

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1999

As used in this subsection a "contingent fee" or "contingency fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee is charged unless a specified finding or result is attained or in which the amount of the fee is otherwise dependent upon the finding or result of the service. For purposes of this subsection, fees are not regarded as being contingent if fixed by courts or other public authorities or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies. A licensee's fees may vary depending on the complexity of services rendered.

See title page for effective date.

CHAPTER 246

H.P. 1310 - L.D. 1871

An Act to Revise Procedures for Probation Revocation

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

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

§1205. Commencement of probation revocation proceedings by arrest

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

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

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

4. A person arrested pursuant to ~~subsections subsection 1 or 3 shall, with or without a warrant, must~~ be afforded a preliminary 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. ~~No~~ A preliminary hearing ~~shall~~ 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. ~~If a person is arrested pursuant to subsections 1 or 3, but is not entitled to a preliminary hearing under this subsection, the probation officer shall file with the court a motion for revocation of probation, as described in subsection 2. A copy of the motion shall be furnished to the person on probation prior to the court hearing on the alleged violation. A preliminary 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.~~

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

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

7. ~~The running of the period of probation shall be tolled upon either the delivery of the summons, the filing of the written notice with the court that the person cannot be located, or the arrest of the person,~~

as provided for in subsection 1. If there is a finding of no probable cause, or if the court does not revoke probation, the running of the period of probation shall be deemed not to have been tolled.

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

Sec. 2. 17-A MRSA §1205-A, as amended by PL 1995, c. 502, Pt. F, §14, is further amended to read:

§1205-A. Administrative preliminary hearing for arrested probationer

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

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

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

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

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

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

4. If the person fails to appear in court after having been served with a summons, the court may

issue a warrant for the arrest of the person. After arrest, the person must be afforded a preliminary hearing as provided in section 1205 and, if retained in custody, section 1205-C, subsection 3 applies.

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

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

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

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 days after the arrest. A copy of the motion must be furnished to the probationer prior to or at the initial appearance.

4. At the initial appearance, the court shall advise the probationer of the contents of the motion, the right to a hearing on the motion, the right to be represented by counsel at a hearing and the right to appointed counsel. If the probationer can not afford counsel, the court shall appoint counsel for the probationer. The court shall call upon the probationer to admit or deny the alleged violation. If the probationer refuses to admit or deny, a denial must be entered. In the case of a denial, the court shall set the motion for hearing and may commit the person, with or without bail, pending hearing.

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

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

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

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

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

7-A. Upon ~~revocation~~ a finding of a violation of probation pursuant to subsection 5, 6 or 7, the court may vacate, ~~in whole or in part~~, all, part or none of the suspension of execution as to imprisonment or fine specified when probation was granted, considering the nature of the violation and the reasons for granting probation. The remaining portion of the sentence for which suspension of execution is not vacated upon the revocation of probation ~~shall remain~~ remains suspended and subject to revocation at a later date. During the service of that portion of the sentence imposed for which the suspension of execution was vacated upon revocation, the running of the period of probation ~~shall~~ must be interrupted and ~~shall resume~~ resumes again upon 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 court may nevertheless revoke probation and vacate the suspension of execution as to the remainder of the suspended sentence or a portion thereof for any criminal conduct committed during the service of that portion of the sentence for which the suspension of execution was vacated upon revocation.

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

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

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

A. Inform the parties of this intention;

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

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

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

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

See title page for effective date.

CHAPTER 247

H.P. 1198 - L.D. 1708

An Act to Amend the Home-release Monitoring Program

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

Sec. 1. 30-A MRSA §1659, first ¶, as enacted by PL 1991, c. 224, is amended to read:

The sheriff of each county may establish and maintain a home-release monitoring program to permit certain inmates, approved by the court in which they were sentenced, to be released and monitored electronically or by intensive supervision by the county and to live at their residences as a portion of the term of incarceration.

Sec. 2. 30-A MRSA §1659, sub-§1, as enacted by PL 1991, c. 224, is amended to read:

1. Petition. A sheriff, upon written request from an inmate eligible for participation in a home-release monitoring program and recommended by the jail administrator, may petition the court in which the inmate was sentenced for authorization to electronically monitor or intensively supervise and to release the inmate to participate in a home-release monitoring program established in that county. Unless the court expressly grants the privilege of home release, the inmate is sentenced to ordinary confinement. The court may withdraw the privilege of home release at any time by order entered with or without notice of hearing. At the time of granting this privilege, the court shall determine whether the inmate is responsible for the cost of participating in the home-release program based on the inmate's ability to pay.

Sec. 3. 30-A MRSA §1659, sub-§2, ¶C, as enacted by PL 1991, c. 224, is amended to read:

C. The inmate has ~~no history of escape or violent behavior and~~ has a verified security classification level of medium or minimum;

Sec. 4. 30-A MRSA §1659, sub-§2, ¶C-1 is enacted to read:

C-1. The offense for which the inmate is serving a sentence is not an offense under Title 17-A, chapter 11;

Sec. 5. 30-A MRSA §1659, sub-§2, ¶D, as enacted by PL 1991, c. 224, is amended to read:

D. For sentences less than 30 days, the inmate serves a minimum of ~~2/3~~ 1/3 of that inmate's sentence prior to participating in a home-release monitoring program. For sentences of 30 days or more, the inmate serves a minimum of ~~4/2~~ 1/3 of that inmate's sentence prior to participating in a home-release monitoring program. In calculating the amount of time served, good time earned under Title 17-A, section 1253 and time reductions earned for charitable or public works projects under section 1606 must be counted; and

Sec. 6. 30-A MRSA §1659, sub-§3, ¶I, as repealed and replaced by PL 1991, c. 783, §2, is amended to read:

I. As a condition of participation of an inmate in a home-release program, the court shall require the inmate to pay a fee, as determined by the court, including an electronic monitoring fee, if applicable, a substance testing fee or both, unless the court determines that the inmate does not have the financial resources to pay these fees. The fee charged may include the costs associated with a home-release program for people who do not have the financial resources to pay the fees.

Sec. 7. 30-A MRSA §1659, sub-§6, as enacted by PL 1991, c. 224, is amended to read:

6. Minimum standards for electronic monitoring and intensive supervision. The Commissioner of Corrections shall establish minimum standards for electronic monitoring and intensive supervision, and may enforce those standards as provided under Title 34-A, section 1208.

See title page for effective date.

CHAPTER 248

S.P. 623 - L.D. 1788

An Act to Clarify 7-day Evictions in Tenancies at Will