

# MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 1182, L.D. 1679)  
2 (New Title)  
3 SECOND REGULAR SESSION  
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5 ONE HUNDRED AND TWELFTH LEGISLATURE  
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7 Legislative Document

No. 2378

9 H.P. 1688

House of Representatives, April 11, 1986

10 Reported by Representative Priest from the Committee on Judiciary and  
11 printed under Joint Rule 2. Original bill sponsored by Representative Crowley  
12 of Stockton Springs. Cosponsored by Representative Murphy of Kennebunk,  
Representative Allen of Washington and Senator Carpenter of Aroostook.

EDWIN H. PERT, Clerk

13  
14 STATE OF MAINE  
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16 IN THE YEAR OF OUR LORD  
17 NINETEEN HUNDRED AND EIGHTY-SIX  
18

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19 AN ACT Concerning Post-conviction Bail.  
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21 Be it enacted by the People of the State of Maine as  
22 follows:

23 15 MRSA sec. 1701-B is enacted to read:

24 sec. 1701-B. Post-conviction bail

25 1. Application to presiding judge or justice.  
26 After a verdict or finding of guilt, a defendant con-  
27 vinced of an offense other than murder may apply to  
28 the judge or justice who presided at his trial for  
29 bail pending imposition or execution of sentence or  
30 entry of judgment or appeal. If the trial judge or  
31 justice is not available, the defendant may apply for  
32 bail under this section to another judge or justice  
33 of the court in which he was tried.

1 The judge or justice shall hold a hearing on the  
2 record on the bail application and shall state in  
3 writing or on the record his reasons for denying or  
4 granting bail. If bail is granted, he shall also  
5 state in writing or on the record his reasons:

6 A. For the kind and amount of bail set;

7 B. For any condition of release imposed; and

8 C. For the omission of a condition of release  
9 sought by the State.

10 The judge or justice may enter an order for bail  
11 pending appeal before a notice of appeal is filed but  
12 conditioned upon its timely filing.

13 2. Standards. Except as provided in subsection  
14 4, a defendant may not be admitted to bail under this  
15 section unless the judge or justice has reasonable  
16 grounds to believe that:

17 A. There is no substantial risk that the defend-  
18 ant will fail to appear as required; and

19 B. There is no substantial risk that the defend-  
20 ant will pose a danger to another or to the com-  
21 munity.

22 In determining whether to admit a defendant to bail,  
23 the judge or justice shall consider the factors rele-  
24 vant to pretrial release listed in section 942, sub-  
25 section 1, as well as the facts proved at trial, the  
26 length of the term of imprisonment imposed, any prior  
27 history of dangerousness and any previous unexcused  
28 failure to appear before any court as required, or to  
29 submit to any order or judgment of any court as re-  
30 quired.

31 If the judge or justice determines to admit a defend-  
32 ant to bail, he shall apply these same factors in  
33 setting the kind and amount of that bail.

34 3. Conditions of release. Except as provided in  
35 subsection 4, the judge or justice may impose, in  
36 lieu of or in addition to an appearance or bail bond,  
37 any condition considered reasonably necessary to min-  
38 imize the risk of flight or danger.

1           4. Standards applicable to bail arising out of a  
2 State's appeal under section 2115-A, subsection 2. In  
3 the instance where the State initiates an appeal un-  
4 der section 2115-A, subsection 2, the judge or jus-  
5 tice shall apply section 942, subsections 1 and 2 to  
6 a defendant's application for bail pending that ap-  
7 peal.

8           5. Appeal by a defendant. A defendant may appeal  
9 a denial of bail, the kind or the amount of bail set  
10 or the conditions of release imposed which aggrieve  
11 him to a single justice of the Supreme Judicial  
12 Court. The single justice shall not conduct a hearing  
13 de novo respecting bail but shall review the lower  
14 court's order. The defendant has the burden of show-  
15 ing that there is no rational basis in the record for  
16 the lower court's denial of bail, the kind or amount  
17 of bail set or the conditions of release imposed of  
18 which he complains.

19           6. Appeal by the State. The State may appeal the  
20 granting of bail, the kind or the amount of bail set  
21 or the court's failure to impose a condition of re-  
22 lease to a single justice of the Supreme Judicial  
23 Court. The single justice shall not conduct a hearing  
24 de novo respecting bail, but shall review the lower  
25 court's order. The State has the burden of showing  
26 that there is no rational basis in the record for the  
27 lower court's granting of bail, the kind or the  
28 amount of bail set or the omission of the condition  
29 of which the State complains.

30           7. Revocation of bail. An order of post-  
31 conviction bail entered by a judge or justice may be  
32 revoked by that judge or justice or, if he is not  
33 available, by another judge or justice of the same  
34 court, upon a determination made after notice and op-  
35 portunity for hearing that:

36           A. The defendant has violated a condition of  
37 bail;

38           B. The defendant has been charged with a crime  
39 allegedly committed while he was released under  
40 this section; or

41           C. The defendant's appeal has been taken for  
42 purposes of delay.

1 If bail is revoked, the defendant may appeal to a  
2 single justice of the Supreme Judicial Court who  
3 shall review the revocation as under subsection 5.

4 8. Failure to appear; penalty. Any person who  
5 has been ordered released under this section and who  
6 fails without just cause to appear before any court  
7 as required is guilty of:

8 A. A Class E crime, if the underlying crime was  
9 punishable by a maximum period of imprisonment of  
10 less than one year; or

11 B. A Class C crime if the underlying crime was  
12 punishable by a maximum period of imprisonment of  
13 one year or more.

14 9. Violation of condition of release; penalty.  
15 Any person who has been ordered released under this  
16 section and who violates a condition of release is  
17 guilty of a Class E crime.

18 STATEMENT OF FACT

19 The Maine Revised Statutes, Title 15, section  
20 1701-B starts from the perspective that after a ver-  
21 dict or finding of guilty a defendant is in an  
22 "after-conviction" posture rather than in the  
23 "pre-conviction" posture to which the Constitution of  
24 Maine, Article I, Section 10 applies. See Fredette v.  
25 State, 428 A.2d 395 Maine 1981. In addition, it  
26 starts from the posture that after a verdict or find-  
27 ing of guilty, a defendant should have no right to  
28 have bail set. Instead, the court should be  
29 statutorily accorded the discretion to set bail rela-  
30 tive to a convicted defendant or to deny him bail al-  
31 together, such discretion being circumscribed by this  
32 section.

33 The Maine Revised Statutes, Title 15, section  
34 1701-B, subsection 1, is modeled after the Maine  
35 Rules of Criminal Procedure, Rule 46A(a). It modifies  
36 present Maine law in that it shrinks the class of  
37 crimes for which post-conviction bail is now wholly  
38 unavailable, offenses which were not "bailable" with-

1 in the meaning of the Maine Revised Statutes, Title  
2 15, section 1701, Fredette v. State, 428 A.2d 395,  
3 406, Maine 1981, to the single crime of murder. This  
4 modification mirrors present practice.

5 The Maine Revised Statutes, Title 15, section  
6 1701-B, subsection 2, is modeled after the Maine  
7 Rules of Criminal Procedure, Rule 46A(b). It is  
8 drafted to reflect more accurately both that no  
9 "right" to bail exists and that it is properly the  
10 defendant's burden to demonstrate that he is an ac-  
11 ceptable bail risk.

12 The Maine Revised Statutes, Title 15, section  
13 1701-B, subsection 3, is modeled after the Maine  
14 Rules of Criminal Procedure, Rule 46A(c).

15 The Maine Revised Statutes, Title 15, section  
16 1701-B, subsection 4, gets its impetus from the Maine  
17 Rules of Criminal Procedure, Rule 37B.

18 The Maine Revised Statutes, Title 15, section  
19 1701-B, subsection 5, does not follow the process  
20 outlined in the Maine Rules of Criminal Procedure,  
21 Rule 46B. Instead it creates a process for review  
22 rather than "an independent determination of the ap-  
23 plication," identifies both who has the burden on ap-  
24 peal and what that burden is and does not limit a de-  
25 fendant's right of access to the single justice of  
26 the Supreme Judicial Court to post-judgment after the  
27 entry of judgment.

28 The Maine Revised Statutes, Title 15, section  
29 1701-B, subsection 6, provides the State a right of  
30 appeal which is as broad as that accorded to a de-  
31 fendant in subsection 4. The State presently has no  
32 such right of appeal.

33 The Maine Revised Statutes, Title 15, section  
34 1701-B, subsection 7, is modeled after the Maine  
35 Rules of Criminal Procedure, Rule 46C.

