

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 1868

H.P. 1308

House of Representatives, January 3, 2006

An Act To Eliminate Administrative Preliminary Hearings for Probationers

Submitted by the Department of Corrections pursuant to Joint Rule 204.

Received by the Clerk of the House on December 28, 2005. Referred to the Committee on Criminal Justice and Public Safety pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PLUMMER of Windham.

Cosponsored by Representatives: GROSE of Woolwich, RECTOR of Thomaston, Senator: MAYO of Sagadahoc.

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

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

6 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 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 period, the person is released on bail 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.

18 A. Whenever a person arrested pursuant to subsection 1 is entitled to a probable cause hearing pursuant to this subsection, that hearing 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 violated probation because of the commission of a new offense, the probable cause hearing is limited to the issue of identification if probable cause on the new offense has already been found by the District Court or by the Superior Court or the person has been indicted, has waived indictment or has been convicted.

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

34 **Sec. 2. 17-A MRSA §1205, sub-§6**, as amended by PL 1999, c. 246, §1, is further amended to read:

38 6. Whenever a person is entitled to a preliminary probable cause hearing, the failure to hold the hearing within the time period specified in subsection 4 is grounds for the person's release on personal recognizance pending further proceedings.

42 **Sec. 3. 17-A MRSA §1205-A**, as amended by PL 2005, c. 326, §4 and affected by §5, is repealed.

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

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

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6 **Sec. 5. 17-A MRSA §1205-C, sub-§2**, as enacted by PL 1999, c.
246, §3, is amended to read:

8 2. The motion must set forth the facts underlying the
alleged violation and be accompanied by ~~the written statement~~
10 ~~prepared pursuant to section 1205-A, subsection 3~~ a copy of the
12 warrant of arrest, the finding of probable cause or by a copy of
14 the summons delivered to the probationer unless the person is to
be afforded a probable cause hearing, as provided in section
1205, at the initial appearance.

16 SUMMARY

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20 This bill eliminates the administrative hearings presently
22 conducted by the Department of Corrections to determine probable
cause for a probation violation and instead requires probable
cause hearings conducted by the courts.