

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1007

6
7 S.P. 373

In Senate, March 13, 1985

8 Reference to the Committee on Legal Affairs suggested. In Senate March
9 13, on Motion of Senator Violette of Aroostook. Referred to the Committee
on Judiciary. Sent down for concurrence and ordered printed.

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

Presented by Senator Trafton of Androscoggin.

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

12 STATE OF MAINE
13

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

17 RESOLUTION, Proposing an Amendment
18 to the Constitution of Maine
19 to Provide for a Clear Right to Bail with a
20 Possible Denial of Bail in Certain Cases.
21

22 Constitutional amendment. RESOLVED: Two thirds
23 of each branch of the Legislature concurring, that
24 the following amendment to the Constitution of Maine
25 be proposed:

26 Constitution, Art. I, §10 is repealed and the
27 following enacted in its place:

28 Section 10. Bailable offenses; habeas corpus.

29 1. All persons, before conviction or juvenile
30 adjudication, shall be eligible for bail in an amount
31 that will reasonably assure their appearance at trial
32 or shall be eligible for release under reasonable
33 conditions that will reasonably assure their appear-
34 ance at trial, adequately protect members of the com-
35 munity from serious bodily injury or adequately pre-

1 vent the intimidation of witnesses or jurors. The
2 Legislature may authorize the courts to deny release
3 to a person accused of a crime punishable by life im-
4 prisonment or a serious crime against another person.
5 Any authorization to deny release shall require the
6 court to find that:

7 A. By clear and convincing evidence, the accused
8 person committed the offense; and

9 B. Denial of release is necessary to adequately
10 protect members of the community from serious
11 bodily injury by the accused or to adequately
12 prevent the intimidation of the witnesses or ju-
13 rors by the accused.

14 2. The privilege of the writ of habeas corpus
15 shall not be suspended unless when in cases of rebel-
16 lion or invasion the public safety may require it.

17 Constitutional referendum procedure; form of
18 question; effective date. Resolved: That the city
19 aldermen, town selectmen and plantation assessors of
20 this State shall notify the inhabitants of their re-
21 spective cities, towns and plantations to meet, in
22 the manner prescribed by law for holding a statewide
23 election, at a statewide election, on the Tuesday
24 following the first Monday of November following the
25 passage of this resolution, to vote upon the ratifi-
26 cation of the amendment proposed in this resolution
27 by voting upon the following question:

28 "Shall the Constitution of Maine be amended as
29 proposed by a resolution of the Legislature to
30 provide for a clear right to bail with a possible
31 denial of bail in certain cases?"
32

33 The legal voters of each city, town and
34 plantation shall vote by ballot on this question, and
35 shall designate their choice by a cross or check mark
36 placed within the corresponding square below the word
37 "Yes" or "No." The ballots shall be received,
38 sorted, counted and declared in open ward, town and
39 plantation meetings and returns made to the Secretary
40 of State in the same manner as votes for members of
41 the Legislature. The Governor shall review the re-

1 turns and, if it appears that a majority of the legal
2 votes are in favor of the amendment, the Governor
3 shall proclaim that fact without delay and the amend-
4 ment shall become part of the Constitution on the
5 date of the proclamation.

6 Secretary of State shall prepare ballots. Re-
7 solved: That the Secretary of State shall prepare
8 and furnish to each city, town and plantation all
9 ballots, returns and copies of this resolution neces-
10 sary to carry out the purposes of this referendum.

11 STATEMENT OF FACT

12 Under the Constitution of Maine, Article I, Sec-
13 tion 10, individuals accused of crimes other than
14 murder are generally entitled to bail. Bail may gen-
15 erally be denied only if necessary to assure that the
16 accused will appear at trial. Bail cannot be denied
17 for reasons of protection of victims, witnesses or
18 the public. With regard to murder, the Constitution
19 of Maine, Article I, Section 10, has been interpreted
20 to permit denial of bail when "the proof is evident
21 or the presumption great" that the accused committed
22 the murder. The traditional assumption has been that
23 bail will be denied in a murder case because no
24 amount of money can guarantee that the accused will
25 show up for trial. The actual extent of judicial au-
26 thority to deny bail to alleged murderers is still
27 being debated in Maine.

28 This resolution repeals the Constitution of
29 Maine, Article I, Section 10 and enacts a new provi-
30 sion which states that all persons accused of crimes
31 are eligible for bail or release on reasonable condi-
32 tions, but that release may be denied in certain sit-
33 uations. The proposal states that the Legislature
34 may not authorize denial of bail where the concern is
35 to assure that the person appear at trial, the as-
36 sumption being that a high enough bail can be set to
37 assure appearance. In cases of crimes punishable by
38 life imprisonment or serious crimes against other
39 persons, the Legislature may authorize a court to de-
40 ny release if the court finds, by clear and convinc-
41 ing evidence, that the accused committed the crime

1 and if the court finds that denial of release is nec-
2 essary to adequately protect members of the community
3 from serious bodily injury, or to prevent adequately
4 the intimidation of witnesses or jurors.

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