

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

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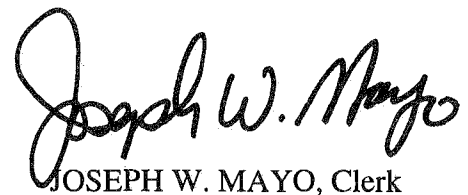
H.P. 1058

House of Representatives, March 11, 1997

An Act Allowing Appellate Review by an Aggrieved Contemnor.

Reported by Representative THOMPSON for the Criminal Law Advisory Commission under the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Joint Standing Committee on Judiciary suggested and printing ordered under Joint Rule 218.


JOSEPH W. MAYO, Clerk

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

PART A

Sec. A-1. 15 MRSA §1004, as enacted by PL 1987, c. 758, §20, is amended to read:

§1004. Applicability and exclusions

This chapter applies to the setting of bail for a defendant in a criminal proceeding, including the setting of bail for an alleged contemnor in a plenary contempt proceeding involving a punitive sanction under the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66. It does not apply to the setting of bail in extradition proceedings under sections 201 to 229 or post-conviction review proceedings under sections 2121 to 2132 or probation revocation proceedings under Title 17-A, sections 1205 to 1207, except to the extent and under the conditions stated in those sections. This chapter applies to the setting of bail for an alleged contemnor in a summary contempt proceeding involving a punitive sanction under the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66 and to the setting of bail relative to a material witness only as specified in sections 1103 and 1104, respectively.

Sec. A-2. 15 MRSA §§1103 and 1104 are enacted to read:

§1103. Summary contempt proceeding involving a punitive sanction

The setting of bail for an alleged contemnor in a summary contempt proceeding involving a punitive sanction under the Maine Rules of Criminal Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule 66, including any appeal under section 2115-B, is a matter wholly within the discretion of the court. Subchapters IV and V apply.

§1104. Material witness; arrest and bail

If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure the presence of that person by subpoena, the court may order the arrest of that person and may require that person to give bail for that person's appearance as a witness, utilizing the same standards for release as for a defendant preconviction bailable as of right under subchapter II. Subchapters IV and V also apply.

PART B

2 Sec. B-1. 15 MRSA §2115-B is enacted to read:

4 §2115-B. Appeal by aggrieved contemnor

6 1. Summary contempt proceedings involving punitive
7 sanctions. In a summary contempt proceeding involving punitive
8 sanctions, accompanied or unaccompanied by remedial sanctions,
9 instituted under either the Maine Rules of Criminal Procedure,
10 Rule 42 or the Maine Rules of Civil Procedure, Rule 66, before a
11 Judge of the District Court, Probate Court or Administrative
12 Court, a contemnor who is aggrieved by an order and imposition of
13 a punitive sanction may appeal, as provided under section 2111
14 and the applicable Maine Rules of Criminal Procedure, to the
15 Superior Court and, if unsuccessful, to the Supreme Judicial
16 Court, sitting as the Law Court, as provided under section 2115
17 and the applicable Maine Rules of Criminal Procedure. In a like
18 proceeding, instituted under either the Maine Rules of Criminal
19 Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule
20 66, before a Justice of the Superior Court or a Justice of the
21 Supreme Judicial Court, any contemnor aggrieved by an order and
22 imposition of a punitive sanction may appeal to the Supreme
23 Judicial Court, sitting as the Law Court, as provided under
24 section 2115 and the applicable Maine Rules of Criminal Procedure.

26 2. Plenary contempt proceedings involving punitive
27 sanctions. In a plenary contempt proceeding involving punitive
28 sanctions, accompanied or unaccompanied by remedial sanctions,
29 instituted under either the Maine Rules of Criminal Procedure,
30 Rule 42 or the Maine Rules of Civil Procedure, Rule 66, any
31 contemnor aggrieved by an adjudication and imposition of a
32 punitive sanction tried other than in the Superior Court or
33 Supreme Judicial Court may appeal, as provided under section 2111
34 and the applicable Maine Rules of Criminal Procedure, to the
35 Superior Court, and if unsuccessful, to the Supreme Judicial
36 Court, sitting as the Law Court, as provided under section 2115
37 and the applicable Maine Rules of Criminal Procedure. In a like
38 proceeding instituted under either the Maine Rules of Criminal
39 Procedure, Rule 42 or the Maine Rules of Civil Procedure, Rule
40 66, any contemnor aggrieved by an adjudication and imposition of
41 a punitive sanction tried in the Superior Court or Supreme
42 Judicial Court, may appeal to the Supreme Judicial Court, sitting
43 as the Law Court, as provided under section 2115 and the
44 applicable Maine Rules of Criminal Procedure.

46
47 SUMMARY

48
49 Part A of this bill amends current law to clarify the matter
50 of bail in contempt proceedings involving punitive sanctions

2 under the Maine Rules of Criminal Procedure, Rule 42 or the Maine
Rules of Civil Procedure, Rule 66 and material witnesses. It
4 applies the bail code fully to the setting of bail in plenary
contempt proceedings involving a punitive sanction but applies to
6 a summary proceeding involving a punitive sanction only as
specified in the Maine Revised Statutes, Title 15, section 1103
and to bail relative to a material witness only as specified in
8 Title 15, section 1104.

10 That part of this bill that enacts Title 15, section 1103
makes the setting of bail at any stage of a summary contempt
12 proceeding involving a punitive sanction, including appeal,
wholly discretionary with the court handling the contempt
14 proceeding. It also ensures that the "sureties and other forms
of bail" provisions of Title 15, chapter 105-A, subchapter IV and
16 the "enforcement" provisions of Title 15, chapter 105-A,
subchapter V apply.

18
20 That part of this bill that enacts Title 15, section 1104
serves as the enabling legislation for Rule 46(g) of the Maine
Rules of Criminal Procedure. It expressly authorizes a court,
22 upon a proper showing that the testimony of a person is material
in any criminal proceeding and that it may become impractical to
24 secure that person's presence by subpoena, to both order the
arrest of that material witness and to require that witness to
26 give bail to ensure that person's appearance as a witness. The
court must utilize the same standards for release as for a
28 defendant in a preconviction posture who is bailable as of right
as provided in Title 15, chapter 105-A, subchapter II. It also
30 ensures that the "sureties and other forms of bail" provisions of
Title 15, chapter 105-A, subchapter IV and the "enforcement"
32 provisions of Title 15, chapter 105-A, subchapter V apply.

34 Part B of this bill clarifies appellate review available to
a person who has committed contempt of court, an aggrieved
36 contemnor. Although the Law Court has recognized that appeal,
rather than a post-conviction review action, is the appropriate
38 method of review of judgments for criminal contempt (Alexander v.
Sharpe, 245 A.2d 279, 282 (Me. 1968)), the Maine Revised
40 Statutes, Title 15, section 2115-B addresses appellate review in
the context of the Supreme Judicial Court's recent major
42 reworking of the Maine Rules of Criminal Procedure, Rule 42 as
well as the creation of identical text in the Maine Rules of
44 Civil Procedure, Rule 66.

46 This bill speaks to appeals from an order and imposition of
a punitive sanction in a summary contempt proceeding involving
48 punitive sanctions instituted under either Rule 42 or 66. An
aggrieved contemnor must first appeal to the Superior Court
50 acting as an intermediate appellate court if the summary

proceeding is before a judge of the District Court, Probate Court
or Administrative Court and, if unsuccessful, to the Law Court.
If the summary proceeding is before a Superior Court or Supreme
Court Justice, an aggrieved contemnor's appeal is to the Law
Court.

The bill speaks to appeal from an order and imposition of a
punitive sanction in a plenary proceeding involving punitive
sanctions instituted under either Rule 42 or 66. If trial is
other than in the Superior Court or the Supreme Judicial Court,
an aggrieved contemnor must first appeal to the Superior Court
acting as an intermediate appellate court and, if unsuccessful,
to the Law Court. If trial is in the Superior Court or the
Supreme Judicial Court, an aggrieved contemnor's appeal is to the
Law Court.