

# MAINE STATE LEGISLATURE

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(AFTER DEADLINE)  
SECOND REGULAR SESSION

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ONE HUNDRED AND THIRTEENTH LEGISLATURE

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Legislative Document

NO. 2456

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H.P. 1792                      House of Representatives, March 4, 1988  
Approved for introduction by a majority of the  
Legislative Council pursuant to Joint Rule 27.  
Reference to the Committee on Judiciary suggested and  
ordered printed.

EDWIN H. PERT, Clerk  
Presented by Representative DIAMOND of Bangor.  
Cosponsored by Senator BRANNIGAN of Cumberland,  
Representatives PARADIS of Augusta and FOSTER of Ellsworth.

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STATE OF MAINE

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

---

1                      AN ACT to Address Comprehensively Bail  
2                      Relative to a Defendant in a Criminal  
3                      Proceeding.  
4

---

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

7                      Sec. 1.     4 MRSA §160, as amended by PL 1967, c.  
8                      134, is repealed.

1       **Sec. 2.**    4 MRSA §164, sub-§1-A, as enacted by PL  
2   1985, c. 506, Pt. B, §2, is amended to read:

3       1-A. Appoint bail commissioners.    Appoint bail  
4   commissioners pursuant to Title 14 15, section  
5   554~~1~~ 1023, for any district when the resident judge  
6   for that district, because of illness, absence or  
7   disability, is unable to appoint.

8       **Sec. 3.**    4 MRSA §171, 2nd ¶, as repealed and  
9   replaced by PL 1979, c. 663, §9, is amended to read:

10       He may, and on complaint shall, cause to be  
11   arrested persons found within his county or in an  
12   adjoining county under the conditions specified in the  
13   first paragraph of section 161 charged with offenses;  
14   and those having committed offenses therein or in an  
15   adjoining county who have escaped therefrom or from an  
16   adjoining county; and all persons charged with  
17   offenses and crimes, and all affrayers, rioters,  
18   breakers of the peace and violators of the law, and  
19   may require such offenders to find sureties for  
20   keeping the peace.   When the offense upon  
21   examination is found to be one not within the  
22   jurisdiction of the District Court, the district judge  
23   may admit the offender to bail to appear before the  
24   Superior Court, and, in default thereof, shall commit  
25   him.

26       **Sec. 4.**    4 MRSA §569, as enacted by PL 1965, c.  
27   356, §7, is repealed.

28       **Sec. 5.**    14 MRSA §5524, as amended by PL 1981,  
29   c. 456, Pt. A, §54, is repealed.

30       **Sec. 6.**    14 MRSA §5540 is repealed.

31       **Sec. 7.**    14 MRSA §5541, as repealed and replaced  
32   by PL 1987, c. 162, is repealed.

33       **Sec. 8.**    14 MRSA §5542, as amended by PL 1985,  
34   c. 35, is repealed.

35       **Sec. 9.**    14 MRSA §5544, as amended by PL 1979,  
36   c. 663, §81, is repealed.

1       **Sec. 10.** 14 MRSA §5547, as enacted by PL 1987,  
2 c. 300, is repealed.

3       **Sec. 11.** 15 MRSA §101-B, sub-§4, ¶B, as enacted  
4 by PL 1987, c. 402, Pt. A, §109, is amended to read:

5       B. Except in the case of a defendant who is  
6 charged with the commission of an offense, the  
7 only punishment for which is life imprisonment,  
8 order the defendant's release on bail Issue a  
9 bail order in accordance with chapter 105-A, with  
10 or without the further order that the defendant  
11 undergo observation at a state mental hospital or  
12 mental health facility approved by the Department  
13 of Mental Health and Mental Retardation, or by  
14 arrangement with a private psychiatrist and  
15 treatment when it is deemed appropriate by the  
16 head of the hospital or clinic or by the private  
17 psychiatrist. When such outpatient observation  
18 and treatment is ordered, the head of the hospital  
19 or clinic or the psychiatrist shall, within the  
20 time specified in subsection 1, forward a report  
21 to the court containing the opinion of the head of  
22 the hospital or clinic or of the psychiatrist,  
23 relative to the defendant's competence to stand  
24 trial and his reasons therefor. The court shall  
25 forthwith set a date for and shall hold a hearing  
26 on the question of the defendant's competence to  
27 stand trial, which shall be held pursuant to and  
28 consistent with the standards set out in paragraph  
29 A.

30       **Sec. 12.** 15 MRSA §808 is repealed.

31       **Sec. 13.** 15 MRSA §813, as repealed and replaced  
32 by PL 1983, c. 862, §43, is repealed.

33       **Sec. 14.** 15 MRSA §814, as amended by PL 1983,  
34 c. 862, §44, is repealed.

35       **Sec. 15.** 15 MRSA §851, as amended by PL 1983,  
36 c. 862, §45, is repealed.

37       **Sec. 16.** 15 MRSA §852, as amended by PL 1965,

1 c. 356, §34, is repealed.

2 Sec. 17. 15 MRSA §855, as amended by PL 1965,  
3 c. 356, §36, is repealed.

4 Sec. 18. 15 MRSA §931, as repealed and replaced  
5 by PL 1965, c. 356, §40, is repealed.

6 Sec. 19. 15 MRSA §942, as amended by PL 1983,  
7 c. 862, §46, is repealed.

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

9 CHAPTER 105-A

10 MAINE BAIL CODE

11 SUBCHAPTER I

12 GENERAL PROVISIONS

13 §1001. Title

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

16 §1002. Legislative findings; statement of purpose

17 The Legislature finds that the statutory  
18 provisions relative to bail for a defendant in a  
19 criminal case are scattered throughout numerous  
20 provisions of Maine's statutory law and that many such  
21 statutory provisions have not been updated to reflect  
22 the modern development of the law. The Legislature  
23 finds that the Supreme Judicial Court sitting as the  
24 Law Court has recently decided cases interpreting the  
25 various constitutional provisions dealing with bail  
26 for a defendant in a criminal proceeding and has  
27 provided guidance as to the proper interpretation of  
28 those constitutional provisions. The Legislature finds  
29 that it is in the interest of the State and of  
30 individual criminal defendants that the law relative  
31 to bail be incorporated into a modern, integrated and  
32 consistent code that will provide a comprehensive  
33 statement of the law of bail. It is the purpose and

1 intent of this chapter to consolidate and clarify the  
2 various provisions of Maine law dealing with the  
3 subject of bail for a defendant in a criminal case.

4 §1003. Definitions

5 As used in this chapter, unless the context  
6 otherwise indicates, the following terms have the  
7 following meanings.

8 1. Bail. "Bail" means, in the preconviction  
9 context, the obtaining of the release of the defendant  
10 upon an undertaking that the defendant shall appear at  
11 the time and place required and may include conditions  
12 designed to ensure the integrity of the judicial  
13 process. For crimes bailable only as a matter of  
14 discretion preconviction, bail may also include  
15 conditions designed to ensure the safety of others in  
16 the community. In the post-conviction context, "bail"  
17 means the obtaining of the release of the defendant  
18 upon an undertaking that the defendant shall appear  
19 and surrender into custody at the time and place  
20 required and may include conditions designed to  
21 otherwise ensure the integrity of the judicial process  
22 or the safety of others in the community.

23 2. Court. "Court" means any Justice of the  
24 Supreme Judicial Court or Superior Court or any active  
25 retired justice and any District Court Judge or active  
26 retired judge.

27 3. Crime bailable as of preconviction right.  
28 "Crime bailable as of preconviction right" means a  
29 crime for which, under the Constitution of Maine,  
30 Article I, Section 10, a defendant has an absolute  
31 right to have bail set at the preconviction stage of  
32 any criminal proceeding.

33 4. Crime bailable only as a matter of  
34 preconviction discretion. "Crime bailable only as a  
35 matter of preconviction discretion" means a formerly  
36 capital offense for which, pursuant to a Harnish bail  
37 proceeding, a capital defendant's conditional  
38 constitutional right to have bail set at the  
39 preconviction stage of a criminal proceeding has been

1 extinguished.

2 5. Ensure the integrity of the judicial process.  
3 To "ensure the integrity of the judicial process" when  
4 used in the context of the granting or denial of bail  
5 means safeguarding the role of the courts in  
6 adjudicating the guilt or innocence of defendants by  
7 assuring the presence of the defendant in court and  
8 otherwise preventing the defendant from obstructing or  
9 attempting to obstruct justice by threatening,  
10 injuring or intimidating a victim, prospective  
11 witness, juror, attorney for the State, judge or  
12 justice or other officer of the court.

13 6. Formerly capital offenses. "Formerly capital  
14 offenses" means crimes which have been denominated  
15 capital offenses since the adoption of the  
16 Constitution of Maine.

17 7. Harnish bail proceeding. "Harnish bail  
18 proceeding" means a preconviction bail proceeding in  
19 which the State is offered the opportunity to obtain a  
20 judicial finding of probable cause that the defendant  
21 has committed a formerly capital offense, and the  
22 defendant, at the same proceeding, is afforded the  
23 opportunity to know and rebut the case against the  
24 defendant.

25 8. Judicial officer. "Judicial officer" includes  
26 the court, as defined in subsection 2, and a bail  
27 commissioner.

28 9. Post-conviction. "Post-conviction" means any  
29 point in a criminal proceeding after verdict or  
30 finding of guilty.

31 10. Preconviction. "Preconviction" means any  
32 point in a criminal proceeding before a verdict in the  
33 context of a jury trial or finding of guilty in the  
34 context of a jury-waived trial or plea.

35 §1004. Applicability and exclusions

36 This chapter applies to the setting of bail for a  
37 defendant in a criminal proceeding. It does not apply  
38 to the setting of bail in extradition proceedings

1 under sections 201 to 229 or post-conviction review  
2 proceedings under sections 2121 to 2132, except to the  
3 extent and under the conditions stated in those  
4 sections.

5

SUBCHAPTER II

6

PRECONVICTION BAIL

7

§1021. Superior Court and Supreme Judicial Court

8

Justices

9 Any Justice of the Supreme Judicial Court or  
10 Superior Court or any active retired justice is  
11 authorized to set preconviction bail for a defendant  
12 in a criminal proceeding in accordance with this  
13 chapter.

14

§1022. District Court Judges

15 Any District Court Judge or active retired judge  
16 is authorized to set preconviction bail for a  
17 defendant in a criminal proceeding in accordance with  
18 this chapter. When the crime upon examination is  
19 found to be one not within the jurisdiction of the  
20 District Court, the judge is authorized to set  
21 preconviction bail for the defendant to appear before  
22 the Superior Court in accordance with this chapter.

23

§1023. Bail commissioners

24 A bail commissioner, appointed pursuant to this  
25 section, is authorized to set preconviction bail for a  
26 defendant in a criminal proceeding in accordance with  
27 this chapter, provided that no bail commissioner may  
28 set preconviction bail for a defendant who is charged  
29 with murder or if the attorney for the State requests  
30 a Harnish bail proceeding for a defendant charged with  
31 any other formerly capital offense or as otherwise  
32 provided in subsection 3.

33

34

35

36

1. Appointment. The District Court Judge  
resident in each district, with the concurrence of the  
Chief Judge of the District Court, may appoint one or  
more residents of the district as bail commissioners.



1 A bail commissioner shall serve at the pleasure of the  
2 District Court Judge resident in the district or the  
3 Chief Judge of the District Court, but no term for  
4 which a bail commissioner is appointed may exceed 5  
5 years. The District Court Judge or the Chief Judge of  
6 the District Court shall require bail commissioners to  
7 complete the necessary training requirements set out  
8 in this section. Bail commissioners have the powers  
9 of notaries public to administer oaths or affirmations  
10 in carrying out their duties.

11 2. Immunity from liability. A person appointed  
12 and serving as a bail commissioner is immune from any  
13 civil liability for acts described in Title 14,  
14 section 8111, subsection 1, performed within the scope  
15 of the bail commissioner's duties.

16 3. Limitations on authority. A bail commissioner  
17 may not set preconviction bail for any defendant  
18 confined in jail or held under arrest by virtue of any  
19 order issued by any Justice of the Supreme Judicial  
20 Court or Superior Court or Judge of the District Court  
21 or any active retired justice or judge. A bail  
22 commissioner may not change the bail that has been set  
23 by a Justice of the Supreme Judicial Court or the  
24 Superior Court or by a judge of the District Court or  
25 any active retired justice or judge.

26 4. Fees. A bail commissioner shall receive a fee  
27 not to exceed \$17 for the charges pursuant to which  
28 the defendant is presently in custody. The bail  
29 commissioner's fee shall be paid by the Judicial  
30 Department from funds appropriated for that purpose.  
31 The bail commissioner shall submit a voucher for  
32 payment upon such forms as the Judicial Department  
33 shall direct.

34 5. Attorneys-at-law. No attorney-at-law who has  
35 acted as bail commissioner in any proceeding may act  
36 as attorney for or on behalf of any defendant for whom  
37 that attorney-at-law has taken bail in any such  
38 proceeding, nor may any attorney-at-law who has acted  
39 as attorney for a defendant in any offense act as bail  
40 commissioner in any proceeding arising out of the  
41 offense with which the defendant is charged.

1           6. Mandatory training. As a condition of  
2 appointment and continued service, a bail commissioner  
3 shall successfully complete a bail training program as  
4 prescribed and scheduled by the Chief Judge of the  
5 District Court. The Maine Criminal Justice Academy  
6 shall cooperate with and provide assistance to the  
7 Chief Judge of the District Court in establishing an  
8 appropriate training program for bail commissioners.  
9 The program shall include instruction on the  
10 provisions of this chapter, the relevant  
11 constitutional provisions on bail and such other  
12 matters pertinent to bail as the Chief Judge of the  
13 District Court considers appropriate and necessary.  
14 The costs of the training shall be borne by the  
15 Judicial Department from funds appropriated for that  
16 purpose. The Chief Judge of the District Court may  
17 establish a continuing education program for bail  
18 commissioners.

19   §1024. Clerks of court

20           Clerks of the District Court and clerks of the  
21 Superior Court, during the hours when the clerk's  
22 office is open for business and subject to the control  
23 of the District Court Judge or Superior Court Justice  
24 may, without fee, take the personal recognizance of  
25 any defendant for appearance on a charge of a Class D  
26 or Class E crime. Nothing in this section may be  
27 construed to prohibit the appointment of any clerk of  
28 the District Court or the Superior Court as a bail  
29 commissioner, except that no fee may be charged by the  
30 clerk while the clerk's office is open for business.

31           In any case where the District Judge or the  
32 Superior Court Justice has set bail for a defendant in  
33 a criminal case, the clerk of the District Court or of  
34 the Superior Court may, subject to the approval of the  
35 District Court Judge or Superior Court Justice, accept  
36 the bail, prepare the bond and take the  
37 acknowledgement of the defendant and sureties, if any,  
38 on the bond.

39   §1025. Law enforcement officers

1 A law enforcement officer may, without fee, take  
2 the personal recognizance of any defendant for  
3 appearance on a charge of a Class D or Class E crime.  
4 If authorized, a law enforcement officer may, without  
5 fee, take the personal recognizance with deposit in  
6 accordance with Title 12, section 7053, subsection 2,  
7 paragraph C.

8 §1026. Standards for release for crime bailable as  
9 of preconviction right

10 1. In general. At the initial appearance before  
11 a judicial officer of a defendant in custody for a  
12 crime bailable as of right preconviction, the judicial  
13 officer shall issue an order that, pending trial, the  
14 defendant be released:

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

17 B. On a condition or combination of conditions  
18 under subsection 3.

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

21 2. Release on personal recognizance or unsecured  
22 appearance bond. The judicial officer shall order the  
23 pretrial release of the defendant on personal  
24 recognizance or upon execution of an unsecured  
25 appearance bond in an amount specified by the judicial  
26 officer, unless the judicial officer determines that  
27 the release will not reasonably assure the appearance  
28 of the defendant as required or will not otherwise  
29 reasonably ensure the integrity of the judicial  
30 process.

31 3. Release on conditions. Conditions that will  
32 reasonably assure the appearance of the defendant and  
33 ensure the integrity of the judicial process shall be  
34 imposed.

35 A. If the judicial officer determines that the  
36 release described in subsection 2 will not  
37 reasonably assure the appearance of the defendant

1 as required or will not otherwise reasonably  
2 ensure the integrity of the judicial process, the  
3 judicial officer shall order the pretrial release  
4 of the defendant subject to the least restrictive  
5 further condition or combination of conditions  
6 that the judicial officer determines will  
7 reasonably assure the appearance of the defendant  
8 as required and will otherwise reasonably ensure  
9 the integrity of the judicial process, which  
10 conditions may include that the defendant:

11 (1) Remain in the custody of a designated  
12 person or organization agreeing to supervise  
13 the defendant, including a public official,  
14 public agency or publicly-funded  
15 organization, if the designated person or  
16 organization is able to reasonably assure  
17 both the appearance of the defendant as  
18 required and the integrity of the judicial  
19 process;

20 (2) Maintain employment or, if unemployed,  
21 actively seek employment;

22 (3) Maintain or commence an educational  
23 program;

24 (4) Abide by specified restrictions on  
25 personal associations, place of abode or  
26 travel;

27 (5) Avoid all contact with a victim of the  
28 alleged crime, a potential witness regarding  
29 the alleged crime or with any other family or  
30 household members of the victim or the  
31 defendant or to contact those individuals  
32 only at certain times or under certain  
33 conditions;

34 (6) Report on a regular basis to a  
35 designated law enforcement agency or other  
36 governmental agency;

37 (7) Comply with a specified curfew;

1           (8) Refrain from possessing a firearm or  
2           other dangerous weapon;

3           (9) Refrain from use or excessive use of  
4           alcohol and from any use of drugs;

5           (10) Undergo, as an outpatient, available  
6           medical or psychiatric treatment, or to enter  
7           and remain, as a voluntary patient, in a  
8           specified institution when required for that  
9           purpose;

10           (11) Execute an agreement to forfeit, upon  
11           failing to appear as required, such  
12           designated property, including money, as is  
13           reasonably necessary to assure the appearance  
14           of the defendant as required and post with an  
15           appropriate court such evidence of ownership  
16           of the property or such percentage of the  
17           money as the judicial officer specifies;

18           (12) Execute a bail bond with sureties in  
19           such amount as is reasonably necessary to  
20           assure the appearance of the defendant as  
21           required;

22           (13) Return to custody for specified hours  
23           following release for employment, schooling  
24           or other limited purposes; and

25           (14) Satisfy any other condition that is  
26           necessary to reasonably assure the appearance  
27           of the defendant as required and to otherwise  
28           reasonably ensure the integrity of the  
29           judicial process.

30           B. The judicial officer may not impose a  
31           financial condition which the defendant cannot  
32           meet. A requirement of sureties is not a  
33           financial condition.

34           C. Upon motion by the attorney for the State or  
35           the defendant and after notice and upon a showing  
36           of changed circumstances or upon the discovery of  
37           new and significant information, the court may

1 amend the bail order to relieve the defendant of  
2 any condition of release, modify the conditions  
3 imposed or impose further conditions authorized by  
4 this subsection as the court determines will  
5 reasonably assure the appearance of the defendant  
6 as required and will otherwise reasonably ensure  
7 the integrity of the judicial process.

8 4. Factors to be considered in release decision.  
9 In setting bail, the judicial officer shall, on the  
10 basis of an interview with the defendant and other  
11 reliable information which can be obtained, take into  
12 account the available information concerning the  
13 following:

14 A. The nature and circumstances of the crime  
15 charged;

16 B. The nature of the evidence against the  
17 defendant; and

18 C. The history and characteristics of the  
19 defendant, including:

20 (1) The defendant's character and physical  
21 and mental condition;

22 (2) The defendant's family ties in the State;

23 (3) The defendant's employment history in  
24 the State;

25 (4) The defendant's financial resources;

26 (5) The defendant's length of residence in  
27 the community and the defendant's community  
28 ties;

29 (6) The defendant's past conduct, including  
30 any history relating to drug or alcohol abuse;

31 (7) The defendant's criminal history, if any;

32 (8) The defendant's record concerning  
33 appearances at court proceedings;

1           (9) Whether, at the time of the current  
2 offense or arrest, the defendant was on  
3 probation, parole or other release pending  
4 trial, sentencing, appeal or completion of a  
5 sentence for an offense in this jurisdiction  
6 or another; and

7           (10) Any evidence that the defendant has  
8 obstructed or attempted to obstruct justice  
9 by threatening, injuring or intimidating a  
10 victim or a prospective witness, juror,  
11 attorney for the State, judge or justice or  
12 other officer of the court.

13           5. Contents of release order. In a release order  
14 issued under subsection 2 or 3, the judicial officer  
15 shall:

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

20           B. Advise the defendant of:

21           (1) The penalties if the defendant fails to  
22 appear as required; and

23           (2) The consequences of violating a  
24 condition of release, including the immediate  
25 issuance of a warrant for the defendant's  
26 arrest.

27           §1027. Standards for release for formerly capital  
28 offenses

29           1. In general. At the initial appearance before  
30 a judicial officer of a defendant in preconviction  
31 custody for a formerly capital offense, the judicial  
32 officer shall issue an order pursuant to section 1009,  
33 unless the attorney for the State moves for a Harnish  
34 bail proceeding. In the event the attorney for the  
35 State requests a Harnish bail proceeding before bail  
36 has been set, the judicial officer shall order the

1 defendant held pending a hearing under subsection 2.  
2 The attorney for the State may move for a Harnish bail  
3 proceeding at any time preconviction. If the attorney  
4 for the State moves for a Harnish bail proceeding  
5 after bail has been set, the court may hold the  
6 defendant pending a hearing under subsection 2 or may  
7 continue the defendant's bail.

8       2. Harnish bail proceeding. A Harnish bail  
9 proceeding shall be held within 5 court days of the  
10 State's request unless the court, for good cause shown  
11 and at the request of either the defendant or the  
12 attorney for the State, grants a continuance. If,  
13 after the hearing, the court finds probable cause to  
14 believe that the defendant has committed a formerly  
15 capital offense, it shall issue an order pursuant to  
16 section 1026, subsection 3. If, after the hearing,  
17 the court does not find probable cause to believe that  
18 the defendant has committed a formerly capital  
19 offense, it shall issue an order pursuant to section  
20 1026.

21       3. Where conditional right has been extinguished  
22 at Harnish bail proceeding. The court's finding that  
23 probable cause exists to believe that the defendant  
24 committed a formerly capital offense extinguishes the  
25 defendant's right to have bail set. The court shall  
26 thereafter make a determination as to whether the  
27 setting of bail is appropriate as a matter of  
28 discretion. The court may set bail unless it has  
29 probable cause to believe that:

30       A. There is a substantial risk that the capital  
31 defendant will not appear as required or will  
32 otherwise pose a substantial risk to the integrity  
33 of the judicial process; or

34       B. There is a substantial risk that the capital  
35 defendant will pose a danger to another or to the  
36 community.

37 In exercising its discretion, the court shall consider  
38 the factors listed in section 1026 and any prior  
39 history of dangerousness and may amend any bail order  
40 pursuant to section 1026, subsection 3, paragraph C.



1 §1028. De novo determination of bail under section  
2 1026

3 1. By defendant in custody. Any defendant  
4 aggrieved by the refusal of a Judge of the District  
5 Court or a bail commissioner acting under section 1026  
6 to authorize the defendant's release on personal  
7 recognizance or on the execution of an unsecured  
8 appearance bond and who is in custody for that crime  
9 may petition the Superior Court for a de novo  
10 determination of that refusal. The District Court  
11 Judge or bail commissioner making the decision shall  
12 advise the defendant of the right to obtain a de novo  
13 determination in the Superior Court.

14 If the defendant chooses to have a de novo  
15 determination of bail, the defendant shall be  
16 furnished with a petition and, upon execution of the  
17 petition and without the issuance of any writ or other  
18 process, the sheriff of the county in which the  
19 decision was made shall provide for the transportation  
20 of the defendant together with the petition and all  
21 papers relevant to the petition or copies of the  
22 petition or papers to the Superior Court. In the  
23 event that no Justice of the Superior Court will be  
24 available within 24 hours, excluding weekends and  
25 holidays, arrangements shall be made for a de novo  
26 determination of bail in the nearest county in which a  
27 Justice of the Superior Court is then sitting. If  
28 there is no Justice of the Superior Court available,  
29 the defendant shall be retained in custody until the  
30 petition can be considered. The defendant's custodian  
31 shall provide transportation to the Superior Court as  
32 required by this chapter without the issuance of any  
33 writ or other process.

34 The petition and such other papers as may accompany it  
35 shall be delivered to the clerk of the Superior Court  
36 to which the defendant is transported and upon receipt  
37 the clerk shall give notice to the attorney for the  
38 State. The petition shall have priority over any  
39 other matter before the Justice of the Superior  
40 Court. The Superior Court Justice considering the  
41 petition shall issue an order in accordance with  
42 section 1026.

1           2. By defendant not in custody. Any defendant  
2 aggrieved by the refusal of a Judge of the District  
3 Court or a bail commissioner to authorize the  
4 defendant's release on personal recognizance or on the  
5 execution of an unsecured bond, and who is not in  
6 custody as a result of that refusal, may petition the  
7 Superior Court for a de novo determination of bail.  
8 The petition shall be considered as scheduled by the  
9 clerk.

10   §1029. Review of bail under section 1027

11           Any defendant in custody following a Harnish bail  
12 proceeding under section 1027 may petition a Justice  
13 of the Superior Court or a single Justice of the  
14 Supreme Judicial Court for review. With respect to  
15 the finding of probable cause to believe that the  
16 defendant committed a formerly capital offense, the  
17 review shall be under the clearly erroneous standard.  
18 With respect to all other issues, the review shall be  
19 de novo. The evidence shall consist of the  
20 information of record submitted in section 1030 and  
21 any additional information the parties may choose to  
22 present.

23   §1030. State's attorney present at certain pro-  
24 ceedings; opportunity to present relevant  
25 information

26           Before making a determination as to whether or not  
27 to set bail for a defendant charged with murder or a  
28 Class A, Class B or Class C crime, the judicial  
29 officer shall afford the attorney for the State or a  
30 law enforcement officer familiar with the charges the  
31 opportunity to present any information relevant to  
32 bail considerations. This opportunity shall be in  
33 addition to the availability of a Harnish bail  
34 proceeding as otherwise provided in this chapter.

35           An attorney for the State shall be present in  
36 District Court at all proceedings governed by Maine  
37 District Court Criminal Rules, Rule 5, and Maine Rules  
38 of Criminal Procedure, Rule 5, at which bail is being  
39 set, except when the offense charged is a Class D or

1 Class E crime.

2 §1031. Bail if no indictment

3 Any defendant charged with a formerly capital  
4 offense, who has been denied bail in accordance with  
5 section 1027, shall have bail set under section 1026  
6 if he is not indicted in the county where the crime is  
7 alleged to have been committed at the 2nd regularly  
8 scheduled session of the grand jury next after the  
9 date of the denial of bail.

10 SUBCHAPTER III

11 POST-CONVICTION BAIL

12 §1051. Post-conviction bail

13 1. Application to presiding judge or justice.  
14 Except as provided in this section, after a verdict or  
15 finding of guilty, a defendant may apply to the judge  
16 or justice who presided at the trial for bail pending  
17 imposition or execution of sentence or entry of  
18 judgment or appeal. If the trial judge or justice is  
19 not available, the defendant may apply for bail under  
20 this section to another judge or justice of the court  
21 in which the defendant was convicted. Post-conviction  
22 bail shall not be available to a defendant convicted  
23 of:

24 A. Murder;

25 B. Any other formerly capital offense for which  
26 bail was denied preconviction pursuant to section  
27 1027; or

28 C. Any crime when the defendant's preconviction  
29 bail was revoked and denied pursuant to section  
30 1093.

31 The judge or justice shall hold a hearing on the  
32 record on the bail application and shall state in  
33 writing or on the record the reasons for denying or  
34 granting bail. If bail is granted, the judge or  
35 justice shall also state in writing or on the record

1 the reasons for the kind and amount of bail set; for  
2 any condition of release imposed; and for the omission  
3 of any condition of release sought by the State.

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

7 2. Standards. Except as provided in subsection  
8 4, a defendant may not be admitted to bail under this  
9 section unless the judge or justice has probable cause  
10 to believe that:

11 A. There is no substantial risk that the  
12 defendant will fail to appear as required and will  
13 not otherwise pose a substantial risk to the  
14 integrity of the judicial process; and

15 B. There is no substantial risk that the  
16 defendant will pose a danger to another or to the  
17 community.

18 In determining whether to admit a defendant to bail,  
19 the judge or justice shall consider the factors  
20 relevant to preconviction bail listed in section 1026,  
21 as well as the facts proved at trial, the length of  
22 the term of imprisonment imposed, any history of  
23 dangerousness and any previous unexcused failure to  
24 appear as required before any court or to submit as  
25 required to an order or judgment of any court.

26 If the judge or justice decides to set post-conviction  
27 bail for a defendant, the judge or justice shall apply  
28 the same factors in setting the kind and amount of  
29 that bail.

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

35 4. Standards applicable to bail arising out of  
36 State's appeal under section 2115-A, subsection 2. In  
37 the instance where the State initiates an appeal under

1 section 2115-A, subsection 2, the judge or justice  
2 shall apply subchapter II to a defendant's application  
3 for bail pending that appeal.

4 5. Appeal by defendant. A defendant may appeal  
5 to a single Justice of the Supreme Judicial Court a  
6 denial of bail, the kind or the amount of bail set or  
7 the conditions of release imposed by which the  
8 defendant is aggrieved. The single justice shall not  
9 conduct a hearing de novo respecting bail, but shall  
10 review the lower court's order. The defendant has the  
11 burden of showing that there is no rational basis in  
12 the record for the lower court's denial of bail, the  
13 kind or amount of bail set or the conditions of  
14 release imposed of which the defendant complains.

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

26 7. Revocation of bail. An order of  
27 post-conviction bail entered by a judge or justice may  
28 be revoked by that judge or justice or, if that judge  
29 or justice is not available, by another judge or  
30 justice of the same court, upon a determination made  
31 after notice and opportunity for hearing that:

32 A. The defendant has violated a condition of bail;

33 B. The defendant has been charged with a crime  
34 allegedly committed while the defendant was  
35 released under this section; or

36 C. The defendant's appeal has been taken for  
37 purposes of delay.

38 If bail is revoked, the defendant may appeal to a

1 single Justice of the Supreme Judicial Court, who  
2 shall review the revocation as under subsection 5.

3 8. Failure to appear; penalty. Any defendant who  
4 has been ordered released under this section and who  
5 fails to appear before any court as required is guilty  
6 of:

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

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

13 It is an affirmative defense that the failure to  
14 appear resulted from just cause.

15 9. Violation of condition of release; penalty.  
16 Any defendant who has been ordered released under this  
17 section and who violates a condition of release is  
18 guilty of a Class E crime. It is an affirmative  
19 defense that the violation resulted from just cause.

20 SUBCHAPTER IV

21 SURETIES AND OTHER FORMS OF BAIL

22 §1071. Sureties to make statement of property

23 Any person who offers to act as surety for the  
24 appearance before the Superior Court of any defendant  
25 in a criminal prosecution, whether the defendant is an  
26 appellant from the finding of a Judge of the District  
27 Court, is to be admitted to bail to await the action  
28 of the grand jury, or is arrested in vacation on a  
29 warrant issued on an indictment pending in the  
30 Superior Court, may be required to file with the judge  
31 or bail commissioner a written statement signed and  
32 sworn to by the surety, describing all real estate  
33 owned by the surety within the State with sufficient  
34 accuracy to identify it and giving in detail all  
35 encumbrances and the value, that valuation to be based  
36 on the judgment of the surety. The certificate shall

1 remain on file with the original papers in the case  
2 and a certified copy shall be transmitted by the  
3 magistrate taking the bail to the clerk of court  
4 before which the defendant is to appear.

5 Any person who offers real estate as surety for  
6 the appearance before a court of a defendant charged  
7 with murder or a Class A, Class B or Class C crime  
8 shall be required to file a bail lien with the  
9 register of deeds in the county where the real estate  
10 lies. If the defendant is to be bailed prior to  
11 appearance in a court for the first time, the person  
12 offering the real estate shall file with that court a  
13 copy of the lien attested by the register of deeds,  
14 stating the date of recording and the book and page  
15 number at which the lien is recorded, on the next  
16 business day after which the real estate is offered.  
17 If the defendant is bailed after having appeared in  
18 court for the first time, the defendant shall not be  
19 released from custody until the person offering real  
20 estate has filed with the court, with which the bail  
21 is posted, a copy of the lien attested by the register  
22 of deeds, stating the date of recording and the book  
23 and page number at which the lien is recorded. If a  
24 defendant is released from custody prior to the  
25 defendant's first appearance in court upon a person  
26 offering real estate as surety and that person fails  
27 to file with the court a duly attested copy of the  
28 lien required by this section within the prescribed  
29 time limit, the defendant may be taken into custody  
30 without the issuance of further process and shall be  
31 held as though the surety had not offered real estate  
32 as surety. The person filing the lien is responsible  
33 for the fee to be paid to the register of deeds for  
34 receiving, recording and indexing the bail lien and  
35 for discharge of the bail lien as provided in Title  
36 33, chapter 11, subchapter IV. A bail lien shall not  
37 be required if bail is posted through a nonprofit bail  
38 assistance project. As used in this chapter, real  
39 estate is limited to real property located in the  
40 State.

41 §1072. Responsibility of sureties

42 Each surety for a defendant admitted to pre-

1 conviction bail shall be responsible for the  
2 appearance of the defendant at all times until a  
3 verdict or finding or plea of guilty, unless the  
4 surety has sooner terminated the agreement to act as  
5 surety and has been relieved of the responsibility in  
6 accordance with section 1073.

7 Each surety for a defendant admitted to  
8 post-conviction bail after conviction shall be  
9 responsible for the defendant's appearance at all  
10 times until the defendant enters into execution of any  
11 sentence of imprisonment, unless the surety has sooner  
12 terminated the agreement to act as surety and has been  
13 relieved of the responsibility in accordance with  
14 section 1073.

15 In no case may a preconviction surety be  
16 responsible for the appearance of a defendant after  
17 conviction, unless the surety has agreed anew to act  
18 as surety following conviction.

19 §1073. Authority of sureties

20 Any person who has agreed to act as surety for a  
21 defendant who has been admitted to preconviction bail  
22 may terminate the agreement by appearing before the  
23 clerk of the court having jurisdiction over the  
24 offense with which the defendant is charged and  
25 executing a statement under oath terminating the  
26 surety agreement. The statement shall include a  
27 certification by the surety that the surety has  
28 notified the defendant or the defendant's attorney of  
29 the surety's intention to terminate the surety  
30 agreement.

31 Upon execution of the statement terminating the  
32 surety agreement, the clerk shall bring the matter to  
33 the attention of a judge or justice of the court who,  
34 unless new and sufficient sureties have appeared,  
35 shall issue a warrant and commitment for the arrest of  
36 the defendant for failure to furnish bail. A  
37 defendant arrested pursuant to such a warrant and  
38 commitment shall be promptly brought before a judge or  
39 justice of the court having jurisdiction over the  
40 crime and the judge or justice shall give the  
41 defendant and the attorney for the State an



1 opportunity to be heard and shall determine whether to  
2 set new bail or to continue the bail as already  
3 established.

4 The judge or justice may absolve the surety of  
5 responsibility to pay all or part of the bond,  
6 provided that no surety may be absolved of the  
7 responsibility to pay all or part of the bond if,  
8 prior to terminating the surety agreement, the  
9 defendant has failed to appear as required. Nothing  
10 in this section may be construed to relieve or release  
11 a surety of the responsibility for the appearance of  
12 the defendant, notwithstanding the termination of the  
13 surety agreement, until the defendant is in the  
14 custody of the sheriff of the county in which the case  
15 is pending, or new or substitute sureties have  
16 appeared or the defendant has otherwise been admitted  
17 to bail.

18 A person who has agreed to act as surety for a  
19 defendant who has been admitted to post-conviction  
20 bail may terminate the surety agreement by following  
21 the procedure set forth in this section.

22 §1074. Property of defendant as bail

23 1. Cash. Whenever cash is deposited as bail to  
24 secure the appearance of a defendant in a criminal  
25 proceeding, either preconviction or post-conviction,  
26 the cash shall be deemed to be the property of the  
27 defendant and shall be returned to the defendant  
28 unless otherwise forfeited or subject to setoff as  
29 provided in this section.

30 2. Real estate. Whenever a defendant in a  
31 criminal proceeding is the owner of real estate and  
32 offers that real estate as security for appearance  
33 before any court, the defendant shall be required to  
34 file a bail lien and to otherwise comply with the  
35 requirements of section 1071 as if the defendant were  
36 a surety. A discharge of the bail lien shall be  
37 governed by section 1071, unless the bail has been  
38 forfeited or is subject to setoff in accordance with  
39 this section.

1           3. Setoff. Whenever a defendant has deposited  
2 cash or other property owned by the defendant as bail,  
3 or has offered real estate owned by the defendant and  
4 subject to a bail lien as bail and the cash, other  
5 property or real estate has not been forfeited, the  
6 court, before ordering the cash or other property  
7 returned to the defendant or discharging the real  
8 estate bail lien, shall determine whether the cash,  
9 other property or real estate or any portion of the  
10 cash, other property or real estate is subject to  
11 setoff as authorized by this section. The court may  
12 order all or a portion of bail owned by a defendant  
13 that has not been forfeited to be first paid and  
14 applied to one or more of the following:

15           A. Any fine, forfeiture, penalty or fee imposed  
16 upon a defendant as part of the sentence for  
17 conviction of any offense for which the bail has  
18 been posted;

19           B. Any amount of restitution the defendant has  
20 been ordered to pay as part of the sentence  
21 imposed;

22           C. Any amount of attorneys' fees or other expense  
23 authorized by the court at the request of the  
24 defendant or attorney and actually paid by the  
25 State on behalf of the defendant on the ground  
26 that the defendant has been found to be indigent;  
27 and

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

29           4. Enforcement orders. If the court determines  
30 that bail owned by a defendant should be ordered set  
31 off as authorized by this section, the court may issue  
32 any appropriate orders deemed necessary to enforce the  
33 setoff. The orders may include, but shall not be  
34 limited to:

35           A. A direction to the clerk of courts to pay cash  
36 bail directly to a specified person, organization  
37 or government;

38           B. An order directed to a public official or the

1 defendant requiring that other property or real  
2 estate be sold and the proceeds paid to a  
3 specified person, organization or government; and

4 C. An order requiring the defendant to convey  
5 clear and marketable title or other evidence of  
6 ownership of interest in real estate or other  
7 property to a specified person, organization or  
8 government.

9 SUBCHAPTER V

10 ENFORCEMENT

11 §1091. Failure to appear; penalty

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

21 §1092. Violation of condition of release

22 Any person charged with an offense who has been  
23 admitted to preconviction bail and who violates a  
24 condition of release is guilty of a Class E crime. It  
25 is an affirmative defense that the violation resulted  
26 from just cause.

27 §1093. Revocation of preconviction bail

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

32 2. Arrest. A warrant for the arrest of a  
33 defendant who has been released on preconviction bail  
34 may be issued upon a showing of probable cause that  
35 the defendant has failed to appear as required, has

1 violated a condition of preconviction bail or has been  
2 charged with a crime allegedly committed while  
3 released on preconviction bail. The warrant shall  
4 direct that the defendant be brought before the judge  
5 or justice who set bail or, if that judge or justice  
6 is not available, before another judge or justice of  
7 the same court. If bail had been set by a bail  
8 commissioner, the warrant shall direct that the  
9 defendant be brought before a judge or justice of the  
10 appropriate court.

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

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

22 B. Clear and convincing evidence that the  
23 defendant has failed to appear as required or has  
24 violated any other condition of the preconviction  
25 bail.

26 If the judge or justice finds that there are  
27 conditions of release that will reasonably assure the  
28 defendant's appearance when required and will  
29 otherwise reasonably ensure the integrity of the  
30 judicial process, the judge or justice shall issue an  
31 order pursuant to section 1026.

32 4. Appeal. A defendant in custody as a result of  
33 an order issued pursuant to subsection 3 may appeal to  
34 the Superior Court or to a single Justice of the  
35 Supreme Judicial Court in accordance with the  
36 procedures set forth in section 1028, as far as  
37 applicable, except that the review shall be limited to  
38 a review of the record to determine whether the order  
39 was rationally supported by the evidence.

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 Section 3203-A, subsection 7, governing the  
19 facilities in which juveniles may be detained, shall  
20 apply to juveniles charged as adults and in custody,  
21 provided they have not attained their 18th birthdays.

22 Sec. 21. 15 MRSA §1701-B, as enacted by PL  
23 1985, c. 743, is repealed.

24 Sec. 22. 17-A MRSA §15, sub-§1, as amended by  
25 PL 1985, c. 737, Pt. A, §40, is further amended to  
26 read:

27 1. Except as otherwise specifically provided, a  
28 law enforcement officer may arrest without a warrant:

29 A. Any person who he has probable cause to  
30 believe has committed or is committing:

31 (1) Murder;

32 (2) Any Class A, Class B or Class C crime;

- 1 (3) Assault while hunting;
- 2 (4) Any offense defined in chapter 45;
- 3 (5) Assault, if the officer reasonably  
4 believes that the person may cause injury to  
5 others unless immediately arrested;
- 6 (5-A) Assault, criminal threatening,  
7 terrorizing or reckless conduct, if the  
8 officer reasonably believes that the person  
9 and the victim are family or household  
10 members, as defined in Title 15, section 321;
- 11 (6) Theft as defined in section 357, when  
12 the value of the services is \$1,000 or less,  
13 if the officer reasonably believes that the  
14 person will not be apprehended unless  
15 immediately arrested;
- 16 (7) Forgery, if the officer reasonably  
17 believes that the person will not be  
18 apprehended unless immediately arrested;
- 19 (8) Negotiating a worthless instrument, if  
20 the officer reasonably believes that the  
21 person will not be apprehended unless  
22 immediately arrested;
- 23 (9) A violation of a condition of his  
24 probation when requested by an official of  
25 the Division of Probation and Parole; or
- 26 (10) Violation of a condition of release in  
27 violation of Title 15, section 942,  
28 subsection 5; and
- 29 B. Any person who has committed in his presence  
30 or is committing in his presence any Class D or  
31 Class E crime.
- 32 A law enforcement officer may, without fee, take the  
33 personal recognizance of any person for his appearance  
34 on-a-charge-of-a-Class-B-or-Class-E-crime.

1 STATEMENT OF FACT

2 The purpose of this bill is to create a  
3 comprehensive set of laws dealing with the subject of  
4 bail in a criminal case. This bill will create the  
5 Maine Bail Code. It is not the purpose of this bill  
6 to make radical changes in the law of bail in the  
7 State. With relatively minor exceptions as noted,  
8 much of this bill is based upon existing law or upon  
9 principles of law as interpreted by the Supreme  
10 Judicial Court sitting as the Law Court.

11 This bill enacts the Maine Revised Statutes, Title  
12 15, chapter 105-A. Title 15, chapter 105-A,  
13 subchapter I sets forth general provisions, including  
14 legislative findings and statement of purpose, and  
15 defines many of the terms and phrases that will be  
16 used in the bill. The term "bail" is specifically  
17 defined. One of the purposes of the definition of  
18 "bail" is to emphasize that bail does not only mean  
19 money, but should be viewed as an undertaking,  
20 including the imposition of reasonable conditions,  
21 designed to assure the appearance of the defendant  
22 when required and to ensure the integrity of the  
23 judicial process. In the post-conviction context and  
24 in the preconviction context for crimes bailable only  
25 as a matter of discretion, bail may also serve the  
26 purpose of protecting others in the community. Many  
27 of the other definitions in Title 15, section 1003,  
28 are required because of Maine's unique constitutional  
29 provisions dealing with the subject of bail in a  
30 criminal case.

31 The bill is designed to apply to the setting of  
32 bail for a defendant in a criminal proceeding, but  
33 does not apply to extradition proceedings or  
34 post-conviction review proceedings, except to the  
35 extent and under the conditions stated in the laws  
36 describing those proceedings.

37 Title 15, chapter 105-A, subchapter II deals  
38 specifically with the subject of preconviction bail.

1 Title 15, sections 1021 and 1022, deal with the  
2 authority of the Supreme Judicial Court and Superior  
3 Court and District Court Judges to set preconviction  
4 bail for a defendant. These laws are virtually  
5 identical to existing law which is found in Titles 4  
6 and 15.

7 Title 15, section 1023, deals with the authority  
8 of bail commissioners and most of the language in the  
9 bill is taken directly from existing law found in  
10 Title 14 governing bail commissioners. Two points  
11 concerning the bill regarding bail commissioners  
12 should be emphasized. The \$17 fee payable to bail  
13 commissioners would be paid by the Judicial Department  
14 from funds appropriated for that purpose. At the  
15 present time, the defendant pays a bail commissioner's  
16 fee. The Governor's Commission on Bail recommended 4  
17 years ago that this practice be stopped because it is  
18 fundamentally unfair and inappropriate for a defendant  
19 to be paying a fee to the official who is setting bail  
20 for the defendant's release. The 2nd change that the  
21 bill would accomplish is to require bail commissioners  
22 to complete a bail training program as established by  
23 the Chief Judge of the District Court. Bail  
24 commissioners perform an important function for the  
25 State, but they have not been required to undergo any  
26 formal training to perform the important function of  
27 deciding when and under what circumstances a defendant  
28 charged with a crime is released on bail. The  
29 mandatory training requirement was also a  
30 recommendation of the Governor's Commission on Bail,  
31 but has never been acted upon.

32 Title 15, sections 1024 and 1025, deal with the  
33 limited authority of clerks of court and law  
34 enforcement officers to release a defendant on  
35 personal recognizance for appearance for a Class D or  
36 Class E crime. These sections essentially recodify  
37 existing law.

38 Title 15, sections 1026 and 1027, are the 2 major  
39 sections of this bill which deal with the standards  
40 for preconviction release of defendants.

41 Title 15, section 1026, continues the principles



1 of law as presently embodied in Title 15, section  
2 942. Specifically, a defendant is to be released on  
3 personal recognizance or upon execution of an  
4 unsecured appearance bond unless the judicial officer  
5 determines that the release will not reasonably assure  
6 the appearance of the defendant as required or will  
7 not otherwise reasonably ensure the integrity of the  
8 judicial process. In that case, the judicial officer  
9 shall order the release of the defendant subject to  
10 the conditions or combination of conditions that will  
11 reasonably assure the defendant's appearance and  
12 otherwise reasonably ensure the integrity of the  
13 judicial process. Title 15, section 1026, also states  
14 that the judicial officer may not impose a financial  
15 condition which the defendant cannot meet. The  
16 purpose of this provision is to emphasize that a  
17 defendant should not be incarcerated before trial  
18 because of the defendant's financial condition. This  
19 provision is designed to focus the attention of  
20 judicial officers upon the importance of setting  
21 conditions that will reasonably assure the appearance  
22 of the defendant as required. A requirement of  
23 sureties is specifically stated not to be a financial  
24 condition.

25 Title 15, section 1026, also embodies a provision  
26 that allows the court to modify bail upon a showing of  
27 changed circumstances or upon a showing of new and  
28 significant information.

29 Title 15, section 1027, sets forth the standards  
30 for release for those crimes which at one time since  
31 the adoption of the Constitution of Maine were capital  
32 offenses. Title 15, section 1027, only comes into  
33 play if the attorney for the State moves for a bail  
34 hearing as discussed in Harnish v. State, 531 A.2d  
35 1264 (Me. 1987). If the attorney for the State does  
36 not request a Harnish bail proceeding, a defendant  
37 charged with a formerly capital offense is treated  
38 under section 1026. In the event that the attorney  
39 for the State does move for a Harnish bail proceeding,  
40 the court must hear evidence to determine whether  
41 there is probable cause to believe that the defendant  
42 has committed a formerly capital offense. If probable  
43 cause exists, the conditional constitutional right to

1 bail is extinguished as stated in Fredette v. State,  
2 428 A.2d 395 (Me. 1981). At that point, the court  
3 must then determine whether the setting of bail is  
4 appropriate as a matter of discretion. Title 15,  
5 section 1027, subsection 3, provides that the court  
6 may set discretionary bail unless it finds that there  
7 is probable cause to believe that the defendant poses  
8 a substantial risk of not appearing or will otherwise  
9 pose a substantial risk to the integrity of the  
10 judicial process or that the defendant poses a  
11 substantial risk of danger to another person or to the  
12 community. If the court makes those findings, it has  
13 no discretion to set bail. Short of those findings,  
14 the court may set bail for a capital defendant  
15 utilizing the factors listed in Title 15, section  
16 1026, and any prior history of dangerousness.

17 Title 15, section 1028, provides for a de novo  
18 determination of bail. This is essentially the same  
19 procedure that is presently utilized pursuant to Title  
20 15, section 942.

21 Title 15, section 1029, provides for a review  
22 mechanism for those defendants who are in custody  
23 following a Harnish bail proceeding under section 1027.

24 Title 15, sections 1030 and 1031, are  
25 recodifications of existing provisions of law found in  
26 Title 15, sections 808, 813 and 814.

27 Title 15, chapter 105-A, subchapter III, deals  
28 exclusively with the subject of post-conviction bail  
29 and Title 15, section 1051, is virtually identical to  
30 existing law on the subject.

31 Title 15, chapter 105-A, subchapter IV, deals with  
32 matters such as sureties and other forms of bail.  
33 Title 15, section 1071, is virtually identical to  
34 Title 15, section 851, which deals with the  
35 requirement of sureties to post a bail lien when they  
36 offer real estate to secure the appearance of a  
37 defendant.

38 Title 15, section 1072, sets forth the  
39 responsibility of sureties when they agree to act as

1 surety for the defendant's preconviction or  
2 post-conviction appearance. Title 15, section 1072,  
3 is essentially a recodification of existing law.

4 Title 15, section 1073, sets forth the authority  
5 of sureties. This section also provides for a  
6 mechanism whereby a surety may terminate the  
7 agreement. It should be noted that Title 15, section  
8 1073, does not expressly authorize a surety physically  
9 to arrest the principal. In some states and pursuant  
10 to the United States Bail Act, a surety may go out and  
11 arrest the principal and physically bring the  
12 defendant to the sheriff or marshal. The bill  
13 essentially makes a policy judgment that sureties  
14 should be discouraged from using self-help and making  
15 arrests in view of the fact that that conduct may  
16 generate additional violence. Title 15, section 1073,  
17 establishes a procedure whereby the surety can  
18 terminate the agreement and seek the assistance of the  
19 court and the sheriff to issue a warrant for the  
20 arrest of the defendant for failure to furnish bail.

21 Title 15, section 1074, deals comprehensively with  
22 the subject of property belonging to the defendant and  
23 which is posted as bail. It is noteworthy that Title  
24 15, section 1074, subsection 1, states as a matter of  
25 law that cash that is posted as bail shall be deemed  
26 to be the property of the defendant. Real estate  
27 offered by a defendant as bail is subject to the same  
28 lien requirements to which a surety is subject.  
29 Finally, Title 15, section 1074, subsection 3,  
30 specifically authorizes the court to set off all or a  
31 portion of bail that is owned by a defendant and that  
32 has not been otherwise forfeited, to be first paid and  
33 applied to payment of any fine or forfeiture, any  
34 restitution, any attorneys' fees paid by the State and  
35 any surcharge imposed by Title 4, section 1057. The  
36 court is given broad authority to enforce its set-off  
37 orders.

38 Title 15, chapter 105-A, subchapter V, deals with  
39 the subject of enforcement. Title 15, section 1091,  
40 sets forth the penalty for failure to appear. This is  
41 a recodification of the language of Title 15, section  
42 942. It should be noted that just cause for failing

1 to appear is made an affirmative defense.

2 Similarly, Title 15, section 1092, makes it a  
3 Class E crime to violate a condition of release and  
4 also provides that just cause shall act as an  
5 affirmative defense for the alleged violation.

6 Title 15, section 1093, deals with the subject of  
7 revocation of preconviction bail.

8 Title 15, section 1094, is a recodification of  
9 Title 15, section 931, dealing with the subject of  
10 bail forfeiture.

11 Title 15, chapter 105-A, subchapter VI, deals with  
12 miscellaneous matters, including Title 15, section  
13 1102, which provides that when a juvenile is charged  
14 as an adult, the provisions of the Maine Juvenile Code  
15 governing the facilities in which juveniles may be  
16 detained shall apply to juveniles charged as adults  
17 until they reach 18 years of age. The purpose of this  
18 provision is to make sure that juveniles are not  
19 incarcerated in adult facilities even though they may  
20 be charged with adult crimes.

21 Sections 2 to 22 of the bill repeal and amend  
22 numerous provisions of Maine law dealing with bail.

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