

MAINE STATE LEGISLATURE

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OFFICE OF
THE GOVERNOR

NO. 15FY 81/82
DATE May 24, 1982

GOVERNOR'S COMMISSION TO STUDY
THE LAWS RELATING TO BAIL
IN CRIMINAL CASES

WHEREAS, the issue of release of criminal defendants on bail both before and after verdict is of fundamental importance to the people of the State of Maine; and

WHEREAS, Article I, §10 of the Constitution of Maine uses the archaic language "proof is evident or the presumption great", the meaning of which is obscure; and

WHEREAS, the release of criminal defendants on bail before a verdict is governed in part by approximately nine statutes, some of which may contain ambiguities and redundancies when those statutes are considered as a whole; and

WHEREAS, the absence of a right to bail in those crimes formerly denominated capital, other than murder, has largely been ignored for many years; and

WHEREAS, recent actions by the Maine Law Court and inferior courts have resulted in murder defendants being released on bail before a verdict, notwithstanding the quality of evidence offered by the State; and

WHEREAS, while the general philosophy of pre-trial bail has been to assure the presence of the defendant at trial, recent studies have suggested other considerations, such as the dangerousness of the accused, as being appropriate considerations in authorizing pre-trial bail; and

WHEREAS, post-verdict bail, presently covered by rule of court, and bail pending post-conviction review, presently covered by statute and by rule of court may require additional legislation or amendment to integrate those areas into a comprehensive bail system; and

WHEREAS, judicial officers who must make decisions on the release of criminal defendants are in need of specific guidelines to assure uniform treatment of similarly situated defendants.

NOW, THEREFORE, I, JOSEPH E. BRENNAN, Governor of the State of Maine, hereby establish a Governor's Commission to Study the Law Relating to Bail in Criminal Cases, in accordance with the following provisions:

Section 1. NAME. The Commission shall be known as the Governor's Commission to Study The Laws Relating to Bail in Criminal Cases.

Section 2. MEMBERSHIP. The Commission shall be chaired by the Attorney General. Its membership shall consist of the following: One State Senator, One State Representative, at least two attorneys with substantial prosecution experience, at least two attorneys with substantial criminal defense experience, one police officer and such other citizens as may be appropriate.

Section 3. SCOPE OF WORK. The Commission is to undertake a complete study of the law relating to bail in criminal cases and to make recommendations with respect to legislation and executive action to the Governor as it deems appropriate. Among other things in undertaking such study, the Commission should do the following:

I. The Commission is to evaluate the appropriateness and desirability of amending Article I, §10 of the Constitution of Maine with particular reference to the following areas:

- (a) Whether Article I, §10 should be amended to reflect an express affirmative statement of the right of an accused to be admitted to bail since it is set forth in the Constitution's "Declaration of Rights";
- (b) Whether Article I, §10 should be amended to clarify which, if any, crimes should be non-bailable as a matter of right and, if so, under what circumstances;
- (c) Whether Article I, §10 should be amended to clarify the meaning of the phrase "the proof is evident or the presumption great";
- (d) Whether Article I, §10 should be amended to clarify whether a person who lacks the right to bail may be admitted to bail as a matter of judicial discretion;
- (e) Whether Article I, §10 should be amended to authorize the denial of bail where it is determined that the defendant poses a risk of flight or a danger to the community.

II. The Commission is to study all of the statutes governing the pre-verdict release of defendants on bail, with particular reference to the following areas:

- (a) Whether any of the statutes should be repealed as unnecessary and redundant;
- (b) Whether the enactment of a comprehensive Bail Reform Act should be considered;
- (c) Whether the statutes governing bail should be amended to clarify the factors and criteria to be used in setting the amount and conditions of bail;

- (d) If certain crimes are bailable only as a matter of judicial discretion, what factors and criteria should be employed in exercising that discretion;
- (e) Whether Maine should adopt provisions providing for preventive detention of defendants charged with one or more classes of crimes, including violent crimes, where such defendants pose a danger to society.

III. The Commission is requested to study the need for legislation governing the release of defendants on bail following conviction of a crime and pending appeal, and what factors and criteria should be employed in determining the conditions of such release.

IV. The Commission is to review the statutes relating to bail in cases of post-conviction review to determine whether and to what extent such statutes should be amended to be consistent with the bail concepts reflected in other legislation to be proposed by the Commission.

V. The Commission is requested further to make such other recommendations on the subject of bail as their study shows to be necessary or desirable.

Section 4. HEARINGS. The Commission may hold such hearings and meetings anywhere in the State as it deems appropriate to learning the views of individuals and organizations interested in its proceedings.

Section 5. LIAISON WITH THE GOVERNOR. The Commission shall maintain liaison with and seek such assistance from the Governor's Office as may be necessary to carry out its function.

Section 6. REPORT. The Commission is to file a report containing its evaluation and recommendations no later than October 15, 1982, together with any draft legislation appropriate for consideration with the Governor for submission to the Legislature.



JOSEPH E. BRENNAN
Governor