

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 1871

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H.P. 1310

House of Representatives, March 16, 1999

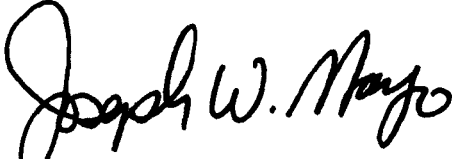
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**An Act to Revise Procedures for Probation Revocation.**

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Reported by Representative POVICH for the Criminal Law Advisory Commission pursuant to Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Joint Standing Committee on Criminal Justice suggested and printing ordered under Joint Rule 218.

  
JOSEPH W. MAYO, Clerk

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

2

3           **Sec. 1. 17-A MRSA §1205**, as amended by PL 1997, c. 273, §1,  
4 is further amended to read:

6

**§1205. Commencement of probation revocation proceedings by arrest**

8

9           1. If a probation officer has probable cause to believe  
10 that a person on probation has violated a condition of that  
11 person's probation, that officer may arrest the person or deliver  
12 ~~a summons to that person ordering that person to appear for a~~  
13 ~~court hearing on~~ cause the person to be arrested for the alleged  
14 violation. If the probation officer can not, with due diligence,  
15 locate the person ~~in order to arrest the person or serve a~~  
16 ~~summons on that person~~, that the officer shall file a written  
17 notice of this fact with the court that placed the person on  
18 probation. Upon the filing of that written notice, the court  
19 shall issue a warrant for the arrest of that person.

20

21 ~~2. The summons delivered pursuant to subsection 1 shall~~  
22 ~~include the signature of the probation officer, a brief statement~~  
23 ~~of the alleged violation, the time and place of the alleged~~  
24 ~~violation and the time, place and date the person is to appear in~~  
25 ~~court. As soon as practicable after service of the summons, the~~  
26 ~~probation officer shall file with the court a motion for~~  
27 ~~revocation of probation, which shall set forth in detail the~~  
28 ~~facts underlying the alleged violation. A copy of the motion~~  
29 ~~shall be furnished to the person on probation prior to the court~~  
30 ~~hearing on the alleged violation.~~

30

31 ~~3. If the person fails to appear in court after having been~~  
32 ~~served with a summons, or if written notice is filed with the~~  
33 ~~court that the person cannot be located, the court may issue a~~  
34 ~~warrant for the arrest of the person. The court may then order~~  
35 ~~the person committed with or without bail, pending the court~~  
36 ~~hearing or pending a preliminary hearing, if the person is~~  
37 ~~entitled to such a hearing under subsection 4.~~

38

39           4. A person arrested pursuant to subsections subsection 1  
40 or 3 shall, with or without a warrant, must be afforded a  
41 preliminary hearing as soon as reasonably possible, but not later  
42 than on the 3rd day after arrest, excluding Saturdays, Sundays  
43 and holidays, in accordance with the procedures set forth in  
44 section 1205-A. ~~No~~ A preliminary hearing shall may not be  
45 afforded if, within the 3-day period, the person is released on  
46 bail or is afforded an opportunity for a court hearing on the  
47 alleged violation. ~~If a person is arrested pursuant to~~  
48 ~~subsections 1 or 3, but is not entitled to a preliminary hearing~~  
49 ~~under this subsection, the probation officer shall file with the~~  
50 ~~court a motion for revocation of probation, as described in~~

2 subsection 2. A copy of the motion shall be furnished to the  
3 person on probation prior to the court hearing on the alleged  
4 violation. A preliminary hearing may not be afforded if the  
5 person is charged with or convicted of a new offense and is  
6 incarcerated as a result of the pending charge or conviction.

7  
8 5. If a person on probation is charged with or convicted of  
9 a new offense and is incarcerated as a result of the pending  
10 charge or conviction, a motion for revocation as described in  
11 subsection 2 may be filed with the court. Upon filing of the  
12 motion, the court may order the person committed with or without  
13 bail, pending the court hearing or pending the preliminary  
14 hearing. A person incarcerated pursuant to this subsection shall  
15 be afforded a preliminary hearing only if he has been released on  
16 bail on the pending criminal charge or pending appeal following a  
17 conviction, and has not been released on bail on the alleged  
18 violation of probation and has not been afforded a court hearing  
19 within the time period specified in subsection 4. A person not  
20 entitled to a preliminary hearing under this subsection shall be  
21 furnished with a copy of the motion prior to the court hearing on  
22 the alleged violation.

23  
24 6. Whenever a person is entitled to a preliminary hearing  
25 pursuant to subsection 4 or 5, the failure to hold the hearing  
26 within the time period specified in subsection 4 shall may be  
27 grounds for his the person's release on personal recognizance  
28 pending further proceedings.

29  
30 7. The running of the period of probation shall be tolled  
31 upon either the delivery of the summons, the filing of the  
32 written notice with the court that the person cannot be located,  
33 or the arrest of the person, as provided for in subsection 1. If  
34 there is a finding of no probable cause, or if the court does not  
35 revoke probation, the running of the period of probation shall be  
36 deemed not to have been tolled.

37  
38 8. In deciding whether to set bail under this section and  
39 in setting the kind and amount of that bail, the court must be  
40 guided by the standards of post-conviction bail in Title 15,  
41 section 1051, subsections 2 and 3. Appeal is governed by Title  
42 15, section 1051, subsections 5 and 6. Bail set under this  
43 section is also governed by the sureties and other forms of bail  
44 provisions in Title 15, chapter 105-A, subchapter IV and the  
45 enforcement provisions in Title 15, chapter 105-A, subchapter V,  
46 articles 1 and 3, including the appeal provisions in Title 15,  
47 section 1099-A, subsection 2.

48 **Sec. 2. 17-A MRS §1205-A**, as amended by PL 1995, c. 502,  
49 Pt. F, §14, is further amended to read:  
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**§1205-A. Administrative preliminary hearing for arrested probationer**

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1. Whenever it appears that a person arrested for an alleged violation of probation is entitled to a preliminary hearing under section 1205, the probation officer shall forthwith furnish the person with a written notice of a preliminary hearing to determine whether there is probable cause to believe that the person has violated a condition of his that person's probation. The notice shall must name the place and time of the preliminary hearing, state the conduct alleged to constitute the violation, and inform the person of his the person's rights under this section.

2. The preliminary hearing must be held before an official designated by the Commissioner of Corrections. It must be held at a location as near to the place where the violation is alleged to have taken place as is reasonable under the circumstances. If it is alleged that the person violated probation because of the commission of a new offense, the preliminary hearing is limited to the issue of identification, if probable cause on the new offense has been found by the District Court, or the person has been indicted, has waived indictment or has been convicted.

3. At the preliminary hearing, the person alleged to have violated a condition of probation has the right to confront and cross-examine persons who have information to give against that person, the right to present evidence on that person's behalf and the right to remain silent. If the hearing officer determines on the basis of the evidence before the officer that there is not probable cause to believe that a condition of probation has been violated, the officer shall terminate the proceedings and order the person on probation released at once from any detention resulting from the alleged violation. If the hearing officer determines that there is such probable cause, the officer shall prepare a written statement summarizing the evidence that was brought before the officer, and particularly describing that which supports the belief that there is probable cause. At the outset of the preliminary hearing, the hearing officer shall inform the person of that person's rights under this section and of the provisions of section 1206. That person may waive, at the preliminary hearing, the right to confront and cross-examine witnesses against that person, the right to present evidence on that person's behalf and the right to remain silent. No other rights may then be waived, nor may there be a waiver of the right to a preliminary hearing.

~~4. If, as a result of a preliminary hearing held under this section, there is a determination of probable cause, the Commissioner of Corrections, or the commissioner's designated~~

2 ~~representative, may file with any court a motion for revocation~~  
3 ~~of probation. The motion must incorporate the written statement~~  
4 ~~prepared pursuant to subsection 3 and must be accompanied by an~~  
5 ~~application for a summons ordering the person to appear before~~  
6 ~~the court for a hearing on the alleged violation. The motion and~~  
7 ~~the application must be filed without unnecessary delay. A copy~~  
8 ~~of the motion must be furnished to the person on probation.~~

9  
10 **Sec. 3. 17-A MRSA §§1205-B and 1205-C are enacted to read:**

11 **§1205-B. Commencement of probation revocation proceedings by**  
12 **summons**

13  
14 1. If a probation officer has probable cause to believe  
15 that a person on probation has violated a condition of probation,  
16 that officer may deliver to that person, or cause to be delivered  
17 to that person, a summons ordering that person to appear for a  
18 court hearing on the alleged violation.

19  
20 2. The summons delivered pursuant to subsection 1 must  
21 include the signature of the probation officer; a brief statement  
22 of the alleged violation; the time and place of the alleged  
23 violation; and the time, place and date the person is to appear  
24 in court or a statement that the court will notify the person of  
25 the time, place and date to appear. As soon as practical after  
26 service of the summons, the probation officer shall file with the  
27 court a motion for revocation of probation that sets forth the  
28 facts underlying the alleged violation.

29  
30 3. A person appearing on a motion to revoke probation  
31 pursuant to a summons must be afforded an initial appearance as  
32 provided in section 1205-C, subsection 4.

33  
34 4. If the person fails to appear in court after having been  
35 served with a summons, the court may issue a warrant for the  
36 arrest of the person. After arrest, the person must be afforded  
37 a preliminary hearing as provided in section 1205 and, if  
38 retained in custody, section 1205-C, subsection 3 applies.

39  
40 **§1205-C. Initial proceedings on probation violation; filing of**  
41 **motion; initial appearance**

42  
43 1. A motion for probation revocation must be filed within 5  
44 days, excluding Saturdays, Sundays and holidays, of the arrest of  
45 a probationer pursuant to section 1205.

46  
47 2. The motion must set forth the facts underlying the  
48 alleged violation and be accompanied by the written statement  
49 prepared pursuant to section 1205-A, subsection 3 or by a copy of  
50 the summons delivered to the probationer.

2           3. Upon receipt of a motion for revocation of probation  
3 with respect to a person arrested pursuant to section 1205 or  
4 section 1205-B, subsection 4 who is not sooner released, the  
5 court shall provide the person with an initial appearance on the  
6 revocation of probation within 14 days after the arrest. A copy  
7 of the motion must be furnished to the probationer prior to or at  
8 the initial appearance.

10           4. At the initial appearance, the court shall advise the  
11 probationer of the contents of the motion and the right to a  
12 hearing on the motion. The court shall call upon the probationer  
13 to admit or deny the alleged violation. If the probationer  
14 refuses to admit or deny, a denial must be entered. In the case  
15 of a denial, the court shall set the motion for hearing and may  
16 commit the person, with or without bail, pending hearing.

18           5. In deciding whether to set bail under this section and  
19 in setting the kind and amount of that bail, the court must be  
20 guided by the standards of post-conviction bail in Title 15,  
21 section 1051, subsections 2 and 3. Appeal is governed by Title  
22 15, section 1051, subsections 5 and 6. Bail set under this  
23 section is also governed by the sureties and other forms of bail  
24 provisions in Title 15, chapter 105-A, subchapter IV and the  
25 enforcement provisions in Title 15, chapter 105-A, subchapter V,  
26 articles 1 and 3, including the appeal provisions in Title 15,  
27 section 1099-A, subsection 2.

28           6. Failure to comply with the time limits set forth in this  
29 section is not grounds for dismissal of a motion for probation  
30 revocation but may be grounds for the probationer's release on  
31 personal recognizance pending further proceedings.

34           **Sec. 4. 17-A MRSA §1206, sub-§1, as repealed and replaced by**  
35 **PL 1977, c. 510, §73, is repealed.**

36           **Sec. 5. 17-A MRSA §1206, sub-§3, as amended by PL 1997, c.**  
37 **273, §2, is repealed.**

38           **Sec. 6. 17-A MRSA §1206, sub-§7-A, as amended by PL 1983, c.**  
39 **450, §8, is further amended to read:**

40           **7-A. Upon ~~revelation~~ a finding of a violation of probation**  
41 **~~pursuant to subsection 5, 6 or 7,~~ the court may vacate, ~~in whole~~**  
42 **~~or in part,~~ all, part or none of the suspension of execution as**  
43 **to imprisonment or fine specified when probation was granted,**  
44 **considering the nature of the violation and the reasons for**  
45 **granting probation. The remaining portion of the sentence for**  
46 **which suspension of execution is not vacated upon the revocation**  
47 **of probation shall ~~remain~~ remains suspended and subject to**  
48 **of probation shall ~~remain~~ remains suspended and subject to**  
49 **of probation shall ~~remain~~ remains suspended and subject to**  
50 **of probation shall ~~remain~~ remains suspended and subject to**

2 revocation at a later date. During the service of that portion of  
the sentence imposed for which the suspension of execution was  
4 vacated upon revocation, the running of the period of probation  
shall ~~must~~ be interrupted and shall ~~resume~~ resumes again upon  
6 release. If the court finds a violation of probation but vacates  
none of the suspended sentence, the running of the period of  
probation resumes upon entry of that final disposition. The  
8 court may nevertheless revoke probation and vacate the suspension  
of execution as to the remainder of the suspended sentence or a  
10 portion thereof for any criminal conduct committed during the  
service of that portion of the sentence for which the suspension  
12 of execution was vacated upon revocation.

14 **Sec. 7. 17-A MRSA §1206, sub-§§7-C and 7-D** are enacted to read:

16 7-C. The running of the period of probation is tolled upon  
either the delivery of the summons, the filing of the written  
18 notice with the court that the person can not be located or the  
arrest of the person. If the motion is dismissed or withdrawn,  
20 or if the court finds no violation of probation, the running of  
the period of probation is deemed not to have been tolled.

22 7-D. If the attorney for the State and the attorney for the  
24 person on probation or the person on probation reach agreement  
that in return for an admission of a violation of probation the  
26 attorney for the State will dismiss other charges; the attorney  
for the State will not oppose the requested disposition requested  
28 by the person on probation; the attorney for the State will  
recommend a particular disposition; or both sides will recommend  
30 a particular disposition; and, if the court at the time of  
disposition intends to enter a disposition less favorable to the  
32 person on probation than that recommended, the court shall on the  
record:

34 A. Inform the parties of this intention;

36 B. Advise the person on probation personally in open court  
38 that the court is not bound by the recommendation;

40 C. Advise the person that if the person does not withdraw  
the admission, the disposition of the motion will be less  
42 favorable to the person than that recommended; and

44 D. Afford the person the opportunity to withdraw the  
admission.

46 The court shall, if possible, inform the person of the intended  
48 disposition.



2

## SUMMARY

4

This bill restructures the laws governing probation revocation and probation violation. It separates the procedures for probation revocation by arrest and by summons. The bill also makes the following substantive changes.

8

10 Currently, a person arrested for violation of probation may be incarcerated indefinitely upon the holding of a preliminary hearing, a procedure conducted by officials of the Department of  
12 Corrections in the facility where the probationer is incarcerated. No deadline currently exists for the filing of a  
14 motion for probation revocation with respect to a person incarcerated after a preliminary hearing or for that person's  
16 appearance in court. This can result in an undue length of time passing before such a person is brought before a judge or justice  
18 and given the opportunity to request that counsel be appointed and to request bail. This bill requires that when a person  
20 arrested for a violation of probation is held subsequent to a preliminary hearing, the motion for probation revocation must be  
22 filed within 5 days of the arrest. In addition, when such a person is not sooner released, an initial appearance must be held  
24 by the court within 14 days of the arrest.

26

Current law does not provide for an initial appearance, separate from the final hearing, on a motion to revoke  
28 probation. Nevertheless, courts have developed a routine practice of conducting initial appearances on motions for  
30 revocation of probation. The bill codifies the practice that has developed and sets forth procedures governing initial appearances  
32 on motions to revoke probation.

34

The bill also makes clear that a court may find a violation of probation, but nevertheless utilize none of the initially  
36 suspended sentence. This commonly occurs when a person on probation admits a violation of probation but, prior to final  
38 disposition, remedies the situation to the satisfaction of the attorney for the State and the court, for example, by paying  
40 restitution owed. The bill eliminates an ambiguity that exists under current law as to whether this practice is authorized. The  
42 bill also makes clear that the running of the period of probation is tolled between the date the proceedings are commenced and the  
44 date of final disposition, even if no part of the original suspension order is modified.

46

48 Finally, the bill provides the same protection to persons entering into an agreement with the attorney for the State for  
disposition of a motion to revoke probation as is currently provided under the Maine Rules of Criminal Procedure for persons  
50

2 entering guilty pleas to substantive charges. That is, the  
person on probation is provided the opportunity to withdraw that  
person's admission if the court deems the agreed upon disposition  
4 too lenient and intends to enter a harsher disposition than that  
agreed to.