

§1812. Court hearing on probation revocation

1. Place of hearing. The hearing on a 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.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

2. Hearing procedure. If a hearing is held, the person on probation must be given 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 cannot 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.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

3. Commission of new crime while on probation. 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 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 is subject to the requirements of section 1608. 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 must be deducted from the time the person is required to serve as a result of the new conviction.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

4. Failure to comply with requirement of probation. If the alleged violation does not constitute a crime and the court finds by a preponderance of the evidence that the person on probation has inexcusably failed to comply with a requirement imposed as a condition of probation, it may revoke probation. This subsection does not apply to a violation of a condition of probation imposed pursuant to section 1807, subsection 2, paragraph I when there is no alleged violation that constitutes a crime, except as set out in section 1814.

[PL 2021, c. 403, §3 (AMD).]

5. Conviction for new crime while on probation. 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 1608. 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.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

6. Authority of court finding violation of probation. 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 is 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. This subsection does not apply to a violation of a condition of probation imposed pursuant to section 1807, subsection 2, paragraph I when there is no alleged violation that constitutes a crime, except as set out in section 1814. [PL 2021, c. 403, §4 (AMD).]

7. Tolling of period of probation; conditions of probation continue in effect. 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 cannot be located or the arrest of the person. If the court finds a violation of probation, the day upon which the tolling occurs does not count toward the period of probation. 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 subchapter. [PL 2021, c. 608, Pt. D, §3 (AMD).]

8. Disposition agreement by parties in return for admission of probation violation. 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 or the attorney for the State will not oppose the requested disposition requested by the person or the attorney for the State will recommend a particular disposition or both sides will recommend a particular disposition, and the court at the time of disposition intends to enter a disposition less favorable to the person than that recommended, the court shall on the record:

- A. Inform the parties of this intention; [PL 2019, c. 113, Pt. A, §2 (NEW).]
- B. Advise the person personally in open court that the court is not bound by the recommendation; [PL 2019, c. 113, Pt. A, §2 (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 [PL 2019, c. 113, Pt. A, §2 (NEW).]
- D. Give the person the opportunity to withdraw the admission. [PL 2019, c. 113, Pt. A, §2 (NEW).]

The court shall, if possible, inform the person of the intended disposition. [PL 2019, c. 113, Pt. A, §2 (NEW).]

9. Deduction of time for detention pending revocation proceeding. Whenever a person is detained in any correctional facility, mental health institute or county jail 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. [PL 2019, c. 113, Pt. A, §2 (NEW).]

10. Respecification of place of imprisonment following vacation of suspension of sentence. 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 1805, subsection 1, paragraph E. [RR 2019, c. 2, Pt. A, §20 (COR).]

11. Effect of vacating suspension while person in execution of unsuspended portion of sentence. 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.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2019, c. 113, Pt. A, §2 (NEW). RR 2019, c. 2, Pt. A, §20 (COR). PL 2021, c. 403, §§3, 4 (AMD). PL 2021, c. 608, Pt. D, §3 (AMD).

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