

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 773

6
7 S.P. 284

In Senate, February 27, 1985

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

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Trafton of Androscoggin.

11 Cosponsored by Senator Najarian of Cumberland, Representative
Diamond of Bangor and Representative Drinkwater of Belfast.

12 STATE OF MAINE
13

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

17 AN ACT to Permit Denial of Bail in Certain
18 Cases to Assure the Safety of Other
19 Persons.
20

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

23 Sec. 1. 15 MRSA §808 is repealed.

24 Sec. 2. 15 MRSA §855, as amended by PL 1965, c.
25 356, §36, is repealed.

26 Sec. 3. 15 MRSA §941-A is enacted to read:

27 §941-A. Definitions

28 As used in sections 942 and 943 the following
29 words have the following meanings.

30 1. Serious bodily injury. "Serious bodily in-
31 jury" has the same meaning as provided in Title 17-A,
32 section 2.

1 2. Serious crime. "Serious crime" means any of-
2 fense designated a Class A or Class B crime in Maine
3 Criminal Code, Title 17-A.

4 Sec. 4. 15 MRSA §942, sub-§1, as amended by PL
5 1983, c. 429, §1, is further amended to read:

6 1. Factors in the release decision. Any Except
7 as provided in section 943, any person charged with
8 an offense, other than an offense punishable by life
9 imprisonment, shall at his appearance before a Judge
10 of the District Court, or bail commissioner, be or-
11 dered released pending trial on his personal recogni-
12 zance or on execution of an unsecured bond which
13 shall be in writing signed by the person on forms ap-
14 proved by the Chief Judge of the District Court, un-
15 less the judge or bail commissioner determines in the
16 exercise of his discretion that the release will not
17 reasonably assure the appearance of the person as re-
18 quired, will not adequately protect members of the
19 community from serious bodily injury or will not ade-
20 quately prevent the intimidation of witnesses or ju-
21 rors without imposing certain conditions on the
22 release. The official having custody of the accused
23 shall promptly notify a judge or bail commissioner.
24 The judge or bail commissioner shall interview the
25 accused prior to making his determination as to re-
26 lease on personal recognizance or bond. In making
27 that determination, he shall, on the basis of an in-
28 terview with the accused and other reliable informa-
29 tion which can be obtained, take into account the
30 following factors:

31 A. The nature and circumstances of the offense
32 charged;

33 B. The accused's family ties in the State of
34 Maine;

35 C. The accused's length of residence in the com-
36 munity;

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

39 E. Any previous flight by the accused to avoid
40 arrest or prosecution for this or any prior al-
41 leged offense;

- 1 F. Any previous unexcused failure to appear as
2 required to answer prior criminal charges;
- 3 G. The accused's financial ability to give bail;
- 4 H. The accused's record of convictions;
- 5 I. The fact that the offense is alleged to have
6 been committed while the person charged was on
7 probation or parole from a previous sentence as a
8 reason for requiring more stringent bail; and
- 9 J. The fact that ~~such~~ the offense is alleged to
10 have been committed while the person charged was
11 released under this section pending further court
12 proceedings for the alleged commission of another
13 felony offense as a reason for requiring more
14 stringent bail.

15 The judge or bail commissioner shall inform the ac-
16 cused of the penalties provided by subsection 4 if he
17 should fail without just cause to appear before any
18 court or judicial officer as required.

19 Sec. 5. 15 MRSA §942, sub-§2, as amended by PL
20 1975, c. 143, §§2 and 3, is further amended to read:

21 2. Conditions on release. If the judge or bail
22 commissioner determines that release on personal re-
23 cognizance or on execution of an unsecured bond will
24 not reasonably assure the appearance of the person,
25 will not adequately protect members of the community
26 from serious bodily injury or will not prevent ade-
27 quately the intimidation of witnesses or jurors, the
28 judge or bail commissioner shall impose the first of
29 the following conditions of release which will rea-
30 sonably assure the appearance of the person, ade-
31 quately protect members of the community from serious
32 bodily injury or adequately prevent the intimidation
33 of witnesses or jurors, or, if no single condition
34 gives that assurance is sufficient, any combination
35 of the following conditions, provided that no finan-
36 cial condition may be imposed to protect members of
37 the community from serious bodily injury or prevent
38 the intimidation of witnesses or jurors:

1 A. Place the person in the custody of any desig-
2 nated person or organization agreeing to super-
3 vise the person, including a public official,
4 public agency or publicly-funded organization;

5 B. Place restrictions on the travel, association
6 or place of abode of the person during the period
7 of release;

8 C. Require the person to recognize without sure-
9 ty in a reasonable sum and to deposit with the
10 clerk of the court an amount in cash not to ex-
11 ceed 50% of the amount of the recognizance; and

12 D. Impose any other condition including surety
13 or a condition that the person return to custody
14 after specified hours.

15 Sec. 6. 15 MRSA §942, sub-§3, as amended by PL
16 1979, c. 257, §2, is repealed.

17 Sec. 7. 15 MRSA §§943 and 944 are enacted to
18 read:

19 §943. Detention prior to trial

20 1. Offenses subject to detention. A judge of
21 the District Court or bail commissioner may order
22 pretrial detention of:

23 A. A person charged with an offense punishable
24 by life imprisonment; or

25 B. A person charged with a serious crime against
26 another person if:

27 (1) The person charged was convicted of a
28 serious crime against another person in the
29 10-year period immediately preceding the al-
30 leged time of commission of the presently
31 charged crime;

32 (2) The presently charged crime was alleg-
33 edly committed while the person charged was
34 on bail, probation, parole or any other re-
35 lease with respect to a prior serious crime
36 against another person; or

1 (3) The person charged has threatened, in-
2 timidated, injured or attempted to threaten,
3 intimidate or injure any prospective wit-
4 ness, prospective juror, witness or juror.

5 2. Finding necessary to allow detention. No
6 person may be ordered detained unless the judge or
7 bail commissioner:

8 A. Holds a pretrial detention hearing in accord-
9 ance with subsection 3 and finds that:

10 (1) The person meets the criteria of sub-
11 section 1, paragraphs A and B, and that
12 there is no condition or combination of con-
13 ditions of release provided in section 942,
14 subsection 2, that will adequately protect
15 members of the community from serious bodily
16 injury or adequately prevent the intimidati-
17 tion of witnesses or jurors; and

18 (2) The State has presented clear and con-
19 vincing evidence that the person committed
20 the offense with which he is charged; and

21 B. Issues an order of detention accompanied by
22 written findings of fact.

23 3. Pretrial detention hearing. Upon the arrest
24 of a person eligible for detention under subsection
25 1, the attorney for the State may move for a pretrial
26 detention hearing to take place. The hearing shall
27 be held within 3 days of the person's arrest unless
28 the person or the State moves for a continuance. If
29 the arrested person moves for a continuance, the de-
30 lay granted may not exceed 5 days from the time of
31 the motion, unless extenuating circumstances exist.
32 If the State moves for a continuance, a delay may be
33 granted only if good cause is shown and the delay may
34 not exceed 3 days from the time of the motion. The
35 arrested person may be detained pending the hearing.
36 The arrested person is entitled to representation by
37 counsel and may present information and testify in
38 his own behalf at the hearing. Information presented
39 at the hearing may be of a kind inadmissible as evi-
40 dence in a court of law. Testimony given by the per-
41 son at the hearing may not be admitted in any other
42 judicial proceeding.

1 4. Disposition of detained person's case. The
2 case of a person detained under this section shall be
3 placed on an expedited calendar and, consistent with
4 the sound administration of justice, the trial shall
5 be given priority, unless the detained person re-
6 quests otherwise.

7 5. Possibilities for ending detention. Original
8 appeals from orders of detention shall follow the
9 procedure outlined in section 944 and shall take
10 place within 15 days of the detention decision. Af-
11 ter the person has been detained for 60 days, and ev-
12 ery 15 days thereafter, he may request a hearing to
13 evaluate whether he may be released because the State
14 is unduly delaying the trial or the person no longer
15 meets the criteria for detention. If at any time a
16 judge or bail commissioner finds that a person no
17 longer meets the criteria for detention, or should be
18 released because of state delay, that person shall be
19 released pursuant to section 942.

20 6. Credit towards sentence. If the detained
21 person is subsequently convicted of the offense
22 charged, he shall receive credit toward service of
23 sentence for the time he was detained under this sec-
24 tion.

25 §944. Review of decisions under sections 942 and 943

26 Any person aggrieved by the decision of a Dis-
27 trict Court Judge or bail commissioner placing condi-
28 tions on his release or ordering detention pending
29 trial may petition the Superior Court for a review of
30 the decision. The judge or bail commissioner making
31 the decision shall advise the person of his right to
32 obtain a review of the decision in the Superior
33 Court. If the person chooses to have a review, he
34 shall be furnished a petition for review in a form
35 prescribed by the Chief Judge of the District Court.
36 Upon execution of the petition and without the iss-
37 uance of any writ or other process, the sheriff of the
38 county in which the decision was made shall provide
39 for the transportation of the petitioner, together
40 with the petition for review and all papers relevant
41 to the petition, or copies of the petition and rele-
42 vant paper, to the Superior Court. In the event that
43 no Justice of the Superior Court will be available

1 within 24 hours excluding weekends and holidays, then
2 arrangements shall be made for review of the bail or
3 detention decision in the nearest county in which a
4 Justice of the Superior Court is then sitting. If
5 there is no Justice of the Superior Court available,
6 the petitioner shall be retained in custody until a
7 review of the bail or detention decision can be held.
8 The petitioner's custodian shall provide transporta-
9 tion to the Superior Court as required in this sec-
10 tion without the issuance of any writ or other pro-
11 cess.

12 The petition and relevant papers shall be delivered
13 to the clerk of the Superior Court to which the peti-
14 tioner is transported and upon their receipt the
15 clerk shall give notice to the prosecuting attorney
16 for the county in which the decision was made. The
17 petition shall have priority over any other matter
18 before the justice and he shall, if he finds in his
19 discretion that the petitioner may be released on his
20 personal recognizance or on execution of an unsecured
21 bond, order the release, or he may make any order of
22 bail he deems appropriate.

23 For persons not detained pending trial, following a
24 determination of the conditions of release by a Judge
25 of the District Court or a bail commissioner, or re-
26 view by a Justice of the Superior Court, the amount
27 of any recognizance shall not be increased, nor shall
28 any additional surety be required, unless the person
29 making the recognizance defaults on that recognizance
30 or unless the court in its discretion determines that
31 changed circumstances or other factors not previously
32 considered by the court make the present recognizance
33 insufficient to reasonably assure the presence of the
34 defendant, provided that any revision which increases
35 the amount of the recognizance or which requires an
36 additional surety shall be made by an order supple-
37 menting rather than replacing any recognizance given
38 pursuant to the initial decision.

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

42 Sec. 8. 15 MRSA §1202 is amended to read:

1 §1202. Postponement or continuance

2 The trial of any criminal case, except ~~for a~~
3 ~~crime punishable by imprisonment for life~~ where the
4 defendant in the case is being detained pending trial
5 under section 943, may be postponed by the court to a
6 future day of the same term, or the jury may be dis-
7 charged therefrom and the case continued, if justice
8 will thereby be promoted.

9 The trial of a criminal case where the defendant
10 is being detained pending trial under section 943 may
11 be postponed only upon request of the defendant.

12 **Sec. 9. Effective date.** This Act shall take ef-
13 fect on December 31, 1985, provided that by that date
14 the Governor has proclaimed that the Constitution of
15 Maine has been amended to provided for a clear right
16 to bail with a possible denial of bail in certain
17 cases. If the Governor has not so proclaimed by that
18 date, then this Act is repealed on December 31, 1985.

1

STATEMENT OF FACT

2 The purpose of this bill is to amend the State's
3 laws concerning criminal defendants' access to bail
4 or release on conditions prior to the trial. This
5 bill enacts limited provisions for a court to order
6 the pretrial detention of criminal defendants for
7 purposes other than to assure that a defendant will
8 appear at trial. Under this bill, criminal defend-
9 ants charged with certain serious crimes may be de-
10 tained prior to trial, that is, may be kept in custo-
11 dy without bail or release on conditions, if a court
12 determines pretrial detention is necessary to protect
13 the community or to prevent the intimidation of wit-
14 nesses or jurors.

15 Sections 1 and 2 of the bill repeal current laws
16 concerning the timing of bail and what judicial offi-
17 cers may order bail. These laws are made unnecessary
18 by new provisions enacted in this bill.

19 Section 3 of the bill enacts the Maine Revised
20 Statutes, Title 15, section 941-A. This new section
21 simply defines the terms "serious bodily injury" and
22 "serious crime" which are used in other sections of
23 the bill.

24 Sections 4 and 5 amend the Maine Revised Stat-
25 utes, Title 15, section 942, which concerns proced-
26 ures for release of criminal defendants prior to
27 trial on personal recognizance, bond or other condi-
28 tions, to recognize that the purposes of release on
29 conditions extend beyond simply assuring that the
30 criminal defendant will appear at the trial. The
31 amendments to section 942 specify that in determining
32 bail or release on conditions, the judge or bail com-
33 missioner must also consider the protection of mem-
34 bers of the community from serious bodily injury and
35 the prevention of intimidation of witnesses or ju-
36 rors.

37 Section 6 of the bill repeals provisions of sec-
38 tion 942 concerning review of bail or other release
39 decisions. These provisions are reenacted in the
40 Maine Revised Statutes, Title 15, section 944.

1 Section 7 enacts a new law which provides a pro-
2 cedure for pretrial detention of criminal defendants.
3 To be susceptible to detention prior to trial under
4 the Maine Revised Statutes, Title 15, section 943,
5 the defendant must be charged with an offense punish-
6 able by life imprisonment or a serious crime, Class A
7 and Class B crimes under the Maine Criminal Code, and
8 have acted in a manner that meets one of 3 prescribed
9 criteria. To order the pretrial detention of such a
10 person, a judge or bail commissioner must hold a
11 hearing and make certain written findings, including
12 findings that no condition or combination of condi-
13 tions of release will adequately protect members of
14 the community from serious bodily injury or adequate-
15 ly prevent the intimidation of witnesses or jurors,
16 and that the State has presented clear and convincing
17 evidence that the person charged committed the of-
18 fense. The Maine Revised Statutes, Title 15, section
19 944, provides for Superior Court review of decisions
20 placing conditions on release or ordering pretrial
21 detention.

22 Section 8 of the bill amends a law concerning
23 continuances in criminal cases to provide that a con-
24 tinuance in a case where the defendant is detained
25 prior to trial may only be granted at the request of
26 the defendant.

27 Section 9 of the bill provides that these changes
28 in the State's bail laws will only go into effect if
29 the state voters adopt by referendum and amendment to
30 the Constitution of Maine permitting pretrial deten-
31 tion of criminal defendants for purposes other than
32 the assurance that they will appear at trial.

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