

MAINE STATE LEGISLATURE

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L.D. 729

DATE: 3-28-03

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CRIMINAL JUSTICE AND PUBLIC SAFETY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 535, L.D. 729, Bill, "An Act To Clarify the Standard for Review of Preconviction Bail"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 15 MRSA §1028, as amended by PL 1999, c. 731, Pt. ZZZ, §10 and as affected by §42, is further amended to read:

§1028. De novo determination of bail under section 1026

1. ~~By defendant in custody.~~ Any defendant aggrieved by the refusal who is in custody as a result of a decision of a Judge of the District Court or a bail commissioner acting under section 1026 ~~to authorize the defendant's release on personal recognizance or on the execution of an unsecured appearance bond and who is in custody for that crime~~ may petition the Superior Court for a de novo determination of ~~that refusal~~ bail. The District Court Judge or bail commissioner making the decision shall advise the defendant of the right to obtain a de novo determination in the Superior Court.

A. If the defendant chooses to have a de novo determination of bail, the defendant must be furnished with a petition and, upon execution of the petition and without the issuance of any writ or other process, the sheriff of the county in which the decision was made shall provide for the transportation of the defendant together with the petition and all papers relevant to the petition or copies of the petition or papers to the Superior Court.

If no Justice of the Superior Court will be available within 48 hours, excluding Saturdays, Sundays and holidays, arrangements must be made for a de novo determination of bail in the nearest county in which a Justice of the Superior Court is then sitting. The defendant's custodian shall provide transportation to the Superior Court as required by this chapter without the issuance of any writ or other process.

If there is no Justice of the Superior Court available, the defendant must be retained in custody until the petition can be considered.

B. The petition and such other papers as may accompany it shall must be delivered to the clerk of the Superior Court to which the defendant is transported and upon receipt the clerk shall notify the attorney for the State. ~~The petition shall have priority over any other matter before the Justice of the Superior Court.~~ The Superior Court Justice ~~considering the petition shall issue an order in accordance with~~ shall review the petition de novo and set bail in any manner authorized by section 1026.

C. Upon receipt of a pro se petition or upon oral or written request of the attorney for the defendant, the clerk shall set a time for hearing and provide oral or written notice to the attorney for the State. The hearing must be scheduled for a time not less than 24 hours nor more than 48 hours after the clerk notifies the attorney for the State.

2. By defendant not in custody. Any defendant who is not in custody but who is aggrieved by ~~the refusal a decision~~ of a Judge of the District Court or a bail commissioner ~~to authorize the defendant's release on personal recognizance or on the execution of an unsecured bond, and who is not in custody as a result of that refusal,~~ acting under section 1026 may petition the Superior Court for a de novo determination of bail. The Superior Court Justice shall review the petition de novo and set bail in any manner authorized by section 1026. The petition shall must be considered as scheduled by the clerk.

3. No further relief. The determination by the Superior Court under this section is final and no further relief is available.'

SUMMARY

This amendment replaces the bill. The amendment clarifies the process for review of preconviction bail by clearly stating

COMMITTEE AMENDMENT "A" to H.P. 535, L.D. 729

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that, upon receiving a petition for review of preconviction bail from a defendant who is in custody as a result of a decision of a District Court Judge or a bail commissioner or a defendant who is not in custody but who is aggrieved by a decision of a District Court Judge or a bail commissioner, a Superior Court Justice shall make an entirely new or de novo determination of bail. The Superior Court does not increase or decrease or otherwise modify the bail that is set but instead hears argument and makes an entirely new bail determination. This determination may include bail in any manner authorized by the Maine Revised Statutes, Title 15, section 1026; therefore, the Superior Court's de novo determination of bail may be the same, may be higher or lower or may have different conditions than the bail previously set.

COMMITTEE AMENDMENT