

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2197

S. P. 766

In Senate, January 2, 1974

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Conley of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

**AN ACT to Establish Guidelines for Release of Accused
Persons Pending Trial.**

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

Sec. 1. R. S., T. 15, § 942, additional. Title 15 of the Revised Statutes is amended by adding a new section 942, to read as follows:

§ 942. Release on personal recognizance or bond

1. Procedure. Any person charged with an offense other than an offense punishable by life imprisonment, shall at his appearance before a judge of the district court, or bail commissioner, be ordered released pending trial on his personal recognizance or on execution of an unsecured bond which shall be in writing signed by said person on forms approved by the Chief Judge of the District Court, unless said judge or bail commissioner determines in the exercise of his discretion that such release will not reasonably assure the appearance of the person as required. In his determination, said judge or bail commissioner shall order cash or surety bail to be provided only if 3 or more of the following factors clearly indicate that release on the accused's personal recognizance or on execution of an unsecured appearance bond will not reasonably assure his appearance as required:

- A. Whether or not the offense charged is of a high and aggravated nature;
- B. The accused's family ties in the State of Maine;
- C. The accused's length of residence in the community;

D. Employment of the accused in the State of Maine ;

E. Any previous flight by the accused to avoid arrest or prosecution for this or any prior alleged offense ;

F. Any previous unexcused failure to appear as required to answer prior criminal charges.

Said judge or bail commissioner shall also inform the accused of the penalties provided by Title 15, section 809 if he should fail without sufficient excuse to appear before any court or judicial officer as required.

Any person aggrieved by the refusal of said judge or bail commissioner to authorize his release on personal recognizance or on the execution of an unsecured appearance bond may petition the Superior Court for a review of such decision. The judge or bail commissioner making such decision shall advise such person of his right to obtain an immediate review of such decision in the Superior Court. If such person chooses to have a review, he shall be furnished a petition for review in a form prescribed by the Chief Judge of the District Court and upon execution of said 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 petitioner forthwith, together with the petition for review and all papers relevant thereto, or copies thereof, to the Superior Court for the county if a justice is then sitting, or to the nearest county in which a justice of the Superior Court is then sitting. In the event that no justice of the Superior Court is then sitting, the petitioner shall be retained in custody until the next business day and upon the morning of such day, without the issuance of any writ or other process, the petitioner's custodian shall provide for his transportation to the Superior Court, as hereinbefore required.

The petition and such papers shall be delivered to the clerk of the Superior Court to which the petitioner is transported and upon their receipt such clerk shall give notice to the county attorney for the county in which the decision was made. Said petition shall have priority over any other matter before said justice and he shall, if he finds in his discretion that the petitioner may be released on his personal recognizance or on execution of an unsecured bond, order such release, or he may make any order of bail he deems appropriate, revising the amount of the recognizance or the number of sureties thereon, or both.

Following a determination of the conditions of release by a judge of the District Court, or review by a justice of the Superior Court, the amount of any recognizance shall not be increased, nor shall any additional surety be required, unless the person making such recognizance shall default thereon or unless the court in its discretion determines that changed circumstances or other factors not previously considered by the court make the present recognizance insufficient to reasonably assure the presence of the defendant, provided that any revision which increases the amount of the recognizance or which requires an additional surety shall be made by an order supplementing rather than replacing any recognizance given pursuant to such initial decision.

Any person aggrieved by a failure to comply with any of the requirements of this section may petition the court as provided in Title 14, section 5501.

2. Failure to appear; penalty. Any person charged with an offense who has been ordered released by a pending trial on his personal recognizance, or on execution of an unsecured or secured appearance bond, who fails without sufficient excuse to appear before any court or judicial officer as required, shall be punished by a fine of not more than the maximum provided for the offense charged, or by imprisonment for not more than 6 months if the offense charged was a misdemeanor or for not more than 5 years if the offense charged was a felony, or by both.

STATEMENT OF FACT

It is the intent of this Act to provide guidelines for release of accused persons pending trial for the following reasons:

There are no statutory guidelines whatsoever to assist bail commissioners and judges in determining whether to release persons accused of crimes on unsecured or on cash or surety bail;

The bail practices throughout the State of Maine are not uniform;

The uniform administration of remedies is one of the hallmarks of justice in any legal system, and arbitrariness breeds disrespect for the laws and good order of the State;

Few persons are being released on personal recognizance in many parts of the State, even when that is justified by the accused's circumstances, community ties, and prior court record, which refusal to release on personal recognizance causes a severe financial hardship to many Maine citizens;

Many reliable persons are not able to raise cash bail and are incarcerated in county jails as a consequence, causing a severe overcrowding of many county jails and unnecessarily depleting the treasuries of several counties with the cost of feeding and caring for said accused persons;

Incarceration while awaiting trial causes unnecessary and in some instances severe, emotional strain on accused persons, which sometimes leads to self-destructive acts, further anti-social behavior and other forms of undesirable activities and allows accused persons to commingle with convicted criminals in county jails.