

Title 17-A: MAINE CRIMINAL CODE

Chapter 49: PROBATION

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Maine Revised Statutes
Title 17-A: MAINE CRIMINAL CODE
Chapter 49: PROBATION

§1201. ELIGIBILITY FOR A SENTENCE ALTERNATIVE THAT INCLUDES A PERIOD OF PROBATION

1. A person who has been convicted of a crime may be sentenced to a section 1152 sentencing alternative that includes a period of probation, unless:

A. The conviction is for murder; [1977, c. 510, §68 (AMD).]

A-1. The conviction is for a Class D or Class E crime other than:

(1) A Class D or Class E crime relative to which, based upon both the written agreement of the parties and a court finding, the facts and circumstances of the underlying criminal episode giving rise to the conviction generated probable cause to believe the defendant had committed a Class A, Class B or Class C crime in the course of that criminal episode and, as agreed upon in writing by the parties and found by the court, the defendant has no prior conviction for murder or for a Class A, Class B or Class C crime and has not been placed on probation pursuant to this subparagraph on any prior occasion;

(2) A Class D crime that the State pleads and proves was committed against a family or household member or a dating partner under chapter 9 or 13 or section 554, 555 or 758. As used in this subparagraph, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4; "dating partner" has the same meaning as in Title 19-A, section 4002, subsection 3-A;

(2-A) A Class D crime under Title 5, section 4659, subsection 1, Title 15, section 321, subsection 6 or Title 19-A, section 4011, subsection 1;

(3) A Class D or Class E crime in chapter 11 or 12;

(4) A Class D crime under section 210-A;

(4-A) A Class E crime under section 552;

(5) A Class D or Class E crime under section 556, section 853, section 854, excluding subsection 1, paragraph A, subparagraph (1), or section 855;

(6) A Class D crime in chapter 45 relating to a schedule W drug;

(7) A Class D or Class E crime under Title 29-A, section 2411, subsection 1-A, paragraph B;

(8) A Class D crime under Title 17, section 1031; or

(10) A Class E crime under Title 15, section 1092, subsection 1, paragraph A, if the condition of release violated is specified in Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or (8) and the underlying crime involved domestic violence. [2015, c. 443, §8 (AMD).]

A-2. The court sentences the person to a sentencing alternative under section 1152 that includes a period of administrative release; [2003, c. 711, Pt. A, §10 (NEW).]

A-3. The court sentences the person to a term of imprisonment followed by a period of supervised release as authorized by chapter 50; [2015, c. 358, §4 (NEW).]

B. The statute that the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person must be sentenced to the imprisonment and required to pay the fine authorized therein; or [1999, c. 24, §2 (AMD).]

C. [1999, c. 24, §2 (RP).]

D. The court finds that such a sentence would diminish the gravity of the crime for which that person was convicted. [1999, c. 24, §2 (AMD).]

[2007, c. 340, §1 (AMD); 2007, c. 344, §1 (AMD); 2007, c. 475, §14 (AMD); 2007, c. 577, §4 (AMD); 2009, c. 573, §3 (AMD); 2011, c. 465, §7 (AMD); 2011, c. 640, Pt. B, §7 (AMD); 2015, c. 443, §8 (AMD) .]

2. A convicted person who is eligible for sentence under this chapter, as provided in subsection 1, may be sentenced to a sentencing alternative that includes a period of probation if the person is in need of the supervision, guidance, assistance or direction that probation can provide.

[1999, c. 24, §2 (AMD) .]

SECTION HISTORY

1975, c. 499, §1 (NEW). 1975, c. 740, §109 (AMD). 1977, c. 53, §3 (AMD). 1977, c. 510, §68 (AMD). 1987, c. 361, §3 (AMD). 1999, c. 24, §2 (AMD). 2003, c. 711, §A10 (AMD). 2005, c. 265, §7 (AMD). 2007, c. 340, §1 (AMD). 2007, c. 344, §1 (AMD). 2007, c. 475, §14 (AMD). 2007, c. 577, §4 (AMD). 2009, c. 573, §3 (AMD). 2011, c. 465, §7 (AMD). 2011, c. 640, Pt. B, §7 (AMD). 2013, c. 194, §11 (AMD). 2015, c. 358, §4 (AMD). 2015, c. 443, §8 (AMD).

§1202. PERIOD OF PROBATION; MODIFICATION AND DISCHARGE

1. A person convicted of a Class A crime may be placed on probation for a period not to exceed 4 years; for a Class B crime, for a period of probation not to exceed 3 years; for a Class C crime, for a period of probation not to exceed 2 years; and for Class D and Class E crimes, for a period not to exceed one year.

[2003, c. 711, Pt. A, §11 (AMD) .]

1-A. Notwithstanding subsection 1:

A. If the State pleads and proves that at the time of the crime the victim had not attained 12 years of age or, in the case of a crime under sections 283 and 284, the victim had not attained 12 years of age at the time the sexually explicit conduct occurred, the period of probation for a person convicted under chapter 11 or 12 may not exceed:

- (1) Eighteen years for a Class A crime;
- (2) Twelve years for a Class B crime; and
- (3) Six years for a Class C crime; [2009, c. 608, §8 (AMD) .]

A-1. If the State pleads and proves that the person was convicted of committing against a family or household member a crime under chapter 9 or 13 or section 554 or if the person was convicted under chapter 11 or 12 or section 556, the period of probation may not exceed:

- (1) Six years for a Class A crime; or
- (2) Four years for a Class B or Class C crime.

As used in this paragraph, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4; [2007, c. 475, §15 (AMD) .]

B. The period of probation for a person sentenced as a repeat sexual assault offender pursuant to section 1252, subsection 4-B is any term of years; and [2003, c. 711, Pt. B, §15 (AMD) .]

C. [2005, c. 673, §1 (RP) .]

D. The period of probation for a person sentenced for the crime of nonsupport of dependents under section 552 is as provided under section 552, subsection 4. [2007, c. 475, §16 (NEW).]

[2009, c. 608, §8 (AMD).]

1-B. Notwithstanding subsection 1, if the State pleads and proves that the enumerated Class D or Class E crime was committed by the person against a family or household member, and if the court orders the person to complete a certified batterers' intervention program as defined in Title 19-A, section 4014, the person may be placed on probation for a period not to exceed 2 years, except that, on motion by the probation officer, the person on probation or the court, the term of probation must be terminated by the court when the probationer has served at least one year of probation, has completed the certified batterers' intervention program, has paid in full any victim restitution ordered and, from the time the period of probation commenced until the motion for termination is heard, has met all other conditions of probation.

A. As used in this subsection, the following definitions apply.

(1) "Enumerated Class D or Class E crime" means any Class D crime in chapter 9, any Class D or Class E crime in chapter 11, the Class D crimes described in sections 302 and 506-B and the Class D crimes described in sections 554, 555 and 758.

(2) "Family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4. [2003, c. 657, §8 (NEW).]

B. Termination under this subsection requires a judicial finding that the probationer has served at least one year of probation, has successfully completed a certified batterers' intervention program, has paid in full any victim restitution ordered and, from the time the period of probation commenced until the motion for termination is heard, has met all other conditions of probation. [2009, c. 142, §6 (AMD).]

[2013, c. 133, §12 (AMD).]

2. During the period of probation specified in the sentence made pursuant to subsection 1, and upon application of a person on probation or the person's probation officer, or upon its own motion, the court may, after a hearing upon notice to the probation officer and the person on probation, modify the requirements imposed by the court or a community reparations board, add further requirements authorized by section 1204 or relieve the person on probation of any requirement imposed by the court or a community reparations board that, in its opinion, imposes on the person an unreasonable burden. If the person on probation cannot meet a requirement imposed by the court or a community reparations board, the person shall bring a motion under this subsection.

Notwithstanding this subsection, the court may grant, ex parte, a motion brought by the probation officer to add further requirements if the requirements are immediately necessary to protect the safety of an individual or the public and if all reasonable efforts have been made to give written or oral notice to the person on probation. Any requirements added pursuant to an ex parte motion do not take effect until written notice of the requirements, along with written notice of the scheduled date, time and place when the court shall hold a hearing on the added requirements, is given to the person on probation.

[2005, c. 265, §8 (AMD).]

2-A. Once the period of probation has commenced, on motion of the probation officer, or of the person on probation, or on the court's own motion, the court may convert at any time a period of probation for a Class D or Class E crime or a Class C crime under Title 29-A, section 2557-A to a period of administrative release. A conversion to administrative release may not be ordered unless notice of the motion is given to

the probation officer and the attorney for the State. The provisions of chapter 54-G apply when probation is converted to administrative release. Conversion to administrative release serves to relieve the person on probation of any obligations imposed by the probation conditions.

[2011, c. 420, Pt. C, §3 (AMD) .]

3. Once the period of probation has commenced, on motion of the probation officer, or of the person on probation, or on its own motion, the court may terminate at any time a period of probation and discharge the convicted person at any time earlier than that provided in the sentence made pursuant to subsection 1, if warranted by the conduct of such person. A termination and discharge may not be ordered unless notice of the motion is given to the probation officer and the attorney for the State. Such termination and discharge serves to relieve the person on probation of any obligations imposed by the sentence of probation.

[2005, c. 265, §10 (AMD) .]

3-A. A motion and hearing pursuant to subsection 2, 2-A or 3 need not be before the justice or judge who originally imposed probation. Any justice or judge may initiate and hear a motion and any justice or judge may hear a motion brought by the probation officer or by the person on probation.

[2009, c. 336, §14 (NEW) .]

4. Any justice, in order to comply with section 1256, subsection 8, may terminate a period of probation that would delay commencement of a consecutive unsuspended term of imprisonment. Any judge may also do so if that judge has jurisdiction over each of the sentences involved.

[1989, c. 739, §1 (NEW) .]

SECTION HISTORY

1975, c. 499, §1 (NEW). 1985, c. 821, §5 (AMD). 1989, c. 393, (AMD). 1989, c. 739, §1 (AMD). 1991, c. 258, (AMD). 1997, c. 395, §M1 (AMD). 1997, c. 421, §B1 (AMD). 1999, c. 492, §1 (AMD). 1999, c. 788, §2 (AMD). 2001, c. 386, §3 (AMD). 2003, c. 154, §1 (AMD). 2003, c. 657, §8 (AMD). 2003, c. 711, §§A11-14, B14 -16 (AMD). 2005, c. 265, §§8-10 (AMD). 2005, c. 673, §1 (AMD). 2007, c. 475, §§15, 16 (AMD). 2009, c. 142, §6 (AMD). 2009, c. 336, §14 (AMD). 2009, c. 608, §8 (AMD). 2011, c. 420, Pt. C, §3 (AMD). 2013, c. 133, §12 (AMD).

§1203. SPLIT SENTENCES

1.

[1999, c. 788, §3 (RP) .]

1-A. The court may sentence a person to a term of imprisonment, not to exceed the maximum term authorized for the crime, an initial portion of which must be served and the remainder of which must be suspended. The period of probation commences on the date the person is released from the initial unsuspended portion of the term of imprisonment, unless the court orders it to commence on an earlier date.

A. If the period of probation commences upon release of the person from the initial unsuspended portion of the term of imprisonment, the court may revoke probation for any criminal conduct committed during that initial period of imprisonment. [1999, c. 788, §4 (NEW).]

B. The court may revoke probation if, during the initial unsuspended portion of the term of imprisonment, a person sentenced as a repeat sexual assault offender, pursuant to section 1252, subsection 4-B, refuses to actively participate in a sex offender treatment program in accordance with the expectations and judgment of the treatment providers, when requested to do so by the Department of Corrections. [2003, c. 711, Pt. B, §17 (AMD).]

B-1. The court may revoke probation if, during an unsuspended portion of the term of imprisonment:

- (1) The person has contact with a victim with whom the person has been ordered not to have contact as a condition of probation;
- (2) In the case of a person who has been committed to the Department of Corrections, the person has contact with any victim with whom the person has been prohibited to have contact by the Department of Corrections; or
- (3) In the case of a person who has been committed to a county or regional jail, the person has contact with any victim with whom the person has been prohibited to have contact by the county or regional jail.

"Victim," as used in this paragraph, has the same meaning as in section 1171, subsection 2 and section 1175. [2017, c. 128, §4 (NEW).]

C. As to both the suspended and unsuspended portions of the sentence, the place of imprisonment must be as follows.

- (1) For a Class D or Class E crime the court must specify a county jail as the place of imprisonment.
- (2) For a Class A, Class B or Class C crime the court must:
 - (a) Specify a county jail as the place of imprisonment for any portion of the sentence that is 9 months or less; and
 - (b) Commit the person to the Department of Corrections for any portion of the sentence that is more than 9 months. [1999, c. 788, §4 (NEW).]

D. If execution of the sentence is stayed, the court may revoke probation for criminal conduct committed during the period of stay or for failure to report as ordered. [2007, c. 344, §2 (NEW).]

[2017, c. 128, §4 (AMD) .]

2.

[1983, c. 268, §2 (RP) .]

2-A. In any prosecution for a crime committed prior to September 23, 1983, the court may, with the consent of the defendant, impose sentence under subsection 1-A.

[1999, c. 788, §5 (AMD) .]

3.

[1985, c. 282, §5 (RP) .]

4. Each person sentenced to an initial unsuspended term of imprisonment in excess of 120 days under this section for a crime committed on or after July 6, 1978, and on or before September 13, 1979, shall earn deductions authorized by section 1253, subsections 3, 3-A, 3-B and 4.

[1979, c. 707, §1 (NEW) .]

SECTION HISTORY

1975, c. 499, §1 (NEW). 1977, c. 510, §69 (AMD). 1977, c. 671, §27 (RPR). 1979, c. 379, §§1,2 (AMD). 1979, c. 512, §§38-40 (AMD). 1979, c. 663, §122 (AMD). 1979, c. 707, §1 (AMD). 1983, c. 268, §§1,2 (AMD). 1983, c. 673, §§1,2 (AMD). 1985, c. 282, §5 (AMD). 1985, c. 821, §6 (AMD). 1989, c. 693, §1 (AMD). 1989, c. 925, §10 (AMD). 1995, c. 425, §1 (AMD). 1999, c. 24, §3 (AMD). 1999, c. 788, §§3-5 (AMD). 2003, c. 711, §B17 (AMD). 2007, c. 344, §2 (AMD). 2017, c. 128, §4 (AMD).

§1203-A. SUSPENSION OF LAST PORTION OF SENTENCE WITH PROBATION

(REPEALED)

SECTION HISTORY

1979, c. 512, §41 (NEW). 1979, c. 707, §2 (RP). 1981, c. 470, §A39 (REEN). 1983, c. 268, §3 (RP).

§1203-B. SUSPENSION; PROBATION

(REPEALED)

SECTION HISTORY

1979, c. 701, §27 (NEW). 1981, c. 470, §A40 (RP).

§1203-C. WHOLLY SUSPENDED SENTENCE WITH PROBATION

The court may sentence a person to a term of imprisonment not to exceed the maximum term authorized for the crime, suspend the entire term of imprisonment and accompany the suspension with a period of probation not to exceed the maximum period authorized for the crime, to commence on the date the person goes into actual execution of the sentence. [1999, c. 24, §4 (NEW).]

SECTION HISTORY

1999, c. 24, §4 (NEW).

§1204. CONDITIONS OF PROBATION

1. If the court imposes a section 1152 sentencing alternative which includes a period of probation, it shall attach such conditions of probation, as authorized by this section, as it deems to be reasonable and appropriate to assist the convicted person to lead a law-abiding life, provided that in every case it shall be a condition of probation that the convicted person refrain from criminal conduct.

[1987, c. 361, §4 (AMD) .]

1-A. The court shall attach as a condition of probation that the convicted person pay, through the Department of Corrections, a supervision fee of between \$10 and \$50 per month, as determined by the court, for the term of probation. The supervision fee is \$10 per month unless the court sets a higher amount, not to exceed \$50 per month. Notwithstanding the attachment of supervision fee conditions on more than one sentence, a person on probation on concurrent sentences is required to pay only one supervision fee. In determining whether to set an amount higher than \$10 per month, the court shall take into account the financial resources of the convicted person and the nature of the burden its payment imposes. A person may not be sentenced to imprisonment without probation solely for the reason the person is not able to pay the fee. When a person on probation fails to pay the supervision fee, the court may revoke probation as specified in section 1206, unless the person shows that failure to pay was not attributable to a willful refusal to pay or to a failure on that person's part to make a good faith effort to obtain the funds required for the payment. The court, if it determines that revocation of probation is not warranted, shall issue a judgment for the total

amount of the fee and shall issue an order attaching a specified portion of money received by or owed to the person on probation until the total amount of the fee has been paid. If the person makes this showing, the court may allow additional time for payment within the remaining period of probation or reduce the size of the fee to as low as \$10 per month, but may not revoke the requirement to pay the fee unless the remaining period of probation is 30 days or less.

[2009, c. 142, §7 (AMD) .]

1-B. Upon the request of the Department of Corrections, the court shall attach as a condition of probation that the convicted person pay, through the department, an electronic monitoring fee, a substance testing fee or both, as determined by the court, for the term of probation. In determining the amount of the fees, the court shall take into account the financial resources of the convicted person and the nature of the burden the payment imposes. A person may not be sentenced to imprisonment without probation solely for the reason the person is not able to pay the fees. When a person on probation fails to pay the fees, the court may revoke probation as specified in section 1206, unless the person shows that failure to pay was not attributable to a willful refusal to pay or to a failure on that person's part to make a good faith effort to obtain the funds required for the payment. The court, if it determines that revocation of probation is not warranted, shall issue a judgment for the total amount of the fees and shall issue an order attaching a specified portion of money received by or owed to the person on probation until the total amount of the fees has been paid. If the person makes this showing, the court may allow additional time for payment within the remaining period of probation or reduce the size of the fees, but may not revoke the requirement to pay the fees unless the remaining period of probation is 30 days or less. Fees received from probationers must be deposited into the department's adult community corrections account, except that when authorized by the Department of Corrections, a person on probation may be required to pay fees directly to a provider of electronic monitoring, substance testing or other services. Funds from this account, which may not lapse, must be used to defray costs associated with the purchase and operation of electronic monitoring and substance testing programs.

[2003, c. 706, Pt. A, §5 (AMD) .]

1-C.

[2009, c. 365, Pt. A, §4 (RP) .]

2.

[1975, c. 740, §110 (RP) .]

2-A. As a condition of probation, the court in its sentence may require the convicted person:

A. To support his dependents and to meet his family responsibilities; [1975, c. 740, §110-A (NEW) .]

B. To make restitution pursuant to chapter 54 to each victim of the convicted person's crime, or to the county where the offense is prosecuted if the identity of the victim cannot be ascertained or if the victim voluntarily refuses the restitution. If the court orders as a condition of probation that the convicted person forfeit and pay a specific amount of restitution, that order, as a matter of law, also constitutes the imposition of restitution pursuant to chapter 54 as a sentencing alternative and no additional order in this regard is necessary. [2009, c. 608, §9 (AMD) .]

C. To devote himself to an approved employment or occupation; [1975, c. 740, §110-A (NEW) .]

D. To undergo, as an out-patient, available medical or psychiatric treatment, or to enter and remain, as a voluntary patient, in a specified institution when required for that purpose. Failure to comply with this condition is considered only as a violation of probation and may not, in itself, authorize involuntary

treatment or hospitalization. The court may not order and the State may not pay for the defendant to attend a batterers' intervention program unless the program is certified under Title 19-A, section 4014; [1995, c. 694, Pt. D, §26 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

E. To pursue a prescribed secular course of study or vocational training; [1975, c. 740, §110-A (NEW).]

F. To refrain from frequenting specified places or consorting with specified persons; [1977, c. 671, §29 (RPR).]

G. To refrain from possessing any firearms or other dangerous weapon; [1975, c. 740, §110-A (NEW).]

H. To remain within the jurisdiction of the court, unless permission to leave temporarily is granted in writing by the probation officer, and to notify the probation officer of any change in his address or his employment; [1975, c. 740, §110-A (NEW).]

I. To refrain from drug use and use or excessive use of alcohol; [2017, c. 407, Pt. A, §55 (AMD).]

J. To report as directed to the court or the probation officer, to answer all reasonable inquiries by the probation officer and to permit the officer to visit him at reasonable times at his home or elsewhere; [1975, c. 740, §110-A (NEW).]

K. To pay any monetary penalty imposed by the court as part of the sentence; [1989, c. 693, §3 (RPR).]

L. To perform specified work for the benefit of the State, a county, a municipality, a School Administrative District, other public entity or a charitable institution; [2013, c. 227, §2 (AMD).]

M. To satisfy any other conditions reasonably related to the rehabilitation of the convicted person or the public safety or security; or [2013, c. 227, §3 (AMD).]

N. To participate in an electronic monitoring program, if available. [2013, c. 227, §4 (NEW).]

[2017, c. 407, Pt. A, §55 (AMD) .]

3. The convicted person shall be given an opportunity to address the court on the conditions which are proposed to be attached and shall, after sentence, be given a written statement setting forth the particular conditions on which he is released on probation.

[1977, c. 510, §70 (RPR) .]

4. Before imposing any condition of psychiatric outpatient or inpatient treatment or mental health counseling, the court may request a report be submitted by an agent of the Department of Health and Human Services who has been designated pursuant to Title 34-B, section 1220 for the purpose of assessing the appropriateness of psychiatric treatment or mental health counseling for the individual and the availability of this treatment or counseling. Whether or not a report is requested, the court shall notify the designated agent of the Department of Health and Human Services when any conditions of probation are imposed that include psychiatric outpatient or inpatient treatment or mental health counseling. This notification must include the name and last known address of the individual placed on probation, the name and address of the attorney of record and the conditions of probation.

[1997, c. 422, §1 (NEW); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

5. Whenever the court requires as a condition of probation that the convicted person remain within the jurisdiction of the court, unless permission to leave temporarily is granted in writing by the probation officer, the Department of Corrections may impose on a person applying for such permission an application fee of \$25. The department may impose on a person an additional fee of \$25 per month if permission is sought and granted to leave the jurisdiction of the court on a periodic basis. Permission to leave may not be denied or withdrawn solely because the person is not able to pay the application fee or the additional fee. When a person fails to pay an imposed fee, the department may refuse to process the application or may withdraw permission to leave if the failure to pay is attributable to the person's willful refusal to pay or to a failure on the person's part to make a good faith effort to obtain the funds required for the payment. Fees received pursuant to this subsection must be deposited into the department's adult community corrections account, which may not lapse. Fees deposited pursuant to this subsection must be used to defray costs associated with processing the applications, including, but not limited to, the cost of materials, equipment, training for probation officers and administration, and for the department's share of the costs of extraditing probationers who are fugitives from justice.

[2013, c. 133, §13 (NEW) .]

6. If a person is convicted of a crime under chapter 9 or 13 or section 758 that the State pleads and proves was committed by the person against a spouse, domestic partner or sexual partner; a former spouse, domestic partner or sexual partner; an individual with whom the person is living or lived as a spouse; or an individual who is or was a dating partner of the person and the court does not order as a condition of probation that the person complete a batterers' intervention program certified pursuant to Title 19-A, section 4014, the court shall make findings on the record of the court's reasons for not ordering the person to complete a batterers' intervention program. If a plea agreement submitted to the court in accordance with Rule 11A(b) of the Maine Rules of Unified Criminal Procedure does not contain a provision ordering the person to complete a batterers' intervention program, the attorney for the State shall indicate, in a writing submitted to the court, the basis for the plea agreement's not including completion of a batterers' intervention program as a condition of probation. For purposes of this subsection, "dating partner" means an individual currently or formerly involved in dating the person, whether or not the individual and the person are or were sexual partners. For purposes of this subsection, "domestic partner" means one of 2 unmarried adults who are domiciled together under a long-term arrangement that evidences a commitment to remain responsible indefinitely for each other's welfare.

[2017, c. 105, §4 (NEW) .]

SECTION HISTORY

1975, c. 499, §1 (NEW). 1975, c. 740, §§110,110-A (AMD). 1977, c. 53, §4 (AMD). 1977, c. 455, §2 (AMD). 1977, c. 510, §70 (AMD). 1977, c. 671, §§28,29 (AMD). 1987, c. 361, §4 (AMD). 1989, c. 693, §§2,3 (AMD). 1989, c. 875, §§E23,24 (AMD). 1991, c. 783, §1 (AMD). 1993, c. 511, §1 (AMD). 1995, c. 368, §§R2,3 (AMD). 1995, c. 405, §1 (AMD). 1995, c. 502, §§F11,12 (AMD). 1995, c. 680, §6 (AMD). 1995, c. 694, §D26 (AMD). 1995, c. 694, §E2 (AFF). 1997, c. 422, §1 (AMD). 1999, c. 437, §1 (AMD). 2001, c. 354, §3 (AMD). 2001, c. 439, §0003 (AMD). 2003, c. 689, §B6 (REV). 2003, c. 706, §A5 (AMD). 2005, c. 389, §2 (AMD). 2005, c. 488, §5 (AMD). 2009, c. 142, §7 (AMD). 2009, c. 365, Pt. A, §4 (AMD). 2009, c. 608, §9 (AMD). 2013, c. 133, §13 (AMD). 2013, c. 227, §§2-4 (AMD). 2017, c. 105, §4 (AMD). 2017, c. 407, Pt. A, §55 (AMD).

§1204-A. COMMUNITY REPARATIONS BOARDS

1. If the court imposes a sentencing alternative that includes a period of probation, the court shall require as a condition of probation that the convicted person appear before a community reparations board and abide by any requirement imposed by the board if:

A. The person has been sentenced to a suspended term of imprisonment with probation or a split sentence of imprisonment with probation the initial portion of which must be served in a county jail under section 1203; [1997, c. 421, Pt. B, §2 (NEW).]

B. The person has not been convicted of a crime under chapter 11 or a crime of domestic violence; [1997, c. 421, Pt. B, §2 (NEW).]

C. The Department of Corrections recommends that appearance before the board be required; and [1997, c. 421, Pt. B, §2 (NEW).]

D. The court finds no circumstance that makes appearance inappropriate. [1997, c. 421, Pt. B, §2 (NEW).]

[1997, c. 421, Pt. B, §2 (NEW) .]

2. A person required to appear before a community reparations board shall:

A. Cooperate with the preparation of the intake report to be submitted to the board; [1997, c. 421, Pt. B, §2 (NEW).]

B. Appear before the board as directed by the probation officer; and [1997, c. 421, Pt. B, §2 (NEW).]

C. Cooperate with the board. [1997, c. 421, Pt. B, §2 (NEW).]

[1997, c. 421, Pt. B, §2 (NEW) .]

3. The powers of a community reparations board are limited to requiring the convicted person to:

A. Pay restitution in accordance with chapter 54; [1997, c. 421, Pt. B, §2 (NEW).]

B. Perform community service; [1997, c. 421, Pt. B, §2 (NEW).]

C. Complete a prescribed course of counseling or education; [1997, c. 421, Pt. B, §2 (NEW).]

D. Refrain from frequenting specified places or consorting with specified persons; [1997, c. 421, Pt. B, §2 (NEW).]

E. Comply with reparative sanctions other than restitution, including, but not limited to, writing an apology to the victim and fulfilling crime-impact education measures; and [1997, c. 421, Pt. B, §2 (NEW).]

F. Report to the board regarding compliance with the other requirements of this subsection. [1997, c. 421, Pt. B, §2 (NEW).]

[1997, c. 421, Pt. B, §2 (NEW) .]

4. No requirement imposed by a community reparations board may extend longer than 6 months, except to pay restitution.

[1997, c. 421, Pt. B, §2 (NEW) .]

5. Failure to abide by the requirements of this section constitutes a violation of probation.

[1997, c. 421, Pt. B, §2 (NEW) .]

6.

[1999, c. 167, §2 (RP); 1999, c. 790, Pt. A, §54 (AFF) .]

SECTION HISTORY

1997, c. 421, §B2 (NEW). 1999, c. 167, §2 (AMD). 1999, c. 790, §A54 (AFF).

§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 cause the person to be arrested for the alleged violation. If the probation officer can not, with due diligence, locate the person, 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.

[1999, c. 246, §1 (AMD) .]

2.

[1999, c. 246, §1 (RP) .]

3.

[1999, c. 246, §1 (RP) .]

4. A person arrested pursuant to subsection 1, with or without a warrant, must be afforded a probable cause hearing as soon as reasonably possible, but not later than on the 5th day after arrest, excluding Saturdays, Sundays and holidays. A probable cause hearing may not be afforded if, within the 5-day period, the person is released from custody or is afforded an opportunity for a court hearing on the alleged violation. A 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 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. [2005, c. 661, §1 (NEW); 2005, c. 661, §9 (AFF) .]

B. Evidence presented to establish probable cause may include affidavits and other reliable hearsay evidence as permitted by the court. [2005, c. 661, §1 (NEW); 2005, c. 661, §9 (AFF) .]

C. 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. [2005, c. 661, §1 (NEW); 2005, c. 661, §9 (AFF) .]

[2005, c. 661, §1 (AMD); 2005, c. 661, §9 (AFF) .]

5.

[1999, c. 246, §1 (RP) .]

6. Whenever a person is entitled to a 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.

[2005, c. 661, §2 (AMD); 2005, c. 661, §9 (AFF) .]

7.

[1999, c. 246, §1 (RP) .]

8.

[1999, c. 246, §1 (RP) .]

SECTION HISTORY

1975, c. 499, §1 (NEW). 1975, c. 740, §§111,112 (AMD). 1977, c. 510, §71 (RPR). 1979, c. 701, §28 (AMD). 1987, c. 315, §1 (AMD). 1995, c. 502, §F13 (AMD). 1997, c. 273, §1 (AMD). 1999, c. 246, §1 (AMD). 2005, c. 661, §§1,2 (AMD). 2005, c. 661, §9 (AFF).

§1205-A. ADMINISTRATIVE PRELIMINARY HEARING FOR ARRESTED PROBATIONER

(REPEALED)

SECTION HISTORY

1977, c. 510, §72 (NEW). 1995, c. 502, §F14 (AMD). 1999, c. 246, §2 (AMD). 2005, c. 326, §4 (AMD). 2005, c. 326, §5 (AFF). 2005, c. 661, §9 (AFF). 2005, c. 661, §3 (RP).

§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.

[1999, c. 246, §3 (NEW) .]

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.

[1999, c. 246, §3 (NEW) .]

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.

[1999, c. 246, §3 (NEW) .]

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 probable cause hearing as provided in section 1205, subsection 4 and an initial appearance as provided in section 1205-C, subsection 3.

[2005, c. 661, §4 (AMD); 2005, c. 661, §9 (AFF) .]

SECTION HISTORY

1999, c. 246, §3 (NEW). 2005, c. 661, §4 (AMD). 2005, c. 661, §9 (AFF).

§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 3 days, excluding Saturdays, Sundays and holidays, of the arrest of a probationer pursuant to section 1205.

[2005, c. 661, §5 (AMD); 2005, c. 661, §9 (AFF) .]

2. The motion must set forth the facts underlying the alleged violation and, unless the person is to be afforded a probable cause hearing at the initial appearance as provided in section 1205, must be accompanied by a copy of the summons delivered to the probationer.

[2005, c. 661, §6 (AMD); 2005, c. 661, §9 (AFF) .]

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 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.

[2005, c. 661, §7 (AMD); 2005, c. 661, §9 (AFF) .]

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 probationer, with or without bail, pending hearing. If the probationer is committed without bail pending hearing, the date of the hearing must be set no later than 45 days from the date of the initial appearance.

[2017, c. 214, §1 (AMD) .]

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, subsection 2-A. 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 4 and the enforcement provisions in Title 15, chapter 105-A, subchapter 5, articles 1 and 3, including the appeal provisions in Title 15, section 1099-A, subsection 2.

[2015, c. 436, §8 (AMD) .]

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 may be grounds for the probationer's release on personal recognizance pending further proceedings.

[2003, c. 657, §9 (AMD) .]

SECTION HISTORY

1999, c. 246, §3 (NEW). 2003, c. 657, §9 (AMD). 2005, c. 661, §§5-7 (AMD). 2005, c. 661, §9 (AFF). 2015, c. 436, §8 (AMD). 2017, c. 214, §1 (AMD).

§1206. COURT HEARING ON PROBATION REVOCATION

1.

[1999, c. 246, §4 (RP) .]

2. The hearing on the motion to revoke probation must be held in the court that sentenced the person to probation in either the county or division in which the person resides or is incarcerated, unless the court orders otherwise in the interests of justice. A motion for revocation of probation need not be heard by the justice or judge who originally imposed probation, but may be heard by any justice or judge.

[1993, c. 234, §1 (AMD) .]

3.

[1999, c. 246, §5 (RP) .]

4. If a hearing is held, the person on probation must be afforded the opportunity to confront and cross-examine witnesses against the person, to present evidence on that person's own behalf and to be represented by counsel. If the person on probation can not afford counsel, the court shall appoint counsel for the person. Assignment of counsel, to the extent not covered in this subsection, and withdrawal of counsel must be in accordance with the Maine Rules of Unified Criminal Procedure.

[2015, c. 431, §40 (AMD) .]

5. When the alleged violation constitutes a crime for which the person on probation has not been convicted, the court may revoke probation if it finds by a preponderance of the evidence that the person on probation committed the crime. If the person is subsequently convicted of the crime, or any other crime or crimes arising out of the same conduct, sentencing shall be subject to the requirements of section 1256. If concurrent terms of imprisonment are imposed and the terms do not commence on the same date, any time served as a result of the probation revocation shall be deducted from the time the person is required to serve as a result of the new conviction.

[1983, c. 450, §5 (AMD) .]

6. If the alleged violation does not constitute a crime and the court finds by a preponderance of the evidence that the person has inexcusably failed to comply with a requirement imposed as a condition of probation, it may revoke probation.

[1983, c. 450, §6 (AMD) .]

7. If a person on probation is convicted of a new crime during the period of probation, the court may sentence that person for the crime and revoke probation. If the person has been sentenced for the new crime and probation revocation proceedings are subsequently commenced, the court that conducts the revocation

hearing may revoke probation. Sentencing for the multiple offenses is subject to section 1256. If concurrent terms of imprisonment are imposed and the terms do not commence on the same date, any time served as a result of the new conviction must be deducted from the time the person is required to serve as a result of the probation revocation.

[1993, c. 234, §2 (AMD) .]

7-A. Upon a finding of a violation of probation, the court may vacate 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 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 must be interrupted and 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.

[1999, c. 246, §6 (AMD) .]

7-B.

[2015, c. 358, §5 (RP) .]

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. The conditions of probation continue in effect during the tolling of the running of the period of probation, and any violation of a condition subjects the person to a revocation of probation pursuant to the provisions of this chapter.

[2005, c. 507, §14 (AMD) .]

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; [1999, c. 246, §7 (NEW) .]

B. Advise the person on probation personally in open court that the court is not bound by the recommendation; [1999, c. 246, §7 (NEW) .]

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 [1999, c. 246, §7 (NEW) .]

D. Afford the person the opportunity to withdraw the admission. [1999, c. 246, §7 (NEW) .]

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

[1999, c. 246, §7 (NEW) .]

8. Whenever a person is detained in any state or county institution pending a probation revocation proceeding, and not in execution of any other sentence of confinement, that period of detention must be deducted from the time the person is required to serve under that portion of the sentence for which the suspension of execution was vacated as a result of the probation revocation. A person who is simultaneously detained for conduct for which the person receives a consecutive term of imprisonment is not entitled to receive a day-for-day deduction from the consecutive term of imprisonment for the period of simultaneous detention except for any period of detention that is longer than the prior term of imprisonment.

[2005, c. 507, §15 (AMD) .]

9. Whenever a previously suspended sentence of imprisonment for a Class A, Class B or Class C crime is vacated, in whole or in part, as the result of a probation revocation, the court must respecify the place of imprisonment for both the portion required to be served and any remaining suspended portion, if necessary, to carry out the intent of section 1203, subsection 1-A.

[1999, c. 788, §6 (AMD) .]

10. If a probation revocation proceeding results in the court vacating a part of the suspension of execution as to imprisonment while the person is in execution of the initial unsuspended portion of the sentence, the portion of imprisonment to be served as a result of the vacating commences only after the initial unsuspended portion of imprisonment has been fully served. If separate probation revocation proceedings result in the vacating of 2 or more parts of the suspension of execution as to imprisonment on the same sentence, the portions to be served must be served successively.

[2007, c. 344, §3 (NEW) .]

SECTION HISTORY

1975, c. 499, §1 (NEW). 1975, c. 740, §113 (AMD). 1977, c. 510, §73 (RPR). 1979, c. 512, §§42,43 (AMD). 1983, c. 450, §§5-9 (AMD). 1989, c. 693, §4 (AMD). 1989, c. 728, §1 (AMD). 1993, c. 234, §§1,2 (AMD). 1997, c. 273, §2 (AMD). 1999, c. 246, §§4-7 (AMD). 1999, c. 788, §6 (AMD). 2005, c. 507, §§14,15 (AMD). 2007, c. 344, §3 (AMD). 2015, c. 358, §5 (AMD). 2015, c. 431, §40 (AMD).

§1207. REVIEW

1. Discretionary appeal to the Law Court. Review of a revocation of probation pursuant to section 1206 must be by appeal to the Law Court. A person whose probation is revoked may not appeal as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

[2015, c. 431, §41 (RPR) .]

2. Assignment and withdrawal of counsel. Assignment and withdrawal of counsel must be in accordance with the Maine Rules of Unified Criminal Procedure.

[2015, c. 431, §41 (RPR) .]

3. Assignment and withdrawal of counsel.

[2015, c. 431, §41 (RP) .]

SECTION HISTORY

1979, c. 701, §29 (NEW). 1981, c. 238, §9 (AMD). 1993, c. 234, §3 (AMD). 1997, c. 273, §3 (RPR). 1999, c. 731, §ZZZ25 (AMD). 1999, c. 731, §ZZZ42 (AFF). 2003, c. 17, §5 (AMD). 2015, c. 431, §41 (RPR).

§1208. IN LIEU OF PROBATION REVOCATION PROCEEDINGS

Whenever a probation officer has probable cause to believe that a person under the supervision of the probation officer has violated a condition of probation but the violation does not constitute a crime, the probation officer, instead of commencing probation revocation proceedings under section 1205, may offer to the person on probation the option of adding one or more of the following conditions to the person's probation: [2013, c. 133, §14 (AMD).]

1. Daily reporting program.

[2013, c. 133, §14 (RP) .]

2. Public restitution program; treatment program. Participation in a public restitution program or treatment program administered through a Department of Corrections' correctional facility; or

[2013, c. 133, §14 (AMD) .]

3. Residing at facility. Residing at a Department of Corrections' correctional facility for a period of time not to exceed 90 days.

[2013, c. 133, §14 (AMD) .]

If the person on probation agrees, in writing, to the additional conditions, the conditions must be implemented. If the person on probation does not agree or if the person fails to fulfill the additional conditions to the satisfaction of the probation officer, the probation officer may commence probation revocation proceedings under section 1205 or 1205-B for the violation that the probation officer had probable cause to believe occurred. If the person on probation fulfills the additional conditions to the satisfaction of the probation officer, the probation officer shall so notify the person in writing and the probation officer may not commence probation revocation proceedings for the violation that the probation officer had probable cause to believe occurred. [2013, c. 133, §14 (AMD).]

SECTION HISTORY

1995, c. 368, §R4 (NEW). 2013, c. 133, §14 (AMD).

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