suspending the prisoner's parole is sooner cancelled, upon such cancellation the parole order again applies with such additional or varied requirements, if any, as the Board may impose and the prisoner shall be released on parole under the order.

(1d) (a) Where pursuant to a parole order a prisoner is residing in another State or a Territory and the Parole Board, or other prescribed authority, of that State or Territory makes an order cancelling, suspending or varying his parole, the parole order shall be deemed to be cancelled, suspended or varied as specified in the order and as so varied applies accordingly.

(b) Where the Parole Board or other prescribed authority of that State or Territory cancels any order suspending a prisoner's parole, the foregoing provisions of this subsection cease to apply in relation to that order.

(2) Where a prisoner who has been released on parole is sentenced to another term of imprisonment in respect of any offence other than an offence against section forty-one A of this Act or a law of another State or a Territory corresponding to section fifty R of this Act, committed during the parole period, whether in this State or elsewhere, his parole, by force of this section, is cancelled notwithstanding that the parole period may already have elapsed.

(3) When a prisoner's parole is cancelled, whether by order of the Board or by the operation of subsection (2) of this section, the Board may, whenever necessary, by warrant signed by any two members, authorize any member of the Police Force or other officer to apprehend the prisoner and return him to a prison to serve the unexpired portion of his term of imprisonment or to be further detained during

the Governor's pleasure or, in the case of a prisoner who is an habitual criminal, to be further detained during the Governor's pleasure or to apprehend him and bring him before the Board as soon as practicable, and the warrant is sufficient authority for the apprehension of the prisoner and for his return to prison or his being apprehended and brought before the Board accordingly.

(3a) It is not necessary for the Board to meet before any warrant is signed and issued by it under this Act.

(3b) Where a prisoner is brought before the Board pursuant to a warrant issued under subsection (3) of this section the Board—

(a) may again direct the release of the prisoner on parole; or

(b) may issue a warrant under that subsection for the return of the prisoner to prison.

(4) Where a prisoner's parole is so cancelled, the original warrant of commitment or other authority for his imprisonment or detention from which he was released on parole, is again in force and except as hereinafter provided in this section, no part of the time between his being so released and his recommencing to serve the unexpired portion of his term of imprisonment or detention shall be regarded as time served in respect of that term or detention but where a prisoner is released on parole pursuant to subsection (3b) of this section the Board may, if it thinks fit, order that all or any of the parole period prior to the prisoner being so released on parole shall be regarded as time served in respect of that term or detention, unless his parole is cancelled on a subsequent occasion.

(5) Where a prisoner's parole is suspended by order of the Board, the Board may whenever necessary, by warrant signed by any two members of the Board, authorize any member of the Police Force or other officer to apprehend the prisoner and return him to a prison or institution specified in the

warrant to be therein kept in custody for so long as the order suspending his parole remains in force and the warrant is sufficient authority for the prisoner's apprehension and for his conveyance to the prison or institution specified in the warrant and for his detention therein during the period during which the order suspending his parole remains in force.

(6) Where a prisoner has been imprisoned or detained under the provisions of a law of another State or a Territory corresponding to section fifty Q of this Act, he shall be regarded for the purposes of this Part, as having served or undergone imprisonment or detention, as the case may be, for the period during which he was so imprisoned or detained and that period shall be regarded as time served in respect of his term of imprisonment or detention under the original warrant of commitment or other authority therefor.

Power to Board to release on parole more than once. Amended by No. 116 of 1981, s. 19.

45. The Board may, from time to time, release a prisoner on parole, notwithstanding that his parole has been cancelled on a prior occasion or occasions under this Act, in respect of the same term of imprisonment or detention during the Governor's pleasure in a prison.

Continuance of leave of absence or probation existing on coming into operation of this Act.

46. (1) Where, before the date of the coming into operation of this Part, a person—

(a) has been permitted to leave a reformatory prison temporarily pursuant to section sixty-four H or sixty-four K of the Prisons Act 1903[1]; or

(b) has been released from a reformatory prison on probation pursuant to section six hundred and sixty-six of The Criminal Code,

if that person on or after that date is absent from the reformatory prison, whether lawfully or unlawfully, the provisions of Part VIA of the Prisons Act 1903[1]; and of Chapter LXV of The Criminal Code and

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[1] Repealed by Prisons Act 1981.

any regulations made thereunder, as those provisions existed immediately prior to that date, continue to apply to that person so far as they affect him, but any reference therein to the Indeterminate Sentences Board shall be read and construed as a reference to the Board.

(2) Upon the return or recommittal of a person to a reformatory prison by virtue of this section this Act applies to that person as if, on the coming into operation of this Part, he had been a prisoner detained in a reformatory prison during the Governor's pleasure.

Power of Board to fix minimum sentence in relation to prisoners imprisoned when this Act comes into operation. Amended by No. 34 of 1964, s. 4; No. 3 of 1969, s. 25.

47. (1) Where, immediately before the date of the coming into operation of this Part of this Act a person is undergoing a sentence—

(a) of imprisonment for life, including a sentence of imprisonment for life commuted pursuant to section six hundred and seventy-nine of The Criminal Code from a sentence of death;

(b) of a term of imprisonment of which less than twelve months remain to be served, having regard to the effect of any remission regulations;

(c) of any term as an habitual criminal and at the expiration of which he is to be detained during the Governor's pleasure in a reformatory prison;

(d) of any term, and at the expiration of which that person is to be so detained otherwise than as an habitual criminal,

that sentence shall continue, subject to the provisions of this Act and to any remission regulations where they are applicable, until its completion, but with respect to every other person undergoing at that date any other sentence of imprisonment for a term, the Board shall fix a minimum term in respect of that term of imprisonment.

(2) With respect to a minimum term fixed under this section—

(a) the remission regulations do not apply; and

(b) the provisions of this Act relating to parole do apply.

(3) The Board may, by order in writing, direct that any person to whom paragraph (b) of subsection (1) of this section relates, be released from prison on parole at the time specified in the order, being a time that is after the person has served one half at least of the term of imprisonment to which he was sentenced; and the person shall be released accordingly.

(3a) Where a person has been released on parole pursuant to subsection (3) of this section, he shall be deemed to have been so released—

(a) for a period equal to the remainder of the term of imprisonment that he was undergoing at the time of his release; and

(b) for the purposes of this Act to be a person who has been so released after serving a minimum term in respect of that term of imprisonment.

(4) The provisions of this Act relating to parole and in particular the provisions of subsections (2), (3) and (4) of section forty-one of this Act, with such modifications as the circumstances require, apply to a person released on parole pursuant to subsection (3) of this section.

Board to have regard to remission provisions when fixing minimum sentence. Substituted by No. 116 of 1981, s. 20.

48. In fixing a minimum term under this Part in respect of any term of imprisonment, the Board shall have regard to the part, if any, of the term of imprisonment that would, in the ordinary course of events, have been remitted pursuant to section 29

of the Prisons Act 1981 if the application of that section had not been excluded by this Act and the Board shall not fix the minimum term to extend beyond the date at which the prisoner in respect of whom the minimum term is being fixed would have been eligible for release under that section.

Resolution of doubtful cases. Amended by No. 57 of 1976, s. 33.

49. Where a doubt or difficulty arises in the application of this Part of this Act, to any particular case, or if any case arises in respect of—

(a) the conviction or sentence of a person before the date of the coming into operation of this Part of this Act;

(b) the effect of any conviction or sentence after that date upon a conviction or sentence before that date; or

(c) any prisoner who, having escaped from lawful custody, is unlawfully at large at that date,

for which this Act makes no provision, a judge, on the application in a summary way of the Director, may by order resolve that doubt or difficulty or deal with that case in such manner as he considers just, and for that purpose may determine any term of imprisonment or minimum term or may direct that any such term or minimum term shall be determined by the Board or in any other specified way.

Terms of imprisonment and minimum terms to be determined within reasonable time.

50. Where a minimum term in respect of a term of imprisonment is required to be determined under this Act in respect of any person who, at the date of the coming into operation of this Part of this Act, is imprisoned in any prison, that minimum term shall be determined within a reasonable time after that date, but that person is not entitled to be released or to have any cause of action by reason only that the minimum term is not determined at any earlier time.

PART IIIA.—ORDERS RELATING TO PROBATION AND PAROLE OF OFFENDERS MADE IN ANOTHER STATE OR A TERRITORY.

Part IIIA. Inserted by No. 3 of 1969, s. 26.

Division 1.—Probation Orders made in another State or in a Territory.

Interpretation. Inserted by No. 3 of 1969, s. 26.

50A. (1) In this Division unless the contrary intention appears—

"probation order" means a probation order, or an order of a class prescribed to be similar to a probation order made under Part II of this Act made by a court or other prescribed authority of another State or Territory that requires or permits the probationer to reside in this State.

(2) For the purposes of this Part, a court having jurisdiction similar to the jurisdiction of the court of another State or Territory by which a probation order was made shall be in the case of a probation order made by—

(a) the Supreme Court of another State or a Territory, the Supreme Court;

(b) a Court of General Sessions, Court of Sessions or a Court of Quarter Sessions of another State or Territory, the Supreme Court;

(c) a court of another State or a Territory constituted by a police, stipendiary or special magistrate or by a justice or justices of the peace, a court of petty sessions constituted by a stipendiary magistrate sitting alone.

Probation order to have effect in this State. Inserted by No. 3 of 1969, s. 27.

50B. Subject to the provisions of this Division, a probation order has force and effect and the probationer is bound by the requirements thereof, whether express or implied, in all respects as if it were an order made under the provisions of Part II of this Act and those provisions apply, subject to such modifications as circumstances require, to the first mentioned probation order.

Reports. Inserted by No. 3 of 1969, s. 28. Amended by No. 89 of 1982, s. 28.

50C. (1) The Director shall cause to be prepared and submitted to the Chief or Principal Probation Officer, or such other officer or authority as is prescribed, of another State or Territory in which the probation order was made, such reports upon, and information with respect to, the probationer as such court, officer or authority from time to time requires.

(2) A report made under paragraph (b) of subsection (2) of section eight of this Act shall include a report with respect to probation orders to which this Division applies in relation to the matters specified in that paragraph.

Probationer to report. Inserted by No. 3 of 1969, s. 29. Amended by No. 89 of 1982, s. 26.

50D. (1) There shall be implied in every probation order a requirement that the probationer—

(a) report in person, or in writing, to the Director within seventy-two hours after he comes into this State; and

(b) report in person at such place, within such time, and to such person as may, from time to time, be specified by the Director by instrument in writing given to the probationer.

(2) Where the Chief or Principal Probation Officer of the State or Territory in which the probation order was made is of opinion, in the circumstances of the case, that any requirement specified in subsection (1) of this section should be waived, he may notify the Director and the probationer in writing to that effect and thereupon the probationer is not required to comply with that requirement unless and until he is directed to the contrary by the Chief or Principal Probation Officer of that State or Territory.

(3) Except where the Chief or Principal Probation Officer of the State or Territory in which the probation order was made informs the Director that the assignment of a probation officer is not required, the Director shall assign a probation officer

to be the probation officer in respect of the probation order and to supervise the probationer in this State during the continuance of the order, and the Director may from time to time assign another probation officer in respect of the order instead of the probation officer previously assigned.

50E. (1) A court having jurisdiction similar to the jurisdiction of the court of another State or a Territory by which a probation order was made may, upon application by the probation officer assigned pursuant to subsection (3) of section fifty D of this Act in respect of the order or by the probationer and after due consideration of any report by the Chief or Principal Probation Officer, or other prescribed officer, of that other State or Territory, make an order for the discharge of the probation order and thereupon the order shall for the purposes of this Part be deemed to be discharged accordingly.

Order of discharge of probation order.
Inserted by No. 3 of 1969, s. 30.

(2) Where an order is made pursuant to subsection (1) of this section, the court making the order shall cause to be sent to the Chief or Principal Probation Officer, or other prescribed officer, in the State or Territory in which the probation order was made, a copy of the order, together with such documents and information relating to the matter as it considers likely to be of assistance to any authority or person in the State or Territory with respect to the order.

50F. (1) A court having jurisdiction similar to that of—

Amendment of probation order.
Inserted by No. 3 of 1969, s. 31.

(a) the supervising court in the State or Territory in which the probation order was made; or

(b) the court of that State or Territory by which the order was made,

may at any time, upon application by the probation officer assigned pursuant to subsection (3) of section fifty D of this Act in respect of the order or by the probationer, and after due consideration of any

report by the Chief or Principal Probation Officer, or other prescribed officer, of that State or Territory, by order amend the probation order by cancelling any requirement thereof or by inserting therein, either in addition to or in substitution of any requirement thereof, any requirement that could be included in that order if it were then being made by the court in accordance with the provisions of Part II of this Act, but the court shall not—

(c) amend a probation order by reducing the probation period or by extending the probation period beyond the maximum period during which the probationer might have been required by the order to be under the supervision of a probation officer in the State or Territory in which the order was made; and

(d) except with the consent of the probationer, so amend the probation order that the probationer is thereby required to reside in any institution or in another State or Territory.

(2) Notwithstanding that a probation order of another State or a Territory does not require or permit the probationer to reside in this State, an amending order may be made pursuant to subsection (1) of this section, on the application of the probationer, permitting or requiring the probationer to reside in this State and thereupon the probation order becomes an order to which this Part applies and shall for the purposes thereof be deemed to be amended accordingly.

(3) The court may direct that any order under subsection (2) of this section has effect retrospectively as from a date specified in the order in that regard.

(4) Where, pursuant to this section, an order is made amending a probation order, the probation order shall for the purposes of this Part be deemed to be amended as specified in the amending order and as so amended applies accordingly.

(5) Where an amending order is made pursuant to this section, the Registrar or clerk of the court, as the case may be,—

(a) shall forthwith cause to be sent to the Chief or Principal Probation Officer or other prescribed officer, of the State or Territory in which the probation order was made, a copy of the order, together with such documents and information relating to the matter as it considers likely to be of assistance to any authority or person in the State or Territory with respect to the order; and

(b) shall forthwith cause a copy of the order to be given or sent to the probationer and to be sent to the probation officer and to the person in charge of any institution in which a probationer is or was required by the order to reside.

(6) Where pursuant to this section a court proposes to amend a probation order otherwise than on the application of the probationer, the court may summon him to appear before it, and the court shall not amend a probation order unless the probationer expresses his willingness to comply with the requirements of the order when amended but this subsection does not apply to an order cancelling any requirement of the probation order or reducing the period of any requirement.

Breach of probation order otherwise than by conviction. Inserted by No. 3 of 1969, s. 32. Amended by No. 57 of 1976, s. 34.

50G. (1) A probationer who at any time during the probation period fails to comply with an express or implied requirement of a probation order, is guilty of an offence against this section.

(2) If at any time during the probation period it appears on complaint in writing to a justice that a probationer has failed to comply with a requirement of a probation order, the justice may issue a summons requiring the probationer to appear at a court of petty sessions at a time and place specified

in the summons or may, if the complaint is in writing and on oath, issue a warrant for the probationer's arrest directing that he be brought before a court of petty sessions at a place specified in the warrant as soon as practicable after his arrest.

(3) The court of petty sessions before which the probationer is so required to appear or is so directed to be brought, as the case may be, has jurisdiction to hear and determine the complaint.

(4) If the court of petty sessions convicts the probationer of an offence against this section, the court may—

(a) without prejudice to the continuation of the probation order, impose on him a fine not exceeding one hundred dollars;

(b) if the probation order was made by a court having in the State or Territory in which the order was made, a jurisdiction similar to the jurisdiction of a court of petty sessions—make an order pursuant to subsection (1) of section fifty H of this Act with respect to the probationer or deal with him in accordance with the provisions of subsection (4) of that section; or

(c) in any other case—commit him to custody or release him on bail, with or without sureties, to be brought or to appear before a court having jurisdiction similar to the jurisdiction of the court of the other State or a Territory by which the order was made.

(5) (a) Where a court of petty sessions exercises the power referred to in paragraph (c) of subsection (4) of this section, that court shall send to the Crown Solicitor a certificate signed by a justice certifying that the probationer has failed to comply with such requirement of the probation order as is specified in the certificate, together with such other particulars of the case as the court thinks desirable.

(b) A certificate given pursuant to paragraph (a) of this subsection is admissible as evidence before any court of such failure and of the other particulars to which it relates.

(6) Without prejudice to the provisions of section fifty J of this Act, a probationer who is convicted of an offence, other than an offence against this section, committed during the probation period, is not on that account liable to be dealt with under this section or section fifty H of this Act for failing to comply with all or any of the requirements of the probation order.

(7) Where the probationer is brought or appears before the Supreme Court or the District Court, and it is proved to the satisfaction of that court that the probationer has failed to comply with a requirement of the probation order, that court may without prejudice to the continuation of the probation order impose a fine not exceeding one hundred dollars, make an order pursuant to subsection (1) of section fifty H of this Act with respect to the probationer or deal with him in accordance with the provisions of subsection (4) of that section.

(8) The provisions of the Justices Act 1902, so far as applicable and subject to such modifications as circumstances require extend and apply to, and with respect to, all complaints, summonses, warrants and admission to bail referred to in this section.

(9) For the purposes of this section and sections fifty H, fifty J and fifty K of this Act, the court may presume that the person before the court—

(a) is the probationer in respect of whom the probation order was made unless that person adduces evidence that he is not the probationer in respect of whom the probation order was made; and

(b) is the person who was convicted of the offence in respect of which the probation order was made unless the person before

the court adduces evidence that he is not the person who was convicted of the offence in respect of which the probation order was made.

Procedure for dealing with probationer on breach of order.
Inserted by No. 3 of 1969, s. 33.
Amended by No. 57 of 1976, s. 35.

50H. (1) A court duly authorized in that behalf under paragraph (b) of subsection (4) or subsection (7) of section fifty G of this Act—

(a) may order that the probationer be returned to the State or Territory in which the probation order was made; and

(b) may, for that purpose by warrant under hand in the prescribed form, direct that the probationer be kept in custody in a prison, lock-up or other place of detention specified in the warrant, and delivered into the custody of a member of the Police Force or other person to whom a court, judge, magistrate or justice of the peace of that State or Territory has directed a warrant, in this section referred to as an "interstate warrant", authorizing the apprehension of the probationer and directing that he be brought before a court of that State or Territory to be dealt with according to law for failing to comply with all or any of the requirements of the probation order.

(2) A warrant issued by a court of this State under subsection (1) of this section may be executed according to its tenor but the warrant does not authorize the detention in custody of a person after the expiration of a period of fourteen days commencing on the day on which it is issued.

(3) On production to a justice of an interstate warrant, the justice, may make an endorsement as prescribed on that warrant authorizing the execution thereof in this State, and the interstate warrant so endorsed—

(a) authorizes the member of the Police Force of the State or Territory in which it was issued or other person to whom it is directed, to take the probationer into his custody and to return him to the State or Territory in which the interstate warrant was issued; and

(b) authorizes, for that purpose, the detention of the probationer in a prison, lock-up or other place of detention for such period not exceeding fourteen days, as may be specified in the endorsement to the interstate warrant pursuant to this subsection.

(4) Subject to subsection (5) of this section, a court duly authorized in that behalf under paragraph (b) of subsection (4) or subsection (7) of section fifty G of this Act may, where an order under subsection (1) of this section is not made or where made, has been discharged under subsection (7) of this section, deal with the probationer for the offence against section fifty G of this Act in any manner in which the court could deal with him if the act or omission constituting the offence in respect of which the probation order was made had taken place within the jurisdiction of the court and if it had just convicted him of an offence constituted by that act or omission punishable by a penalty not exceeding the maximum penalty prescribed by the law of the State or Territory in which the probation order was made for the offence in respect of which that order was made.

(5) A court shall not deal with a probationer under subsection (4) of this section unless it appears that the appropriate court or authority of the State or Territory in which the probation order was made does not require the return of the probationer to that State or Territory to be dealt with for the offence in respect of which that order was made.

(6) The court before which the probationer is brought may discharge the probationer, admit him to bail on such conditions as it thinks fit, or

authorize his detention in a prison, lock-up or other place of detention for a reasonable period not exceeding fourteen days, pending receipt of instructions from the appropriate court or authority in the State or Territory in which the probation order was made whether the return of the probationer to that State or Territory is desired or not.

(7) Where an order has been made under subsection (1) of this section, the court may at any time before the expiration of a period of fourteen days commencing on the day on which the warrant is issued, discharge the order and may thereupon deal with the probationer as provided by subsection (4) of this section.

(8) A probationer who has been dealt with under the provisions of a law of another State or a Territory corresponding to the provisions of section sixteen of this Act for failing to comply with a requirement of the probation order is not liable to be dealt with under this section or under section fifty G of this Act for the act or omission that constituted the failure to comply for which he was so dealt with.

(9) A sentence imposed by the Court pursuant to subsection (4) of this section shall be regarded as a sentence imposed on a conviction and where the court is the Supreme Court or the District Court the provisions of Chapter LXIX of The Criminal Code so far as applicable apply accordingly for the purposes of any appeal against the sentence.

Breach of order by conviction. Inserted by No. 3 of 1969, s. 34. Amended by No. 57 of 1976, s. 36.

50J. (1) A probationer who is convicted of an offence, other than an offence against section fifty G of this Act, committed during the probation period and is dealt with in respect of that offence, is guilty of an offence against this Act and is liable to be dealt with as provided in this section.

(2) If it appears on complaint in writing to a justice that a person in whose case a probation order has been made, has been convicted of an offence, other than an offence against section fifty G of this

Act, committed during the probation period, and has been dealt with in respect of that offence, the justice may issue a summons requiring that person to appear at the time and place specified in the summons, or, where the complaint is in writing and on oath, may issue a warrant for his arrest.

(3) A summons or warrant issued under subsection (2) of this section shall direct the person so convicted to appear or be brought before a court having jurisdiction similar to the jurisdiction of the court of another State or a Territory by which the probation order was made.

(4) If a person in whose case a probation order has been made is convicted and dealt with in respect of an offence, other than an offence against section fifty G of this Act, committed during the probation period by a court not having jurisdiction similar to that of the court of another State or a Territory by which the order was made, that court may commit him to custody or release him on bail, with or without sureties, to be brought or to appear before a court having jurisdiction similar to that of the court of another State or a Territory by which the probation order was made; and if it does so that court shall send to the Crown Solicitor a certificate of the conviction signed by the proper officer of that court.

(5) A certificate given pursuant to subsection (4) of this section is admissible as evidence before any court that the probationer has been convicted and dealt with in respect of the offence therein specified committed in this State during the probation period.

(6) Where—

(a) a probationer is convicted of and dealt with in respect of an offence, other than an offence against section fifty G of this Act, committed during the probation period by a court having jurisdiction similar to that of the court of another State or a Territory by which the probation order was made; or

(b) it is proved to the satisfaction of a court having jurisdiction similar to that of the

court of another State or a Territory by which the probation order was made that the probationer has been convicted of and dealt with in respect of an offence, other than an offence against section fifty G of this Act, committed during the probation period,

the court may make an order pursuant to subsection (1) of section fifty K of this Act with respect to the probationer or deal with him in accordance with the provisions of subsection (4) of that section.

(7) Where a probationer in whose case the probation order was made by a court of another State or a Territory having jurisdiction similar to that of a court of petty sessions is convicted before the Supreme Court or the District Court of an offence committed during the probation period, the Supreme Court or District Court may make an order pursuant to subsection (1) of section fifty K of this Act with respect to the probationer or deal with him in accordance with the provisions of subsection (4) of that section, and any sentence imposed shall be regarded as the sentence of a court of petty sessions.

(8) Where a probationer in whose case the probation order was made by a court of another State or a Territory having jurisdiction similar to that of the District Court is convicted before the Supreme Court of an offence committed during the probation period, the Supreme Court may make an order pursuant to subsection (1) of section fifty K of this Act with respect to the probationer or deal with him in accordance with the provisions of subsection (4) of that section, and any sentence imposed shall, for all purposes, be regarded as the sentence of the District Court imposed on a conviction of indictment.

Consequences on conviction. Inserted by No. 3 of 1969, s. 35. Amended by No. 57 of 1976, s. 37.

50K. (1) A court duly authorized in that behalf under subsection (6), (7) or (8) of section fifty J of this Act—

(a) may order that the probationer be returned to the State or Territory in which the probation order was made either forthwith or

at the expiration, or at any time before the expiration, of a term of imprisonment or detention which he is serving or to which he has been sentenced; and

(b) may, for that purpose, by warrant under hand in the prescribed form direct that the probationer be kept in custody in a prison, lock-up or other place of detention specified in the warrant and delivered into the custody of a member of the Police Force or other person to whom a court, judge, magistrate or justice of the peace of that State or Territory has directed a warrant, in this section referred to as an "interstate warrant", authorizing the apprehension of the probationer and directing that he be brought before a court of that State or Territory to be dealt with according to law for that he has been convicted of and dealt with for an offence committed during the probation period.

(2) A warrant issued by a court of this State under subsection (1) of this section may be executed according to its tenor but the warrant does not authorize the detention in custody of a person after the expiration of a period of fourteen days commencing on the day on which that person is taken into custody or commences to be detained under the warrant.

(3) On production to a justice of an interstate warrant, the justice, may make an endorsement as prescribed on that warrant authorizing the execution thereof in this State and the interstate warrant when so endorsed—

(a) authorizes the member of the Police Force of the State or Territory in which it was issued or other person to whom it is directed to take the probationer into his custody and to return him to the State or Territory in which the interstate warrant was issued;

and

(b) authorizes, for that purpose, the detention of the probationer in a prison, lock-up or other place of detention for such period not exceeding fourteen days as may be specified in the endorsement to the interstate warrant pursuant to this subsection.

(4) Subject to subsection (5) of this section, a court duly authorized in that behalf pursuant to subsection (6), (7) or (8) of section fifty J of this Act may, where an order under subsection (1) of this section is not made or, where made, has been discharged under subsection (7) of this section, deal with the probationer for the offence against section fifty J of this Act in any manner in which the court could deal with him if the act or omission constituting the offence in respect of which the probation order was made had taken place within the jurisdiction of the court and if it had just convicted him of an offence constituted by that act or omission and punishable by a penalty not exceeding the maximum penalty prescribed by the law of the State or Territory in which the probation order was made for the offence in respect of which that order was made.

(5) A court shall not deal with a probationer pursuant to subsection (4) of this section unless it appears that the appropriate court or authority of the State or Territory in which the probation order was made does not require the return of the probationer to that State or Territory to be dealt with for the offence in respect of which that order was made.

(6) The court before which the probationer is brought may discharge the probationer, admit him to bail on such conditions as it thinks fit, or authorize his detention in a prison, lock-up or other place of detention for a reasonable period not exceeding fourteen days, pending receipt of instructions from the appropriate court or authority in the State or Territory in which the probation order was made whether the return of the probationer to that State or Territory is desired or not.

(7) Where an order has been made under subsection (1) of this section, the court may at any time before the expiration of a period of fourteen days commencing on the day on which the warrant issued under that subsection is expressed to take effect discharge the order and may thereupon deal with the probationer as provided by subsection (4) of this section.

(8) A probationer who has been dealt with under the provisions of a law of another State or a Territory corresponding to the provisions of section seventeen of this Act for that he has been convicted of, and dealt with for, an offence committed during the probation period is not liable to be dealt with under this section or under section fifty J of this Act on account of that conviction.

(9) Any sentence imposed by the court pursuant to subsection (4) of this section shall be regarded as a sentence imposed on a conviction and where the court is the Supreme Court or the District Court the provisions of Chapter LXIX of The Criminal Code so far as applicable apply accordingly for the purposes of any appeal against that sentence.

Application of ss. 17 and 18 of this Act. Inserted by No. 3 of 1969, s. 36.

50L. In the application of sections seventeen and eighteen of this Act pursuant to section fifty B of this Act, for the purposes of this Part the provisions of the firstmentioned sections shall be read as if the reference therein to the foregoing provisions of this Act were a reference to the provisions of Division 1 of Part IIIA of this Act.

Division 2.—Parole Orders made in another State or in a Territory.

Heading and Division 2. Inserted by No. 3 of 1969, s. 37.

Interpretation. Inserted by No. 3 of 1969, s. 37.

50M. In this Division unless the contrary intention appears, "parole order" means a parole order or any order of a class prescribed to be similar to a parole order made under Part III of this Act by the Parole Board or other prescribed authority of another State or of a Territory that requires or permits the prisoner to reside in this State.

Parole orders to have effect in this State. Inserted by No. 3 of 1969, s. 38. Amended by No. 89 of 1982, s. 26.

50N. (1) Subject to this Division, a parole order has force and effect and the prisoner is bound by the requirements thereof, whether express or implied, in all respects as if it were a parole order made under Part III of this Act and that Part applies, subject to such modifications as circumstances require, to the firstmentioned parole order.

(2) A report made in accordance with subsection (1) of section thirty-four of this Act shall include a report with respect to parole orders to which this Division applies in relation to the matters specified in that subsection.

(3) The Director shall cause to be prepared and submitted to the Parole Board or other prescribed authority, or to the Chief or Principal Parole Officer, of another State or a Territory in which the parole order was made such reports upon, and information with respect to, any prisoner as that Board, authority or officer requires from time to time.

Implied requirements of parole orders. Inserted by No. 3 of 1969, s. 39. Amended by No. 89 of 1982, s. 26.

50P. (1) There shall be implied in every parole order a requirement that the prisoner—

(a) report in person, or in writing, to the Director within seventy-two hours after he comes into this State; and

(b) report in person at such place, within such time and to such person as may, from time to time, be specified by the Director by instrument in writing given or sent to the prisoner.

(2) Where the Chief or Principal Parole Officer of the State or Territory in which the parole order was made is of opinion, in the circumstances of the case, that any requirement specified in subsection (1) of this section should be waived, he may notify the Director and the prisoner in writing to that effect and thereupon the prisoner is not required to comply with that requirement unless and until he is directed to the contrary by the Chief or Principal Parole Officer of that State or Territory.

(3) Except where the Chief or Principal Parole Officer of the State or Territory in which the parole order was made informs the Director that the assignment of a parole officer is not required, the Board or the Director shall assign a parole officer to supervise the prisoner in this State during the parole period and may from time to time so assign another parole officer instead of the parole officer previously assigned.

Cancellation, etc., of parole order.
Inserted by No. 3 of 1969, s. 40.
Amended by No. 89 of 1982, s. 26.

50Q. (1) The Board may, at any time before the expiration of the parole period after due consideration of any report by the Chief or Principal Parole Officer of the State or Territory in which the parole order was made, by order cancel, suspend, amend or vary the prisoner's parole and thereupon the parole order shall, for the purposes of this Part, be deemed to be cancelled, suspended, amended or varied as specified in the order, and as so amended or varied applies accordingly.

(2) (a) A suspension of a prisoner's parole under subsection (1) of this section may be for a fixed or an indeterminate period as the Board thinks fit.

(b) The Board may at any time cancel an order made under subsection (1) of this section suspending a prisoner's parole.

(c) Where the Parole Board or other prescribed authority of that State or Territory cancels any order suspending a prisoner's parole, the foregoing provisions of this subsection ceases to apply in relation to that order.

(3) Where a prisoner's parole has been suspended under this section and during the period of the suspension the prisoner's parole has not been cancelled for the purposes of this Part of this Act whether by order of the Board or by the operation of subsection (6) of this section, then at the expiration of the period of suspension of the prisoner's parole, or, if the order suspending the prisoner's parole is sooner cancelled upon such cancellation,

the parole order again applies with such additional or varied requirements, if any, as the Board imposes and the prisoner shall be released on parole under the order.

(4) Where a prisoner's parole is suspended by order of the Board, the Board may whenever necessary, by warrant signed by any two members of the Board, authorize any member of the Police Force or other officer to apprehend the prisoner and to convey him to a prison, lock-up or other place of detention specified in the warrant to be therein kept in custody for so long as the order suspending his parole remains in force and the warrant is a sufficient authority for the prisoner's apprehension and for his conveyance to the prison, lock-up or other place of detention specified in the warrant and for his detention therein during the period during which the order suspending his parole remains in force.

(5) Where an order is made under subsection (1) of this section, the Director shall forthwith—

(a) cause to be sent to the Chief or Principal Parole Officer, or other prescribed officer, of the State or Territory in which the parole order was made, a copy of the order, together with such documents and information relating to the matter as he considers likely to be of assistance to any authority or officer in the State or Territory with respect to the order; and

(b) cause a copy of the order to be sent to the prisoner and the parole officer assigned to supervise the person.

(6) Where the prisoner is sentenced to a term of imprisonment in respect of any offence, other than an offence against section fifty R of this Act, committed during the parole period or where the prisoner's parole has been cancelled by, or under the provisions of, a law of the State or Territory in which he was released upon parole corresponding to subsection (2) of section forty-four of this Act,

his parole is by force of this subsection cancelled for the purposes of this Part of this Act, notwithstanding that the parole period may already have elapsed.

(7) Where a prisoner's parole is cancelled for the purposes of this Part of this Act whether by order of the Board or by the operation of subsection (6) of this section, the Board—

(a) may order that the prisoner be returned to the State or Territory in which he was released on parole either forthwith or at the expiration, or at any time before the expiration, of any term of imprisonment or detention which he is serving or to which he has been sentenced; and

(b) may, for that purpose, by warrant in the prescribed form signed by any two members of the Board, whenever necessary authorize any member of the Police Force or other officer to apprehend the prisoner and convey him to such prison, lock-up or other place of detention as may be specified in the warrant and direct that the prisoner be kept in custody in the prison, lock-up or other place of detention so specified and thereafter delivered into the custody of a member of the Police Force or other person to whom the Parole Board, or other prescribed authority, of the State or Territory in which the parole order was made, has directed a warrant, in this section referred to as an "interstate warrant", authorizing the apprehension of the prisoner and directing that he be returned to a prison or institution in that State or Territory, as the case requires—

(i) to serve the unexpired portion of his term of imprisonment, or detention,

or

(ii) in the case of a person who immediately prior to his release on parole was being detained during Her Majesty's pleasure, to be further so detained.

(8) A warrant issued pursuant to subsection (7) of this section may be executed according to its tenor but the warrant does not authorize the detention in custody of a person after the expiration of a period of fourteen days commencing on the day on which that person is taken into custody or commences to be detained under the warrant.

(9) On production to a justice of an interstate warrant, the justice, may make an endorsement as prescribed on the warrant authorizing the execution thereof in this State and the interstate warrant when so endorsed—

(a) authorizes the member of the Police Force of the State or Territory in which it was issued or other person to whom it is directed to take the prisoner into his custody and to return him to the State or Territory in which the interstate warrant was issued; and

(b) authorizes, for that purpose, the detention of the prisoner in a prison, lock-up or other place of detention for such period not exceeding fourteen days as may be specified in the endorsement to the interstate warrant pursuant to this subsection.

(10) Subject to subsection (12) of this section, where a prisoner's parole is cancelled for the purposes of this Part of this Act whether by order of the Board or by the operation of subsection (6) of this section, the Board may, where an order pursuant to subsection (7) of this section is not made or, where made, has been discharged pursuant to subsection (13) of this section, by warrant signed by two members of the Board authorize any member of the Police Force or other officer to apprehend the prisoner and convey him to such prison or institution as may be specified in the warrant to serve a period of imprisonment or detention equal to the unexpired portion of the term of imprisonment or detention which he was undergoing in the State or Territory in which he was released upon parole immediately

prior to his release and as specified in the warrant, or where prior to his release on parole in that State or Territory he was being detained during Her Majesty's pleasure, to be further so detained and the warrant is sufficient authority for his apprehension and his conveyance to prison or an institution, accordingly.

(11) Subject to subsection (12) of this section, where a prisoner's parole is cancelled for the purposes of this Part of this Act whether by order of the Board or by operation of subsection (6) of this section, the Board may where an order under subsection (7) of this section is not made, or where made, has been discharged pursuant to subsection (13) of this section, issue a warrant of commitment for the prisoner's imprisonment or detention, as the case may require, in a prison or institution specified in the warrant—

(a) for a period of imprisonment equal to the unexpired portion of that term where he was undergoing a term of imprisonment immediately prior to his release upon parole;

(b) for a period of detention equal to the unexpired portion of that term where he was undergoing detention for a period immediately prior to his release upon parole;

(c) for his detention at Her Majesty's pleasure where he was being detained at Her Majesty's pleasure immediately prior to his release upon parole,

and the warrant is sufficient authority for his detention in that prison or institution accordingly.

(12) The Board shall not deal with a prisoner under subsection (10) or (11) of this section unless it appears to the Board that the Parole Board, or other prescribed authority, of the State or Territory in which the prisoner was released upon parole does not require that he be returned to a prison or institution in that State or Territory to serve the

unexpired portion of his term of imprisonment or detention or, in the case of a person who immediately prior to his release on parole was being detained during Her Majesty's pleasure, to be further so detained.

(13) Where an order has been made pursuant to subsection (7) of this section, the Board may, at any time before the expiration of a period of fourteen days commencing on the day on which the prisoner is taken into custody under the warrant, discharge the order and may thereupon deal with the prisoner as provided by subsections (10) and (11) of this section.

Breach of requirements of parole order. Inserted by No. 3 of 1969, s. 41. Amended by No. 89 of 1982, s. 26.

50R. (1) A prisoner who at any time during the parole period fails to comply with an express or implied requirement of the parole order, is guilty of an offence against this section.

(2) It at any time during the parole period it appears on complaint in writing to a justice that a prisoner has failed to comply with an express or implied requirement of the parole order, the justice may issue a summons requiring the prisoner to appear at a court of petty sessions at a time and place specified in the summons or may, if the complaint is in writing and on oath, issue a warrant for his arrest directing that he be brought before a court of petty sessions at a place specified in the warrant as soon as practicable, after his arrest.

(3) The court of petty sessions before which the prisoner is so required to appear or is so directed to be brought, as the case may be, has jurisdiction to hear and determine the complaint.

(4) If the court of petty sessions before which the prisoner appears or is brought pursuant to subsection (2) of this section, convicts the prisoner of an offence against this section, the court may, without prejudice to the continuation of the parole order, impose on him a fine not exceeding One hundred dollars or sentence him to imprisonment for a term not exceeding three months.

(5) The conviction of a prisoner of an offence against this section does not limit the power of the Board by order to cancel, suspend, amend or vary the parole order pursuant to section fifty Q of this Act.

(6) Without prejudice to the provisions of subsection (6) of section fifty Q of this Act, a prisoner who is sentenced to another term of imprisonment in respect of an offence, other than an offence against this section, committed during the parole period is not on account of the conviction for that offence liable to be dealt with under this section.

(7) A prisoner who has been dealt with under the provisions of a law of another State or Territory corresponding to section forty-one A of this Act for failing to comply with a requirement of the parole order is not liable to be dealt with under this section for the act or omission that constituted the failure to comply for which he was so dealt with.

(8) The provisions of the Justices Act 1902, so far as applicable and subject to such modifications as circumstances require, extend and apply to and with respect to all complaints, summonses and warrants referred to in the foregoing provisions of this section.

(9) For the purposes of this section and section fifty Q of this Act, a court or the Board may presume that the person before the court or the Board is the prisoner in respect of whom the parole order was made unless that person adduces evidence that he is not the prisoner in respect of whom the parole order was made.

(10) Where any breach of a requirement of a parole order comes to the knowledge of the Director, he shall give forthwith notice in writing of the breach to the secretary to the Board and shall submit to him such reports upon and information with respect to the breach as the secretary to the Board requires.

Release on parole after cancellation. Inserted by No. 3 of 1969, s. 42.

50S. (1) The Board may release from prison upon parole a prisoner undergoing imprisonment or detention pursuant to this Part of this Act and the provisions of Part III of this Act shall subject to such modifications as circumstances require be applicable to the parole order and to the prisoner during the parole period.

(2) The Board may release a prisoner on parole notwithstanding that his parole has been cancelled on any prior occasion or occasions under the provisions of this Part of this Act in respect of the same term of imprisonment, detention for a period, or detention during Her Majesty's pleasure.

Persons on parole deemed still under sentence. Inserted by No. 3 of 1969, s. 43.

50T. If the parole period specified in a parole order elapses without—

(a) the making of an order under this Part of this Act or under the law of the State or Territory in which the parole order was made cancelling the prisoner's parole; or

(b) the sentencing of the prisoner to another term of imprisonment for any offence by reason whereof his parole is cancelled by force of the provisions of this Part of this Act or of the law of the State or Territory in which he was released upon parole,

the prisoner for the purposes of this Part of this Act—

(c) shall be regarded as having served his term of imprisonment, detention for a period, or detention during Her Majesty's pleasure in respect of which he was released on parole; and

(d) by force of this section is wholly discharged therefrom or in the case of an habitual criminal, ceases to be such,

but until the parole so elapses or until he is otherwise discharged from his sentence of imprisonment, detention for a period, or detention during Her

Majesty's pleasure, a prisoner released on parole shall for the purposes of this Part of this Act be regarded as being still under sentence or detention and as not having suffered the punishment to which he was sentenced or as not having undergone detention during the period for which he was ordered to be detained or, in the case of an habitual criminal as being an habitual criminal and liable to be further detained during Her Majesty's pleasure and no part of the time between his release on parole and his recommencing to serve the unexpired portion of his term of imprisonment or detention shall be regarded as time served in respect of that term.

Division 3.—General.

Heading and Division 3. Inserted by No. 3 of 1969, s. 44.

Probationers and prisoners in transit. Inserted by No. 3 of 1969, s. 44.

50U. (1) Where an interstate warrant of a kind referred to in subsection (1) of section fifty H or subsection (1) of section fifty K or subsection (7) of section fifty Q of this Act, in this section referred to as an "interstate warrant", has been issued under a law of another State or a Territory and the person to whom the warrant relates is brought into this State in the custody of a person who appears to have been entitled under the authority of the warrant to have custody of that person in the State or Territory from which he is so brought that warrant authorizes the member of the Police Force or other person to whom it is directed, for the purposes of conveying him to the State or Territory in which the warrant was issued, to take or keep the person to whom it relates in custody in this State.

(2) An interstate warrant is sufficient authority for the detention in custody of the person to whom it relates in a prison, lock-up or other place of detention.

(3) A person shall not be detained in custody under an interstate warrant after the expiration of five days from the time when the person was brought into the State in custody in pursuance of the warrant.

(4) An interstate warrant authorizes a member of the Police Force or other person to whom the warrant is directed and all police officers of this State to apprehend the person to whom the warrant relates if that person escapes from custody and return him to any custody in which he may be detained under the authority of the warrant.

Proof of orders, etc., made in another State or Territory.
Inserted by No. 3 of 1969, s. 45.

50V. (1) A certificate under the hand of a member, secretary or other proper officer of a Parole Board, or other prescribed authority, of another State or a Territory purporting to record any order, determination or decision of the Board, or other authority, is evidence of that order, determination or decision, and of the making of the order, determination or decision.

(2) All courts, the Board and persons having, by law or consent of the parties, authority to hear, receive and examine evidence—

(a) shall take judicial notice of the signature of every person who is or has been a member, secretary or other proper officer of a Parole Board, or other prescribed authority of another State or a Territory that is attached or appended to any document that is or relates to a probation or parole order made or having force and effect in that State or Territory; and

(b) shall unless the contary is proved, presume that every such signature is properly attached or appended thereto.

(3) In proceedings under this Act relating to a probationer or a prisoner, a document under the hand of the Chief or Principal Probation Officer, or the Chief or Principal Parole Officer of the State or Territory in which the probation order, or parole order in question was made or where made in this State is in force and effect, setting forth matters relevant to the offence upon conviction for which the probation or parole order was made, the

probationer's or prisoner's conduct subsequent to release upon probation or parole order, his antecedents and other matters relevant to his probation and parole shall be received by all courts and the Board as evidence of the matters set forth therein.

(4) All courts and the Board and persons having, by law or consent of the parties, authority to hear, receive and examine evidence—

(a) shall take judicial notice of the signature of every person who is or has been the Chief or Principal Probation Officer, or the Chief or Principal Parole Officer, or other prescribed officer, of another State or a Territory, that is attached or appended to any document that relates to a probation or parole order made, or having force and effect, in that State or Territory or to a probationer or prisoner in respect of whom such an order is made; and

(b) shall unless the contrary is proved, presume that every such signature is properly attached or appended thereto.

Consultation with respect to breaches of probation or parole orders. Inserted by No. 3 of 1969, s. 46. Amended by No. 89 of 1982, s. 23.

50W. (1) Except in special circumstances, before proceedings are taken under this Part of this Act with respect to a breach of a probation order, or a parole order, to which this Part of this Act relates, the Director—

(a) shall give notice thereof to the corresponding officer of the other State or Territory in which the probation order or parole order, as the case may be, was made;

(b) shall invite that officer of the other State or Territory to make such report and recommendation, as he thinks fit, with respect to the proposed proceedings; and

(c) shall give due consideration to any report and recommendation made under paragraph (b) of this subsection.

(2) In any proceedings under this Part of this Act with respect to breaches of an order referred to in subsection (1) of this section, a court or the Board may take into consideration any report and recommendation made under paragraph (b) of that subsection.

PART IV.—MISCELLANEOUS.

Secrecy. Amended by No. 68 of 1983, s. 11.

51. A member or the secretary to the Board, a parole officer, probation officer or any other officer appointed under or for the purposes of this Act shall not, except—

(a) for the purposes of this Act and in the due exercise of his functions thereunder;

(b) where ordered by a court or judge to do so; or

(c) to such persons or bodies or in such circumstances as the Attorney General approves from time to time,

produce in any court or to any person any return, declaration, statement, report or other document, or disclose to any court or person the fact that he has received any information, or the nature thereof, or the name of the person who gave that information, or any matter or thing coming under his notice in the performance of his duties under this Act.

Power to take proceedings. Inserted by No. 3 of 1969, s. 47. Amended by No. 57 of 1976, s. 38; No. 89 of 1982, s. 26.

51A. (1) (a) Proceedings in respect of offences arising under Part II, IIA and Division 1 of Part IIIA of this Act may be taken by the Director or by a person authorized in writing in that behalf by that officer.

(b) A certificate under the hand of the Director of an authorization under this subsection is evidence of that authorization.

(2) (a) Proceedings in respect of offences arising under Part III and Division 2 of Part IIIA of this Act may be taken by a person authorized in that behalf by the Board either generally or in a particular case.

(b) A certificate under the hand of the secretary to the Board of an authorization under this subsection is evidence of that authorization.

52. The Governor may make such regulations has he considers necessary for carrying the purposes and provisions of this Act into effect. Regulations.

53. The judges may make rules with respect to any matter or thing that is by this Act required or permitted to be prescribed by rules. Rules.

By Authority: WILLIAM C. BROWN, Government Printer