

MAINE STATE LEGISLATURE

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103

L.D. 1868

DATE: 3/2/6

(Filing No. H-796)

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CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
122ND LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1308, L.D. 1868, Bill, "An Act To Eliminate Administrative Preliminary Hearings for Probationers"

Amend the bill by striking out all of section 1 and inserting in its place the following:

Sec. 1. 17-A MRSA §1205, sub-§4, as amended by PL 1999, c. 246, §1, is further amended to read:

4. A person arrested pursuant to subsection 1, with or without a warrant, must be afforded a preliminary probable cause hearing as soon as reasonably possible, but not later than on the 3rd 5th day after arrest, excluding Saturdays, Sundays and holidays, ~~in accordance with the procedures set forth in section 1205-A.~~ A preliminary probable cause hearing may not be afforded if, within the 3-day 5-day period, the person is released on bail from custody or is afforded an opportunity for a court hearing on the alleged violation. A preliminary probable cause hearing is not required if the person is charged with or convicted of a new offense and is incarcerated as a result of the pending charge or conviction.

A. Whenever a person arrested pursuant to subsection 1 is entitled to a probable cause hearing pursuant to this subsection, unless the person waives the right to the hearing, that hearing must be afforded at the initial appearance and may be held by either the District Court or the Superior Court located 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

COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to H.P. 1308, L.D. 1868

2 violated probation because of the commission of a new
3 offense, the probable cause hearing is limited to the issue
4 of identification if probable cause on the new offense has
5 already been found by the District Court or by the Superior
6 Court or the person has been indicted, has waived indictment
7 or has been convicted.

8 B. Evidence presented to establish probable cause may
9 include affidavits and other reliable hearsay evidence as
10 permitted by the court.

12 C. If the court determines that there is not probable cause
13 to believe that the person has violated a condition of
14 probation, the court shall order the person's release.'

16 Further amend the bill by striking out all of sections 4 and
17 5 and inserting in their place the following:

18 **Sec. 4. 17-A MRSA §1205-B, sub-§4,** as enacted by PL 1999, c.
19 246, §3, is amended to read:

22 4. If the person fails to appear in court after having been
23 served with a summons, the court may issue a warrant for the
24 arrest of the person. After arrest, the person must be afforded
25 a preliminary probable cause hearing as provided in section 1205,
26 subsection 4 and, ~~if retained in custody,~~ an initial appearance
27 as provided in section 1205-C, subsection 3 applies.

28 **Sec. 5. 17-A MRSA §1205-C, sub-§1,** as enacted by PL 1999, c.
29 246, §3, is amended to read:

32 1. A motion for probation revocation, which first must be
33 approved by the prosecuting attorney, must be filed within 5 3
34 days, excluding Saturdays, Sundays and holidays, of the arrest of
35 a probationer pursuant to section 1205.

36 **Sec. 6. 17-A MRSA §1205-C, sub-§2,** as enacted by PL 1999, c.
37 246, §3, is amended to read:

40 2. The motion must set forth the facts underlying the
41 alleged violation and, unless the person is to be afforded a
42 probable cause hearing at the initial appearance as provided in
43 section 1205, must be accompanied by the ~~written statement~~
44 ~~prepared pursuant to section 1205-A, subsection 3 or~~ by a copy of
45 the summons delivered to the probationer.

46 **Sec. 7. 17-A MRSA §1205-C, sub-§3,** as enacted by PL 1999, c.
47 246, §3, is amended to read:

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

Sec. 8. Effective date. This Act takes effect January 1, 2007.'

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment requires the court to hold probable cause hearings within 5 days after arrest instead of 3 days, as required by the bill. The amendment specifies that evidence presented to establish probable cause may include affidavits and other reliable hearsay evidence as permitted by the court. The amendment also adds an effective date of January 1, 2007.

FISCAL NOTE REQUIRED
(See attached)



122nd MAINE LEGISLATURE

LD 1868

LR 3015(02)

An Act to Eliminate Administrative Preliminary Hearings for Probationers

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

Fiscal Note

	2005-06	2006-07	Projections 2007-08	Projections 2008-09
Net Cost (Savings)				
General Fund	\$0	\$0	\$36,355	\$73,871
Appropriations/Allocations				
General Fund	\$0	\$0	\$36,355	\$73,871

Fiscal Detail and Notes

This legislation will require a General Fund appropriation of \$36,355 in fiscal year 2007-08 and \$73,871 in fiscal year 2008-09 to the Judicial Department for increased indigent counsel costs.

The Department of Corrections will absorb its additional costs resulting from this legislation utilizing existing budgeted resources.