

MAINE STATE LEGISLATURE

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132nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2025

Legislative Document

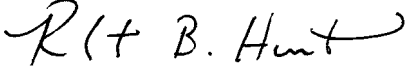
No. 527

H.P. 346

House of Representatives, February 11, 2025

An Act to Establish Bail Officers to Administer the Maine Bail Code

Submitted by the Judicial Department pursuant to Joint Rule 204.
Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative LEE of Auburn.
Cosponsored by Senator STEWART of Aroostook.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 15 MRSA §288** is amended to read:

3 **§288. Recognizance after commitment**

4 A person committed for not recognizing ~~as aforesaid~~ pursuant to section 285 may be
5 discharged by a Justice of the Superior Court or a bail commissioner, a bail officer as
6 defined in section 1003, subsection 1-A, a law enforcement officer as defined in section
7 1003, subsection 8-B or a corrections officer as defined in Title 25, section 2801-A,
8 subsection 2, on giving the security required under section 281.

9 **Sec. 2. 15 MRSA §1003, sub-§1-A** is enacted to read:

10 **1-A. Bail officer.** "Bail officer" refers to an employee of the judicial branch who is
11 hired and trained to set and execute bail in accordance with this chapter.

12 **Sec. 3. 15 MRSA §1003, sub-§8-B** is enacted to read:

13 **8-B. Law enforcement officer.** "Law enforcement officer" means a sworn police
14 officer who is certified by the Maine Criminal Justice Academy.

15 **Sec. 4. 15 MRSA §1023**, as amended by PL 2023, c. 299, §1, is further amended to
16 read:

17 **§1023. Bail commissioners; bail officers**

18 **1. Authority.** A bail commissioner, appointed under this section, ~~or a bail officer~~ shall
19 set preconviction bail for a defendant in a criminal proceeding in accordance with this
20 chapter, ~~provided~~ except that a bail commissioner or bail officer may not set preconviction
21 bail for a defendant:

- 22 A. Who is charged with murder;
- 23 B. If the attorney for the State requests a Harnish bail proceeding for a defendant
24 charged with any other formerly capital offense; or
- 25 C. As otherwise provided in subsection 4.

26 **2. Appointment of bail commissioners.** The Chief Judge of the District Court may
27 appoint one or more residents of the State as bail commissioners. A bail commissioner
28 serves at the pleasure of the Chief Judge of the District Court, but ~~no~~ the term for ~~which~~ a
29 ~~bail commissioner is appointed~~ commissioner's appointment may not exceed 5 years. The
30 Chief Judge of the District Court shall require bail commissioners to complete the
31 necessary training requirements set out in this section. Bail commissioners have the powers
32 of notaries public to administer oaths or affirmations in carrying out their duties.

33 **3. Immunity from liability of bail commissioners.** A person appointed and serving
34 as a bail commissioner is immune from any civil liability, as are employees of
35 governmental entities under the Maine Tort Claims Act, Title 14, chapter 741 for acts
36 performed within the scope of the bail commissioner's duties.

37 **4. Limitations on authority.** A bail commissioner or bail officer may not:

- 38 A. Set preconviction bail for a defendant confined in jail or held under arrest by virtue
39 of any order issued by a court in which bail has not been authorized;
- 40 B. Change the amount of bail or bail conditions set by a court;

1 B-1. Set preconviction bail for a defendant alleged to have committed any of the
2 following offenses against a family or household member as defined in Title 19-A,
3 section 4102, subsection 6:

4 (1) A violation of a protection from abuse order provision set forth in Title 19-A,
5 former section 4006, subsection 5, paragraph A, B, C, D, E or F; Title 19-A, former
6 section 4007, subsection 1, paragraph A, A-1, A-2, B, C, D, E or G; Title 19-A,
7 section 4108, subsection 2, paragraph B, subparagraphs (1) to (6); or Title 19-A,
8 section 4110, subsection 3, paragraph A, B, C, D, E, F, G or I;

9 (2) Any Class A, B or C crime under Title 17-A, chapter 9;

10 (3) Any Class A, B or C sexual assault offense under Title 17-A, chapter 11;

11 (4) Kidnapping under Title 17-A, section 301;

12 (5) Criminal restraint under Title 17-A, section 302, subsection 1, paragraph A,
13 subparagraph (4) or Title 17-A, section 302, subsection 1, paragraph B,
14 subparagraph (2);

15 (6) Domestic violence stalking that is a Class C crime under Title 17-A, section
16 210-C, subsection 1, paragraph B;

17 (7) Domestic violence criminal threatening that is a Class C crime under Title
18 17-A, section 209-A, subsection 1, paragraph B or domestic violence criminal
19 threatening that is elevated to a Class C crime by the use of a dangerous weapon
20 under Title 17-A, section 1604, subsection 5, paragraph A;

21 (8) Domestic violence terrorizing that is a Class C crime under Title 17-A, section
22 210-B, subsection 1, paragraph B or domestic violence terrorizing that is elevated
23 to a Class C crime by the use of a dangerous weapon under Title 17-A, section
24 1604, subsection 5, paragraph A; or

25 (9) Domestic violence reckless conduct that is a Class C crime under Title 17-A,
26 section 211-A, subsection 1, paragraph B or domestic violence reckless conduct
27 that is elevated to a Class C crime by the use of a dangerous weapon under Title
28 17-A, section 1604, subsection 5, paragraph A;

29 C. In a case involving domestic violence, set preconviction bail for a defendant before
30 making a good faith effort to obtain from the arresting officer, the responsible
31 prosecutorial office, a jail employee or other law enforcement officer:

32 (1) A brief history of the alleged abuser;

33 (2) The relationship of the parties;

34 (3) The name, address, phone number and date of birth of the victim;

35 (4) Existing conditions of protection from abuse orders, conditions of bail and
36 conditions of probation;

37 (5) Information about the severity of the alleged offense; and

38 (6) Beginning no later than January 1, 2015, the results of a validated, evidence-
39 based domestic violence risk assessment recommended by the Maine Commission
40 on Domestic and Sexual Abuse, established in Title 5, section 12004-I, subsection

1 74-C, and approved by the Department of Public Safety conducted on the alleged
2 abuser when the results are available;

3 D. Set preconviction or post-conviction bail for a violation of condition of release
4 pursuant to section 1092, except as provided in section 1092, subsection 4;

5 E. Set preconviction bail using a condition of release not included in every order for
6 pretrial release without specifying a court date within 8 weeks of the date of the bail
7 order;

8 F. Set preconviction bail for crimes involving allegations of domestic violence without
9 specifying a court date within 5 weeks of the date of the bail order; or

10 G. Notwithstanding section 1026, subsection 3, paragraph A, subparagraph (9-A),
11 impose a condition of preconviction bail that a defendant submit to random search with
12 respect to a prohibition on the possession, use or excessive use of alcohol, cannabis or
13 illegal drugs.

14 **5. Fees Bail commissioner fees.** A bail commissioner is entitled to receive a fee not
15 to exceed \$60 for the charges pursuant to which the defendant is presently in custody,
16 unless the defendant lacks the present financial ability to pay the fee. A defendant presently
17 in custody who is qualified to be released upon personal recognizance or upon execution
18 of an unsecured appearance bond, whether or not accompanied by one or more conditions
19 of bail that have been set by a judicial officer, but who in fact lacks the present financial
20 ability to pay a bail commissioner fee, must nonetheless be released upon personal
21 recognizance or upon execution of an unsecured appearance bond. A bail commissioner
22 may not refuse to examine a person to determine the person's eligibility for bail, set bail,
23 prepare the personal recognizance or bond or take acknowledgement of the person in
24 custody because the person in custody lacks the present financial ability to pay a bail
25 commissioner fee. The bail commissioner shall submit such forms as the Judicial
26 Department directs to verify the amount of fees received under this subsection. The sheriff
27 of the county in which the defendant is detained may create a fund for the distribution by
28 the sheriff or the sheriff's designee for the payment in whole or in part of the \$60 bail
29 commissioner fee for those defendants who do not have the financial ability to pay that fee.
30 A bail commissioner fee under this subsection is not a financial condition of release for the
31 purposes of section 1026, subsection 3, paragraph B-1.

32 **6. Attorneys-at-law Bail commissioners; attorneys-at-law.** ~~No~~ An attorney-at-law
33 who has acted as bail commissioner in any proceeding may not act as attorney for or on
34 behalf of any defendant for whom that attorney-at-law has taken bail in any such
35 proceeding, nor may any attorney-at-law who has acted as attorney for a defendant in any
36 offense act as bail commissioner in any proceeding arising out of the offense with which
37 the defendant is charged.

38 **7. Mandatory training.** As a condition of appointment and continued service, a bail
39 commissioner must successfully complete a bail training program, as prescribed and
40 scheduled by the Chief Judge of the District Court, not later than one year following
41 appointment. The Maine Criminal Justice Academy shall ~~provide assistance to~~ collaborate
42 with the Chief Judge of the District Court in establishing an appropriate training ~~program~~
43 class for law enforcement officers regarding execution of bail commissioners bonds. The
44 ~~program shall~~ class must include instruction on the provisions of this chapter, the relevant

1 constitutional provisions on bail and any other matters pertinent to bail that the Chief Judge
2 of the District Court considers appropriate and necessary. The Maine Criminal Justice
3 Academy and the Chief Judge of the District Court may also establish a continuing
4 education program class for bail commissioners law enforcement officers.

5 **8. Bail commissioners in indigent cases.** The Chief Judge of the District Court may
6 adopt rules requiring a bail commissioner to appear and set bail regardless of whether the
7 defendant is indigent and unable to pay the bail commissioner's fee. The Chief Judge of the
8 District Court may also adopt rules governing the manner in which a bail commissioner is
9 paid in the event an indigent person is released on bail and is unable to pay the bail
10 commissioner's fee.

11 **Sec. 5. 15 MRSA §1024, first ¶,** as enacted by PL 1987, c. 758, §20, is amended
12 to read:

13 Clerks of the District Court and clerks of the Superior Court, during the hours when
14 the clerk's office is open for business and subject to the control of the District Court Judge
15 or Superior Court Justice, may, without fee, take the personal recognizance of any
16 defendant for appearance on a charge of a Class D or Class E crime. ~~Nothing in this section~~
17 ~~may be construed to prohibit the appointment of any clerk of the District Court or the~~
18 ~~Superior Court as a bail commissioner, except that no fee may be charged by the clerk~~
19 ~~while the clerk's office is open for business.~~

20 **Sec. 6. 15 MRSA §1025,** as amended by PL 2003, c. 414, Pt. B, §28 and affected
21 by Pt. D, §7 and c. 614, §9, is further amended to read:

22 **§1025. Law enforcement officers**

23 A law enforcement officer making a warrantless arrest under Title 17-A, section 15
24 may, without fee, take the personal recognizance of any defendant for appearance on a
25 charge of a ~~Class D or Class E crime~~ as required by Title 15, section 1092, paragraph 4. If
26 authorized, a law enforcement officer may, without fee, take the personal recognizance
27 with deposit in accordance with Title 12, section 10353, subsection 2, paragraph C; and
28 Title 12, section 9707. The law enforcement officer's authority under this section continues
29 as long as the arrestee remains in the officer's custody.

30 If a court, bail commissioner or bail officer issues an order that a defendant in custody
31 be released pending trial, whether or not accompanied by one or more conditions under
32 section 1026, subsection 3, a law enforcement officer may, without fee, prepare the bond
33 and take the acknowledgment of the defendant.

34 **Sec. 7. 15 MRSA §1025-A,** as amended by PL 2023, c. 508, §1, is further amended
35 to read:

36 **§1025-A. County jail employees**

37 If a court ~~or~~, bail commissioner or bail officer issues an order that a defendant in
38 custody be released, pending trial, ~~on personal recognizance or upon execution of an~~
39 ~~unsecured appearance bond,~~ whether or not accompanied by one or more conditions under
40 section 1026, subsection 3, an employee of the county jail having custody of the defendant,
41 if authorized to do so by the sheriff, may, without fee, prepare the ~~personal recognizance~~
42 ~~or~~ bond and take the acknowledgment of the defendant.

1 **Sec. 8. 15 MRSA §1026, sub-§3, ¶A**, as amended by PL 2023, c. 299, §2, is further
2 amended by amending subparagraph (11) to read:

3 (11) Execute an agreement to forfeit, in the event of noncompliance, such
4 designated property, including money, as is reasonably necessary to ensure the
5 appearance of the defendant at the time and place required, to ensure that the
6 defendant will refrain from any new criminal conduct, to ensure the integrity of the
7 judicial process and to ensure the safety of others in the community and post with
8 an appropriate court such evidence of ownership of the property or such percentage
9 of the money as the judicial officer specifies. Whenever there is a financial
10 condition of bail, any money or cash bail may be paid with United States currency
11 or any other form of payment permitted by the Chief Judge of the District Court.
12 If payment is made by credit card, the court is authorized to impose, in addition to
13 the amount designated as bail, a surcharge in the amount equal to the service charge
14 to the court for accepting payment made by credit card;

15 **Sec. 9. 15 MRSA §1026, sub-§4**, as amended by PL 2021, c. 397, §5 and c. 647,
16 Pt. B, §10 and affected by §65, is further amended to read:

17 **4. Factors to be considered in release decision.** In setting bail, the judicial officer
18 shall, on the basis of an interview with the defendant, information provided by the
19 defendant's attorney ~~and~~, information provided by the attorney for the State or information
20 provided by an informed law enforcement officer if the attorney for the State is not
21 available and other reliable information that can be obtained, take into account the available
22 information concerning the following:

- 23 A. The nature and circumstances of the crime charged;
- 24 B. The nature of the evidence against the defendant; and
- 25 C. The history and characteristics of the defendant, including, but not limited to:
- 26 (1) The defendant's character and physical and mental condition;
- 27 (2) The defendant's family ties in the State;
- 28 (3) The defendant's employment history in the State;
- 29 (4) The defendant's financial resources, including the ability of the defendant to
- 30 afford a financial condition imposed by the judicial officer;
- 31 (5) The defendant's length of residence in the community and the defendant's
- 32 community ties;
- 33 (6) The defendant's past conduct;
- 34 (7) The defendant's criminal history, if any;
- 35 (8) The defendant's record concerning appearances at court proceedings;
- 36 (9) Whether, at the time of the current offense or arrest, the defendant was on
- 37 probation, parole or other release pending trial, sentencing, appeal or completion
- 38 of a sentence for an offense in this jurisdiction or another;
- 39 (9-A) Any evidence that the defendant poses a danger to the safety of others in the
- 40 community, including the results of a validated, evidence-based domestic violence
- 41 risk assessment recommended by the Maine Commission on Domestic and Sexual

1 Abuse, established in Title 5, section 12004-I, subsection 74-C, and approved by
2 the Department of Public Safety;

3 (10) Any evidence that the defendant has obstructed or attempted to obstruct
4 justice by threatening, injuring or intimidating a victim or a prospective witness,
5 juror, attorney for the State, judge, justice or other officer of the court;

6 (11) Whether the defendant has previously violated conditions of release,
7 probation or other court orders, including, but not limited to, violating protection
8 from abuse orders pursuant to former Title 19, section 769 or Title 19-A, former
9 section 4011 or Title 19-A, section 4113;

10 (12) Whether the defendant is the person primarily responsible for the care of
11 another person;

12 (13) Whether the defendant has a specific health care need, including a mental
13 health care need, that is being met or would be better met outside of custody; and

14 (14) Whether being placed or remaining in custody would prevent the defendant
15 from maintaining employment.

16 **Sec. 10. 15 MRSA §1028**, as amended by PL 2015, c. 431, §12, is further amended
17 to read:

18 **§1028. De novo determination of bail under section 1026**

19 **1. By defendant in custody.** Any defendant who is in custody as a result of a decision
20 of a bail commissioner or bail officer acting under section 1026 may file a petition with the
21 Unified Criminal Docket for a de novo determination of bail. The bail commissioner or
22 bail officer making the decision shall advise the defendant of the right to obtain a de novo
23 determination.

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

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

34 If there is no justice or judge available, the defendant must be retained in custody until
35 the petition can be considered.

36 B. The petition and such other papers as may accompany it must be delivered to the
37 clerk of the Unified Criminal Docket to which the defendant is transported and upon
38 receipt the clerk shall notify the attorney for the State. The court shall review the
39 petition de novo and set bail in any manner authorized by section 1026.

40 C. Upon receipt of a pro se petition or upon oral or written request of the attorney for
41 the defendant, the clerk shall set a time for hearing and provide oral or written notice

1 to the attorney for the State. The hearing must be scheduled for a time not less than 24
2 hours nor more than 48 hours after the clerk notifies the attorney for the State.

3 **2. By defendant not in custody.** Any defendant who is not in custody but who is
4 aggrieved by a decision of a bail commissioner or bail officer acting under section 1026 as
5 to the amount or conditions of bail set may file a petition with the Unified Criminal Docket
6 for a de novo determination of bail. A justice or judge shall review the petition de novo
7 and set bail in any manner authorized by section 1026. The petition must be considered as
8 scheduled by the clerk.

9 **3. No further relief.** The de novo determination by a justice or judge under this
10 section is final and no further relief is available.

11 **Sec. 11. 15 MRSA §1092, sub-§4,** as amended by PL 2013, c. 519, §3, is further
12 amended to read:

13 **4. Limitations on authority of bail commissioner or bail officer to set bail.** A court
14 may, but a bail commissioner or bail officer may not, set bail for a defendant granted
15 preconviction or post-conviction bail who has been arrested for an alleged violation of this
16 section if:

17 A. The condition of release alleged to be violated relates to new criminal conduct for
18 a crime classified as Class C or above or for a Class D or Class E crime involving
19 domestic violence, sexual assault pursuant to Title 17-A, chapter 11 or sexual
20 exploitation of minors pursuant to Title 17-A, chapter 12;

21 B. The underlying crime for which preconviction or post-conviction bail was granted
22 is classified as Class C or above; or

23 C. The underlying crime for which preconviction or post-conviction bail was granted
24 is a crime involving domestic violence, sexual assault pursuant to Title 17-A, chapter
25 11 or sexual exploitation of minors pursuant to Title 17-A, chapter 12.

26 If a bail commissioner or bail officer does not have sufficient information to determine
27 whether the violation of the condition of release meets the criteria set forth under this
28 subsection, the bail commissioner or bail officer may not set bail on the violation of the
29 condition of release.

30 **Sec. 12. 15 MRSA §1096, first ¶,** as amended by PL 2005, c. 449, §3, is further
31 amended to read:

32 A preconviction bail order of a bail commissioner or bail officer may be revoked by
33 any judge or justice, and a preconviction bail order of a judge or justice may be revoked by
34 any judge or justice of the same court, upon a determination made after notice and
35 opportunity for hearing that:

36 **Sec. 13. 17-A MRSA §2108, sub-§3,** as enacted by PL 2019, c. 113, Pt. A, §2, is
37 amended to read:

38 **3. Limited disclosure as part of bail condition or court order.** A bail
39 commissioner, bail officer, judge, justice, court clerk, law enforcement officer or attorney
40 for the State may disclose a victim's current address or location to the defendant or accused
41 person, or the attorney or authorized agent of the defendant or accused person, as part of a
42 bail condition or court order restricting contact with the victim only when it is clear that
43 the defendant already knows the victim's current address or location or when the victim

1 requests that such bail condition or court order be issued and the victim requests that the
2 current address or location be specified. For purposes of this subsection, "bail officer" has
3 the same meaning as in Title 15, section 1003, subsection 1-A.

4 **Sec. 14. 19-A MRSA §4114, sub-§6, ¶E**, as enacted by PL 2021, c. 647, Pt. A, §3
5 and affected by Pt. B, §65, is amended to read:

6 E. Making a good faith effort to administer a validated, evidence-based domestic
7 violence risk assessment recommended by the Maine Commission on Domestic and
8 Sexual Abuse, established in Title 5, section 12004-I, subsection 74-C, and approved
9 by the Department of Public Safety. The law enforcement officer administering this
10 assessment shall provide the results of the assessment to the bail commissioner or bail
11 officer, if appropriate, and the district attorney for the county in which the abuse took
12 place. For purposes of this paragraph, "bail officer" has the same meaning as in Title
13 15, section 1003, subsection 1-A.

14 **Sec. 15. 25 MRSA §2803-B, sub-§1, ¶D**, as amended by PL 2023, c. 235, §§6 to
15 8, is further amended by amending subparagraph (2) to read:

16 (2) A process for the collection of information regarding the defendant that
17 includes the defendant's previous history, the parties' relationship, whether the
18 commission of an alleged crime included the use of strangulation as defined in
19 Title 17-A, section 208, subsection 1, paragraph C, the name of the victim and a
20 process to relay this information to a bail commissioner or bail officer before a bail
21 determination is made. For purposes of this paragraph, "bail officer" has the same
22 meaning as in Title 15, section 1003, subsection 1-A;

23 **Sec. 16. 25 MRSA §2803-B, sub-§1, ¶D**, as amended by PL 2023, c. 235, §§6 to
24 8, is further amended by amending subparagraph (5) to read:

25 (5) A process for the administration of a validated, evidence-based domestic
26 violence risk assessment recommended by the Maine Commission on Domestic
27 and Sexual Abuse, established in Title 5, section 12004-I, subsection 74-C, and
28 approved by the Department of Public Safety and the conveyance of the results of
29 that assessment to the bail commissioner or bail officer, if appropriate, and the
30 district attorney for the county in which the domestic violence occurred; and

31 SUMMARY

32 This bill amends the Maine Bail Code to create a new position of bail officer within
33 the judicial branch to set and execute bail in accordance with the law. This bill requires the
34 Maine Criminal Justice Academy to collaborate with the Chief Judge of the District Court
35 to establish a training class for law enforcement officers regarding the execution of bail
36 bonds. The bill also authorizes the court to impose a surcharge for accepting bail payments
37 made by credit card.