

# MAINE STATE LEGISLATURE

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R.S.

L.D. 1411

DATE: 6/14/95

(Filing No. H-483 )

CRIMINAL JUSTICE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1000, L.D. 1411, Bill, "An Act to Amend the Maine Bail Code"

Amend the bill by inserting after section 2 the following:

'Sec. 3. 15 MRSA §1023, sub-§2, as amended by PL 1993, c. 675, Pt. B, §12, is further amended to read:

2. Appointment. The Chief Judge of the District Court may appoint one or more residents of each-district the State as bail commissioners. A bail commissioner serves at the pleasure of the Chief Judge of the District Court, but no term for which a bail commissioner is appointed may exceed 5 years. The Chief Judge of the District Court shall require bail commissioners to complete the necessary training requirements set out in this section. Bail commissioners have the powers of notaries public to administer oaths or affirmations in carrying out their duties.'

Further amend the bill in section 7 in subsection 1 in paragraph C in the last line (page 3, line 38 in L.D.) by striking out the following: "section 1093 1095" and inserting in its place the following: 'section-1093 sections 1096 and 1097'

Further amend the bill by inserting after section 12 the following:

'Sec. 13. 15 MRSA §1073, as enacted by PL 1987, c. 758, §20, is amended to read:

§1073. Termination of surety or cash bail agreement

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 1000, L.D. 1411

2 Any A person who has agreed either to act as surety or to  
3 deposit cash bail for a defendant who has been admitted to  
4 preconviction bail may terminate the agreement by appearing  
5 before the clerk of the court having jurisdiction over the  
6 offense with which the defendant is charged and executing a  
7 statement under oath terminating the surety agreement. The  
8 statement shall must include a certification by the surety person  
9 that the surety person has notified the defendant or the  
10 defendant's attorney of the surety's person's intention to  
11 terminate the surety agreement. A person may not terminate a  
12 cash bail agreement unless the person has been designated as the  
owner of all of the cash as required by section 1074.

14 Upon execution of the statement terminating the surety  
15 agreement, the clerk shall bring the matter to the attention of a  
16 judge or justice of the court who, unless new and sufficient  
17 sureties have appeared or new and sufficient cash has been  
18 deposited, shall order the defendant committed for failure to  
19 furnish bail and shall issue a warrant for the defendant's arrest.

20 The judge or justice may absolve the surety person of  
21 responsibility to pay all or part of the bond, ~~provided~~ or may  
22 order the return of cash bail, except that ~~no~~ surety a person may  
23 not be absolved of the responsibility to pay all or part of the  
24 bond, or receive any cash deposited as bail, if, prior to  
25 terminating the surety agreement, the defendant has failed to  
26 appear as required. Nothing in this section may be construed to  
27 relieve or release a surety person of the responsibility for the  
28 appearance of the defendant, notwithstanding the termination of  
29 the surety agreement, until the defendant is in the custody of  
30 the sheriff of the county in which the case is pending, new or  
31 substitute sureties have appeared, new cash bail has been  
32 deposited or the defendant has otherwise been admitted to bail.

34 A person who has agreed either to act as surety or to  
35 deposit cash bail for a defendant who has been admitted to  
36 post-conviction bail may terminate the surety agreement by  
37 following the procedure set forth in this section.'

40 Further amend the bill by striking out all of section 17 and  
41 inserting in its place the following:

42 'Sec. 17. 15 MRSA c. 105-A, sub-c. V, art. 2 and 3 are enacted to  
43 read:

46 ARTICLE 2

48 REVOCATION OF PRECONVICTION BAIL

50 §1095. Proceedings for revocation of preconviction bail

R. of S.

2            1. In general. The attorney for the State, or the court on  
 4            its own motion, may move for the revocation of a defendant's  
 6            preconviction bail based upon probable cause to believe that the  
 8            defendant has failed to appear as required, has violated a  
 10           condition of preconviction bail or has been charged with a crime  
 12           allegedly committed while released on preconviction bail. The  
 14           motion must set forth the essential facts underlying the alleged  
 16           violation. If the defendant has not already been arrested  
 18           pursuant to subsection 2, the clerk of the court shall issue,  
 20           upon the request of the attorney for the State or by direction of  
the court, a warrant for the defendant's arrest or, in lieu of a  
warrant if so directed, a summons ordering the defendant to  
appear for a court hearing on the alleged violation. The summons  
must include the signature of the attorney for the State or the  
court, the time and place of the alleged violation and the time,  
place and date the person is to appear in court. If the  
defendant can not be located with due diligence, a hearing on the  
motion for revocation must be heard in the defendant's absence.

22           2. Arrest. A law enforcement officer may arrest with a  
 24           warrant, or without a warrant pursuant to Title 17-A, section 15,  
 26           any defendant who the law enforcement officer has probable cause  
 28           to believe has failed to appear as required, has violated a  
 30           condition of preconviction bail or has been charged with a crime  
 32           allegedly committed while released on preconviction bail. If the  
 34           defendant is charged with new criminal conduct, a bail  
 36           commissioner is authorized only to set bail for the new crimes in  
 38           accordance with this chapter. A defendant under arrest pursuant  
to subsection 1 or this subsection must be brought before any  
judge or justice of the appropriate court. The judge or justice  
shall determine without hearing whether the existing  
preconviction bail order should be modified or whether the  
defendant should be committed without bail pending the bail  
revocation hearing. A copy of the motion for revocation must be  
furnished to the defendant prior to the hearing on the alleged  
violation, unless the hearing must be conducted in the absence of  
the defendant.

40           **§1096. Grounds for revocation of preconviction bail**

42           An order of preconviction bail entered by a judge or justice  
 44           may be revoked by the judge or justice or, if that judge or  
 46           justice is not available, by another judge or justice of the same  
court, upon a determination made after notice and opportunity for  
hearing that:

48           1. Probable cause. Probable cause exists to believe that  
 50           the defendant has committed a new crime following the setting of  
preconviction bail; or

R.d.S.

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2. Clear and convincing evidence. Clear and convincing evidence exists that the defendant has failed to appear as required or has violated any other condition of the preconviction bail.

§1097. Disposition after revocation of preconviction bail

1. Setting of new bail. If, after considering the factors in subsection 2, the judge or justice finds that there are conditions of release that will reasonably ensure the defendant's appearance when required and will otherwise reasonably ensure the integrity of the judicial process, the judge or justice shall issue an order under section 1026.

2. Denial of bail. In deciding whether to hold the defendant without bail, the judge or justice shall consider whether there are conditions of release that reasonably ensure the defendant's appearance when required and otherwise reasonably ensure the integrity of the judicial process. In this weighing process, the commission of a new crime, in the event that it is not found to otherwise increase the risk posed by the defendant to the integrity of the judicial process, must be treated by the judge or justice as increasing the risk that the defendant will fail to appear when required. The judge or justice shall also consider whether there is an unreasonable risk that the defendant may fail to comply with any condition of release.

3. Appeal. A defendant in custody as a result of an order issued under this section by the District Court may appeal to the Superior Court and a defendant in custody as a result of an order issued under this section by the Superior Court may appeal to a single Justice of the Supreme Judicial Court. The appeal must be in accordance with the procedures set forth in section 1028, as far as applicable, except that the review is limited to a review of the record to determine whether the order was rationally supported by the evidence.

4. No new bail consideration when bail has been revoked and denied in District Court. When a District Court judge has, after revocation, ordered the defendant held without bail, the defendant is not entitled to have bail set when charges are brought by indictment for the same underlying conduct. If the defendant has not previously appealed the District Court bail revocation, the Superior Court may, upon request of the defendant, entertain the appeal at the defendant's arraignment.

ARTICLE 3

REVOCATION OF POST-CONVICTION BAIL

R of S.

2 **§1098. Proceedings for revocation of post-conviction bail**

4 1. In general. The attorney for the State, or the court on  
6 its own motion, may move for the revocation of a defendant's  
8 post-conviction bail based upon probable cause to believe that  
10 the defendant has failed to appear as required, has violated a  
12 condition of post-conviction bail or has been charged with a  
14 crime allegedly committed while released on post-conviction  
16 bail. The motion must set forth the essential facts underlying  
18 the alleged violation. If the defendant has not already been  
20 arrested pursuant to subsection 2, the clerk of the court shall  
22 issue, upon the request of the attorney for the State or by the  
direction of the court, a warrant for the defendant's arrest or,  
in lieu of a warrant if so directed, a summons ordering the  
defendant to appear for a court hearing on the alleged  
violation. The summons must include the signature of the  
attorney for the State or the court, the time and place of the  
alleged violation and the time, place and date the person is to  
appear in court. If the defendant can not be located with due  
diligence, a hearing on the motion for revocation must be heard  
in the defendant's absence.

24 2. Arrest. A law enforcement officer may arrest with a  
26 warrant, or without a warrant pursuant to Title 17-A, section 15,  
28 any defendant who the law enforcement officer has probable cause  
30 to believe has failed to appear as required, violated a condition  
32 of post-conviction bail or been charged with a crime allegedly  
34 committed while released on post-conviction bail. If the  
36 defendant is charged with new criminal conduct, a bail  
38 commissioner is authorized only to set bail for the new crimes in  
40 accordance with this chapter. A defendant under arrest pursuant  
to this subsection must be brought before a judge or justice of  
the appropriate court. The judge or justice shall determine  
without hearing whether the existing post-conviction bail order  
should be modified or the defendant should be committed without  
bail pending the bail revocation hearing. A copy of the motion  
for revocation must be furnished to the defendant prior to the  
hearing on the alleged violation, unless the hearing must be  
conducted in the absence of the defendant.

42 **§1099. Grounds for revocation of post-conviction bail**

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

R.S.

1. Crime charged. The defendant has in fact been charged with a crime allegedly committed after post-conviction bail was set;

2. Failure to appear. The defendant has failed to appear as required or has violated a condition of post-conviction bail as demonstrated by a preponderance of the evidence; or

3. Appeal for purposes of delay. The defendant's appeal has been taken for the purpose of delay as demonstrated by a preponderance of the evidence.

**§1099-A. Disposition after revocation of post-conviction bail**

1. Held without bail. The judge or justice shall order the defendant held without bail unless the judge or justice finds that under the facts of the case it would be unreasonable to do so, in which event the judge or justice shall issue an order under section 1051.

2. Appeal. A defendant in custody as a result of an order issued under this section may appeal to a single Justice of the Supreme Judicial Court who shall review the revocation pursuant to the procedures set forth in section 1051, subsection 5.'

Further amend the bill in section 18 in paragraph A in subparagraph (10) in the 2nd line (page 9, line 28 in L.D.) by inserting after the following: "subsection 3;" the following: 'Title 15, section 1027, subsection 3;'

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

**STATEMENT OF FACT**

This amendment makes the following changes to the bill:

1. Changes the residency requirement for bail commissioners to require them to be Maine residents instead of residents of the specific district;

2. Amends current law to allow a person who has agreed to either act as surety or to deposit cash bail for a defendant to terminate the bail agreement if new and sufficient cash has been deposited;

R. d. S.  
COMMITTEE AMENDMENT "A" to H.P. 1000, L.D. 1411

2 3. Clarifies the language of the bill that proposed  
additions and changes to the procedures for revocation of  
preconviction and post-conviction bail;

4  
6 4. Outlines revocation of preconviction bail in the Maine  
Revised Statutes, Title 15, sections 1095, 1096 and 1097.  
8 Section 1095 includes new procedures for initiating revocation of  
preconviction bail. Section 1096 outlines the grounds for  
10 revocation. Section 1097 gives new guidance to a court following  
a revocation in deciding whether bail should be denied or set  
12 again. The amendment makes it easier for a court to deny bail  
following revocation. Section 1097 also outlines the right of  
14 appeal by the defendant and clarifies that once preconviction  
bail is revoked in District Court, a defendant's indictment for  
16 the same conduct does not create a new right to have bail set in  
Superior Court; and

18 5. Creates the Maine Revised Statutes, Title 15, chapter  
20 105-A, subchapter V, article 3, sections 1098, 1099 and 1099-A  
for revocation of post-conviction bail, which parallels the  
22 process for preconviction bail.