

Sec. 4. Section two (2) of this Act is effective on the date set forth in chapter one thousand two hundred forty-five (1245), Acts of the Sixty-sixth General Assembly, 1976 Session, chapter four (4), section five hundred twenty-nine (529).

Approved April 15, 1977

I hereby certify that the foregoing Act, House File 331, was published in The Sioux City Journal, Sioux City, Iowa on April 23, 1977, and in the Telegraph Herald, Dubuque, Iowa on April 22, 1977.

MELVIN D. SYNHORST, *Secretary of State*

## CHAPTER 157

### CRIMINAL CODE REVISION

S. F. 319

AN ACT amending the criminal code revision so that a liaison officer shall preside over a probable cause hearing regarding violation of parole.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Chapter one thousand two hundred forty-five (1245), Acts of the Sixty-sixth General Assembly, 1976 Session, chapter three (3), section eight hundred three (803), is amended to read as follows:

SEC. 803. NEW SECTION. PLACE OF PROBABLE CAUSE HEARING. The probable cause hearing shall be held in the same county as the alleged parole violator had his or her initial appearance. ~~The clerk of court shall provide a room suitable for the probable cause hearing.~~

Sec. 2. Chapter one thousand two hundred forty-five (1245), Acts of the Sixty-sixth General Assembly, 1976 Session, chapter three (3), section eight hundred four (804), is amended to read as follows:

SEC. 804. NEW SECTION. PROBABLE CAUSE HEARING. At the probable cause hearing, a magistrate liaison officer appointed pursuant to section four hundred five (405) of this chapter and who is an attorney shall determine whether there is probable cause to believe that the alleged parole violator has violated ~~his-or-her~~ parole. The alleged parole violator shall be informed of the inculpatory evidence ~~against-him-or-her~~. The alleged parole violator shall be given an opportunity to be heard in person and to present witnesses

and other evidence ~~on-his-or-her-behalf~~. The alleged parole violator shall have the right to confront and cross-examine ~~these-furnishing-evidence-against-him-or-her~~ adverse witnesses, except where the magistrate liaison officer finds that a witness would be subjected to risk or harm if the witness' identity were disclosed.

Sec. 3. Chapter one thousand two hundred forty-five (1245), Acts of the Sixty-sixth General Assembly, 1976 Session, chapter three (3), section eight hundred five (805), is amended to read as follows:

SEC. 805. NEW SECTION. WAIVER OF PROBABLE CAUSE HEARING. The alleged parole violator may waive the probable cause hearing, in which event the magistrate liaison officer shall proceed as upon a finding of probable cause. Before accepting a waiver of hearing, the magistrate liaison officer shall inform the alleged violator of the charge ~~against-him-or-her~~, of the alleged violator's right to a hearing to determine whether there is probable cause to believe that ~~he-or-she has-violated-his-or-her~~ parole has been violated, and that if the ~~alleged-violator-waives-the~~ hearing that ~~he-or-she is waived, the alleged violator~~ will be committed to the custody of the department of social services without further proceedings, to await the determination of his-future-status by the parole board. The magistrate liaison officer shall make a verbatim record of the proceedings in which the hearing is waived.

Sec. 4. Chapter one thousand two hundred forty-five (1245), Acts of the Sixty-sixth General Assembly, 1976 Session, chapter three (3), section eight hundred six (806), is amended to read as follows:

SEC. 806. NEW SECTION. DISPOSITION BY MAGISTRATE LIAISON OFFICER. If it appears from the evidence that there is no probable cause to believe that the arrested person has violated the conditions of ~~his-or-her~~ parole, the magistrate liaison officer shall order the arrested person to be released from custody and continued on parole. If it appears that there is probable cause to believe that the arrested person has violated the conditions of ~~his-or-her~~ parole, the magistrate liaison officer shall commit the arrested person to the custody of the department of social services, and the procedure prescribed in section one hundred seven (107) of this chapter shall apply to such commitment; or the magistrate liaison officer may admit recommend that the arrested person be

admitted to bail as provided in section eight hundred two (802) of this chapter. The magistrate liaison officer shall make a summary of the testimony and other evidence considered ~~by the liaison officer~~ and a statement of the facts relied on ~~by the liaison officer~~ as a basis for ~~his or her~~ the finding of probable cause or no probable cause, and shall without delay forward them together with all documents relating to the matter to the executive secretary of the parole board. If the alleged parole violator has waived the probable cause hearing, the verbatim record of that proceeding shall be forwarded in lieu of the summary of evidence and statement of facts.

Sec. 5. Chapter one thousand two hundred forty-five (1245), Acts of the Sixty-sixth General Assembly, 1976 Session, chapter three (3), section eight hundred seven (807), is amended to read as follows:

SEC. 807. NEW SECTION. ACTION BY PAROLE BOARD. Upon a finding of probable cause to believe that a parole violation has occurred, the board of parole shall proceed without unreasonable delay to hear the charge of parole violation. Upon receipt of the record prepared and forwarded by the magistrate liaison officer, the board shall fix a time and place for such hearing and shall notify in writing the alleged violator, ~~his~~ the alleged violator's attorney of record, if any, and the department of social services of such hearing and the claimed violation of parole. The alleged violator shall be given an opportunity to be heard by the board under such rules as the board shall adopt. The inquiry shall be limited to the following two matters: 1. Did the alleged parole violation actually occur? 2. If the violation did occur, should the violator's parole be revoked? If the board determines that the parole should be revoked, it shall make an order revoking the parole. The board shall furnish the violator with a written statement of the facts relied upon to establish a violation and the reasons for revoking parole.

Sec. 6. Chapter one thousand two hundred forty-five (1245), Acts of the Sixty-sixth General Assembly, 1976 Session, chapter three (3), section eight hundred eight (808), is amended to read as follows:

SEC. 808. NEW SECTION. PROCEEDING WITHOUT ARREST. The board of parole may receive from a parole officer a charge or complaint of parole violation against any parolee and may proceed to a hearing on such charge in any case where the

alleged violator has not been arrested or has been arrested and discharged by the magistrate liaison officer on a finding of no probable cause. The presence of the alleged violator at such hearing shall be secured by summons. A statement of the charge against the alleged violator shall accompany the summons, and ~~his-or-her~~ the parole officer shall give the alleged violator such assistance as ~~he-or-she-may-need~~ is needed to get to the place of the hearing. Travel expenses, if any, shall be paid by the board. If ~~he-or-she~~ the alleged violator fails without good cause to appear as commanded by the summons, such failure shall be considered a violation of the parole, and the board may proceed to revoke ~~his-or-her~~ her parole. If the parole is revoked, the board shall issue a warrant for ~~his-or-her~~ the person's arrest and return to the custody of the department of social services. Upon his or her return to custody, the board shall, upon request, give ~~him-or-her~~ the person an opportunity to present any matters in defense or mitigation of ~~his~~ the conduct ~~if-he-so-requests~~.

Sec. 7. Chapter one thousand two hundred forty-five (1245), Acts of the Sixty-sixth General Assembly, 1976 Session, chapter three (3), section eight hundred ten (810), is amended to read as follows:

SEC. 810. NEW SECTION. VIOLATION OF PROBATION. A parole officer or other agency charged with the supervision of a probationer as authorized by sections one hundred seven (107) and five hundred one (501) of this chapter having probable cause to believe that any person released on probation has violated the conditions of ~~his-or-her~~ probation shall proceed by arrest or summons as in the case of a parole violation. The functions of the magistrate liaison officer and the board of parole shall be performed by the judge or magistrate who placed the alleged violator on probation if that judge or magistrate is available, otherwise by another judge or magistrate who would have had jurisdiction to try the original offense. Where the parole officer proceeds by arrest, any magistrate may receive the complaint, issue an arrest warrant, or conduct the initial appearance and probable cause hearing where it is not convenient for the judge who placed the alleged violator on probation to do so. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may at the discretion of the court be merged into a single hearing, when it appears that the alleged violator will not be prejudiced thereby. If the violation

is established, the court may continue the probation with or without an alteration of the conditions of probation, or may revoke the probation and may require the defendant to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was deferred, may impose any sentence which might originally have been imposed.

Sec. 8. Chapter one thousand two hundred forty-five (1245), Acts of the Sixty-sixth General Assembly, 1976 Session, chapter three (3), section eight hundred eleven (811), is amended to read as follows:

SEC. 811. NEW SECTION. CONVICTION OF OTHER OFFENSE.  
When the alleged violation consists of a conviction of a public offense in this or any other state, such conviction shall be proved by a certified copy of the judgment of conviction, together with evidence that the alleged violator is the person against whom the judgment was rendered. Neither the magistrate liaison officer, court, nor board of parole shall re-try the facts underlying such conviction.

Sec. 9. This Act is effective on the date set forth in chapter one thousand two hundred forty-five (1245), Acts of the Sixty-sixth General Assembly, 1976 Session, chapter four (4), section five hundred twenty-nine (529).

Approved June 17, 1977