

MAINE STATE LEGISLATURE

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(EMERGENCY)
THIRD SPECIAL SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2687

H.P. 1984 House of Representatives, September 13, 1988
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 26.

Received by the Clerk of the House on September 12,
1988. Referred to the Committee on Judiciary and ordered
printed pursuant to Joint Rule 14.

EDWIN H. PERT, Clerk
Presented by Representative PARADIS of Augusta.

Cosponsored by Representative ROTONDI of Athens, Senators
BRANNIGAN of Cumberland and BLACK of Cumberland.

STATE OF MAINE

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

1 AN ACT to Ensure the Integrity of the
2 Judicial Process under the Bail Law.
3

4 Emergency preamble. Whereas, Acts of the
5 Legislature do not become effective until 90 days
6 after adjournment unless enacted as emergencies; and

7 Whereas, changes are necessary to the Maine Bail
8 Code, enacted by Public Law 1987, chapter 758, section
9 20, which need to be enacted as emergencies to

1 accomplish the intent of the Legislature; and

2 Whereas, in the judgment of the Legislature, these
3 facts create an emergency within the meaning of the
4 Constitution of Maine and require the following
5 legislation as immediately necessary for the
6 preservation of the public peace, health and safety;
7 now, therefore,

8 Be it enacted by the People of the State of Maine as
9 follows:

10 **Sec. 1.** 15 MRSA §1002, as enacted by PL 1987,
11 c. 758, §20, is amended to read:

12 §1002. Legislative findings; statement of purpose

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

33 It is the purpose and intent of this chapter that
34 bail be set for a defendant in order to reasonably
35 ensure the appearance of the defendant as required, to
36 otherwise reasonably ensure the integrity of the
37 judicial process and, when applicable, to reasonably
38 ensure the safety of others in the community.
39 Finally, it is also the purpose and intent of this
40 chapter that the judicial officer consider, relative

1 to crimes bailable as of right preconviction, the
2 least restrictive release alternative which will
3 reasonably ensure the attendance of the defendant as
4 required, or otherwise reasonably ensure the integrity
5 of the judicial process.

6 Sec. 2. 15 MRSA §1003, sub-§1, ¶A, as enacted
7 by PL 1987, c. 758, §20, is amended to read:

8 A. In the preconviction context, "bail" means the
9 obtaining of the release of the defendant upon an
10 undertaking that the defendant shall appear at the
11 time and place required and may include
12 conditions, in accordance with section 1026,
13 designed to ensure the integrity of the judicial
14 process. For crimes bailable only as a matter of
15 discretion preconviction, bail may also include
16 conditions designed to ensure the safety of others
17 in the community.

18 Sec. 3. 15 MRSA §1023, sub-§5, as enacted by PL
19 1987, c. 758, §20, is amended to read:

20 5. Fees. A bail commissioner shall receive a fee
21 not to exceed \$17 for the charges pursuant to which
22 the defendant is presently in custody. The bail
23 commissioner shall submit such forms as the Judicial
24 Department shall direct to verify the amount of fees
25 received under this subsection. The sheriff of the
26 county in which the defendant is detained may create a
27 fund for the distribution by the sheriff or the
28 sheriff's designee for the payment in whole or in part
29 of the \$17 bail commissioner fee for those defendants
30 who do not have the financial ability to pay that fee.

31 Sec. 4. 15 MRSA §1026, sub-§1, as enacted by PL
32 1987, c. 758, §20, is amended to read:

33 1. In general. At the initial appearance before
34 a judicial officer of a defendant in custody for a
35 crime bailable as of right preconviction, the judicial
36 officer shall issue an order that, pending trial, the
37 defendant be released:

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

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

5 Every order for the pretrial release of any defendant
6 shall include a waiver of extradition by the defendant
7 as well as a condition of bail that the defendant
8 refrain from criminal conduct.

9 Sec. 5. 15 MRSA §1026, sub-§3, ¶¶A and B, as
10 enacted by PL 1987, c. 758, §20, are amended to read:

11 A. If the judicial officer determines that the
12 release described in subsection 2 will not
13 reasonably ensure the appearance of the defendant
14 as required or will not otherwise reasonably
15 endure the integrity of the judicial process, the
16 judicial officer shall order the pretrial release
17 of the defendant subject to the least restrictive
18 further condition or combination of conditions
19 that the judicial officer determines will
20 reasonably ensure the appearance of the defendant
21 as required and will otherwise reasonably ensure
22 the integrity of the judicial process. These
23 conditions may include that the defendant:

24 (1) Remain in the custody of a designated
25 person or organization agreeing to supervise
26 the defendant, including a public official,
27 public agency or publicly funded
28 organization, if the designated person or
29 organization is able to reasonably ensure
30 both the appearance of the defendant as
31 required and the integrity of the judicial
32 process. When feasible, the judicial officer
33 shall impose the responsibility upon the
34 defendant to produce the designated person or
35 organization. The judicial officer shall
36 interview the designated person or
37 organization to ensure satisfaction of both
38 the willingness and ability required. The
39 designated person or organization shall agree
40 to notify immediately the judicial

- 1 officer of any violation of release by the
2 defendant. A designated person or
3 organization who intentionally or knowingly
4 fails to notify the judicial officer of any
5 violation of the release of the defendant
6 commits a Class E crime;
- 7 (2) Maintain employment or, if unemployed,
8 actively seek employment;
- 9 (3) Maintain or commence an educational
10 program;
- 11 (4) Abide by specified restrictions on
12 personal associations, place of abode or
13 travel;
- 14 (5) Avoid all contact with a victim of the
15 alleged crime, a potential witness regarding
16 the alleged crime or with any other family or
17 household members of the victim or the
18 defendant or to contact those individuals
19 only at certain times or under certain
20 conditions;
- 21 (6) Report on a regular basis to a
22 designated law enforcement agency or other
23 governmental agency;
- 24 (7) Comply with a specified curfew;
- 25 (8) Refrain from possessing a firearm or
26 other dangerous weapon;
- 27 (9) Refrain from use or excessive use of
28 alcohol and from any use of drugs;
- 29 (10) Undergo, as an outpatient, available
30 medical or psychiatric treatment, or enter
31 and remain, as a voluntary patient, in a
32 specified institution when required for that
33 purpose;
- 34 (11) Execute an agreement to forfeit, upon
35 failing to appear as required, such

1 designated property, including money, as is
2 reasonably necessary to ensure the appearance
3 of the defendant as required and post with an
4 appropriate court such evidence of ownership
5 of the property or such percentage of the
6 money as the judicial officer specifies;

7 (12) Execute a bail bond with sureties in
8 such amount as is reasonably necessary to
9 ensure the appearance of the defendant as
10 required;

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

14 ~~(14)~~ Satisfy any other condition that is
15 reasonably necessary to ensure the appearance
16 of the defendant as required and to otherwise
17 reasonably ensure the integrity of the
18 judicial process.

19 (14) Report on a regular basis to the
20 defendant's attorney;

21 (15) Notify the court of any changes of
22 address or employment;

23 (16) Provide to the court the name, address
24 and telephone number of a designated person
25 or organization that will know the
26 defendant's whereabouts at all times;

27 (17) Inform any law enforcement officer of
28 the defendant's condition of release if the
29 defendant is subsequently arrested for new
30 criminal conduct; and

31 (18) Satisfy any other condition that is
32 reasonably necessary to ensure the appearance
33 of the defendant as required and to otherwise
34 reasonably ensure the integrity of the
35 judicial process.

36 B. The judicial officer may not impose a

1 financial condition which the defendant cannot
2 meet, either alone or in combination with other
3 conditions of bail, is in excess of that
4 reasonably necessary to ensure the appearance of
5 the defendant as required or to otherwise ensure
6 the integrity of the judicial process.

7 Sec. 6. 15 MRSA §1026, sub-§5, ¶B, as enacted
8 by PL 1987, c. 758, §20, is amended to read:

9 B. Advise the defendant of:

10 (1) The penalties if the defendant fails to
11 appear as required; and

12 (2) The consequences of violating a
13 condition of release, including the
14 immediate issuance of a warrant for the
15 defendant's arrest the defendant's
16 warrantless arrest pursuant to Title 17-A,
17 section 15.

18 Sec. 7. 15 MRSA §1030, 2nd ¶, as enacted by PL
19 1987, c. 758, §20, is amended to read:

20 An attorney for the State or law enforcement
21 officer familiar with the charges shall be present in
22 District Court at all proceedings governed by Maine
23 District Court Criminal Rules, Rule 5, and Maine Rules
24 of Criminal Procedure, Rule 5, at which bail is being
25 set, except when the offense charged is a Class D or
26 Class E crime.

27 Sec. 8. 15 MRSA §1051, sub-§1, as enacted by PL
28 1987, c. 758, §20, is amended to read:

29 1. Application to presiding judge or justice.
30 Except as provided in this section, after a verdict or
31 finding of guilty, a defendant may apply to the judge
32 or justice who presided at the trial for bail pending
33 imposition or execution of sentence or entry of
34 judgment or appeal. If the trial judge or justice is
35 not available, the defendant may apply for bail under
36 this section to another judge or justice of the court
37 in which the defendant was convicted. Post-conviction

1 bail shall not be available to a defendant convicted
2 of:

3 A. Murder;

4 B. Any other formerly capital offense for which
5 bail was denied preconviction under section 1027;
6 or

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

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

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

20 Every order for post-conviction release of a defendant
21 shall include a waiver of extradition by the defendant
22 as well as a condition of bail that the defendant
23 refrain from criminal conduct.

24 Sec. 9. 15 MRSA §1051, sub-§9, as enacted by PL
25 1987, c. 758, §20, is repealed and the following
26 enacted in its place:

27 9. Violation of condition of release; penalty.
28 Any defendant who has been ordered released under this
29 section and who, in fact, violates a condition of
30 release commits:

31 A. A Class E crime if the release order was
32 granted for a crime punishable by a maximum period
33 of imprisonment of less than one year; or

34 B. A Class C crime if the release order was
35 granted for a crime punishable by a maximum period

1 of imprisonment of one year or more.

2 It is an affirmative defense that the violation
3 resulted from just cause.

4 Sec. 10. 15 MRS §1071, sub-§1, ¶A, as enacted
5 by PL 1987, c. 758, §20, is repealed and the following
6 enacted in its place:

7 A. The written statement shall provide in detail
8 the nature of the surety's ownership, the
9 existence of any other parties who may have an
10 interest in the land, the assessed tax value, the
11 surety's estimate of the fair market value of the
12 land, any mortgages, tax liens, mechanic's liens
13 and any other encumbrances on the land including
14 any prior pledges of the land as surety for any
15 other person.

16 Sec. 11. 15 MRS §1071, sub-§1, ¶C is enacted
17 to read:

18 C. Upon motion to the court and notice to the
19 defendant, the defendant shall produce and the
20 State shall have the right to examine all evidence
21 of ownership, valuation and all encumbrances on
22 the land.

23 Sec. 12. 15 MRS §1072, sub-§3 is enacted to
24 read:

25 3. Penalty. Any person who offers to act as
26 surety for the appearance of any defendant who
27 intentionally or knowingly misrepresents the value of
28 the property or encumbrances or fails to disclose any
29 encumbrances on the property commits a Class C crime.

30 Sec. 13. 15 MRS §1092, as enacted by PL 1987,
31 c. 758, §20, is amended to read:

32 §1092. Violation of condition of release

33 Any person charged with an offense who has been

1 admitted to preconviction bail and who, in fact,
2 violates a condition of release is guilty of a Class E
3 crime; if the offense charged was punishable by a
4 maximum period of imprisonment of less than one year,
5 or is guilty of a Class C crime if the offense charged
6 was punishable by a maximum period of imprisonment of
7 one year or more. It is an affirmative defense that
8 the failure to appear resulted from just cause.

9 Sec. 14. 15 MRSA §1093, sub-§2, as enacted by
10 PL 1987, c. 758, §20, is repealed and the following
11 enacted in its place:

12 2. Arrest. A law enforcement officer may arrest
13 with a warrant or without a warrant pursuant to Title
14 17-A, section 15, any defendant who the law
15 enforcement officer has probable cause to believe has
16 failed to appear as required, has violated a condition
17 of preconviction bail, or has been charged with a
18 crime allegedly committed while released on
19 preconviction bail. Any defendant under arrest shall
20 be brought before the judge or justice who set bail
21 or, if that judge or justice is not available, before
22 another judge or justice of the same court. The judge
23 or justice shall make a determination as to whether or
24 not the setting of bail upon the violation is
25 appropriate pending a revocation proceeding.

26 Sec. 15. 17-A MRSA §15, sub-§1, ¶A, as amended
27 by PL 1987, c. 758, §22, is further amended to read:

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

- 30 (1) Murder;
- 31 (2) Any Class A, Class B or Class C crime;
- 32 (3) Assault while hunting;
- 33 (4) Any offense defined in chapter 45;
- 34 (5) Assault, if the officer reasonably
35 believes that the person may cause injury to
36 others unless immediately arrested;

- 1 (5-A) Assault, criminal threatening,
2 terrorizing or reckless conduct, if the
3 officer reasonably believes that the person
4 and the victim are family or household
5 members, as defined in Title 15, section 321;
- 6 (6) Theft as defined in section 357, when
7 the value of the services is \$1,000 or less,
8 if the officer reasonably believes that the
9 person will not be apprehended unless
10 immediately arrested;
- 11 (7) Forgery, if the officer reasonably
12 believes that the person will not be
13 apprehended unless immediately arrested;
- 14 (8) Negotiating a worthless instrument, if
15 the officer reasonably believes that the
16 person will not be apprehended unless
17 immediately arrested;
- 18 (9) A violation of a condition of his
19 probation when requested by an official of
20 the Division of Probation and Parole; or
- 21 (10) Violation of a condition of release in
22 violation of Title 15, section 1026,
23 subsection 3 and, section 1051, subsection
24 2, section 1051, subsection 9 and section
25 1092; and

26 **Emergency clause.** In view of the emergency
27 cited in the preamble, this Act shall take effect when
28 approved.

1 STATEMENT OF FACT

2 The purpose of this bill is to correct problems
3 that have arisen in the practical application of the
4 newly enacted Maine Bail Code.

5 5851090988