

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1281

S. P. 443

In Senate, March 13, 1981

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

MAY M. ROSS, Secretary of the Senate

Presented by Senator Devoe of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Amend Certain Aspects of Post-Conviction Review.

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

Sec. 1. 15 MRSA § 2121, sub-§ 2, as enacted by PL 1979, c. 701, § 15, is amended to read:

2. Post-sentencing proceeding. "Post-sentencing proceeding" means a court proceeding or administrative action occurring during the course of and pursuant to the operation of a sentence which affects whether there is incarceration or its length, including ~~revocation of probation~~ revocation of parole or entrustment of a juvenile, failure to grant parole or an error of law in the computation of a sentence. It does not include administrative disciplinary proceedings resulting in a loss of time deductions under Title 17-A, section 1253, subsection 5, **revocation of probation or proceedings before the Appellate Division of the Supreme Judicial Court pursuant to chapter 306.**

Sec. 2. 15 MRSA § 2125, as enacted by PL 1979, c. 701, § 15, is amended to read:

§ 2125. Ground for relief

A person who satisfies the prerequisites of section 2124 may show that the challenged criminal judgment or sentence is unlawful or unlawfully imposed, or that the impediment resulting from the challenged post-sentencing procedure is

unlawful, as a result of any error or ground for relief, whether or not of record, unless the error is harmless or unless relief is unavailable for a reason provided in section 2126 ~~2127~~ or 2128.

Sec. 3. 15 MRSA § 2126, as enacted by PL 1979, c. 701, § 15, is amended to read:

§ 2126. Exhaustion

A person under restraint or impediment specified in section 2124 must also demonstrate that he has previously exhausted remedies incidental to proceedings in the trial court, on appeal or administrative remedies. A person who has taken an appeal from a judgment of conviction or a juvenile adjudication ~~shall is not be~~ precluded from utilizing the remedy of this chapter while the appeal is pending, provided that ~~the post-conviction review proceeding shall be limited to those issued which may not be raised on appeal. The court before which the direct appeal is pending in its discretion may order that either the appeal or portions of this action be held in abeyance while the other action proceeds or that both actions proceed simultaneously~~ **is automatically stayed pending resolution of the appeal unless the Law Court on motion and for good cause otherwise directs.**

Sec. 4. 15 MRSA § 2127, as enacted by PL 1979, c. 701, § 15, is repealed.

Sec. 5. 15 MRSA § 2129, as enacted by PL 1979, c. 701, § 15, is repealed and the following enacted in its place:

§ 2129. Petition and procedure

1. Filing of petition. Petitions shall be filed as follows.

A. A proceeding for post-conviction review shall be commenced by filing a petition in the Superior Court in the county specified in section 2123.

B. If the petitioner desires to have counsel appointed, he shall file an affidavit of indigency in the form prescribed by the Supreme Judicial Court. If the petitioner is incarcerated, the affidavit shall be accompanied by a certificate of the appropriate officer of the institution in which the petitioner is incarcerated as to the amount of money or securities on deposit to the petitioner's credit in any account in the institution. The failure to include an affidavit of indigency with the petition does not bar the court from appointing counsel upon a subsequent filing of an affidavit of indigency.

C. Once the petition has been filed, the clerk shall forward a copy of the petition and any separate documents filed with it to the Chief Justice of the Supreme Judicial Court and to the Attorney General.

2. Assignment of case. On receipt of a copy of the petition, the Chief Justice shall assign the case to any Justice of the Supreme Judicial Court or to a Regional Presiding Justice of the Superior Court, who may in turn assign the case to another Superior Court Justice.

3. Representation of respondent. In all proceedings for post-conviction review, the State shall be represented by the Attorney General. On agreement between the Attorney General and a district attorney, a district attorney may represent the State.

4. Bail pending disposition of petition. Pending final disposition, the assigned justice may order the release of the petitioner on bail at such time and under such circumstances and conditions as the Supreme Judicial Court shall by rule provide.

5. Procedure in proceedings pursuant to this chapter. In all respects not covered by statute, the procedure in proceedings under this chapter shall be as the Supreme Judicial Court shall by rule provide.

Sec. 6. 15 MRSA § 2130, last sentence, as enacted by PL 1979, c. 701, § 15, is amended to read:

When relief is granted to the petitioner and release is appropriate, the justice may release a petitioner on bail pending the proceedings specified in section 2131 appeal.

Sec. 7. 15 MRSA § 2131, sub-§ 1, last sentence, as enacted by PL 1979, c. 701, § 15, is repealed as follows:

~~An appeal after the issuance of a certificate of probable cause shall be in the same manner as a criminal appeal from a judgment of conviction~~

Sec. 8. 15 MRSA § 2131, sub-§§ 2 and 3, as enacted by PL 1979, c. 701, § 15, are repealed and the following enacted in their place:

2. Appeal by State. If an appeal is taken by the State, neither a certificate of probable cause nor a certificate of approval of the Attorney General is required.

3. Procedure on appeal. The time for appeal and the manner of taking an appeal shall be as the Supreme Judicial Court shall by rule provide.

STATEMENT OF FACT

The purpose of this bill is to make changes to the post-conviction review provisions enacted by Public Law 1979, chapter 701. The substance of the significant changes is indicated below.

Section 1 removes revocation of probation proceedings from post-conviction review.

Section 3 clarifies that post-conviction proceedings initiated during the pendency of a direct appeal are stayed unless otherwise ordered by the Law Court.

Section 4 repeals the mootness provision to permit the Law Court greater flexibility with what has traditionally been judicial doctrine.

Section 5 replaces the elaborate procedural provisions and authorizes the Supreme Judicial Court to promulgate appropriate Rules of Court.

Sections 6, 7 and 8 delete provisions the subject matter of which are more appropriate for court rule.