

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1411

H.P. 1000

House of Representatives, April 25, 1995

An Act to Amend the Maine Bail Code.

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

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative WHEELER of Bridgewater.
Cosponsored by Senator MICHAUD of Penobscot.

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

2 **Sec. 1. 15 MRSA §1003, sub-§5-A** is enacted to read:

4 **5-A. Failure to appear.** "Failure to appear" includes a
6 failure to appear at the time or place required by a release
8 order and the failure to surrender into custody at the time and
10 place required by a release order or by the Maine Rules of
12 Criminal Procedure, Rule 38(c).

14 **Sec. 2. 15 MRSA §1003, sub-§§9 and 10**, as enacted by PL 1987,
16 c. 758, §20, are amended to read:

18 **9. Post-conviction.** "Post-conviction" means any point in a
20 criminal proceeding after a verdict or finding of guilty or after
22 the acceptance of a plea of guilty or nolo contendere.

24 **10. Preconviction.** "Preconviction" means any point in a
26 criminal proceeding before a verdict in the context of a jury
28 trial or finding of guilty in the context of a jury-waived trial
30 or plea before the acceptance of a plea of guilty or nolo
32 contendere.

34 **Sec. 3. 15 MRSA §1025**, as repealed and replaced by PL 1991,
36 c. 824, Pt. A, §23, is amended to read:

38 **§1025. Law enforcement officers**

40 A law enforcement officer making a warrantless arrest under
42 Title 17-A, section 15 may, without fee, take the personal
44 recognizance of any defendant for appearance on a charge of a
46 Class D or Class E crime. If authorized, a law enforcement
48 officer may, without fee, take the personal recognizance with
deposit in accordance with Title 12, section 675; Title 12,
section 7053, subsection 2, paragraph C; and Title 12, section
9707. The law enforcement officer's authority under this section
continues as long as the arrestee remains in the officer's
custody.

Sec. 4. 15 MRSA §1026, sub-§7 is enacted to read:

7. Applicability of conditions of release. A condition of
release takes effect and is fully enforceable as of the time the
judicial officer sets the condition, unless the bail order
expressly excludes it from immediate applicability.

Sec. 5. 15 MRSA §1027, sub-§§2 and 3, as enacted by PL 1987, c.
758, §20, are amended to read:

2 **2. Harnish bail proceeding.** A Harnish bail proceeding
3 shall must be held within 5 court days of the State's request
4 unless the court, for good cause shown and at the request of
5 either the defendant or the attorney for the State, grants a
6 continuance. Evidence presented at a Harnish bail proceeding may
7 include testimony, affidavits and other reliable hearsay evidence
8 as permitted by the court. If, after the hearing, the court
9 finds probable cause to believe that the defendant has committed
10 a formerly capital offense, it shall issue an order under
11 subsection 3. If, after the hearing, the court does not find
12 probable cause to believe that the defendant's alleged criminal
13 conduct was formerly a capital offense, it shall issue an order
14 under section 1026 and may amend its bail order as provided under
section 1026, subsection 3, paragraph C.

16 **3. When conditional right has been extinguished at Harnish**
17 **bail proceeding.** The court's finding that probable cause exists
18 to believe that the defendant committed a formerly capital
19 offense extinguishes the defendant's right to have bail set. The
20 court shall make a determination as to whether or not the setting
21 of bail is appropriate as a matter of discretion. The court may
22 set bail unless the State establishes by clear and convincing
23 evidence that:

- 24 A. There is a substantial risk that the capital defendant
25 will not appear as required or will otherwise pose a
26 substantial risk to the integrity of the judicial process; or
27
28 B. There is a substantial risk that the capital defendant
29 will pose a danger to another or to the community.
30

32 In exercising its discretion, the court shall consider the
33 factors listed in section 1026 and any prior history of
34 dangerousness. ~~The court may amend any bail order as provided~~
35 ~~under section 1026, subsection 3, paragraph C.~~ If the court has
36 issued a bail order on the basis of its discretionary authority
37 to set bail in a case involving a formerly capital offense, the
38 court having jurisdiction of the case may modify or deny bail at
39 any time upon motion by the attorney for the State or the
40 defendant or upon its own initiative and upon a showing of
41 changed circumstances or the discovery of new and significant
42 information.

44 **Sec. 6. 15 MRSA §1030**, as amended by PL 1987, c. 870, §5, is
45 further amended to read:

46 **§1030. State's attorney present at certain proceedings;**
47 **opportunity to present relevant information**
48

2 Before making a determination as to whether or not to set
3 bail for a defendant charged with murder or a Class A, Class B or
4 Class C crime and before any bail order is reviewed under section
5 1028 or 1029, the judicial officer shall afford the attorney for
6 the State or a law enforcement officer familiar with the charges
7 the opportunity to present any information relevant to bail
8 considerations. This opportunity ~~shall be~~ is in addition to the
9 availability of a Harnish bail proceeding as otherwise provided
10 in this chapter.

11 An attorney for the State or a law enforcement officer
12 familiar with the charges shall must be present in District Court
13 at all proceedings governed by ~~Maine--District--Court--Criminal~~
14 ~~Rules--Rule-5--and the~~ Maine Rules of Criminal Procedure, Rule 5,
15 at which bail is being set, ~~except when the offense charged is a~~
16 ~~Class-D-or-Class-E-crime.~~

17 **Sec. 7. 15 MRSA §1051, sub-§1**, as amended by PL 1987, c. 870,
18 §6, is further amended to read:

19 **1. Application to presiding judge or justice.** ~~Except After~~
20 ~~post-conviction, except~~ as provided in this section, ~~after--a~~
21 ~~verdict-or-finding-of-guilty~~, a defendant may apply to the judge
22 or justice who presided at the trial for bail pending imposition
23 or execution of sentence or entry of judgment or appeal. If the
24 trial judge or justice is not available, the defendant may apply
25 for bail under this section to another judge or justice of the
26 court in which the defendant was convicted. ~~Post-conviction bail~~
27 ~~shall is~~ not be available to a defendant convicted of:

28 A. Murder;

29 B. Any other formerly capital offense for which
30 preconviction bail was denied ~~preconviction~~ under section
31 1027; or

32 C. Any crime when the defendant's preconviction bail was
33 revoked and denied under section ~~1093~~ 1095.

34 The judge or justice shall hold a hearing on the record on the
35 bail application and shall state in writing or on the record the
36 reasons for denying or granting bail. If bail is granted, the
37 judge or justice shall also state, in writing or on the record,
38 the reasons for the kind and amount of bail set, for any
39 condition of release imposed and for the omission of any
40 condition of release sought by the State.

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

2 Every order for post-conviction release of a defendant shall must
include a waiver of extradition by the defendant as well as a
4 condition of bail that the defendant refrain from criminal
conduct.

6 **Sec. 8. 15 MRSA §1051, sub-§3**, as enacted by PL 1987, c. 758,
§20, is amended to read:

8
10 **3. Conditions of release.** Except as provided in subsection
4, the judge or justice may impose, in lieu of or in addition to
an appearance or bail bond, any condition considered reasonably
12 necessary to minimize the risk ~~of flight or danger~~ that the
14 defendant may fail to appear as required, may compromise the
integrity of the judicial process or may constitute a danger to
another person or the community.

16
18 **Sec. 9. 15 MRSA §1051, sub-§7-A**, as enacted by PL 1991, c.
393, §2, is repealed.

20 **Sec. 10. 15 MRSA §1051, sub-§8**, as enacted by PL 1987, c. 758,
§20, is repealed.

22
24 **Sec. 11. 15 MRSA §1051, sub-§9**, as repealed and replaced by PL
1987, c. 870, §7, is repealed.

26 **Sec. 12. 15 MRSA §1072, sub-§1**, as amended by PL 1989, c. 147,
§5, is further amended to read:

28
30 **1. Preconviction.** Each surety for a defendant admitted to
preconviction bail is responsible for the appearance of the
defendant at all times until a verdict or finding or plea of
32 guilty or until the acceptance of a plea of guilty or nolo
contendere, unless the surety has sooner terminated the agreement
34 to act as surety and has been relieved of the responsibility in
accordance with section 1073.

36
38 ~~In no case may a~~ A preconviction surety ~~be~~ is not responsible for
the appearance of a defendant after conviction, unless the surety
has agreed to act as postconviction surety.

40
42 **Sec. 13. 15 MRSA c. 105-A, sub-c. V** is amended by repealing the
chapter headnote and enacting the following in its place:

44 **SUBCHAPTER V**

46 **ENFORCEMENT**

48 **ARTICLE 1**

50 **GENERAL PROVISIONS**

2 violation. If the defendant has not already been arrested
3 pursuant to subsection 2, the clerk of the court shall issue,
4 upon the request of the attorney for the State or by direction of
5 the court, a warrant for the defendant's arrest or, in lieu of a
6 warrant if so directed, a summons ordering the defendant to
7 appear for a court hearing on the alleged violation. The summons
8 must include the signature of the attorney for the State or the
9 court, the time and place of the alleged violation and the time,
10 place and date the person is to appear in court. If the
11 defendant can not be located with due diligence, a hearing on the
12 motion for revocation must be heard in the defendant's absence.

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

31 3. Revocation. An order of preconviction bail entered by a
32 judge or justice may be revoked by that judge or justice or, if
33 that judge or justice is not available, by another judge or
34 justice of the same court, upon a determination made after notice
35 and opportunity for hearing that there is:

36 A. Probable cause to believe that the defendant has
37 committed a new crime following the setting of preconviction
38 bail; or

39 B. Clear and convincing evidence that the defendant has
40 failed to appear as required or has violated any other
41 condition of the preconviction bail.

42 In deciding whether to revoke the defendant's preconviction bail
43 and order the defendant held without bail, the judge or justice
44 shall consider whether there are conditions of release that
45 reasonably ensure the defendant's appearance when required and
46 otherwise reasonably ensure the integrity of the judicial

2 process. In this weighing process, the commission of a new
4 crime, in the event that it is not found to otherwise increase
6 the risk posed by the defendant to the integrity of the judicial
8 process, must be treated by the judge or justice as increasing
10 the risk to the defendant's appearance when required. The judge
12 or justice shall also consider whether there is an unreasonable
14 risk that the defendant may fail to comply with any condition of
16 release. If the judge or justice decides not to revoke the
18 defendant's preconviction bail, the judge or justice shall issue
20 an order under section 1026.

22 **§1096. No new bail consideration when bail has been revoked in**
24 **District Court**

26 When bail has been set and revoked in the District Court and
28 the District Court judge has ordered the defendant held without
30 bail, the defendant is not entitled to have bail set when charges
32 are brought by indictment for the same underlying conduct. If
34 the defendant has not previously appealed the District Court bail
36 revocation, the Superior Court may, upon request of the
38 defendant, entertain the appeal at the defendant's arraignment.

40 **ARTICLE 3**

42 **REVOCATION OF POST-CONVICTION BAIL**

44 **§1097. Revocation of post-conviction bail**

46 1. In general. The attorney for the State, or the court on
48 its own motion, may move for the revocation of a defendant's
50 post-conviction bail based upon probable cause to believe that
the defendant has failed to appear as required, has violated a
condition of post-conviction bail or has been charged with a
crime allegedly committed while released on post-conviction
bail. The motion must set forth the essential facts underlying
the alleged violation. If the defendant has not already been
arrested pursuant to subsection 2, the clerk of the court shall
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.

2. Arrest. A law enforcement officer may arrest with a
warrant, or without a warrant pursuant to Title 17-A, section 15,

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

32 **3. Revocation.** An order of post-conviction bail entered by
34 a judge or justice may be revoked by the judge or justice or, if
36 that judge or justice is not available, by another judge or
38 justice of the same court, upon determination made after notice
40 and opportunity for hearing that:

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

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

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

4. Appeal. If bail is revoked, the defendant may appeal to
a single Justice of the Supreme Judicial Court who shall review
the revocation pursuant to section 1051, subsection 5.

Sec. 18. 17-A MRSA §15, sub-§1, ¶A, as amended by PL 1993, c.
475, §3, is further amended to read:

A. Any person who the officer has probable cause to believe
has committed or is committing:

- (1) Murder;
- (2) Any Class A, Class B or Class C crime;
- (3) Assault while hunting;
- (4) Any offense defined in chapter 45;

2 (5) Assault, criminal threatening or terrorizing, if
the officer reasonably believes that the person may
cause injury to others unless immediately arrested;

4
6 (5-A) Assault or reckless conduct, if the officer
reasonably believes that the person and the victim are
family or household members, as defined in Title 15,
8 section 321;

10 (6) Theft as defined in section 357, when the value of
the services is \$1,000 or less, if the officer
12 reasonably believes that the person will not be
apprehended unless immediately arrested;

14
16 (7) Forgery, if the officer reasonably believes that
the person will not be apprehended unless immediately
arrested;

18
20 (8) Negotiating a worthless instrument, if the officer
reasonably believes that the person will not be
apprehended unless immediately arrested;

22
24 (9) A violation of a condition of probation when
requested by an official of the Division of Probation
and Parole;

26
28 (10) Violation of a condition of release in violation
of Title 15, section 1026, subsection 3; Title 15,
section 1051, ~~subsections 2 and 9~~ subsection 2; and
30 Title 15, section 1092;

32 (11) Theft involving a detention under Title 17,
section 3521;

34 (12) Harassment, as set forth in section 506-A; or

36
38 (13) Violation of a protection order, as specified in
Title 5, section 4659, subsection 2; Title 15, section
321, subsection 6; Title 19, section 769, subsection 2;
40 and Title 19, section 770, subsection 5; and

42
STATEMENT OF FACT

44
This bill does the following:

46
48 1. Adds a definition of "failure to appear" to the Maine
Bail Code to ensure that the phrase carries the same meaning
throughout the code;

2 2. Amends the definitions of "preconviction" and
3 "post-conviction" to clarify that a court's acceptance of a plea
4 of guilty or nolo contendere constitutes a conviction;

5 3. Clarifies that a law enforcement officer's authority to
6 release an arrestee on personal recognizance extends only to
7 those whom the officer has arrested without a warrant;

8 4. Clarifies that bail conditions take effect when set,
9 except when otherwise specified by the judicial officer;

10 5. Clarifies that bail orders issued under the Maine
11 Revised Statutes, Title 15, section 1026, following a Harnish
12 bail proceeding, are subject to amendment under Title 15, section
13 1026, subsection 3, paragraph C;

14 6. Clarifies that bail orders issued under the
15 discretionary authority of the court to set bail in cases
16 involving formerly capital offenses are not subject to amendment
17 under Title 15, section 1026, subsection 3, paragraph C. Since
18 the bail orders are issued pursuant to the discretionary
19 authority of the court and not as a matter of constitutional
20 right, the amendment or denial of such bail orders are also
21 addressed to the court's discretionary authority;

22 7. Adds new language to make it clear that when a bail
23 order is issued in a formerly capital offense case on the basis
24 of discretion and not as a matter of right, the court having
25 jurisdiction of the case may always reconsider the issue of
26 discretion and may modify or even deny bail as a matter of
27 discretion upon a showing of changed circumstances or when new
28 and significant information has been discovered;

29 8. Clarifies that, when the charge is a felony, the
30 attorney for the State or a law enforcement officer familiar with
31 the charge must be allowed to participate in the initial setting
32 of bail and in any review or appeal of the initially set or
33 denied bail. It also eliminates an obsolete reference to the
34 former District Court Criminal Rules;

35 9. Specifically identifies each of the risks that bail
36 conditions should be tailored to minimize;

37 10. Repeals the enforcement provisions currently found in
38 Title 15, section 1051 and moves them to chapter 105-A,
39 subchapter V.

40 11. Amends the language specifying the responsibility of
41 sureties;

2 12. Amends Title 15, sections 1091 and 1092 to make them
applicable to post-conviction as well as preconviction bail;

4
6 13. Repeals Title 15, section 1093 and places the language
from that section in a new section 1095; and

8 14. Creates a new section of law that clarifies that, once
preconviction bail has been revoked in the District Court, a
10 defendant's indictment for the same conduct does not create a new
right to have bail set in the Superior Court.