

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND TENTH LEGISLATURE
5

6 **Legislative Document**

No. 1867

8 S. P. 791 In Senate, January 21, 1982
9 Approved for introduction by the Legislative Council pursuant to
Joint Rule 26.

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

10 MAY M. ROSS, Secretary of the Senate
11 Presented by Senator Devoe of Penobscot.

12 Cosponsor: Representative Aloupis of Bangor.
13

14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-TWO
18

19 **AN ACT Clarifying the Laws Governing**
20 **Bail in Murder Cases.**
21

22 **Emergency preamble.** Whereas, Acts of the Legislature
23 do not become effective until 90 days after adjournment
24 unless enacted as emergencies; and

25 Whereas, the Constitution of Maine, Article I, Section
26 10, provides, in part, that no person, before conviction,
27 may be bailable for the crime of murder, where the proof is
28 evident or the presumption great; and

29 Whereas, since its adoption in 1820 and its subsequent
30 amendment in 1838, Article I, Section 10, has been viewed as
31 requiring the denial of bail to a person charged with the
32 crime of murder, where the proof of the crime is evident or
33 the presumption great; and

1 Whereas, the Supreme Judicial Court in Fredette v.
2 State, Me., 428 A.2d 395 (1981) left open the possibility
3 that a person charged with the crime of murder may be admit-
4 ted to bail in the discretion of the judge, notwithstanding
5 proof evident or presumption great; and

6 Whereas, several Justices of the Superior Court have
7 expressed uncertainty as to the meaning of the Law Court's
8 language in Fredette v. State; and

9 Whereas, some Justices of the Superior Court have ruled
10 that they do not have discretion to admit a murder defendant
11 on bail where the proof is evident or the presumption great
12 while others have ruled they do have that discretion; and

13 Whereas, similar confusion and uncertainty exists among
14 Judges of the District Court; and

15 Whereas, some Judges of the District Court have ruled
16 that they do not have authority to bail a person charged
17 with the crime of murder while other judges have ruled that
18 they do; and

19 Whereas, in the judgment of the Legislature, these
20 facts create an emergency within the meaning of the Consti-
21 tution of Maine and require the following legislation as
22 immediately necessary for the preservation of the public
23 peace, health and safety; now, therefore,

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

25 Sec. 1. 4 MRSA §171, 2nd ¶, last sentence, as repealed
26 and replaced by PL 1979, c. 663, §9, is amended to read:

27 When the offense upon examination is found to be one not
28 within the jurisdiction of the District Court, the ~~district~~
29 judge District Judge may admit the offender to bail to
30 appear before the Superior Court, and, in default thereof,
31 shall commit him, except where the crime charged is murder,
32 in which case the District Judge shall not have any author-
33 ity to admit the offender to bail.

34 Sec. 2. 14 MRSA §5524, first sentence is amended to
35 read:

36 If Except as otherwise provided in the Constitution of
37 Maine, Article I, section 10 and Title 15, Section 855, if
38 the party is imprisoned and detained for a- bailable an

1 offense, he shall be admitted to bail if sufficient bail is
2 offered.

3 Sec. 3. 14 MRSA §5540 is amended to read:

4 §5540. Bail; exceptions

5 Nothing in this chapter shall ~~may~~ restrain the Supreme
6 Judicial Court or the Superior Court in term time, or any
7 justice thereof in vacation, from bailing a person for any
8 offense when the circumstances of the case require it;
9 except persons committed by the Governor ~~and Council~~, Senate
10 or House of Representatives for causes mentioned in the Con-
11 stitution of Maine, and except as otherwise provided in the
12 Constitution of Maine, Article I, Section 10 and Title 15,
13 section 855.

14 Sec. 4. 14 MRSA §5542, first ¶, as amended by PL 1965,
15 c. 356, §15, is further amended to read:

16 ~~When Subject to the limitation contained in Title 15,~~
17 section 942, subsection 1, when a person is confined in a
18 jail for a ~~bailable~~ an offense or for not finding sureties,
19 except when a verdict of guilty has been rendered against
20 him for an offense punishable in the State Prison and except
21 when such person is committed pending decision on report,
22 any such commissioner, on application, may inquire into the
23 case and admit him to bail and exercise the same power as
24 any Justice of the Supreme Judicial Court or Superior Court
25 can; and may issue a writ of habeas corpus and cause such
26 person to be brought before him for this purpose, and may
27 admit him to bail. During a term of the Superior Court, a
28 bail commissioner is not authorized to admit to bail any
29 person confined in jail or held under arrest by virtue of a
30 precept returnable to ~~said~~ that term. When a person is con-
31 finied in jail for a ~~bailable~~ an offense or for not finding
32 sureties and the amount of his bail has been fixed by a Jus-
33 tice of the Supreme Judicial Court or of the Superior Court
34 or by a Judge of the District Court, a bail commissioner is
35 not authorized to change the amount of such bail.

36 Sec. 5. 14 MRSA §5544, first ¶ is amended to read:

37 Any Subject to the limitation contained in Title 15,
38 section 942, subsection 1, any person under arrest for a
39 ~~bailable~~ criminal offense may, before commitment to jail if
40 he so requests, be taken by the officer having him in charge
41 before a bail commissioner, who may inquire into the case
42 and admit him to bail. ~~Any Subject to the limitation con-~~

1 tained in Title 15, section 942, subsection 1, any person
2 arrested on the Lord's Day, or on the afternoon or evening
3 preceding, for a bailable criminal offense, may be admitted
4 to bail on that day by such commissioner.

5 Sec. 6. 15 MRSA §101, sub-§2, first sentence, as
6 amended by PL 1981, c. 493, is further amended to read:

7 Except in the case of a defendant who is charged with the
8 ~~commission- of- an offense,~~ the only punishment for which is
9 life imprisonment crime of murder, order the defendant's
10 release on bail, with or without the further order that the
11 defendant undergo observation at a state mental hospital or
12 mental health facility approved by the Department of Mental
13 Health and Mental Retardation, or by arrangement with a private
14 psychiatrist and treatment when it is deemed appropriate
15 by the head of the hospital or clinic or by the private
16 psychiatrist.

17 Sec. 7. 15 MRSA §855, as amended by PL 1965, c. 356,
18 §36, is further amended to read:

19 §855. Bail after commitment

20 Any Justice of the Supreme Judicial or Superior Court,
21 ~~or bail commissioner within his county,~~ on application of a
22 prisoner committed before verdict of guilty for a bailable
23 any offense may inquire into the case and admit him to bail,
24 except where the crime charged is murder and the proof is
25 evident or the presumption is great, in which case the jus-
26 tice shall not have any authority to admit the prisoner to
27 bail.

28 Sec 8. 15 MRSA §942, sub-§1, first sentence, as
29 enacted by PL 1973, c. 760, is amended to read:

30 Any person charged with an offense, ~~other- than- an- offense~~
31 ~~punishable- by- life- imprisonment,~~ shall at his appearance
32 before a judge Judge of the ~~district court~~ District Court,
33 or bail commissioner, be ordered released pending trial on
34 his personal recognizance or on execution of an unsecured
35 bond which shall be in writing signed by said that person on
36 forms approved by the Chief Judge of the District Court,
37 unless ~~said~~ that judge or bail commissioner determines in
38 the exercise of his discretion that such release will not
39 reasonably assure the appearance of the person as required;
40 provided that where the crime charged is murder, neither the
41 District Judge nor the bail commissioner shall have any
42 authority to admit the person to bail.

1 **Emergency clause.** In view of the emergency cited in
2 the preamble, this Act shall take effect when approved.

3 STATEMENT OF FACT

4 This bill is proposed as emergency legislation for the
5 reasons set forth in the emergency preamble. In particular,
6 since April 14, 1981, when the Supreme Judicial Court
7 decided Fredette v. State, Me., 428 A.2d 395 (1981) there
8 has been considerable uncertainty on the part of judges and
9 prosecutors as to whether a person charged with the crime of
10 murder, where the proof is evident or the presumption great,
11 may be admitted to bail in the discretion of the judge.
12 This emergency legislation makes it clear that neither a
13 District Judge nor a bail commissioner has any authority to
14 admit a murder defendant to bail and that neither a Supreme
15 Judicial nor Superior Court Justice has any authority to
16 admit a murder defendant to bail, where the proof is evident
17 or the presumption great.

18 Section 1 amends Title 4, section 171 to make it clear
19 that when a person charged with murder appears before the
20 District Court, the District Judge has no authority to admit
21 the person to bail, but may simply commit him to appear
22 before the Superior Court.

23 Sections 2 and 3 amends Title 14, sections 5524 and
24 5540 by making it clear that where the crime charged is
25 murder and the proof is evident or the presumption great,
26 the Supreme Judicial and Superior Court has no authority to
27 admit the defendant to bail.

28 Sections 4 and 5 amends Title 14, sections 5542 and
29 5544 to make it clear that where the crime charged is
30 murder, a bail commissioner has no authority to admit a
31 defendant to bail.

32 Section 6. Under the present version of Title 15,
33 section 101, subsection 2, if the court determines that any
34 defendant is incompetent to stand trial, it may release the
35 defendant on bail "except in the case of a defendant who is
36 charged with the commission of an offense, the only punish-
37 ment for which is life imprisonment..." Under Maine's
38 Criminal Code, there is no longer any offense which has life
39 imprisonment as its only punishment. The amendment to Title
40 15, section 101, subsection 2 makes it clear that the court
41 may release the defendant on bail, except where the crime
42 charged is murder.

1 Section 7 amends Title 15, section 855 to make it clear
2 that any Supreme or Superior Court Justice has the authority
3 to admit a defendant to bail, except where the crime charged
4 is murder and the proof is evident or the presumption is
5 great. Where the crime charged is murder and the proof is
6 evident or the presumption is great, the justices do not have
7 any authority to admit the defendant to bail.

8 Section 8. Title 15, section 942 is the general stat-
9 ute which requires District Court Judges and bail commis-
10 sioners to release defendants pending trial on personal
11 recognizance or on the execution of an unsecured bond. The
12 first sentence of section 942, subsection 1 excludes from
13 its operation "an offense punishable by life imprison-
14 ment,"i.e., murder. This language had been understood to
15 mean that the District Court and bail commissioners had no
16 authority to admit a murder defendant to bail. The statute
17 has been construed to mean that a District Judge or bail
18 commissioner may admit a murder defendant to bail, but must
19 set bail at something other than personal recognizance or
20 unsecured bond. The amendment to Title 15, section 942,
21 subsection 1 makes it clear that where the crime charged is
22 murder, neither the District Judge nor bail commissioner has
23 any authority to admit the defendant to bail.

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