

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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Legislative Document

No. 1162

H.P. 857

House of Representatives, April 5, 1993

**An Act to Help Clarify the Application of the Maine Rules of Criminal Procedure to Probation Revocation Proceedings, Including the Appeal Process.**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative COTE of Auburn.  
Cosponsored by Representative: FARNSWORTH of Hallowell, Senator: CONLEY of Cumberland.

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

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4 Sec. 1. 17-A MRSA §1206, sub-§§2 to 4, as repealed and replaced by PL 1977, c. 510, §73, are amended to read:

6 2. The hearing on the motion to revoke probation shall must  
8 be held in the court which that sentenced the person to probation  
10 in either the county or division in which the person resides or  
12 is incarcerated, unless the court orders otherwise in the  
interests of justice. A motion for revocation of probation need  
not be heard by the justice or judge who originally imposed  
probation, but may be heard by any justice or judge.

14 3. If a hearing is ordered, the person on probation shall must  
16 be notified, and the court may issue a summons or may issue  
a warrant for his the person's arrest and order him the person  
18 committed, with or without bail, pending the hearing.

20 4. If a hearing is held, the person on probation shall must  
22 be afforded the opportunity to confront and cross-examine  
witnesses against him the person, to present evidence on his that  
24 person's own behalf and to be represented by counsel. If he  
cannot the person on probation can not afford counsel, the court  
26 shall appoint counsel for him the person. Assignment of counsel,  
to the extent not covered in this subsection, and withdrawal of  
counsel must be in accordance with the Maine Rules of Criminal  
Procedure.

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30 Sec. 2. 17-A MRSA §1206, sub-§7, as amended by PL 1983, c.  
450, §7, is further amended to read:

32 7. If a person on probation is convicted of a new crime  
34 during the period of probation, the court may sentence him that  
person for such the crime and revoke probation. If the person has  
36 been sentenced for the new crime and probation revocation  
proceedings are subsequently commenced, the court which that  
38 conducts the revocation hearing may revoke probation. Sentencing  
for the multiple offenses shall be is subject to section 1256. If  
40 concurrent terms of imprisonment are imposed and the terms do not  
commence on the same date, any time served as a result of the new  
42 conviction shall must be deducted from the time the person is  
required to serve as a result of the probation revocation.

44 Sec. 3. 17-A MRSA §1207, as amended by PL 1981, c. 238, §9,  
46 is further amended to read:

48 **§1207. Review**

50 Review of a revocation of probation pursuant to section 1206  
shall must be by appeal. In a probation revocation proceeding in

2 the District Court, a person whose probation is revoked may  
4 appeal, as under Title 15, section 2111 and the applicable Maine  
6 Rules of Criminal Procedure, to the Superior Court and if  
8 unsuccessful to the Supreme Judicial Court, sitting as the Law  
10 Court, as under Title 15, section 2115 and the applicable Maine  
12 Rules of Criminal Procedure. In a probation revocation  
proceeding in the Superior Court, a person whose probation is  
revoked may appeal, as under Title 15, section 2115 and the  
applicable Maine Rules of Criminal Procedure, to the Supreme  
Judicial Court, sitting as the Law Court. Assignment and  
withdrawal of counsel must be in accordance with the Maine Rules  
of Criminal Procedure.

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### STATEMENT OF FACT

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This bill amends the Maine Revised Statutes, Title 17-A, section 1206 by making it gender-neutral and incorporating the substance of Rule 32(e) of the Maine Rules of Criminal Procedure. The bill also makes Rules 44(a)(2), (b), (c) and (d) and 44B of the Maine Rules of Criminal Procedure applicable to probation revocation hearings.

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This bill also amends Title 17-A, section 1207 by ensuring that Part VII of the Maine Rules of Criminal Procedure has application both to the 2-tiered appeal process applicable to an aggrieved person whose probation has been revoked in the District Court and to the unitary appeal process applicable to an aggrieved person whose probation has been revoked in the Superior Court.

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