

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

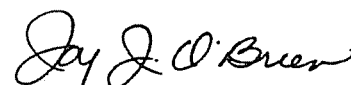
Legislative Document

No. 1137

S.P. 426

In Senate, April 11, 1989

Reference to the Committee on Judiciary suggested and ordered printed.


JOY J. O'BRIEN
Secretary of the Senate

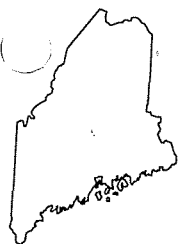
Presented by Senator BRANNIGAN of Cumberland.

Cosponsored by Representative PARADIS of Augusta, Representative STEVENS of Bangor and Representative LAPOINTE of Auburn.

STATE OF MAINE

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

An Act to Amend Certain Provisions of the Maine Bail Code.



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

3 Sec. 1. 15 MRSA §1023, sub-§7, as enacted by PL 1987, c. 758,
5 §20, is amended to read:

7 7. **Mandatory training.** As a condition of appointment and
9 continued service, a bail commissioner must successfully complete
11 a bail training program, as prescribed and scheduled by the Chief
13 Judge of the District Court, not later than one year following
15 appointment. The Maine Criminal Justice Academy shall provide
17 assistance to the Chief Judge of the District Court in
19 establishing an appropriate training program for bail
21 commissioners. The program shall include instruction on the
23 provisions of this chapter, the relevant constitutional
25 provisions on bail and any other matters pertinent to bail that
27 the Chief Judge of the District Court considers appropriate and
29 necessary. The Chief Judge of the District Court may establish a
31 continuing education program for bail commissioners.

33 Sec. 2. 15 MRSA §1026, sub-§6 is enacted to read:

35 6. Initial appearance in court. Nothing contained in this
37 chapter may be construed as limiting the authority of a judge or
39 justice to consider the issue of preconviction bail at a
41 defendant's initial appearance in court.

43 Sec. 3. 15 MRSA §1029, sub-§2, as enacted by PL 1987, c. 758,
45 §20, is amended to read:

47 2. **Standard of review.** With respect to the finding of
49 probable cause to believe that the defendant committed a formerly
51 capital offense, the finding of the lower court shall be upheld,
unless it is clearly erroneous provided there is an adequate
record for purposes of review. With respect to all other issues
or with respect to the issue of probable cause when the record is
inadequate for review, the review shall be de novo. The parties
shall cooperate to expeditiously assemble a record for review.

53 Sec. 4. 15 MRSA §1071, sub-§1, ¶B, as enacted by PL 1987, c.
55 758, §20, is amended to read:

57 B. The certificate shall remain on file with the original
59 papers in the case and a certified copy shall be transmitted
61 by the magistrate judicial officer taking the bail to the
clerk of court before which the defendant is to appear.

63 Sec. 5. 15 MRSA §1072, sub-§1, as enacted by PL 1987, c. 758,
65 §20, is amended to read:

67 1. **Preconviction.** Each surety for a defendant admitted to
69 preconviction bail is responsible for the appearance of the
71 defendant at all times until a verdict or finding or plea of

1 guilty, unless the surety has sooner terminated the agreement to
2 act as surety and has been relieved of the responsibility in
3 accordance with section 1073.

5 In no case may a preconviction surety be responsible for the
6 appearance of a defendant after conviction, unless the surety has
7 agreed anew to act as postconviction surety ~~following-conviction~~.

9 **Sec. 6. 15 MRSA §1093, sub-§2, as repealed and replaced by PL**
10 **1987, c. 870, §10, is amended to read:**

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

27

29 STATEMENT OF FACT

31 This bill makes minor modifications to the Maine Bail Code.

33 Section 1 of the bill clarifies that the mandatory training
34 of bail commissioners need not be completed prior to appointment,
35 but that the training must be completed within one year of
36 appointment.

37

38 Section 2 of the bill creates a new subsection of the Maine
39 Revised Statutes, Title 15, section 1026, and clarifies that a
40 judge or justice may consider the issue of preconviction bail at
41 the defendant's initial appearance in court. This does not
42 change existing law. There has been some suggestion that the
43 Maine Bail Code, as presently written, precludes a District Court
44 Judge or a Superior Court Justice from considering the issue of
45 bail once it has been set by a bail commissioner unless there are
46 changed circumstances or new evidence. This was never intended
47 in the original bail law and the changes contained in this bill
48 will make that intent clear.

49

50 Section 3 of the bill provides that the standard for review
51 of a Harnish bail proceeding on the issue of probable cause, when
there is an adequate record, is the "clearly erroneous"

1 standard. In cases when the record is inadequate for review, a
2 "de novo" standard will be used. The parties are required to
3 cooperate in promptly assembling the record.

5 Section 4 of the bill eliminates the word "magistrate" in
6 Title 15, section 1071, subsection 1, paragraph B, and replaces
7 it with the phrase "judicial officer." This corrects an
8 oversight in the original legislation.

9 Section 5 of the bill eliminates the words "anew" and
10 "following conviction" from Title 15, section 1072, subsection
11 1. Under current law, a preconviction surety may not be held
12 responsible for the appearance of a defendant after conviction
13 unless the surety has agreed to act as postconviction surety.
14 This bill eliminates the requirement that such agreement occur
15 after conviction. The surety may agree at any time to be
16 responsible for the postconviction appearance of the defendant,
17 including any appeal.

19 Section 6 of the bill makes it clear that if a defendant has
20 been released on preconviction bail and has been arrested for
21 failure to appear, for violating a condition of the bail or for a
22 new crime committed while released on preconviction bail, a bail
23 commissioner is without the authority to set new bail on the
24 underlying violation, but may set bail for the defendant only
25 with respect to new crimes with which the defendant has been
26 charged. Whether or not bail should be set pending the bail
27 revocation proceeding must be determined by a judge or justice.
28 This change simply clarifies existing law.