

HOUSE No. 4322

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, February 8, 2024.

The committee on the Judiciary, to whom was referred the petition (accompanied by bill, House, No. 1441) of Michael S. Day relative to arrests without a warrant of persons on probation and temporary custody, reports recommending that the accompanying bill (House, No. 4322) ought to pass.

For the committee,

MICHAEL S. DAY.

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**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act concerning the arrest without a warrant of persons on probation and temporary custody.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 279 is hereby amended by striking out section 3 and inserting in
2 place thereof the following section:

3 Section 3. For the purposes of this section, probation officer shall include all personnel
4 directed by the commissioner of probation, including but not limited to a chief probation officer,
5 a regional probation supervisor, a statewide probation supervisor, the director of the ELMO
6 center and the deputy commissioner of field services. At any time before final disposition of the
7 case of a person placed under probation supervision or in the custody or care of a probation
8 officer, the probation officer may arrest them without a warrant and take them before the court,
9 or the court may issue a warrant for their arrest. When taken before the court, it may, if they have
10 not been sentenced, sentence them or make any other lawful disposition of the case, and if they
11 have been sentenced, it may continue or revoke the suspension of the execution of their sentence;
12 provided however, that in all cases where the probationer is served with notice of surrender and
13 at least one of the underlying crimes for which they are on probation is a felony, then the
14 probation officer shall provide a duplicate copy of the notice of surrender to the district attorney,

15 and the court shall provide to the district attorney the opportunity to be heard and present
16 evidence at the surrender hearing. If such suspension is revoked, the sentence shall be in full
17 force and effect. If a warrant has been issued by the court for the arrest of such a person and they
18 are a prisoner in any correctional institution, jail or house of correction, the commissioner of
19 correction, the sheriff, master or keeper of said house of correction, or in Suffolk county, the
20 penal institutions commissioner of the city of Boston, as the case may be, having such prisoner
21 under their supervision or control, upon receiving notice of such warrant, shall notify such
22 prisoner that they have the right to apply to the court for prompt disposition thereof. Such an
23 application shall be in writing and given or sent by such prisoner to the commissioner of
24 correction, or such sheriff, master, keeper, or penal institutions commissioner, who shall
25 promptly forward it to the court from which the warrant issued, by certified mail, together with a
26 certificate of said commissioner of correction, sheriff, master, keeper, or penal institutions
27 commissioner, stating (a) the term of commitment under which such prisoner is being held, (b)
28 the amount of time served, (c) the amount of time remaining to be served, (d) the amount of good
29 time earned, (e) the time of parole eligibility of such prisoner, and (f) any decisions of the board
30 of parole relating to such prisoner. Said commissioner of correction, sheriff, master, keeper, or
31 penal institutions commissioner shall notify the appropriate district attorney by certified mail of
32 such application to the court. Any such prisoner shall, within six months after such application is
33 received by the court, be brought into court for sentencing or other lawful disposition of their
34 case as hereinbefore provided.

35 In no case where a provision of this chapter provides for a finding, disposition or other
36 order to be made by the court, or for a warrant to be issued, shall such be made or issued by any
37 person other than a justice, special justice or other person exercising the powers of a magistrate.

38 Notwithstanding any restriction in the preceding paragraph, if a probation officer has
39 probable cause to believe that a person placed under probation supervision or in the custody or
40 care of a probation officer pursuant to sections 42A, 58A or 87 of chapter 276 or any other
41 statute that allows the court to set conditions of release, has violated the conditions set by the
42 court, the probation officer may arrest the probationer or may issue a warrant for the custody of
43 the probationer. The probation officer shall arrange for the appearance of the probationer before
44 the next sitting of the court pursuant to the first paragraph of this section. Such warrant shall
45 constitute sufficient authority to a probation officer and to the superintendent, jailer, or any other
46 person in charge of any jail, house of correction, lockup, or place of detention to whom it is
47 exhibited, to hold in custody the probationer detained pursuant thereto. The probationer shall be
48 brought before the next session of the court having jurisdiction over the place where the person is
49 held or to the court that set the condition of release.