

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1473

7 H.P. 1115

House of Representatives, April 14, 1983

8 Referred to the Committee on Judiciary. Sent up for concurrence and
9 ordered printed.

10 EDWIN H. PERT, Clerk

11 Presented by Representative Connolly of Portland.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT Repealing the Law on the Effect
18 of Bail Following Conviction and Commitment.
19

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

22 15 MRSA §1701, as repealed and replaced by PL
23 1965, c. 356, §54, is repealed.

24 STATEMENT OF FACT

25 The purpose of this bill is to eliminate the
26 unfairness a person sentenced to a period of incar-
27 ceration faces in deciding whether to seek bail while
28 he appeals his conviction.

29 Currently, a person who actually serves some time
30 after being sentenced cannot have that time credited

1 to his sentence if he succeeds in getting released on
2 bail pending appeal. This denial of credit is the
3 only situation under Maine law where time spent in
4 custody is not credited to the sentence. A more
5 detailed analysis follows.

6 Presently, Title 15, section 1701, addresses cal-
7 culation of the period of imprisonment pending a
8 direct appeal to the Maine Law Court where a defen-
9 dant has been bailed after having been in active
10 execution of some portion of his sentence of impris-
11 onment. More specifically, section 1701 mandates
12 that:

13 If a defendant is committed in execution of his
14 sentence and is thereafter admitted to bail pend-
15 ing appeal, this admission to bail vacates the
16 effect of the original commitment and the entire
17 sentence will commence to run from the date of
18 the commitment after final decision. Thus, if a
19 defendant has served 30 days on his sentence
20 before being admitted to bail pending appeal, if
21 the judgment is affirmed and he is again commit-
22 ted, he receives no credit for the 30 days he
23 originally served.

24 3 Glassman, Maine Practice: Rules of Criminal Proce-
25 dure Annotated section 38.1 at 326 (1967).

26 The proposed elimination of Title 15, section
27 1701, has the following bipartite impetus.

28 First, although the denial of credit for time ac-
29 tually served in execution of a sentence in exchange
30 for securing conditional freedom (following a judg-
31 ment of conviction) while awaiting the outcome of a
32 direct appeal may well have reflected a legitimate
33 legislative objective at the time of its initial
34 legislative appearance in 1905 (Public Law 1905,
35 chapter 106), presently this trade-off serves no
36 apparent public purpose. It is, in fact, directly at
37 odds both with the punishment provisions of the Maine
38 Criminal Code (Title 17-A, Pt. 3) which do not
39 countenance any form of "dead time" or even the with-
40 drawal of "good time" (Title 17-A, section 1253, sub-
41 sections 3, 3-A and 3-B) or "extra good time", Title
42 17-A, section 1253, absent prisoner misbehavior Title

1 17-A, section 1253, subsection 5, and with the statu-
2 tory provisions addressing credit for time served
3 either pre-trial (Title 17-A, section 1253, subsec-
4 tion 2) or in a post-conviction review proceeding
5 (Title 17-A, section 1701) which do not deny credit
6 for time actually served if bail is secured pending a
7 direct appeal. Indeed, it is viewed by the criminal
8 justice system as so unfair that section 1701 is
9 wholly ignored.

10 Second, the denial of credit for time acutally
11 served in execution of a sentence in exchange for
12 securing conditional freedom (following a judgment of
13 conviction) while awaiting the outcome of a direct
14 appeal is of questionable constitutional validity.
15 Specifically, this trade-off may, inter alia:

16 (a) Constitute a multiple punishment for the
17 same offense in violation of the constitutional
18 guarantees against double jeopardy (cf. North
19 Carolina v. Pearce, 395 United States 711, 717-19
20 (1969); State v. Howes, 432 A. 2d 419, 423 (Me.
21 1981);

22 (b) Constitute, in certain cases (depending upon
23 the sentence actually imposed and the amount of
24 time spent in execution of such sentence prior to
25 being admitted to bail), an over-the-statutory
26 maximum imprisonment for the particular under-
27 lying crime in violation of fundamental notions
28 of due process;

29 (c) Constitute - given the absence of such
30 denial of credit both in a post-conviction review
31 proceeding (Title 15, section 1701) and for
32 pre-trial detention time (Title 17-A, section
33 1253, subsection 2), whether pending trial or an
34 interlocutory appeal - an irrational, arbitrary
35 and, therefore, invidious discrimination in
36 violation of equal protection of the law's
37 guarantees; and

38 (d) Constitute, in certain cases (depending upon
39 the sentence actually imposed and the amount of
40 time spent in execution of such sentence prior to
41 being admitted to bail) cruel and unusual punish-
42 ment in violation of the constitutional guaran-

