

Amending 2/12 Do. Pass for 4/25, 4/27 5/12 (p. 2163)

Senate File 319
Judiciary and Law
Enforcement:
Doyle, chair
Garrison
Newhard
Clark of Cerro Gordo
Lipsky

FILED APR 4 1977

SENATE FILE 319

By COMMITTEE ON JUDICIARY
approved 4/4 (p. 732)

Passed Senate, Date 4-5-77 (p. 925) Passed House, Date 5-13-77 (p. 2235)

Vote: Ayes 34 Nays 13 Vote: Ayes 83 Nays 0

Approved June 17, 1977

*Re-passed Senate 5-17-77 (p. 1644)
43.4*

A BILL FOR

- 1 An Act amending the criminal code revisions so that a
- 2 liaison officer shall preside over a probable cause
- 3 hearing regarding violation of parole.
- 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 319 FISCAL NOTE

Date Prepared: April 12, 1977
Requested by: Senator Glenn
Prepared in regard to Senate File 319, An Act amending the criminal code revisions so that a liaison officer shall preside over a probable cause hearing regarding violation of parole.

Following is the fiscal effect in dollars of the legislative proposal as required by Joint Rule 16.

Senate File 319 amends the Criminal Code Revision so that liaison officers, not magistrates, will preside over probable cause hearings regarding violation of parole.

The Board of Parole is presently meeting the requirements of Senate File 319. Therefore, no additional fiscal effect is anticipated.

Source: Board of Parole

FILED
APRIL 12, 1977

Gerry D. Rankin
Legislative Fiscal Director

S.F. 319

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1 Section 1. Chapter one thousand two hundred forty-five
2 (1245), Acts of the Sixty-sixth General Assembly, 1976 Session,
3 chapter three (3), section eight hundred four (804), is amended
4 to read as follows:

5 SEC. 804. NEW SECTION. PROBABLE CAUSE HEARING. At the
6 probable cause hearing, a magistrate liaison officer appointed
7 pursuant to section four hundred five (405) of this chapter
8 shall determine whether there is probable cause to believe
9 that the alleged parole violator has violated ~~his-or-her~~
10 parole. The alleged parole violator shall be informed of
11 the inculpatory evidence ~~against-him-or-her~~. The alleged
12 parole violator shall be given an opportunity to be heard
13 in person and to present witnesses and other evidence ~~on-his~~
14 ~~or-her-behalf~~. The alleged parole violator shall have the
15 right to confront and cross-examine ~~those-furnishing-evidence~~
16 ~~against-him-or-her~~ adverse witnesses, except where the
17 magistrate liaison officer finds that a witness would be
18 subjected to risk or harm if the witness' identity were
19 disclosed.

20 Sec. 2. Chapter one thousand two hundred forty-five (1245),
21 Acts of the Sixty-sixth General Assembly, 1976 Session, chapter
22 three (3), section eight hundred five (805), is amended to
23 read as follows:

24 SEC. 805. NEW SECTION. WAIVER OF PROBABLE CAUSE HEARING.
25 The alleged parole violator may waive the probable cause
26 hearing, in which event the magistrate liaison officer shall
27 proceed as upon a finding of probable cause. Before accepting
28 a waiver of hearing, the magistrate liaison officer shall
29 inform the alleged violator of the charge ~~against-him-or-her~~,
30 of the alleged violator's right to a hearing to determine
31 whether there is probable cause to believe that ~~he-or-she~~
32 ~~has-violated-his-or-her~~ parole has been violated, and that
33 if the ~~alleged-violator-waives-the~~ hearing ~~that-he-or-she~~
34 is waived, the alleged violator will be committed to the
35 custody of the department of social services without further

1 proceedings, to await the determination of ~~his-future-status~~
2 by the parole board. The ~~magistrate~~ liaison officer shall
3 make a verbatim record of the proceedings in which the hear-
4 ing is waived.

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

9 SEC. 806. NEW SECTION. DISPOSITION BY MAGISTRATE LIAISON
10 OFFICER. If it appears from the evidence that there is no
11 probable cause to believe that the arrested person has violated
12 the conditions of ~~his-er-her~~ parole, the ~~magistrate~~ liaison
13 officer shall order the arrested person to be released from
14 custody and continued on parole. If it appears that there
15 is probable cause to believe that the arrested person has
16 violated the conditions of ~~his-er-her~~ parole, the ~~magistrate~~
17 liaison officer shall commit the arrested person to the custody
18 of the department of social services, and the procedure
19 prescribed in section one hundred seven (107) of this chapter
20 shall apply to such commitment; or the ~~magistrate~~ liaison
21 officer may ~~admit~~ recommend that the arrested person be
22 admitted to bail as provided in section eight hundred two
23 (802) of this chapter. The ~~magistrate~~ liaison officer shall
24 make a summary of the testimony and other evidence considered
25 ~~by-the-liaison-officer~~ and a statement of the facts relied
26 on ~~by-the-liaison-officer~~ as a basis for ~~his-er-her~~ the finding
27 of probable cause or no probable cause, and shall without
28 delay forward them together with all documents relating to
29 the matter to the executive secretary of the parole board.
30 If the alleged parole violator has waived the probable cause
31 hearing, the verbatim record of that proceeding shall be
32 forwarded in lieu of the summary of evidence and statement
33 of facts.

34 Sec. 4. Chapter one thousand two hundred forty-five (1245),
35 Acts of the Sixty-sixth General Assembly, 1976 Session, chapter

1 three (3), section eight hundred seven (807), is amended to
2 read as follows:

3 SEC. 807. NEW SECTION. ACTION BY PAROLE BOARD. Upon
4 a finding of probable cause to believe that a parole violation
5 has occurred, the board of parole shall proceed without unrea-
6 sonable delay to hear the charge of parole violation. Upon
7 receipt of the record prepared and forwarded by the magistrate
8 liaison officer, the board shall fix a time and place for
9 such hearing and shall notify in writing the alleged violator,
10 ~~his~~ the alleged violator's attorney of record, if any, and
11 the department of social services of such hearing and the
12 claimed violation of parole. The alleged violator shall be
13 given an opportunity to be heard by the board under such rules
14 as the board shall adopt. The inquiry shall be limited to
15 the following two matters: 1. Did the alleged parole
16 violation actually occur? 2. If the violation did occur,
17 should the violator's parole be revoked? If the board deter-
18 mines that the parole should be revoked, it shall make an
19 order revoking the parole. The board shall furnish the vio-
20 lator with a written statement of the facts relied upon to
21 establish a violation and the reasons for revoking parole.

22 Sec. 5. Chapter one thousand two hundred forty-five (1245),
23 Acts of the Sixty-sixth General Assembly, 1976 Session, chapter
24 three (3), section eight hundred eight (808), is amended to
25 read as follows:

26 SEC. 808. NEW SECTION. PROCEEDING WITHOUT ARREST. The
27 board of parole may receive from a parole officer a charge
28 or complaint of parole violation against any parolee and may
29 proceed to a hearing on such charge in any case where the
30 alleged violator has not been arrested or has been arrested
31 and discharged by the magistrate liaison officer on a finding
32 of no probable cause. The presence of the alleged violator
33 at such hearing shall be secured by summons. A statement
34 of the charge against the alleged violator shall accompany
35 the summons, and ~~his-or-her~~ the parole officer shall give

1 the alleged violator such assistance as ~~he-er-she-may-need~~
2 is needed to get to the place of the hearing. Travel expenses,
3 if any, shall be paid by the board. If ~~he-er-she~~ the alleged
4 violator fails without good cause to appear as commanded by
5 the summons, such failure shall be considered a violation
6 of the parole, and the board may proceed to revoke ~~his-er~~
7 ~~her~~ parole. If the parole is revoked, the board shall issue
8 a warrant for ~~his-er-his~~ the person's arrest and return to
9 the custody of the department of social services. Upon his
10 or her return to custody, the board shall, upon request, give
11 ~~him-er-his~~ the person an opportunity to present any matters
12 in defense or mitigation of ~~his~~ the conduct ~~if-he-so-requests~~.

13 Sec. 6. Chapter one thousand two hundred forty-five (1245),
14 Acts of the Sixty-sixth General Assembly, 1976 Session, chapter
15 three (3), section eight hundred ten (810), is amended to
16 read as follows:

17 SEC. 810. NEW SECTION. VIOLATION OF PROBATION. A parole
18 officer or other agency charged with the supervision of a
19 probationer as authorized by sections one hundred seven (107)
20 and five hundred one (501) of this chapter having probable
21 cause to believe that any person released on probation has
22 violated the conditions of ~~his-er-his~~ probation shall proceed
23 by arrest or summons as in the case of a parole violation.
24 The functions of the ~~magistrate~~ liaison officer and the board
25 of parole shall be performed by the judge or magistrate who
26 placed the alleged violator on probation if that judge or
27 magistrate is available, otherwise by another judge or
28 magistrate who would have had jurisdiction to try the original
29 offense. Where the parole officer proceeds by arrest, any
30 magistrate may receive the complaint, issue an arrest warrant,
31 or conduct the initial appearance and probable cause hearing
32 where it is not convenient for the judge who placed the alleged
33 violator on probation to do so. The initial appearance,
34 probable cause hearing, and probation revocation hearing,
35 or any of them, may at the discretion of the court be merged

1 into a single hearing, when it appears that the alleged .
2 violator will not be prejudiced thereby. If the violation
3 is established, the court may continue the probation with
4 or without an alteration of the conditions of probation, or
5 may revoke the probation and may require the defendant to
6 serve the sentence imposed, or any lesser sentence, and, if
7 imposition of sentence was deferred, may impose any sentence
8 which might originally have been imposed.

9 Sec. 7. Chapter one thousand two hundred forty-five (1245),
10 Acts of the Sixty-sixth General Assembly, 1976 Session, chapter
11 three (3), section eight hundred eleven (811), is amended
12 to read as follows:

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

21 Sec. 8. This Act is effective on the date set forth in
22 chapter one thousand two hundred forty-five (1245), Acts of
23 the Sixty-sixth General Assembly, 1976 Session, chapter four
24 (4), section five hundred twenty-nine (529).

25 EXPLANATION

26 This bill amends the Criminal Code Revision so that liaison
27 officers, not magistrates, will preside over probable cause
28 hearings regarding violation of parole.

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SENATE FILE 319

H-4128

1 Amend Senate File 319 as follows:

2 1. Page 1, by inserting before line 1 the follow-
3 ing section:

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

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

15 2. By renumbering the remaining sections to con-
16 form to this amendment.

H-4128 FILED *Adopted 5/13* BY COMMITTEE ON JUDICIARY
MAY 12, 1977 *(p. 2234)* AND LAW ENFORCEMENT
JESSE of Polk, Chair

SENATE FILE 319

H-4129

1 Amend Senate File 319 as follows:

2 1. Page 1, line 7, by inserting after the word
3 "chapter" the words "and who is an attorney".

4 2. Title page, line 1, by striking the word
5 "revisions" and inserting in lieu thereof the word
6 "revision".

H-4129 FILED *Adopted 5/13* BY COMMITTEE ON JUDICIARY
MAY 12, 1977 *(p. 2234)* AND LAW ENFORCEMENT
JESSE of Polk, Chair

House Amendment to Senate File 319

S-3613

1 Amend Senate File 319 as follows:

2 1. Page 1, by inserting before line 1 the follow-
3 ing section:

4 "Section 1. Chapter one thousand two hundred
5 forty-five [1245], Acts of the Sixty-sixth General
6 Assembly, 1976 Session, chapter three [3], section
7 eight hundred three [803], is amended to read as
8 follows:

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

15 2. Page 1, line 7, by inserting after the word
16 "chapter" the words "and who is an attorney".

17 3. Renumbering the remaining sections to con-
18 form to this amendment.

19 4. Title page, line 1, by striking the word
20 "revisions" and inserting in lieu thereof the word
21 "revision".

S-3613 FILED
MAY 16, 1977

RECEIVED FROM THE HOUSE

Senate concurred 5/17
(p. 1644)

SENATE FILE 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 ~~those-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~~ 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).

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 319, Sixty-seventh General Assembly.

STEVEN C. CROSS
Secretary of the Senate

Approved June 17, 1977

ROBERT D. RAY
Governor