

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 273

H.P. 216

House of Representatives, January 28, 2003

### **An Act To Modify Certain Criminal Appeal Statutes in View of the New Maine Rules of Appellate Procedure**

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

Reference to the Committee on Judiciary suggested and ordered printed under Joint Rule 218.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

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

2           **Sec. 1. 15 MRSA §210-A**, as amended by PL 1997, c. 181, §2, is  
4 further amended to read:

6           **§210-A. Procedure at hearing**

8           At the hearing on the petition contesting extradition, if  
10 the Governor's warrant and the demand comply with the provisions  
12 of this chapter, the petitioner has the burden of proving by  
14 clear and convincing evidence that the petitioner has not been  
16 charged with a crime in the demanding state and that the  
18 petitioner is not a fugitive from justice. If the name of the  
20 petitioner is the same as that of the person named in the  
22 Governor's warrant, the petitioner has the burden of proving, by  
clear and convincing evidence, that the petitioner is not the  
person whom the demanding state is seeking to extradite. If the  
names are not identical, the respondent State has the burden of  
proving by a preponderance of the evidence that the petitioner is  
the person sought to be extradited by the demanding state. The  
following are conclusive on the issue of probable cause:

24           **1. Indictment.** An indictment or an information issued upon  
a waiver of indictment; or

26           **2. Judicial determination of probable cause.** An information  
28 or other formal charging instrument or an arrest warrant issued  
on a determination of probable cause by a judicial officer in the  
demanding state.

30           Affidavits, including any affidavits supplied pursuant to  
32 the provisions of section 203 or in support of an application for  
34 requisition, and any other hearsay evidence that may be deemed  
36 reliable by the court, are admissible at the hearing on the  
petition contesting extradition, for the purpose of showing that  
38 the petitioner is charged with a crime in the demanding state,  
that there is probable cause, that the petitioner is in fact the  
person charged with the crime and that the petitioner is a  
40 fugitive from justice.

42           ~~The order or judgment making final disposition of the~~  
petition constitutes a final judgment for the purpose of review.  
44 ~~A final judgment entered under this section may be reviewed by~~  
the Supreme Judicial Court sitting as the Law Court. ~~An appeal~~  
46 ~~may be taken within 10 days after entry of the order or judgment~~  
appealed from. ~~An appeal by the petitioner may not proceed~~  
unless the Law Court issues a certificate of probable cause. ~~The~~  
48 ~~filing of the notice of appeal is deemed to constitute a request~~  
for a certificate of probable cause. ~~Upon the filing of a notice~~  
50 ~~of appeal, the presiding judge shall prepare a statement of the~~

2 facts of the proceedings in the District Court, which must be  
3 forwarded to the Law Court. In the presiding judge's discretion  
4 and upon a finding that special circumstances exist, the  
5 presiding judge, in lieu of preparing a statement of facts, may  
6 order that a transcript of all or part of the proceedings in the  
7 District Court be prepared and transmitted to the Law Court. The  
8 statement of facts or the transcript must be returned to the  
9 District Court with the order of the court. Denial of the  
10 certificate constitutes finality of the proceedings. An appeal  
11 after the issuance of a certificate of probable cause to the  
12 petitioner or an appeal taken by the State, in which case no  
13 certificate of probable cause is necessary, may be taken in the  
14 same manner as an appeal of a criminal conviction by a defendant  
15 except that the appeal must be made directly to the Law Court.  
16 The provisions of section 2115-A do not apply.

17 Sec. 2. 15 MRSA §210-B is enacted to read:

18 **§210-B. Review of final judgment by Law Court**

19 The order making final disposition of the petition  
20 contesting extradition constitutes a final judgment for the  
21 purpose of review. A final judgment entered under this section  
22 may be reviewed by the Supreme Judicial Court sitting as the Law  
23 Court. An appeal must be taken within 7 days after entry of the  
24 order that is being appealed.

25 1. Appeal by petitioner. A petitioner aggrieved by the  
26 order may not appeal as of right. The manner and any conditions  
27 for the taking of an appeal are as the Supreme Judicial Court  
28 provides by rule.

29 2. Appeal by State. The State aggrieved by the order may  
30 appeal as of right and no certificate of approval by the Attorney  
31 General is required. The manner and any conditions for the  
32 taking of an appeal are as the Supreme Judicial Court provides by  
33 rule.

34 Sec. 3. 15 MRSA §2115-B, as corrected by RR 1999, c. 2, §16  
35 and affected by §17, is amended to read:

36 **§2115-B. Appeal by aggrieved contemnor**

37 1. Summary contempt proceedings involving punitive  
38 sanctions. In a summary contempt proceeding involving punitive  
39 sanctions, accompanied or unaccompanied by remedial sanctions,  
40 instituted under either the Maine Rules of Criminal Procedure,  
41 Rule 42 or the Maine Rules of Civil Procedure, Rule 66, before a  
42 Judge of the District Court or Probate Court or a Justice of the  
43 Superior Court or the Supreme Judicial Court, a contemnor who is  
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2 aggrieved by an order and imposition of a punitive sanction may  
3 appeal to the Supreme Judicial Court sitting as the Law Court, as  
4 provided under section 2111 or 2115 and the applicable Maine  
5 Rules of ~~Criminal~~ Appellate Procedure.

6       **2. Plenary contempt proceedings involving punitive**  
7 **sanctions.** In a plenary contempt proceeding involving punitive  
8 sanctions, accompanied or unaccompanied by remedial sanctions,  
9 instituted under either the Maine Rules of Criminal Procedure,  
10 Rule 42 or the Maine Rules of Civil Procedure, Rule 66, any  
11 contemnor aggrieved by an adjudication and imposition of a  
12 punitive sanction may appeal to the Supreme Judicial Court  
13 sitting as the Law Court, as provided under section 2111 or 2115  
14 and the applicable Maine Rules of ~~Criminal~~ Appellate Procedure.

15       **Sec. 4. 15 MRSA §2131**, as amended by PL 1981, c. 238, §§7 and  
16 8, is repealed and the following enacted in its place:  
17

18       **§2131. Review of final judgment**

19       A final judgment entered under section 2130 may be reviewed  
20 by the Supreme Judicial Court sitting as the Law Court.  
21

22       1. Appeal by petitioner. A petitioner aggrieved by the  
23 final judgment may not appeal as of right. The time for taking  
24 the appeal and the manner and any conditions for the taking of  
25 the appeal are as the Supreme Judicial Court provides by rule.  
26

27       2. Appeal by State. The State aggrieved by the final  
28 judgment may appeal as of right and no certificate of approval by  
29 the Attorney General is required. The time for taking the appeal  
30 and the manner and any conditions for the taking of an appeal are  
31 as the Supreme Judicial Court provides by rule.  
32

33       **Sec. 5. 17-A MRSA §1207, sub-§2**, as enacted by PL 1997, c.  
34 273, §3, is amended to read:  
35

36       **2. Superior Court proceeding.** In a probation revocation  
37 proceeding in the Superior Court, a person whose probation is  
38 revoked may not appeal as of right. ~~The--time--manner--and~~  
39 ~~specific-conditions-for-taking-that-appeal-to-the-Law-Court-are~~  
40 ~~as-the-Supreme-Judicial-Court-provides-in-the-Maine-Rules-of~~  
41 ~~Criminal-Procedure.~~ The time for taking the appeal and the manner  
42 and any conditions for the taking of the appeal are as the  
43 Supreme Judicial Court provides by rule.  
44

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## SUMMARY

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4 This bill makes changes in 4 separate criminal appeal  
6 statutes in response to the Supreme Judicial Court's adoption of  
8 the Maine Rules of Appellate Procedure, effective January 1,  
2001, and in response to Public Law 2001, chapter 17, effective  
September 2001. Specifically, the changes are as follows.

8

10 1. The Maine Revised Statutes, Title 15, section 210-A  
12 currently addresses both the hearing procedure and appellate  
14 review procedure relative to a petition contesting extradition.  
16 It has been amended to remove the appellate review procedure.  
18 The latter procedure, significantly abbreviated, has been moved  
20 into a new section 210-B. New section 210-B sets a 7-day time  
period for initiating an appeal and provides separate treatment  
for a petitioner-initiated appeal and a State-initiated appeal.  
The manner and conditions for the taking of an appeal are no  
longer addressed in the statute; instead, that procedure is left  
to the Supreme Judicial Court to provide by rule.

20

22 2. Title 15, section 2115-B has been amended to replace the  
24 current reference to the Maine Rules of Criminal Procedure with a  
reference to the Maine Rules of Appellate Procedure.

24

26 3. Title 15, section 2131 addresses appellate review from a  
28 final judgment in a post-conviction review proceeding. It is  
amended to direct the Supreme Judicial Court to provide by rule  
for the time, manner and conditions for the taking of the  
appeal. The statute continues to treat an appeal by the State as  
"of right" while that of a petitioner is treated as "conditional."

30

32 4. Title 17-A, section 1207, subsection 2 is modified to  
34 conform its language to that used in Public Law 2001, chapter 17.

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