

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1184

S.P. 440

In Senate, March 21, 1991

Submitted by the Department of the Attorney General pursuant to Joint Rule 24.  
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator MILLS of Oxford

Cosponsored by Representative GWADOSKY of Fairfield, Representative PARADIS of  
Augusta and Representative MAYO of Thomaston.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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

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

2           Sec. 1. 15 MRSA §1051, sub-§7, as enacted by PL 1987, c. 758,  
4 §20, is repealed.

6           Sec. 2. 15 MRSA §1051, sub-§7-A is enacted to read:

8           7-A. Revocation of post-conviction bail. The attorney for  
10 the State, or the court on its own motion, may initiate a  
12 proceeding for the revocation of a defendant's post-conviction  
14 bail by complying with this subsection.

16           A. A law enforcement officer may arrest with a warrant or  
18 without a warrant pursuant to Title 17-A, section 15 any  
20 defendant who the law enforcement officer has probable cause  
22 to believe has failed to appear as required, violated a  
24 condition of post-conviction bail or been charged with a  
26 crime allegedly committed while released on post-conviction  
28 bail. If the defendant is charged with new criminal  
30 conduct, a bail commissioner is authorized only to set bail  
32 for the new crimes in accordance with this chapter. A  
34 defendant under arrest pursuant to this subsection must be  
36 brought before a judge or justice of the appropriate court.  
38 The judge or justice shall determine whether the setting of  
40 bail upon the violation is appropriate pending the bail  
42 revocation proceeding.

44           B. An order of post-conviction bail entered by a judge or  
46 justice may be revoked by that judge or justice or, if that  
48 judge or justice is not available, by another judge or  
50 justice of the same court, upon a determination made after  
52 notice and opportunity for hearing that:

(1) The defendant has violated a condition of bail as  
          shown by a preponderance of the evidence;

(2) The defendant has been charged with a crime  
          allegedly committed while the defendant was released  
          under this section; or

(3) The defendant's appeal has been taken for purposes  
          of delay as shown by a preponderance of the evidence.

C. If bail is revoked, the defendant may appeal to a single  
          Justice of the Supreme Judicial Court who shall review the  
          revocation pursuant to subsection 5.

          Sec. 3. 15 MRSA §1094, as enacted by PL 1987, c. 758, §20, is  
amended to read:

**§1094. Forfeiture of bail; enforcement**

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

10  
12 **STATEMENT OF FACT**

14 This bill rewrites part of the law on revocation of  
post-conviction bail to more closely parallel the law on  
revocation of preconviction bail. A substantive change also has  
16 been made with the addition of a provision expressly authorizing  
arrest in the post-conviction bail context. In the preconviction  
18 bail context, such an arrest provision already exists.

20 This bill also modifies the law on forfeiture of bail to  
eliminate a potential conflict between the Maine Revised  
22 Statutes, Title 15, section 1094 and a proposed change to the  
Maine Rules of Criminal Procedure, Rule 46(e). Under the Maine  
24 Rules of Criminal Procedure, Rule 46(e), as presently written,  
the State must file a motion to reduce the declaration of  
26 forfeiture to a judgment of default necessitating notice and  
hearing. Title 15, section 1094 assumes the existence of this  
28 procedure in its substance at present. The proposed amendment to  
the Maine Rules of Criminal Procedure, Rule 46(e) would require  
30 notice of the declaration of forfeiture to the obligors and  
thereafter require them to file a motion to set aside the  
32 forfeiture in order to prevent the entry of judgment, a process  
similar to that reflected in the Maine Rules of Civil Procedure,  
34 Rule 55, relative to a civil default. Even if the Supreme  
Judicial Court were to reject the present proposed change to the  
36 Maine Rules of Criminal Procedure, Rule 46(e), the modification  
to Title 15, section 1094 should be made since the language is  
38 unnecessary and the procedure is fully covered by rule.