

MAINE STATE LEGISLATURE

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R. of S.

L.D. 1184

(Filing No. S- 237)

STATE OF MAINE
SENATE
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 440, L.D. 1184, Bill, "An Act to Amend Certain Provisions of the Maine Bail Code"

Amend the bill in section 2 in subsection 7-A in paragraph A by striking out the last sentence (page 1, lines 24 to 26 in L.D.) and inserting in its place the following: 'The judge or justice shall determine whether the existing post-conviction bail order should be modified or the defendant should be committed without bail pending the bail revocation hearing.'

Further amend the bill by striking out all of section 3 and inserting in its place the following:

'Sec. 3. 15 MRSA §1093, sub-§2, as amended by PL 1989, c. 147, §6, is further amended to read:

2. Arrest. A law enforcement officer may arrest with a warrant or without a warrant pursuant to Title 17-A, section 15, any defendant who the law enforcement officer has probable cause to believe has failed to appear as required, has violated a condition of preconviction bail or has been charged with a crime allegedly committed while released on preconviction bail. If the defendant is charged with new criminal conduct, a bail commissioner is authorized only to set bail for the new crimes in accordance with this chapter. A defendant under arrest pursuant to this subsection shall must be brought before any judge or justice of the appropriate court. ~~The judge or justice shall make a determination as to whether or not the setting of bail upon the violation is appropriate pending the bail revocation proceeding~~ determine whether the existing preconviction bail order should be modified or the defendant should be committed without bail pending the bail revocation hearing.

Sec. 4. 15 MRSA §1094, as enacted by PL 1987, c. 758, §20, is repealed and the following enacted in its place:

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§1094. Forfeiture of bail; enforcement

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When a defendant who has been admitted to either preconviction or post-conviction bail in a criminal case fails to appear as required, the court shall declare a forfeiture of the bail. The obligation of the defendant and any sureties may be enforced in such manner as the Supreme Judicial Court shall by rule provide and in accordance with section 224-A. The rules adopted by the Supreme Judicial Court must provide for notice to the defendant and any sureties of the consequences of failure to comply with the conditions of bail.

If the obligation of the defendant or any surety has been reduced to judgment pursuant to the Maine Rules of Criminal Procedure, Rule 46, the following provisions apply to the enforcement of the obligation.

1. Execution. The court shall issue an execution of the judgment once the judgment has become final by the expiration of the time for appeal, by dismissal of an appeal or on certificate of decision from the Supreme Judicial Court, unless the court that rendered judgment on the bail obligation has pursuant to rule ordered execution at an earlier time. The execution of the judgment is returnable within one year after issuance.

2. Lien on real estate, personal property and motor vehicles. An execution issued under this section creates the lien described in Title 14, section 4651-A, if properly filed according to that section. A filing or recording fee may not be charged for any execution issued under this section.

3. Relation back of liens. The effective date of any execution lien created on any property pursuant to this section and Title 14, section 4651-A relates back to the date when a bail lien, as described in section 1071, was first filed or recorded in the proper place for the perfection or attachment of the lien. The relation back applies only to that portion of the bail obligation that the bail lien secured when it was recorded or filed. The remainder of the execution lien and the full amount of any execution lien created when no bail lien was ever recorded or filed, is effective and perfected from the date of the recording or filing of the execution. Any lien created pursuant to this section and Title 14, section 4651-A continues as long as the judgment issued on the bail obligation or any part of the bail obligation, plus costs and interest, has not been paid, discharged or released.

4. Enforcement. The lien provided by this section may be enforced by a turnover or sale order pursuant to Title 14, section 3131.

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2 5. Application. This section applies to all bail
3 obligations in effect on or after October 1, 1991 and all bail
4 liens recorded as of or after October 1, 1991.'

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8 **STATEMENT OF FACT**

10 The amendment revises language to make provisions governing
11 preconviction bail consistent with post-conviction bail. The
12 change addresses the role of the court when a defendant fails to
13 appear as required, violates a condition of bail or is charged
14 with new criminal conduct.

16 The amendment also establishes procedures for the
17 enforcement of forfeiture of bail through execution of the
18 judgment and liens on real property, personal property and motor
19 vehicles. These enforcement provisions apply to all bail
20 obligations in effect on or after October 1, 1991 and all bail
liens recorded as of or after October 1, 1991.

Reported by Senator Gauvreau for the Committee on
Judiciary. Reproduced and Distributed Pursuant to
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(5/29/91)

(S-237)