

MAINE STATE LEGISLATURE

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L.D. 2456

(Filing No. H- 674)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
113TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "^A" to H.P. 1792, L.D. 2456,
Bill, "AN ACT to Address Comprehensively Bail Relative
to a Defendant in a Criminal Proceeding."

Amend the bill by striking out all of section 20
and inserting in its place the following:

'Sec. 20. 15 MRSA c. 105-A is enacted to read:

CHAPTER 105-A

MAINE BAIL CODE

SUBCHAPTER I

GENERAL PROVISIONS

§1001. Title

This chapter shall be known and may be cited as
the "Maine Bail Code."

§1002. Legislative findings; statement of purpose

The Legislature finds that the statutory
provisions relative to bail for a defendant in a
criminal case are scattered throughout numerous
provisions of Maine's statutory law and that many such

1 statutory provisions have not been updated to reflect
2 the modern development of the law. The Legislature
3 finds that the Supreme Judicial Court sitting as the
4 Law Court has recently decided cases interpreting the
5 various constitutional provisions dealing with bail
6 for a defendant in a criminal proceeding and has
7 provided guidance as to the proper interpretation of
8 those constitutional provisions. The Legislature finds
9 that it is in the interest of the State and of
10 individual criminal defendants that the law relative
11 to bail be incorporated into a modern, integrated and
12 consistent code that will provide a comprehensive
13 statement of the law of bail. It is the purpose and
14 intent of this chapter to consolidate and clarify the
15 various provisions of Maine law dealing with the
16 subject of bail for a defendant in a criminal case.

17 §1003. Definitions

18 As used in this chapter, unless the context
19 otherwise indicates, the following terms have the
20 following meanings.

21 1. Bail. "Bail" is defined as follows.

22 A. In the preconviction context, "bail" means the
23 obtaining of the release of the defendant upon an
24 undertaking that the defendant shall appear at the
25 time and place required and may include conditions
26 designed to ensure the integrity of the judicial
27 process. For crimes bailable only as a matter of
28 discretion preconviction, bail may also include
29 conditions designed to ensure the safety of others
30 in the community.

31 B. In the post-conviction context, "bail" means
32 the obtaining of the release of the defendant upon
33 an undertaking that the defendant shall appear and
34 surrender into custody at the time and place
35 required and may include conditions designed to
36 otherwise ensure the integrity of the judicial
37 process or the safety of others in the community.

38 2. Court. "Court" means any Justice of the

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1 Supreme Judicial Court or Superior Court or any active
2 retired justice and any District Court Judge or active
3 retired judge, or any Administrative Court Judge or
4 active retired judge when assigned under Title 4,
5 section 157-C or 1158.

6 3. Crime bailable as of right preconviction.
7 "Crime bailable as of right preconviction" means a
8 crime for which, under the Constitution of Maine,
9 Article I, Section 10, a defendant has an absolute
10 right to have bail set at the preconviction stage of
11 any criminal proceeding.

12 4. Crime bailable only as a matter of discretion
13 preconviction. "Crime bailable only as a matter of
14 discretion preconviction" means a formerly capital
15 offense for which, pursuant to a Harnish bail
16 proceeding, a capital defendant's conditional
17 constitutional right to have bail set at the
18 preconviction stage of a criminal proceeding has been
19 extinguished.

20 5. Ensure the integrity of the judicial process.
21 To "ensure the integrity of the judicial process,"
22 when used in the context of the granting or denial of
23 bail, means safeguarding the role of the courts in
24 adjudicating the guilt or innocence of defendants by
25 assuring the presence of the defendant in court and
26 otherwise preventing the defendant from obstructing or
27 attempting to obstruct justice by threatening,
28 injuring or intimidating a victim, prospective
29 witness, juror, attorney for the State, judge, justice
30 or other officer of the court.

31 6. Formerly capital offenses. "Formerly capital
32 offenses" means crimes which have been denominated
33 capital offenses since the adoption of the
34 Constitution of Maine.

35 7. Harnish bail proceeding. "Harnish bail
36 proceeding" means a preconviction bail proceeding in
37 which the State is offered the opportunity to obtain a
38 judicial finding of probable cause that the defendant
39 has committed a formerly capital offense, and the

1 defendant, at the same proceeding, is afforded the
2 opportunity to know and rebut the case against the
3 defendant.

4 8. Judicial officer. "Judicial officer" includes
5 the court, as defined in subsection 2, and a bail
6 commissioner.

7 9. Post-conviction. "Post-conviction" means any
8 point in a criminal proceeding after a verdict or
9 finding of guilty.

10 10. Preconviction. "Preconviction" means any
11 point in a criminal proceeding before a verdict in the
12 context of a jury trial or finding of guilty in the
13 context of a jury-waived trial or plea.

14 §1004. Applicability and exclusions

15 This chapter applies to the setting of bail for a
16 defendant in a criminal proceeding. It does not apply
17 to the setting of bail in extradition proceedings
18 under sections 201 to 229 or post-conviction review
19 proceedings under sections 2121 to 2132 or probation
20 revocation proceedings under Title 17-A, sections 1205
21 to 1207, except to the extent and under the conditions
22 stated in those sections.

23 SUBCHAPTER II

24 PRECONVICTION BAIL

25 §1021. Superior Court and Supreme Judicial Court
26 Justices

27 Any Justice of the Supreme Judicial Court or
28 Superior Court or any active retired justice shall set
29 preconviction bail for a defendant in a criminal
30 proceeding in accordance with this chapter.

31 §1022. District Court Judges

32 Any District Court Judge or active retired judge
33 shall set preconviction bail for a defendant in a

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1 criminal proceeding in accordance with this chapter.
2 When the crime upon examination is found to be one not
3 within the jurisdiction of the District Court, the
4 judge shall set preconviction bail for the defendant
5 to appear before the Superior Court in accordance with
6 this chapter.

7 §1023. Bail commissioners

8 1. Authority. A bail commissioner, appointed
9 under this section, shall set preconviction bail for a
10 defendant in a criminal proceeding in accordance with
11 this chapter, provided that a bail commissioner may
12 not set preconviction bail for a defendant:

13 A. Who is charged with murder;

14 B. If the attorney for the State requests a
15 Harnish bail proceeding for a defendant charged
16 with any other formerly capital offense; or

17 C. As otherwise provided in subsection 4.

18 2. Appointment. The District Court Judge
19 resident in each district, with the concurrence of the
20 Chief Judge of the District Court, may appoint one or
21 more residents of the district as bail commissioners.
22 A bail commissioner shall serve at the pleasure of the
23 District Court Judge resident in the district or the
24 Chief Judge of the District Court, but no term for
25 which a bail commissioner is appointed may exceed 5
26 years. The District Court Judge or the Chief Judge of
27 the District Court shall require bail commissioners to
28 complete the necessary training requirements set out
29 in this section. Bail commissioners have the powers
30 of notaries public to administer oaths or affirmations
31 in carrying out their duties.

32 3. Immunity from liability. A person appointed
33 and serving as a bail commissioner is immune from any
34 civil liability for acts described in Title 14,
35 section 8111, subsection 1, performed within the scope
36 of the bail commissioner's duties.

1 4. Limitations on authority. A bail commissioner
2 may not set preconviction bail for any defendant
3 confined in jail or held under arrest by virtue of any
4 order issued by a court in which bail has not been
5 authorized. A bail commissioner may not change the
6 bail that has been set by a court.

7 5. Fees. A bail commissioner shall receive a fee
8 not to exceed \$17 for the charges pursuant to which
9 the defendant is presently in custody. The bail
10 commissioner shall submit such forms as the Judicial
11 Department shall direct to verify the amount of fees
12 received under this subsection.

13 6. Attorneys-at-law. No attorney-at-law who has
14 acted as bail commissioner in any proceeding may act
15 as attorney for or on behalf of any defendant for whom
16 that attorney-at-law has taken bail in any such
17 proceeding, nor may any attorney-at-law who has acted
18 as attorney for a defendant in any offense act as bail
19 commissioner in any proceeding arising out of the
20 offense with which the defendant is charged.

21 7. Mandatory training. As a condition of
22 appointment and continued service, a bail commissioner
23 must successfully complete a bail training program as
24 prescribed and scheduled by the Chief Judge of the
25 District Court. The Maine Criminal Justice Academy
26 shall provide assistance to the Chief Judge of the
27 District Court in establishing an appropriate training
28 program for bail commissioners. The program shall
29 include instruction on the provisions of this chapter,
30 the relevant constitutional provisions on bail and any
31 other matters pertinent to bail that the Chief Judge
32 of the District Court considers appropriate and
33 necessary. The Chief Judge of the District Court may
34 establish a continuing education program for bail
35 commissioners.

36 \$1024. Clerks of court

37 Clerks of the District Court and clerks of the
38 Superior Court, during the hours when the clerk's

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1 office is open for business and subject to the control
2 of the District Court Judge or Superior Court Justice,
3 may, without fee, take the personal recognizance of
4 any defendant for appearance on a charge of a Class D
5 or Class E crime. Nothing in this section may be
6 construed to prohibit the appointment of any clerk of
7 the District Court or the Superior Court as a bail
8 commissioner, except that no fee may be charged by the
9 clerk while the clerk's office is open for business.

10 In any case when the District Judge or the
11 Superior Court Justice has set bail for a defendant in
12 a criminal case, the clerk of the District Court or of
13 the Superior Court may, subject to the approval of the
14 District Court Judge or Superior Court Justice, accept
15 the bail, prepare the bond and take the
16 acknowledgement of the defendant and sureties, if any,
17 on the bond.

18 §1025. Law enforcement officers

19 A law enforcement officer may, without fee, take
20 the personal recognizance of any defendant for
21 appearance on a charge of a Class D or Class E crime.
22 If authorized, a law enforcement officer may, without
23 fee, take the personal recognizance with deposit in
24 accordance with Title 12, section 7053, subsection 2,
25 paragraph C.

26 §1026. Standards for release for crime bailable
27 as of right preconviction

28 1. In general. At the initial appearance before
29 a judicial officer of a defendant in custody for a
30 crime bailable as of right preconviction, the judicial
31 officer shall issue an order that, pending trial, the
32 defendant be released:

33 A. On personal recognizance or upon execution of
34 an unsecured appearance bond under subsection 2; or

35 B. On a condition or combination of conditions
36 under subsection 3.

1 Every order for the pretrial release of any defendant
2 shall include a waiver of extradition by the defendant.

3 2. Release on personal recognizance or unsecured
4 appearance bond. The judicial officer shall order the
5 pretrial release of the defendant on personal
6 recognizance or upon execution of an unsecured
7 appearance bond in an amount specified by the judicial
8 officer, unless the judicial officer determines that
9 the release will not reasonably ensure the appearance
10 of the defendant as required or will not otherwise
11 reasonably ensure the integrity of the judicial
12 process.

13 3. Release on conditions. Conditions that will
14 reasonably ensure the appearance of the defendant and
15 ensure the integrity of the judicial process shall be
16 imposed as provided in this subsection.

17 A. If the judicial officer determines that the
18 release described in subsection 2 will not
19 reasonably ensure the appearance of the defendant
20 as required or will not otherwise reasonably
21 ensure the integrity of the judicial process, the
22 judicial officer shall order the pretrial release
23 of the defendant subject to the least restrictive
24 further condition or combination of conditions
25 that the judicial officer determines will
26 reasonably ensure the appearance of the defendant
27 as required and will otherwise reasonably ensure
28 the integrity of the judicial process. These
29 conditions may include that the defendant:

30 (1) Remain in the custody of a designated
31 person or organization agreeing to supervise
32 the defendant, including a public official,
33 public agency or publicly funded
34 organization, if the designated person or
35 organization is able to reasonably ensure
36 both the appearance of the defendant as
37 required and the integrity of the judicial
38 process;

39 (2) Maintain employment or, if unemployed,
40 actively seek employment;

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- 1 (3) Maintain or commence an educational
2 program;
- 3 (4) Abide by specified restrictions on
4 personal associations, place of abode or
5 travel;
- 6 (5) Avoid all contact with a victim of the
7 alleged crime, a potential witness regarding
8 the alleged crime or with any other family or
9 household members of the victim or the
10 defendant or to contact those individuals
11 only at certain times or under certain
12 conditions;
- 13 (6) Report on a regular basis to a
14 designated law enforcement agency or other
15 governmental agency;
- 16 (7) Comply with a specified curfew;
- 17 (8) Refrain from possessing a firearm or
18 other dangerous weapon;
- 19 (9) Refrain from use or excessive use of
20 alcohol and from any use of drugs;
- 21 (10) Undergo, as an outpatient, available
22 medical or psychiatric treatment, or enter
23 and remain, as a voluntary patient, in a
24 specified institution when required for that
25 purpose;
- 26 (11) Execute an agreement to forfeit, upon
27 failing to appear as required, such
28 designated property, including money, as is
29 reasonably necessary to ensure the appearance
30 of the defendant as required and post with an
31 appropriate court such evidence of ownership
32 of the property or such percentage of the
33 money as the judicial officer specifies;

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1 (12) Execute a bail bond with sureties in
2 such amount as is reasonably necessary to
3 ensure the appearance of the defendant as
4 required;

5 (13) Return to custody for specified hours
6 following release for employment, schooling
7 or other limited purposes; and

8 (14) Satisfy any other condition that is
9 reasonably necessary to ensure the appearance
10 of the defendant as required and to otherwise
11 reasonably ensure the integrity of the
12 judicial process.

13 B. The judicial officer may not impose a
14 financial condition which the defendant cannot
15 meet.

16 C. Upon motion by the attorney for the State or
17 the defendant and after notice and upon a showing
18 of changed circumstances or upon the discovery of
19 new and significant information, the court may
20 amend the bail order to relieve the defendant of
21 any condition of release, modify the conditions
22 imposed or impose further conditions authorized by
23 this subsection as the court determines will
24 reasonably ensure the appearance of the defendant
25 as required and will otherwise reasonably ensure
26 the integrity of the judicial process.

27 4. Factors to be considered in release decision.
28 In setting bail, the judicial officer shall, on the
29 basis of an interview with the defendant and other
30 reliable information which can be obtained, take into
31 account the available information concerning the
32 following:

33 A. The nature and circumstances of the crime
34 charged;

35 B. The nature of the evidence against the
36 defendant; and

- 1 C. The history and characteristics of the
2 defendant, including, but not limited to:
- 3 (1) The defendant's character and physical
4 and mental condition;
- 5 (2) The defendant's family ties in the State;
- 6 (3) The defendant's employment history in
7 the State;
- 8 (4) The defendant's financial resources;
- 9 (5) The defendant's length of residence in
10 the community and the defendant's community
11 ties;
- 12 (6) The defendant's past conduct, including
13 any history relating to drug or alcohol abuse;
- 14 (7) The defendant's criminal history, if any;
- 15 (8) The defendant's record concerning
16 appearances at court proceedings;
- 17 (9) Whether, at the time of the current
18 offense or arrest, the defendant was on
19 probation, parole or other release pending
20 trial, sentencing, appeal or completion of a
21 sentence for an offense in this jurisdiction
22 or another; and
- 23 (10) Any evidence that the defendant has
24 obstructed or attempted to obstruct justice
25 by threatening, injuring or intimidating a
26 victim or a prospective witness, juror,
27 attorney for the State, judge, justice or
28 other officer of the court.
- 29 5. Contents of release order. In a release order
30 issued under subsection 2 or 3, the judicial officer
31 shall:

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1 A. Include a written statement that sets forth
2 all the conditions to which the release is subject
3 in a manner sufficiently clear and specific to
4 serve as a guide for the defendant's conduct; and

5 B. Advise the defendant of:

6 (1) The penalties if the defendant fails to
7 appear as required; and

8 (2) The consequences of violating a
9 condition of release, including the immediate
10 issuance of a warrant for the defendant's
11 arrest.

12 §1027. Standards for release for formerly capital
13 offenses

14 1. In general. At the initial appearance before
15 a judicial officer of a defendant in custody
16 preconviction for a formerly capital offense, the
17 judicial officer shall issue an order under section
18 1026, unless the attorney for the State moves for a
19 Harnish bail proceeding. If the attorney for the
20 State requests a Harnish bail proceeding before bail
21 has been set, the judicial officer shall order the
22 defendant held pending a hearing under subsection 2.
23 The attorney for the State may move for a Harnish bail
24 proceeding at any time preconviction. If the attorney
25 for the State moves for a Harnish bail proceeding
26 after bail has been set, the court may hold the
27 defendant pending a hearing under subsection 2 or may
28 continue the defendant's bail.

29 2. Harnish bail proceeding. A Harnish bail
30 proceeding shall be held within 5 court days of the
31 State's request unless the court, for good cause shown
32 and at the request of either the defendant or the
33 attorney for the State, grants a continuance.
34 Evidence presented at a Harnish bail proceeding may
35 include testimony, affidavits and other reliable
36 hearsay evidence as permitted by the court. If, after

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1 the hearing, the court finds probable cause to believe
2 that the defendant has committed a formerly capital
3 offense, it shall issue an order under subsection 3.
4 If, after the hearing, the court does not find
5 probable cause to believe that the defendant's alleged
6 criminal conduct was formerly a capital offense, it
7 shall issue an order under section 1026.

8 3. When conditional right has been extinguished
9 at Harnish bail proceeding. The court's finding that
10 probable cause exists to believe that the defendant
11 committed a formerly capital offense extinguishes the
12 defendant's right to have bail set. The court shall
13 make a determination as to whether or not the setting
14 of bail is appropriate as a matter of discretion. The
15 court may set bail unless the State establishes by
16 clear and convincing evidence that:

17 A. There is a substantial risk that the capital
18 defendant will not appear as required or will
19 otherwise pose a substantial risk to the integrity
20 of the judicial process; or

21 B. There is a substantial risk that the capital
22 defendant will pose a danger to another or to the
23 community.

24 In exercising its discretion, the court shall consider
25 the factors listed in section 1026 and any prior
26 history of dangerousness. The court may amend any
27 bail order as provided under section 1026, subsection
28 3, paragraph C.

29 §1028. De novo determination of bail under section
30 1026

31 1. By defendant in custody. Any defendant
32 aggrieved by the refusal of a Judge of the District
33 Court or a bail commissioner acting under section 1026
34 to authorize the defendant's release on personal
35 recognizance or on the execution of an unsecured
36 appearance bond and who is in custody for that crime
37 may petition the Superior Court for a de novo
38 determination of that refusal. The District Court

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1 Judge or bail commissioner making the decision shall
2 advise the defendant of the right to obtain a de novo
3 determination in the Superior Court.

4 A. If the defendant chooses to have a de novo
5 determination of bail, the defendant shall be
6 furnished with a petition and, upon execution of
7 the petition and without the issuance of any writ
8 or other process, the sheriff of the county in
9 which the decision was made shall provide for the
10 transportation of the defendant together with the
11 petition and all papers relevant to the petition
12 or copies of the petition or papers to the
13 Superior Court.

14 If no Justice of the Superior Court will be
15 available within 24 hours, excluding Saturdays,
16 Sundays and holidays, arrangements shall be made
17 for a de novo determination of bail in the nearest
18 county in which a Justice of the Superior Court is
19 then sitting. The defendant's custodian shall
20 provide transportation to the Superior Court as
21 required by this chapter without the issuance of
22 any writ or other process.

23 If there is no Justice of the Superior Court
24 available, the defendant shall be retained in
25 custody until the petition can be considered.

26 B. The petition and such other papers as may
27 accompany it shall be delivered to the clerk of
28 the Superior Court to which the defendant is
29 transported and upon receipt the clerk shall
30 notify the attorney for the State. The petition
31 shall have priority over any other matter before
32 the Justice of the Superior Court. The Superior
33 Court Justice considering the petition shall issue
34 an order in accordance with section 1026.

35 2. By defendant not in custody. Any defendant
36 aggrieved by the refusal of a Judge of the District
37 Court or a bail commissioner to authorize the
38 defendant's release on personal recognizance or on the

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1 execution of an unsecured bond, and who is not in
2 custody as a result of that refusal, may petition the
3 Superior Court for a de novo determination of bail.
4 The petition shall be considered as scheduled by the
5 clerk.

6 §1029. Review of bail under section 1027

7 1. Petition for review. Any defendant in custody
8 following a Harnish bail proceeding under section 1027
9 may petition for review as provided in this subsection.

10 A. If the Harnish bail proceeding was conducted
11 in the District Court, the defendant may petition
12 a Justice of the Superior Court for review under
13 this section.

14 B. If the Harnish bail proceeding was conducted
15 in the Superior Court, the defendant may petition
16 a single Justice of the Supreme Judicial Court for
17 review under this section.

18 2. Standard of review. With respect to the
19 finding of probable cause to believe that the
20 defendant committed a formerly capital offense, the
21 finding of the lower court shall be upheld unless it
22 is clearly erroneous. With respect to all other
23 issues, the review shall be de novo.

24 3. Evidence. The evidence shall consist of the
25 information of record submitted in the Harnish bail
26 proceeding under section 1027 and any additional
27 information the parties may chose to present.

28 §1030. State's attorney present at certain
29 proceedings; opportunity to present
30 relevant information

31 Before making a determination as to whether or not
32 to set bail for a defendant charged with murder or a
33 Class A, Class B or Class C crime, the judicial
34 officer shall afford the attorney for the State or a
35 law enforcement officer familiar with the charges the
36 opportunity to present any information relevant to

1 bail considerations. This opportunity shall be in
2 addition to the availability of a Harnish bail
3 proceeding as otherwise provided in this chapter.

4 An attorney for the State shall be present in
5 District Court at all proceedings governed by Maine
6 District Court Criminal Rules, Rule 5, and Maine Rules
7 of Criminal Procedure, Rule 5, at which bail is being
8 set, except when the offense charged is a Class D or
9 Class E crime.

10 §1031. Bail if no indictment

11 Any defendant charged with a formerly capital
12 offense who has been denied bail in accordance with
13 section 1027 shall have bail set under section 1026 if
14 the defendant is not indicted in the county where the
15 crime is alleged to have been committed at the 2nd
16 regularly scheduled session of the grand jury next
17 after the date of the denial of bail.

18 SUBCHAPTER III

19 POST-CONVICTION BAIL

20 §1051. Post-conviction bail

21 1. Application to presiding judge or justice.
22 Except as provided in this section, after a verdict or
23 finding of guilty, a defendant may apply to the judge
24 or justice who presided at the trial for bail pending
25 imposition or execution of sentence or entry of
26 judgment or appeal. If the trial judge or justice is
27 not available, the defendant may apply for bail under
28 this section to another judge or justice of the court
29 in which the defendant was convicted. Post-conviction
30 bail shall not be available to a defendant convicted
31 of:

32 A. Murder;

33 B. Any other formerly capital offense for which
34 bail was denied preconviction under section 1027;

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1 or

2 C. Any crime when the defendant's preconviction
3 bail was revoked and denied under section 1093.

4 The judge or justice shall hold a hearing on the
5 record on the bail application and shall state in
6 writing or on the record the reasons for denying or
7 granting bail. If bail is granted, the judge or
8 justice shall also state, in writing or on the record,
9 the reasons for the kind and amount of bail set, for
10 any condition of release imposed and for the omission
11 of any condition of release sought by the State.

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

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

19 A. There is no substantial risk that the
20 defendant will fail to appear as required and will
21 not otherwise pose a substantial risk to the
22 integrity of the judicial process; and

23 B. There is no substantial risk that the
24 defendant will pose a danger to another or to the
25 community.

26 In determining whether to admit a defendant to bail,
27 the judge or justice shall consider the factors
28 relevant to preconviction bail listed in section 1026,
29 as well as the facts proved at trial, the length of
30 the term of imprisonment imposed, any history of
31 dangerousness and any previous unexcused failure to
32 appear as required before any court or to submit as
33 required to an order or judgment of any court.

34 If the judge or justice decides to set post-conviction
35 bail for a defendant, the judge or justice shall apply

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1 the same factors in setting the kind and amount of
2 that bail.

3 3. Conditions of release. Except as provided in
4 subsection 4, the judge or justice may impose, in lieu
5 of or in addition to an appearance or bail bond, any
6 condition considered reasonably necessary to minimize
7 the risk of flight or danger.

8 4. Standards applicable to bail arising out of
9 State's appeal under section 2115-A, subsection 2. If
10 the State initiates an appeal under section 2115-A,
11 subsection 2, the judge or justice shall apply
12 subchapter II to a defendant's application for bail
13 pending that appeal.

14 5. Appeal by defendant. A defendant may appeal
15 to a single Justice of the Supreme Judicial Court a
16 denial of bail, the kind or amount of bail set or the
17 conditions of release imposed by which the defendant
18 is aggrieved. The single justice shall not conduct a
19 hearing de novo respecting bail, but shall review the
20 lower court's order. The defendant has the burden of
21 showing that there is no rational basis in the record
22 for the lower court's denial of bail, the kind or
23 amount of bail set or the conditions of release
24 imposed of which the defendant complains.

25 6. Appeal by State. The State may appeal to a
26 single Justice of the Supreme Judicial Court the
27 granting of bail, the kind or amount of bail set or
28 the lower court's failure to impose a condition of
29 release. The single justice shall not conduct a
30 hearing de novo respecting bail, but shall review the
31 lower court's order. The State has the burden of
32 showing that there is no rational basis in the record
33 for the lower court's granting of bail, the kind or
34 amount of bail set or the omission of the conditions
35 of which the State complains.

36 7. Revocation of bail. An order of
37 post-conviction bail entered by a judge or justice may
38 be revoked by that judge or justice or, if that judge
39 or justice is not available, by another judge or

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1 justice of the same court, upon a determination made
2 after notice and opportunity for hearing that:

3 A. The defendant has violated a condition of
4 bail, as shown by a preponderance of the evidence;

5 B. The defendant has been charged with a crime
6 allegedly committed while the defendant was
7 released under this section; or

8 C. The defendant's appeal has been taken for
9 purposes of delay, as shown by a preponderance of
10 the evidence.

11 If bail is revoked, the defendant may appeal to a
12 single Justice of the Supreme Judicial Court, who
13 shall review the revocation as under subsection 5.

14 8. Failure to appear; penalty. Any defendant who
15 has been ordered released under this section and who,
16 in fact, fails to appear before any court as required
17 is guilty of:

18 A. A Class E crime if the underlying crime was
19 punishable by a maximum period of imprisonment of
20 less than one year; or

21 B. A Class C crime if the underlying crime was
22 punishable by a maximum period of imprisonment of
23 one year or more.

24 It is an affirmative defense that the failure to
25 appear resulted from just cause.

26 9. Violation of condition of release; penalty.
27 Any defendant who has been ordered released under this
28 section and who, in fact, violates a condition of
29 release is guilty of a Class E crime. It is an
30 affirmative defense that the violation resulted from
31 just cause.

32 SUBCHAPTER IV

33 SURETIES AND OTHER FORMS OF BAIL

1 §1071. Sureties to make statement of property

2 1. Statement by surety. Any person who offers to
3 act as surety for the appearance before the Superior
4 Court of any defendant in a criminal prosecution,
5 whether or not the defendant is an appellant from the
6 finding of a Judge of the District Court, is to be
7 admitted to bail to await the action of the grand
8 jury, or is arrested in vacation on a warrant issued
9 on an indictment pending in the Superior Court, may be
10 required to file with the judicial officer a written
11 statement signed and sworn to by the surety describing
12 all real estate owned by the surety within the State
13 with sufficient accuracy to identify it.

14 A. The statement shall provide in detail all
15 encumbrances and the value of the land. The value
16 of the land shall be based on the judgment of the
17 surety.

18 B. The certificate shall remain on file with the
19 original papers in the case and a certified copy
20 shall be transmitted by the magistrate taking the
21 bail to the clerk of court before which the
22 defendant is to appear.

23 2. Bail lien required. Any person who offers
24 real estate as surety for the appearance before a
25 court of a defendant charged with murder or a Class A,
26 Class B or Class C crime must file a bail lien with
27 the register of deeds in the county where the real
28 estate lies.

29 A. If the defendant is to be bailed prior to
30 appearance in a court for the first time, the
31 person offering the real estate shall file with
32 that court a copy of the lien attested by the
33 register of deeds, stating the date of recording
34 and the book and page number at which the lien is
35 recorded, on the next business day after which the
36 real estate is offered.

37 (1) If a defendant is released from custody,
38 prior to the defendant's first appearance in

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1 court, upon a person offering real estate as
2 surety and that person fails to file with the
3 court a duly attested copy of the lien
4 required by this paragraph within the
5 prescribed time limit, the defendant may be
6 taken into custody without the issuance of
7 further process and shall be held as though
8 the surety had not offered real estate as
9 surety.

10 B. If the defendant is bailed after having
11 appeared in court for the first time, the
12 defendant shall not be released from custody until
13 the person offering real estate has filed with the
14 court, with which the bail is posted, a copy of
15 the lien attested by the register of deeds,
16 stating the date of recording and the book and
17 page number at which the lien is recorded.

18 C. The person filing the lien is responsible for
19 the fee to be paid to the register of deeds for
20 receiving, recording and indexing the bail lien
21 and for discharge of the bail lien as provided in
22 Title 33, chapter 11, subchapter IV.

23 D. A bail lien is not required if bail is posted
24 through a nonprofit bail assistance project.

25 3. Limitation on real estate. As used in this
26 chapter, real estate is limited to real property
27 located in the State.

28 §1072. Responsibility of sureties

29 1. Preconviction. Each surety for a defendant
30 admitted to preconviction bail is responsible for the
31 appearance of the defendant at all times until a
32 verdict or finding or plea of guilty, unless the
33 surety has sooner terminated the agreement to act as
34 surety and has been relieved of the responsibility in
35 accordance with section 1073.

36 In no case may a preconviction surety be responsible

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1 for the appearance of a defendant after conviction,
2 unless the surety has agreed anew to act as surety
3 following conviction.

4 2. Post-conviction. Each surety for a defendant
5 admitted to bail after conviction is responsible for
6 the defendant's appearance at all times until the
7 defendant enters into execution of any sentence of
8 imprisonment, unless the surety has sooner terminated
9 the agreement to act as surety and has been relieved
10 of the responsibility in accordance with section 1073.

11 §1073. Termination of surety agreement

12 Any person who has agreed to act as surety for a
13 defendant who has been admitted to preconviction bail
14 may terminate the agreement by appearing before the
15 clerk of the court having jurisdiction over the
16 offense with which the defendant is charged and
17 executing a statement under oath terminating the
18 surety agreement. The statement shall include a
19 certification by the surety that the surety has
20 notified the defendant or the defendant's attorney of
21 the surety's intention to terminate the surety
22 agreement.

23 Upon execution of the statement terminating the
24 surety agreement, the clerk shall bring the matter to
25 the attention of a judge or justice of the court who,
26 unless new and sufficient sureties have appeared,
27 shall order the defendant committed for failure to
28 furnish bail and shall issue a warrant for the
29 defendant's arrest.

30 The judge or justice may absolve the surety of
31 responsibility to pay all or part of the bond,
32 provided that no surety may be absolved of the
33 responsibility to pay all or part of the bond if,
34 prior to terminating the surety agreement, the
35 defendant has failed to appear as required. Nothing
36 in this section may be construed to relieve or release
37 a surety of the responsibility for the appearance of
38 the defendant, notwithstanding the termination of the
39 surety agreement, until the defendant is in the

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1 custody of the sheriff of the county in which the case
2 is pending, new or substitute sureties have appeared
3 or the defendant has otherwise been admitted to bail.

4 A person who has agreed to act as surety for a
5 defendant who has been admitted to post-conviction
6 bail may terminate the surety agreement by following
7 the procedure set forth in this section.

8 §1074. Property of defendant as bail

9 1. Cash. Whenever cash is deposited as bail to
10 secure the appearance of a defendant in a criminal
11 proceeding, either preconviction or post-conviction,
12 the cash shall be deemed to be the property of the
13 defendant unless, at the time the cash is deposited,
14 the defendant or the person offering the cash as bail,
15 designates under oath another person to whom the cash
16 belongs. If a person other than the defendant has
17 been designated as the owner of the cash, it shall be
18 returned to that person unless otherwise forfeited.
19 If the defendant is deemed to be the owner of the
20 cash, it shall be returned to the defendant unless
21 otherwise forfeited or subject to setoff as provided
22 in this section.

23 2. Real estate. When a defendant in a criminal
24 proceeding is the owner of real estate and offers that
25 real estate as security for appearance before any
26 court, the defendant must file a bail lien and
27 otherwise comply with the requirements of section 1071
28 as if the defendant were a surety. A discharge of the
29 bail lien is governed by section 1071, unless the bail
30 has been forfeited or is subject to setoff in
31 accordance with this section.

32 3. Setoff. When a defendant has deposited cash
33 or other property owned by the defendant as bail or
34 has offered real estate owned by the defendant and
35 subject to a bail lien as bail and the cash, other
36 property or real estate has not been forfeited, the
37 court, before ordering the cash or other property
38 returned to the defendant or discharging the real
39 estate bail lien, shall determine whether the cash,

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1 other property or real estate or any portion of the
2 cash, other property or real estate is subject to
3 setoff as authorized by this section. The court may
4 order all or a portion of the bail owned by a
5 defendant that has not been forfeited to be first paid
6 and applied to one or more of the following:

7 A. Any fine, forfeiture, penalty or fee imposed
8 upon a defendant as part of the sentence for
9 conviction of any offense arising out of the
10 criminal proceeding for which the bail has been
11 posted;

12 B. Any amount of restitution the defendant has
13 been ordered to pay as part of the sentence
14 imposed;

15 C. Any amount of attorneys' fees or other expense
16 authorized by the court at the request of the
17 defendant or attorney and actually paid by the
18 State on behalf of the defendant on the ground
19 that the defendant has been found to be indigent;
20 and

21 D. Any surcharge imposed by Title 4, section 1057.

22 4. Enforcement orders. If the court determines
23 that bail owned by a defendant should be ordered set
24 off as authorized by this section, the court may issue
25 any appropriate orders considered necessary to enforce
26 the setoff. The orders may include, but are not
27 limited to:

28 A. A direction to the clerk of courts to pay cash
29 bail directly to a specified person, organization
30 or government;

31 B. An order directed to a public official or the
32 defendant requiring that other property or real
33 estate be sold and the proceeds paid to a
34 specified person, organization or government; and

35 C. An order requiring the defendant to convey
36 clear and marketable title or other evidence of

1 ownership of interest in real estate or other
2 property to a specified person, organization or
3 government.

4 SUBCHAPTER V

5 ENFORCEMENT

6 §1091. Failure to appear; penalty

7 Any defendant charged with an offense who has been
8 admitted to preconviction bail and who, in fact, fails
9 to appear as required is guilty of a Class E crime if
10 the offense charged was punishable by a maximum period
11 of imprisonment of less than one year, or is guilty of
12 a Class C crime if the offense charged was punishable
13 by a maximum period of imprisonment of one year or
14 more. It is an affirmative defense that the failure
15 to appear resulted from just cause.

16 §1092. Violation of condition of release

17 Any person charged with an offense who has been
18 admitted to preconviction bail and who, in fact,
19 violates a condition of release is guilty of a Class E
20 crime. It is an affirmative defense that the
21 violation resulted from just cause.

22 §1093. Revocation of preconviction bail

23 1. In general. The attorney for the State, or
24 the court on its own motion, may initiate a proceeding
25 for the revocation of a defendant's preconviction bail
26 by complying with this section.

27 2. Arrest. A warrant for the arrest of a
28 defendant who has been released on preconviction bail
29 may be issued upon a showing of probable cause that
30 the defendant has failed to appear as required, has
31 violated a condition of preconviction bail or has been
32 charged with a crime allegedly committed while
33 released on preconviction bail. The warrant shall
34 direct that the defendant be brought before the judge
35 or justice who set bail or, if that judge or justice

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1 is not available, before another judge or justice of
2 the same court. If bail had been set by a bail
3 commissioner, the warrant shall direct that the
4 defendant be brought before a judge or justice of the
5 appropriate court.

6 3. Revocation. After notice and opportunity for
7 hearing, the judge or justice may revoke the
8 defendant's preconviction bail and order the defendant
9 held without bail if the judge or justice finds that
10 there is no condition or combination of conditions of
11 release that will reasonably ensure the defendant's
12 appearance when required or will otherwise reasonably
13 ensure the integrity of the judicial process, and if
14 the judge or justice finds that there is:

15 A. Probable cause to believe that the defendant
16 has committed a crime while on release; or

17 B. Clear and convincing evidence that the
18 defendant has failed to appear as required or has
19 violated any other condition of the preconviction
20 bail.

21 If the judge or justice finds that there are
22 conditions of release that will reasonably ensure the
23 defendant's appearance when required and will
24 otherwise reasonably ensure the integrity of the
25 judicial process, the judge or justice shall issue an
26 order under section 1026.

27 4. Appeal. A defendant in custody as a result of
28 an order issued under subsection 3 by the District
29 Court may appeal to the Superior Court and a defendant
30 in custody as a result of an order issued under
31 subsection 3 by the Superior Court may appeal to a
32 single Justice of the Supreme Judicial Court. The
33 appeal shall be in accordance with the procedures set
34 forth in section 1028, as far as applicable, except
35 that the review shall be limited to a review of the
36 record to determine if the order was rationally
37 supported by the evidence.

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1 §1094. Forfeiture of bail; enforcement

2 When a defendant who has been admitted to either
3 preconviction or post-conviction bail in a criminal
4 case fails to appear as required, the court shall
5 declare a forfeiture of the bail. The obligation of
6 the defendant and any sureties may be enforced by
7 motion in the court in which the bail was posted or in
8 the Superior Court in the same county, in such manner
9 as the Supreme Judicial Court shall by rule provide
10 and in accordance with section 224-A.

11 SUBCHAPTER VI

12 MISCELLANEOUS

13 §1101. Forms and rules

14 The Supreme Judicial Court shall develop forms and
15 adopt such rules as may be necessary to implement this
16 chapter.

17 §1102. Detention of juveniles charged as adults

18 Unless they have attained their 18th birthday,
19 persons who are arrested for crimes defined under
20 Title 12 or Title 29, which are not juvenile crimes as
21 defined in section 3103, may not be detained unless a
22 juvenile caseworker has been notified within 2 hours
23 after the person's arrest and has approved the
24 detention. Section 3203-A, subsection 7, paragraphs A
25 and B, governing the facilities in which juveniles may
26 be detained, apply to any detention of such juveniles
27 following arrest.'

28 Further amend the bill in section 22, in
29 subsection 1, in paragraph A, in subparagraph (10), in
30 the 2nd and 3rd lines (page 29, lines 27 and 28 in
31 L.D.) by striking out the following: "section 942,
32 subsection 5" and inserting in its place the following
33 '~~section 942, subsection 5~~ section 1026, subsection
34 3 and section 1051, subsection 2'

35 Further amend the bill by inserting before the
36 statement of fact the following:

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1 'Sec. 23. Appropriation. The following funds
2 are appropriated from the General Fund to carry out
3 the purposes of this Act.

4 1988-89

5 JUDICIAL DEPARTMENT

6 Courts - Supreme, Superior,
7 District and Administrative

8 All Other \$10,000

9 Provides funds for the
10 establishment of a
11 training program for
12 bail commissioners.

13 FISCAL NOTE

14 The fiscal impact of this bill is accurately
15 reflected in the appropriation section.'

16 STATEMENT OF FACT

17 This amendment makes several technical and
18 stylistic changes and makes the following substantive
19 clarifications.

20 The amendment clarifies that the Maine Bail Code
21 does not apply to probation revocation proceedings
22 under the Maine Revised Statutes, Title 17-A.

23 The amendment deletes the provisions of the bill
24 that required bail commissioners' fees to be paid by
25 the State. Under the amendment, the fees for bail
26 commissioners will continue to be paid by the
27 individual defendants. Bail commissioners are
28 however, required to submit forms to the Judicial
29 Department in order to permit the department to gather
30 reliable information regarding the amount of money

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1 paid to bail commissioners.

2 The amendment clarifies the intended scope and
3 nature of a Harnish bail proceeding under the bill.
4 The amendment makes clear that a Harnish bail
5 proceeding is not intended to be a mini-trial, but may
6 include live testimony, affidavits and reliable
7 hearsay evidence in accordance with the Law Court's
8 statements in Harnish v. State, 531 A.2d 1264, 1268
9 n.8 (Me. 1987).

10 The amendment increases the standard of proof
11 required to eliminate a court's discretion to grant
12 bail in a formerly capital case. The bill required
13 that the State meet a probable cause standard; the
14 amendment replaces this with a test of clear and
15 convincing evidence.

16 In each of the penalty provisions for a
17 defendant's failure to appear as required and for the
18 violation of a condition of release, the amendment
19 clarifies that a defendant who, in fact, fails to
20 appear or who, in fact, violates a condition of
21 release is guilty as provided in the bill. No
22 culpable mental state is required to be proven by the
23 State. The amendment does not change the provisions
24 of the bill that make it an affirmative defense that
25 the failure to appear or the violation resulted from
26 just cause.

27 The amendment clarifies that appeals from the
28 denial of bail in the District Court are to the
29 Superior Court. If bail is originally denied by the
30 Superior Court, an appeal may be made to a Single
31 Justice of the Supreme Judicial Court. It is not
32 intended that there be more than a single appeal in
33 these cases.

34 The amendment modifies the provisions dealing with
35 the set off of cash bail by creating a mechanism to
36 allow the defendant or any other person who posts a
37 cash bail for the defendant to designate under oath
38 that the cash belongs to the defendant or to some
39 other person. This designation must be made when the
40 cash is deposited. If no designation is made to the
41 contrary, the cash is deemed to be the property of the

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1 defendant and is subject to the set-off provisions of
2 the bill.

3 Finally, the amendment clarifies that Title 15,
4 section 1102, is intended to ensure that the detention
5 of juveniles arrested for Class D and E crimes defined
6 in Title 12 or Title 29, crimes not defined as
7 juvenile crimes, will be in places specified by Title
8 15, section 3202-A, subsection 7, paragraphs A and B.
9 Additionally, a juvenile caseworker must be involved
10 within 2 hours of the arrest if continued detention is
11 contemplated.

12

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