

MAINE STATE LEGISLATURE

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(New Draft of S.P. 268, L.D. 749)
(New Title)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1700

S.P. 568

In Senate, May 29, 1987

Reported by Senator Black of Cumberland for the Committee on Judiciary and printed under Joint Rule 2. Original Bill sponsored by Senator Brannigan of Cumberland. Cosponsored by: Representative Thistle of Dover-Foxcroft, Representative Cote of Auburn, Representative Kilkelly of Wiscasset.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Grant Jurisdiction to Bail
2 Commissioners to Ensure the Integrity
3 of the Judicial Process.
4

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

7 14 MRSA §5547 is enacted to read:

8 §5547. Orders to ensure the integrity of the judi-
9 cial process

10 1. Authority of bail commissioners. A bail com-
11 missioner may impose orders regulating the conduct of
12 any person for whom he sets bail under sections 5542
13 and 5544. These orders must be reasonably effected

1 to ensure the integrity of the judicial process and
2 ~~the proper administration of justice during the pend-~~
3 ~~ing proceedings related to the offense for which the~~
4 ~~person was arrested. The order shall be in writing~~
5 ~~and a copy shall be given to the alleged offender~~
6 ~~when the order is issued. The commissioner may pro-~~
7 ~~vide a copy of the order to the law enforcement ag-~~
8 ~~encies most likely to enforce it. The order may re-~~
9 ~~quire the alleged offender:~~

10 A. To stay away from the home, school, business
11 or place of employment of:

12 (1) The victim of the offense;

13 (2) Other family or household members of
14 the victim or alleged offender; or

15 (3) Any potential witness regarding the of-
16 fense;

17 B. Not to visit, or to visit only at certain
18 times or under certain conditions, a child resid-
19 ing with the victim or any potential witness re-
20 garding the offense;

21 C. Not to do specific acts which the commis-
22 ioner finds may harass, torment or threaten:

23 (1) The victim of the offense;

24 (2) Other family or household members of
25 the victim or alleged offender; or

26 (3) Any potential witness regarding the of-
27 fense;

28 D. To refrain from contacting, threatening, as-
29 saulting, molesting, harassing or otherwise dis-
30 turbing the peace of:

31 (1) The victim of the offense;

32 (2) Other family or household members of
33 the victim or alleged offender; or

34 (3) Any potential witness regarding the of-
35 fense;

1 E. To refrain from taking, converting or damag-
2 ing property in which the victim or other family
3 or household members of the victim or alleged of-
4 fender or any potential witness regarding the of-
5 fense may have a legal interest; and

6 F. To take any action or to avoid taking any ac-
7 tion as necessary to protect the integrity of the
8 judicial process or the ability of the court to
9 proceed with the case fairly, expeditiously and
10 justly.

11 2. Modification or dissolution of orders. Any
12 person against whom an order is issued by a bail com-
13 missioner under subsection 1 may file a motion in the
14 court having jurisdiction over the offense for which
15 he was arrested to modify or dissolve the bail com-
16 missioner's order. The court shall hear the motion
17 as soon as possible and may modify or dissolve the
18 order as justice requires. The court, at any time,
19 on its own motion may modify or dissolve the order as
20 justice requires. In any event, any order issued by
21 a bail commissioner under subsection 1 is void when
22 the alleged offender is convicted and sentenced, ac-
23 quitted or the charges against him are dismissed.

24 3. Enforcement of orders. Any violation of an
25 order issued by a bail commissioner under subsection
26 1, when the alleged offender has prior actual notice
27 of the order, is a Class E crime. Notwithstanding
28 any other law, an arrest for such a violation may be
29 without warrant upon probable cause whether or not
30 the violation is committed in the presence of the law
31 enforcement officer. The law enforcement officer may
32 verify, if necessary, the existence of the order by
33 telephone or radio communication with the bail com-
34 missioner or a law enforcement agency with knowledge
35 of the order.

36 4. Repeal. This section is repealed on July 1,
37 1989.

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STATEMENT OF FACT

2 This new draft completely rewrites the original
3 bill. The original bill called for certain condi-
4 tions to be set on any alleged offender's bail. The
5 Constitution of Maine requires that any bail condi-
6 tions be imposed solely for the purpose of securing
7 the alleged offender's appearance at court for trial.
8 The proposed conditions violated the constitutional
9 restrictions on the granting of bail. This new draft
10 instead grants bail commissioners jurisdiction to im-
11 pose any orders necessary to ensure the integrity of
12 the judicial process and the proper administration of
13 justice. Under a court's inherent powers, a judge
14 may order an alleged offender to abide by certain
15 conditions before trial, unrelated to securing his
16 appearance at that trial, as long as those conditions
17 are related to ensuring the proper administration of
18 justice in the case. This new draft extends juris-
19 diction to exercise this inherent power to bail com-
20 missioners, who as officers of the court may impose
21 similar conditions upon alleged offenders at the same
22 time as the setting of bail.

23 Under this new draft, bail commissioners will not
24 be setting conditions of bail unrelated to securing
25 the person's appearance in court, but will be issuing
26 orders designed to protect the integrity of the judi-
27 cial process under the court's inherent power to con-
28 trol its own proceedings.

29 Orders issued by a bail commissioner under this
30 new draft may be modified or dissolved upon motion to
31 the court having jurisdiction over the case. This
32 ensures that onerous or unjustified orders issued by
33 bail commissioners can be quickly corrected. Viola-
34 tions of any order issued by a bail commissioner will
35 be punished as a Class E crime. Finally, the law
36 will be automatically repealed after 2 years to en-
37 sure that its effects are reviewed after implementa-
38 tion.

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