

MAINE STATE LEGISLATURE

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**STATE OF MAINE
118TH LEGISLATURE**

**FIRST REGULAR SESSION
AND
FIRST SPECIAL SESSION**

**BILL SUMMARIES
JOINT STANDING COMMITTEE
ON
CRIMINAL JUSTICE**

JULY 1997

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ONE HUNDRED EIGHTEENTH LEGISLATURE
FIRST REGULAR AND FIRST SPECIAL SESSIONS

Summary Of Legislation Before The Joint Standing Committees
August 1997

We are pleased to provide this summary of bills that were considered by the 15 Joint Standing Committees of the Maine Legislature staffed by this office. The document is a compilation of bill summaries which describe each bill, committee amendments and other relevant amendments, as well as the final action taken on the bill. Also included are statistical summaries of bill activity this Session for the Legislature and each of its joint standing committees.

The document is organized for convenient reference to information on bills handled by the joint standing committees. It is organized alphabetically by committees and within committees by bill (LD) number. The committee report(s), prime sponsor for each bill and the lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are listed by paper number. Two indices, a subject index and a numerical index by LD number are provided for easy reference to bills. They are located at the back of the document. A separate publication, History and Final Disposition of Legislative Documents, may also be helpful in providing information on the disposition of bills. These bill summaries also are available at the Law and Legislative Reference Library and on the Internet (www.state.me.us/legis/opla).

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

<i>CARRIED OVER</i>	<i>Bill carried over to Second Regular Session</i>
<i>CON RES XXX</i>	<i>Chapter # of Constitutional Resolution passed by both Houses</i>
<i>CONF CMTE UNABLE TO AGREE</i>	<i>Committee of Conference unable to agree; bill died</i>
<i>DIED BETWEEN BODIES</i>	<i>House & Senate disagree; bill died</i>
<i>DIED IN CONCURRENCE</i>	<i>One body accepts ONTP report; the other indefinitely postpones the bill</i>
<i>DIED ON ADJOURNMENT</i>	<i>Action incomplete when session ended; bill died</i>
<i>EMERGENCY</i>	<i>Enacted law takes effect sooner than 90 days</i>
<i>FAILED EMERGENCY ENACTMENT/FINAL PASSAGE</i>	<i>Emergency bill failed to get 2/3 vote</i>
<i>FAILED ENACTMENT/FINAL PASSAGE</i>	<i>Bill failed to get majority vote</i>
<i>FAILED MANDATE ENACTMENT</i>	<i>Bill imposing local mandate failed to get 2/3 vote</i>
<i>INDEF PP</i>	<i>Bill Indefinitely Postponed</i>
<i>ONTP</i>	<i>Ought Not To Pass report accepted</i>
<i>OTP ND</i>	<i>Committee report Ought To Pass In New Draft</i>
<i>OTP ND/NT</i>	<i>Committee report Ought To Pass In New Draft/New Title</i>
<i>P&S XXX</i>	<i>Chapter # of enacted Private & Special Law</i>
<i>PUBLIC XXX</i>	<i>Chapter # of enacted Public Law</i>
<i>RESOLVE XXX</i>	<i>Chapter # of finally passed Resolve</i>
<i>UNSIGNED</i>	<i>Bill held by Governor</i>
<i>VETO SUSTAINED</i>	<i>Legislature failed to override Governor's Veto</i>

Please note the effective date for all non-emergency legislation enacted in the First Regular Session (unless otherwise specified in a particular law) is June 26, 1997 and September 19, 1997 for the First Special Session.

David E. Boulter, Director
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a petition seeking relief from a criminal judgment coming within the Maine Revised Statutes, Title 15, section 2124, subsection 1 or 1-A. That filing deadline is modeled after the federal habeas corpus statute, 28 United States Code, Section 2254. In order to ensure fairness, a grace period of the same length as the new limitation period is provided.

Public Law 1997, chapter 399 also adopts a flat one-year filing deadline for initiating a petition seeking relief from a criminal judgment coming within the Maine Revised Statutes, Title 15, section 2124, subsection 3. The limitation period starts to run from the date the sentence is imposed for the new crime.

LD 1548

An Act to Outlaw the Sale of Code Grabbers in the State

PUBLIC 372

<u>Sponsor(s)</u> PLOWMAN	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-552
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LD 1548 proposed to make the sale or possession of code grabbers in the State unlawful. The sale or possession of code grabbers would have been a Class D crime.

Committee Amendment "A" (H-552) replaced the bill and proposed to do the following:

1. Prohibit the transfer of burglar's tools, in addition to possession of them;
2. List electronic devices used as code grabbers among the examples of burglar's tools;
3. Specify that possession of burglar's tools is a Class E crime and transfer of burglar's tools is a Class D crime; and
4. Prohibit the possession or transfer of theft devices, in general, rather than simply theft of services devices.

Enacted law summary

Public Law 1997, chapter 372 does the following:

1. Makes transferring or possessing with the intent to transfer burglar's tools that the person knows are designed for or are useful for the commission of a crime a Class D crime;
2. Makes possession with the intent to use a burglar's tools to commit a crime a Class E crime;
3. Lists electronic devices used as code grabbers among the examples of burglar's tools; and
4. Prohibits the possession or transfer of theft devices.

LD 1571

An Act to Amend the Maine Bail Code

PUBLIC 543

<u>Sponsor(s)</u> BENOIT WATERHOUSE	<u>Committee Report</u> OTP-AM MAJ OTP-AM MIN	<u>Amendments Adopted</u> S-423
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LD 1571 proposed to do the following:

1. Amend the definitions of the terms "bail" and "ensure the integrity of the judicial process;"

2. Change the standards for release of a defendant in custody for a crime bailable as of right preconviction;
3. Prohibit a judicial officer from ordering the pretrial release of a defendant on personal recognizance or upon execution of an unsecured appearance bond on new criminal conduct if the defendant has pending criminal charges;
4. List criteria for a judicial officer to consider in determining whether the pretrial release of a defendant on personal recognizance or an unsecured appearance bond is appropriate;
5. Prohibit a judicial officer from ordering the defendant released on personal recognizance or unsecured appearance bond if the defendant's crime is serious or the judicial officer finds the defendant's criminal record inappropriate for granting the defendant release on personal recognizance or unsecured appearance bond;
6. Repeal the provision that permits the Superior Court to make a de novo determination of the refusal of a judge of the District Court or a bail commissioner acting under the Maine Revised Statutes, Title 15, section 1026 to authorize the defendant's release on personal recognizance or on the execution of an unsecured appearance bond and replace it with a provision that permits a defendant to appeal to the Superior Court to review whether the District Court or bail commissioner abused the court's or commissioner's discretion in setting the bail. It provides that for a defendant in custody, an appeal hearing would have to be scheduled within 96 hours of the filing of the appeal;
7. Change the standards admitting a defendant to post-conviction bail;
8. Provide that a surety for a defendant admitted to bail is responsible for the appearance of the defendant at all times, the defendant's compliance with the conditions of release and ensuring that the defendant refrains from engaging in new criminal conduct; and
9. Change the standards for determining whether to release a person on bail in connection with probation revocation proceedings and provides that bail is not available to any person pending the appeal of a revocation of probation pursuant to Title 17-A, section 1207.

Committee Amendment "A" (S-314) replaced the bill and was the majority report of the Joint Standing Committee on Criminal Justice. The amendment proposed to do the following:

1. Amend the code's statement of purpose to include the fact that, while on bail, a defendant is expected to refrain from engaging in new criminal conduct;
2. Amend the bail definition both in the preconviction and post-conviction context to expressly include refraining from any new criminal conduct and obeying each condition of release imposed by the judicial officer;
3. Define new criminal conduct;
4. Clarify that a judicial officer is authorized to issue a preconviction order releasing a defendant on personal recognizance or execution of an unsecured bond and imposes additional release conditions;
5. Require that every preconviction and post-conviction order of release contain, in addition to a waiver of extradition by the defendant, a condition that the defendant refrain from new criminal conduct and not violate any pending protection from abuse orders;

6. Clarify that a judicial officer is authorized to require a defendant preconviction to execute an agreement to forfeit designated property or execute a bail bond with sureties to ensure the integrity of the judicial process as well as the defendant's appearance;
7. Recognize additional sources of information from which the judicial officer may gather reliable information needed to make the release decision;
8. Add the factor of whether the defendant has previously violated conditions of release, probation or other court orders, including protection from abuse orders to the list of factors to be considered in the preconviction and post-conviction release decision;
9. Clarify that the judicial officer must advise the defendant of the potential penalties as well as the consequences of violating a condition of release;
10. Require, both in the post-conviction context and when the conditional right to have preconviction bail set has been extinguished at a Harnish bail proceeding, that bail be denied in the event a substantial risk exists that the defendant will commit new criminal conduct;
11. Increase from 24 to 48 hours the time within which a confined defendant must be transported to a different county if no Justice of the Superior Court is locally available to make a de novo determination of preconviction bail. It additionally requires the clerk to provide notice to the attorney for the State of the upcoming hearing and to schedule that hearing for a time not less than 24 hours but not more than 48 hours after the attorney for the State has been notified;
12. Make both preconviction and post-conviction sureties responsible for ensuring a defendant's compliance with each condition of release imposed by the judicial officer, including that the defendant refrain from new criminal conduct, in addition to being responsible for ensuring the appearance of the defendant at all times;
13. Prior to undertaking the responsibility of surety for a defendant, a surety must be provided a copy of the defendant's written release order and a written statement containing an explanation of both the general responsibilities of a surety and the potential consequences to a surety if a defendant violates a condition of release and must be verbally advised of each condition in the defendant's written release order as well as the potential consequences to the surety if the defendant fails to abide by each condition of release. It further requires the Supreme Judicial Court to specify by rule who will be responsible for advising the surety and providing to the surety a copy of the written order and the written explanation;
14. Address the consequences to a defendant who fails to refrain from new criminal conduct. If a judge or justice finds probable cause exists to believe that the defendant has committed a new crime following the setting of preconviction bail, the judge or justice must issue an order denying bail unless the court finds that there are conditions of release that will reasonably ensure that the defendant will not continue to commit new crimes while out on bail in which case, the court must issue an order under the Maine Revised Statutes, Title 15, section 1026; and
15. Add a fiscal note.

Committee Amendment "B" (S-315) replaced the bill and was the minority report of the Joint Standing Committee on Criminal Justice. The amendment proposed to do the same as Committee Amendment "A" (S-314),

except that it would not have made changes to the surety provisions as described in paragraphs 12 and 13 of Committee Amendment "A."

Committee of Conference Amendment "A" (S-423) proposed to do the same as Committee Amendment "A" (S-314), except that it would have amended the surety provisions differently by replacing Committee Amendment "A's" paragraph 12 with the following:

12. Make both preconviction and post-conviction sureties responsible for ensuring a defendant's compliance with each condition of release imposed by the judicial officer, including that the defendant refrain from new criminal conduct, in addition to being responsible for ensuring the appearance of the defendant at all times. Notwithstanding this new responsibility of sureties, the amendment also establishes a precondition to forfeiture of cash or other property of a surety if the defendant violates a condition of release. The precondition requires the court to absolve a surety of the responsibility to pay bond and to return deposited cash bail to the surety, unless the surety had on a prior occasion, acted as a surety or deposited cash bail for the defendant's compliance with each condition of release and on that occasion the defendant failed to comply with each condition. This precondition does not apply to a defendant's failure to appear. The attorney for the State shall make a good faith effort to notify the surety of a bail revocation hearing and, if the surety appears at the hearing, the court must explain the consequences of the precondition to the surety. If bail is reset and the surety elects to continue to act as surety, that person will receive notice of surety responsibilities pursuant to the Maine Revised Statutes, Title 15, section 1072-A.

Enacted law summary

Public Law 1997, chapter 543 does the following:

1. Amends the code's statement of purpose to include the fact that, while on bail, a defendant is expected to refrain from engaging in new criminal conduct;
2. Amends the bail definition both in the preconviction and post-conviction context to expressly include refraining from any new criminal conduct and obeying each condition of release imposed by the judicial officer;
3. Defines new criminal conduct;
4. Clarifies that a judicial officer is authorized to issue a preconviction order releasing a defendant on personal recognizance or execution of an unsecured bond and imposes additional release conditions;
5. Requires that every preconviction and post-conviction order of release contain, in addition to a waiver of extradition by the defendant, a condition that the defendant refrain from new criminal conduct and not violate any pending protection from abuse orders;
6. Clarifies that a judicial officer is authorized to require a defendant preconviction to execute an agreement to forfeit designated property or execute a bail bond with sureties to ensure the integrity of the judicial process as well as the defendant's appearance;
7. Recognizes additional sources of information from which the judicial officer may gather reliable information needed to make the release decision;

8. Adds the factor of whether the defendant has previously violated conditions of release, probation or other court orders, including protection from abuse orders to the list of factors to be considered in the preconviction and post-conviction release decision;
9. Clarifies that the judicial officer must advise the defendant of the potential penalties as well as the consequences of violating a condition of release;
10. Requires, both in the post-conviction context and when the conditional right to have preconviction bail set has been extinguished at a Harnish bail proceeding, that bail be denied in the event a substantial risk exists that the defendant will commit new criminal conduct;
11. Increases from 24 to 48 hours the time within which a confined defendant must be transported to a different county if no Justice of the Superior Court is locally available to make a de novo determination of preconviction bail. It additionally requires the clerk to provide notice to the attorney for the State of the upcoming hearing and to schedule that hearing for a time not less than 24 hours but not more than 48 hours after the attorney for the State has been notified;
12. Makes both preconviction and post-conviction sureties responsible for ensuring a defendant's compliance with each condition of release imposed by the judicial officer, including that the defendant refrain from new criminal conduct, in addition to being responsible for ensuring the appearance of the defendant at all times. Notwithstanding this new responsibility of sureties, chapter 543 also establishes a precondition to forfeiture of cash or other property of a surety if the defendant violates a condition of release. The precondition requires the court to absolve a surety of the responsibility to pay bond and to return deposited cash bail to the surety, unless the surety had on a prior occasion, acted as a surety or deposited cash bail for the defendant's compliance with each condition of release and on that occasion the defendant failed to comply with each condition. This precondition does not apply to a defendant's failure to appear. The attorney for the State shall make a good faith effort to notify the surety of a bail revocation hearing and, if the surety appears at the hearing, the court must explain the consequences of the precondition to the surety. If bail is reset and the surety elects to continue to act as surety, that person will receive notice of surety responsibilities pursuant to the Maine Revised Statutes, Title 15, section 1072-A.
13. Prior to a person's undertaking the responsibility of surety for a defendant, a surety must be provided a copy of the defendant's written release order and a written statement containing an explanation of both the general responsibilities of a surety and the potential consequences to a surety if a defendant violates a condition of release and must be verbally advised of each condition in the defendant's written release order as well as the potential consequences to the surety if the defendant fails to abide by each condition of release. It further requires the Supreme Judicial Court to specify by rule who will be responsible for advising the surety and providing to the surety a copy of the written order and the written explanation; and
14. Addresses the consequences to a defendant who fails to refrain from new criminal conduct. If a judge or justice finds probable cause exists to believe that the defendant has committed a new crime following the setting of preconviction bail, the judge or justice must issue an order denying bail unless the court finds that there are conditions of release that will reasonably ensure that the defendant will not continue to commit new crimes while out on bail in which case, the court must issue an order under the Maine Revised Statutes, Title 15, section 1026.