

MAINE STATE LEGISLATURE

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R.O.S.

M. J. [unclear]

L.D. 1571

DATE: *May 22, 1997*

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CRIMINAL JUSTICE

Reported by: *Majority*

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**STATE OF MAINE
SENATE
118TH LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to S.P. 509, L.D. 1571, Bill, "An Act to Amend the Maine Bail Code"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 15 MRSA §1002, last ¶, as enacted by PL 1987, c. 870, §1, is amended to read:

It is the purpose and intent of this chapter that bail be set for a defendant in order to reasonably ensure the appearance of the defendant as required, to otherwise reasonably ensure the integrity of the judicial process and, when applicable, to reasonably ensure the safety of others in the community. ~~Finally, it~~ It is also the purpose and intent of this chapter that the judicial officer consider, relative to crimes bailable as of right preconviction, the least restrictive release alternative which that will reasonably ensure the attendance of the defendant as required, or otherwise reasonably ensure the integrity of the judicial process. Finally, it is also the intent and purpose of this chapter that a defendant, while at liberty on bail, refrain from committing new crimes.

Sec. 2. 15 MRSA §1002, as amended by PL 1987, c. 870, §1, is further amended by adding at the end 2 new paragraphs to read:

The Legislature finds that personal recognizance bail or an unsecured appearance bond should not be available for offenders who have a pending charge.

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2 The Legislature further believes that, as a matter of public
3 policy, personal recognizance bail or an unsecured appearance
4 bond should not be available to repeat offenders or to those who
5 commit serious crimes.

6 **Sec. 3. 15 MRSA §1003, sub-§1, ¶A**, as amended by PL 1987, c.
7 870, §2, is further amended to read:

10 A. In the preconviction context, "bail" means the obtaining
11 of the release of the defendant upon an undertaking that the
12 defendant shall appear at the time and place required ~~and~~
13 ~~may include conditions, that the defendant shall conform to~~
14 any condition imposed, in accordance with section 1026,
15 designed to ensure the integrity of the judicial process ~~and~~
16 that the defendant shall refrain from any new criminal
17 conduct. For crimes bailable only as a matter of discretion
18 preconviction, bail may also ~~include conditions~~ means the
19 obtaining of the release of the defendant upon an
20 undertaking that the defendant shall conform to each
21 condition that is designed to ensure the safety of others in
22 the community.

24 **Sec. 4. 15 MRSA §1003, sub-§1, ¶B**, as enacted by PL 1987, c.
25 758, §20, is amended to read:

26 B. In the post-conviction context, "bail" means the
27 obtaining of the release of the defendant upon an
28 undertaking that the defendant shall appear and surrender
29 into custody at the time and place required, ~~that the~~
30 defendant shall refrain from any new criminal conduct and
31 ~~may include conditions that the defendant shall conform to~~
32 each condition imposed that is designed to otherwise ensure
33 the integrity of the judicial process ~~and~~ and to ensure the
34 safety of others in the community.

36 **Sec. 5. 15 MRSA §1003, sub-§5**, as enacted by PL 1987, c. 758,
37 §20, is repealed and the following enacted in its place:

38 5. Ensure the integrity of the judicial process. To
39 "ensure the integrity of the judicial process," when used in the
40 context of the granting or denial of bail, means:

41 A. Safeguarding the role of the courts in adjudicating the
42 guilt or innocence of defendants by ensuring the presence of
43 the defendant in court and otherwise preventing the
44 defendant from obstructing or attempting to obstruct justice
45 by threatening, injuring or intimidating a victim,
46 prospective witness, juror, attorney for the State, judge,
47 justice or other officer of the court or otherwise affecting
48 public safety; and

2 B. Accurately ensuring that the defendant will comply with
4 conditions of release and the court's order to refrain from
6 new criminal conduct by giving due consideration to the
8 defendant's prior criminal record and prior failures to obey
10 bail conditions; probation conditions; and other court
12 orders, including, but not limited to, violating protection
14 from abuse orders pursuant to Title 19, section 769 or Title
16 19-A, section 4011.

18 **Sec. 6. 15 MRSA §1003, sub-§8-A is enacted to read:**

20 **8-A. New criminal conduct.** "New criminal conduct" refers
22 to criminal activity by a defendant occurring after bail has been
24 set.

26 **Sec. 7. 15 MRSA §1026, as amended by PL 1995, c. 356, §5, is**
28 **further amended to read:**

30 **§1026. Standards for release for crime bailable as of right**
32 **preconviction**

34 **1. In general.** At the initial appearance before a judicial
36 officer of a defendant in custody for a crime bailable as of
38 right preconviction, the judicial officer shall may issue an
40 order that, pending trial, the defendant be released:

42 **A.** On personal recognizance or upon execution of an
44 unsecured appearance bond under subsection 2; ~~or~~

46 **B.** On a condition or combination of conditions under
48 subsection 3; or

50 **C.** On personal recognizance or execution of an unsecured
appearance bond, accompanied by one or more conditions under
subsection 3.

Every order for the pretrial release of any defendant shall must
include a waiver of extradition by the defendant and the
conditions that the defendant refrain from new criminal conduct
and not violate any pending protection from abuse orders pursuant
to Title 19, section 769 or Title 19-A, section 4011.

2. Release on personal recognizance or unsecured appearance
bond. The judicial officer shall may order the pretrial release
of the defendant on personal recognizance or upon execution of an
unsecured appearance bond in an amount specified by the judicial
officer, ~~unless the judicial officer determines that the release~~
~~will not reasonably ensure the appearance of the defendant as~~
~~required or will not otherwise reasonably ensure the integrity of~~

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2 the--judicial--process. Before any defendant is released on
3 personal recognizance or an unsecured appearance bond, the
4 judicial officer must determine that the defendant will appear as
5 required and that the defendant's release will not otherwise
6 affect the integrity of the judicial process.

7 The judicial officer may not order the pretrial release of the
8 defendant on personal recognizance or upon execution of an
9 unsecured appearance bond on new criminal conduct if the
10 defendant has pending criminal charges.

11 In determining whether the pretrial release of the defendant on
12 personal recognizance or upon execution of an unsecured
13 appearance bond is appropriate, the judicial officer shall
14 consider:

15 A. The defendant's prior criminal history, including, but
16 not limited to, whether the defendant has previously
17 violated conditions of release, whether the defendant has
18 been or is on probation and whether the defendant has
19 previously violated court orders, such as protection from
20 abuse orders pursuant to Title 19, section 769 or Title
21 19-A, section 4011;

22 B. The severity, nature and circumstances of the crime
23 charged;

24 C. The defendant's failures to appear when required;

25 D. The defendant's failure to pay fines;

26 E. Any other factors that may enhance a sentence of
27 incarceration; and

28 F. Any other factors that may be considered relevant to the
29 judicial officer, including, but not limited to, those
30 enumerated in subsection 4.

31 In considering all the factors enumerated in paragraphs A to F,
32 the judicial officer shall give the greatest weight to the
33 defendant's criminal history and the severity of the crime. The
34 judicial officer may not order the defendant released on personal
35 recognizance or an unsecured appearance bond if the defendant's
36 crime is serious or the judicial officer finds the defendant's
37 criminal record inappropriate for granting the defendant release
38 on personal recognizance or an unsecured appearance bond.

39 **3. Release on conditions.** Conditions that will reasonably
40 ensure the appearance of the defendant and ensure the integrity
41 of the judicial process shall ~~must~~ be imposed as provided in this
42 subsection.

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2 A. If the judicial officer determines that the release
4 described in subsection 2 will not reasonably ensure the
6 appearance of the defendant as required or will not
8 otherwise reasonably ensure the integrity of the judicial
10 process, the judicial officer shall order the pretrial
12 release of the defendant subject to the least restrictive
 further condition or combination of conditions that the
 judicial officer determines will reasonably ensure the
 appearance of the defendant as required and will otherwise
 reasonably ensure the integrity of the judicial process.
 These conditions may include that the defendant:

14 (1) Remain in the custody of a designated person or
16 organization agreeing to supervise the defendant,
18 including a public official, public agency or publicly
20 funded organization, if the designated person or
22 organization is able to reasonably ensure both the
24 appearance of the defendant as required and the
26 integrity of the judicial process. When feasible, the
28 judicial officer shall impose the responsibility upon
 the defendant to produce the designated person or
 organization. The judicial officer may interview the
 designated person or organization to ensure
 satisfaction of both the willingness and ability
 required. The designated person or organization shall
 agree to notify immediately the judicial officer of any
 violation of release by the defendant;

30 (2) Maintain employment or, if unemployed, actively
32 seek employment;

34 (3) Maintain or commence an educational program;

36 (4) Abide by specified restrictions on personal
 associations, place of abode or travel;

38 (5) Avoid all contact with a victim of the alleged
40 crime, a potential witness regarding the alleged crime
42 or with any other family or household members of the
 victim or the defendant or to contact those individuals
 only at certain times or under certain conditions;

44 (6) Report on a regular basis to a designated law
46 enforcement agency or other governmental agency;

48 (7) Comply with a specified curfew;

50 (8) Refrain from possessing a firearm or other
 dangerous weapon;

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- 2 (9) Refrain from use or excessive use of alcohol and
4 from any use of drugs;
 - 6 (10) Undergo, as an outpatient, available medical or
8 psychiatric treatment, or enter and remain, as a
10 voluntary patient, in a specified institution when
12 required for that purpose;
 - 14 (11) Execute an agreement to forfeit, upon failing to
16 appear as required, such designated property, including
18 money, as is reasonably necessary to ensure the
20 appearance of the defendant as required and to ensure
22 the integrity of the judicial process and post with an
24 appropriate court such evidence of ownership of the
26 property or such percentage of the money as the
28 judicial officer specifies;
 - 30 (12) Execute a bail bond with sureties in such amount
32 as is reasonably necessary to ensure the appearance of
34 the defendant as required and to ensure the integrity
36 of the judicial process;
 - 38 (13) Return to custody for specified hours following
40 release for employment, schooling or other limited
42 purposes;
 - 44 (14) Report on a regular basis to the defendant's
46 attorney;
 - 48 (15) Notify the court of any changes of address or
50 employment;
 - (16) Provide to the court the name, address and
telephone number of a designated person or organization
that will know the defendant's whereabouts at all times;
 - (17) Inform any law enforcement officer of the
defendant's condition of release if the defendant is
subsequently arrested or summoned for new criminal
conduct; and
 - (18) Satisfy any other condition that is reasonably
necessary to ensure the appearance of the defendant as
required and to otherwise reasonably ensure the
integrity of the judicial process.
- B. The judicial officer may not impose a financial
condition which that, either alone or in combination with
other conditions of bail, is in excess of that reasonably

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2 necessary to ensure the appearance of the defendant as
required or to otherwise ensure the integrity of the
judicial process.

4
6 C. Upon motion by the attorney for the State or the
defendant and after notice and upon a showing of changed
8 circumstances or upon the discovery of new and significant
information, the court may amend the bail order to relieve
10 the defendant of any condition of release, modify the
conditions imposed or impose further conditions authorized
12 by this subsection as the court determines will reasonably
ensure the appearance of the defendant as required and will
14 otherwise reasonably ensure the integrity of the judicial
process.

16 **4. Factors to be considered in release decision.** In
18 setting bail, the judicial officer shall, on the basis of an
interview with the defendant, information provided by the
20 defendant's attorney and information provided by the attorney for
the State or an informed law enforcement officer if the attorney
22 for the State is not available and other reliable information
which that can be obtained, take into account the available
information concerning the following:

24 A. The nature and circumstances of the crime charged;

26 B. The nature of the evidence against the defendant; and

28 C. The history and characteristics of the defendant,
30 including, but not limited to:

32 (1) The defendant's character and physical and mental
condition;

34 (2) The defendant's family ties in the State;

36 (3) The defendant's employment history in the State;

38 (4) The defendant's financial resources;

40 (5) The defendant's length of residence in the
42 community and the defendant's community ties;

44 (6) The defendant's past conduct, including any
history relating to drug or alcohol abuse;

46 (7) The defendant's criminal history, if any;

48 (8) The defendant's record concerning appearances at
50 court proceedings;

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2 (9) Whether, at the time of the current offense or
4 arrest, the defendant was on probation, parole or other
6 release pending trial, sentencing, appeal or completion
of a sentence for an offense in this jurisdiction or
another; and

8 (10) Any evidence that the defendant has obstructed or
10 attempted to obstruct justice by threatening, injuring
or intimidating a victim or a prospective witness,
12 juror, attorney for the State, judge, justice or other
officer of the court; and

14 (11) Whether the defendant has previously violated
16 conditions of release, probation or other court orders,
including, but not limited to, violating protection
18 from abuse orders pursuant to Title 19, section 769 or
Title 19-A, section 4011.

20 **5. Contents of release order.** In a release order issued
under subsection 2 or 3, the judicial officer shall:

22 A. Include a written statement that sets forth all the
24 conditions to which the release is subject in a manner
sufficiently clear and specific to serve as a guide for the
26 defendant's conduct; and

28 B. Advise the defendant of:

30 (1) The penalties if the defendant fails to appear as
required; and

32 (2) The penalties for and consequences of violating a
34 condition of release, including the immediate issuance
of a warrant for the defendant's arrest.

36 **6. Initial appearance in court.** Nothing contained in this
38 chapter may be construed as limiting the authority of a judge or
justice to consider the issue of preconviction bail at a
40 defendant's initial appearance in court.

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

46 **Sec. 8. 15 MRSA §1027, sub-§3, ¶¶A and B,** as enacted by PL
48 1987, c. 758, §20, are amended to read:

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A. There is a substantial risk that the capital defendant will not appear as required or will otherwise pose a substantial risk to the integrity of the judicial process; or

B. There is a substantial risk that the capital defendant will pose a danger to another or to the community; or

Sec. 9. 15 MRSA §1027, sub-§3, ¶C is enacted to read:

C. There is a substantial risk that the capital defendant will commit new criminal conduct.

Sec. 10. 15 MRSA §1028, sub-§1, ¶A, as enacted by PL 1987, c. 758, §20, is amended to read:

A. If the defendant chooses to have a de novo determination of bail, the defendant shall must be furnished with a petition and, upon execution of the petition and without the issuance of any writ or other process, the sheriff of the county in which the decision was made shall provide for the transportation of the defendant together with the petition and all papers relevant to the petition or copies of the petition or papers to the Superior Court.

If no Justice of the Superior Court will be available within 24 48 hours, excluding Saturdays, Sundays and holidays, arrangements shall must be made for a de novo determination of bail in the nearest county in which a Justice of the Superior Court is then sitting. The defendant's custodian shall provide transportation to the Superior Court as required by this chapter without the issuance of any writ or other process.

If there is no Justice of the Superior Court available, the defendant shall must be retained in custody until the petition can be considered.

Sec. 11. 15 MRSA §1028, sub-§1, ¶C is enacted to read:

C. Upon receipt of a pro se petition or upon oral or written request of the attorney for the defendant, the clerk shall set a time for hearing and provide oral or written notice to the attorney for the State. The hearing must be scheduled for a time not less than 24 hours nor more than 48 hours after the clerk notifies the attorney for the State.

Sec. 12. 15 MRSA §1051, sub-§1, as amended by PL 1995, c. 356, §8, is further amended to read:

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1. **Application to presiding judge or justice.** After post-conviction, except as provided in this section, a defendant may apply to the judge or justice who presided at the trial for bail pending imposition or execution of sentence or entry of judgment or appeal. If the trial judge or justice is not available, the defendant may apply for bail under this section to another judge or justice of the court in which the defendant was convicted. Post-conviction bail is not available to a defendant convicted of:

A. Murder;

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

C. Any crime when the defendant's preconviction bail was revoked and denied under sections 1096 and 1097.

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

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

Every order for post-conviction release of a defendant must include a waiver of extradition by the defendant as well as a condition of bail that the defendant refrain from new criminal conduct and not violate any pending protection from abuse order pursuant to Title 19, section 769, or Title 19-A, section 4011.

Sec. 13. 15 MRSA §1051, sub-§2, as enacted by PL 1987, c. 758, §20, is amended to read:

2. **Standards.** Except as provided in subsection 4, a defendant may not be admitted to bail under this section unless the judge or justice has probable cause to believe that:

A. There is no substantial risk that the defendant will fail to appear as required and will not otherwise pose a substantial risk to the integrity of the judicial process; and

B. There is no substantial risk that the defendant will pose a danger to another or to the community; and

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2 C. There is no substantial risk that the defendant will
4 commit new criminal conduct.

In determining whether to admit a defendant to bail, the judge or
6 justice shall consider the factors relevant to preconviction bail
8 listed in section 1026, as well as the facts proved at trial, the
length of the term of imprisonment imposed, any history of
10 dangerousness and any previous unexcused failure to appear as
required before any court or ~~to submit as required to~~ the
12 defendant's prior failure to obey an order or judgment of any
court, including, but not limited to, violating a protection from
14 abuse order pursuant to Title 19, section 769 or Title 19-A,
section 4011.

16 If the judge or justice decides to set post-conviction bail for a
defendant, the judge or justice shall apply the same factors in
18 setting the kind and amount of that bail.

20 **Sec. 14. 15 MRSA §1051, sub-§3**, as amended by PL 1995, c. 356,
§9, is further amended to read:

22 **3. Conditions of release.** Except as provided in subsection
24 4, the judge or justice may impose, in lieu of or in addition to
an appearance or bail bond, any condition considered reasonably
26 necessary to minimize the risk that the defendant may fail to
appear as required, may compromise the integrity of the judicial
28 process, may commit new criminal conduct, may fail to comply with
conditions of release or may constitute a danger to another
30 person or the community.

32 **Sec. 15. 15 MRSA §1071, sub-§1**, as amended by PL 1989, c. 147,
§4, is further amended to read:

34 **1. Statement by surety.** Any person who offers to act as
36 surety ~~for the appearance before~~ in the Superior Court ~~of~~ for any
defendant in a criminal prosecution, whether or not the defendant
38 is an appellant from the finding of a Judge of the District
Court, is to be admitted to bail to await the action of the grand
40 jury, or is arrested in vacation on a warrant issued on an
indictment pending in the Superior Court, may be required to file
42 with the judicial officer a written statement signed and sworn to
by the surety describing all real estate owned by the surety
44 within the State with sufficient accuracy to identify it.

46 A. The statement shall ~~shall~~ must provide in detail all
encumbrances and the value of the land. The value of the
48 land shall ~~shall~~ must be based on the judgment of the surety.

2 B. The certificate shall must remain on file with the
original papers in the case and a certified copy shall must
4 be transmitted by the judicial officer taking the bail to
the clerk of court before which the defendant is to appear.

6 C. Upon motion to the court and notice to the defendant,
the defendant shall produce and the State shall ~~have~~ has the
8 right to examine all evidence of ownership, valuation and
all encumbrances on the land.

10 **Sec. 16. 15 MRSA §1072**, as amended by PL 1995, c. 356, §13,
12 is further amended to read:

14 **§1072. Responsibility of sureties**

16 1. **Preconviction.** Each surety for a defendant admitted to
preconviction bail is responsible for the appearance of the
18 defendant at all times as well as the defendant's compliance with
each condition of release, including that the defendant refrain
20 from new criminal conduct, until a verdict or finding or plea of
guilty or until the acceptance of a plea of guilty or nolo
22 contendere, unless the surety has sooner terminated the agreement
to act as surety and has been relieved of the responsibility in
24 accordance with section 1073.

26 A preconviction surety is not responsible for the appearance of a
defendant after conviction nor for the defendant's compliance
28 with the conditions of release, unless the surety has agreed to
act as postconviction surety.

30 2. **Post-conviction.** Each surety for a defendant admitted
to bail after conviction is responsible for the defendant's
32 appearance at all times until the defendant enters into execution
of any sentence of imprisonment as well as the defendant's
34 compliance with each condition of release, including that the
36 defendant refrain from new criminal conduct, unless the surety
has sooner terminated the agreement to act as surety and has been
38 relieved of the responsibility in accordance with section 1073.

40 **Sec. 17. 15 MRSA §1072-A** is enacted to read:

42 **§1072-A. Advising the surety**

44 Prior to undertaking the responsibility as a surety for a
defendant the surety must be:

46 1. **Written release order.** Provided with a copy of the
48 written release order pertaining to the defendant;

50 2. **Conditions of release.** Orally advised of each of the
conditions of release pertaining to the defendant for which the

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2 surety is responsible and the consequences to the surety if the
defendant violates any condition of release; and

4 3. Responsibilities and consequences. Provided with a
6 written statement advising the surety as to the general
responsibilities of a surety under section 1072 and the
8 consequences to the surety if the defendant fails to abide by
each condition.

10 The Supreme Judicial Court shall by rule specify who is
12 responsible for providing to the prospective surety the required
oral and written advice as well as the copy of the written
14 release order pertaining to the defendant.

16 **Sec. 18. 15 MRSA §1073, 3rd ¶,** as amended by PL 1995, c. 356,
§14, is further amended to read:

18 The judge or justice may absolve the person of
20 responsibility to pay all or part of the bond or may order the
return of cash bail, except that a person may not be absolved of
22 the responsibility to pay all or part of the bond, or receive any
cash deposited as bail, if, prior to terminating the agreement,
24 the defendant has failed to appear as required or has violated
the conditions of release. Nothing in this section may be
26 construed to relieve or release a person of the responsibility
for the appearance of the defendant, notwithstanding the
28 termination of the agreement, until the defendant is in the
custody of the sheriff of the county in which the case is
30 pending, new or substitute sureties have appeared, new cash bail
has been deposited or the defendant has otherwise been admitted
to bail.

32 **Sec. 19. 15 MRSA §1074, sub-§1,** as enacted by PL 1987, c. 758,
34 §20, is amended to read:

36 **1. Cash.** Whenever cash is deposited as bail to secure the
appearance of and conformance to conditions of release by a
38 defendant in a criminal proceeding, either preconviction or
post-conviction, the cash shall ~~be~~ is deemed to be the property
40 of the defendant unless, at the time the cash is deposited, the
defendant or the person offering the cash as bail, designates
42 under oath another person to whom the cash belongs. If a person
other than the defendant has been designated as the owner of the
44 cash, it shall must be returned to that person unless otherwise
forfeited. If the defendant is deemed to be the owner of the
46 cash, it shall must be returned to the defendant unless otherwise
forfeited or subject to setoff as provided in this section.

48 **Sec. 20. 15 MRSA §1094, first ¶,** as repealed and replaced by PL
50 1991, c. 393, §4, is amended to read:

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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, or has violated the conditions of release,
the court shall declare a forfeiture of the bail. The obligation
6 of the defendant and any sureties may be enforced in such manner
as the Supreme Judicial Court shall by rule provide and in
8 accordance with section 224-A. The rules adopted by the Supreme
Judicial Court must provide for notice to the defendant and any
10 sureties of the consequences of failure to comply with the
conditions of bail.

12 **Sec. 21. 15 MRSA §1095, sub-§2,** as enacted by PL 1995, c. 356,
14 §19, is amended to read:

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

34 **Sec. 22. 15 MRSA §1097, sub-§§1 and 2,** as enacted by PL 1995,
36 c. 356, §19, are repealed and the following enacted in their
place:

38 **1. New criminal conduct.** If the judge or justice finds
40 that there are conditions of release that will reasonably ensure
that the defendant will not continue to commit new crimes while
42 out on bail, the judge or justice shall issue an order under
section 1026. If the judicial finding is otherwise, the judge or
44 justice shall issue an order denying bail.

46 **2. Appearance of the defendant; ensuring the integrity of**
the judicial process. If the judge or justice finds that there
48 are conditions of release that will reasonably ensure the
defendant's appearance when required and will otherwise ensure
50 the integrity of the judicial process, the judge or justice shall

2 issue an order under section 1026. If the judicial finding is
3 otherwise, the judge or justice shall issue an order denying
4 bail.'

6 Further amend the bill by inserting at the end before the
7 summary the following:

8
9
10 **FISCAL NOTE**

11 The Judicial Department will incur some minor additional
12 costs to print and distribute the bail code and to implement the
13 new requirements on preconviction and postconviction orders.
14 These costs can be absorbed within the Judicial Department's
15 existing budgeted resources.

16 This bill may also result in increased costs to county
17 jails. The amount of the increase can not be determined, but is
18 estimated to be \$83.78 per day per prisoner.'

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22 **SUMMARY**

23 This amendment replaces the bill and is the majority report
24 of the Joint Standing Committee on Criminal Justice. In addition
25 to making a number of nonsubstantive changes to the Maine Bail
26 Code, the amendment does the following.

27
28 1. It amends the code's statement of purpose to include the
29 fact that, while on bail, a defendant is expected to refrain from
30 engaging in new criminal conduct.

31
32 2. It amends the bail definition both in the preconviction
33 and post-conviction context to expressly include refraining from
34 any new criminal conduct and obeying each condition of release
35 imposed by the judicial officer.

36
37 3. It defines new criminal conduct.

38
39 4. It clarifies that a judicial officer is authorized to
40 issue a preconviction order releasing a defendant on personal
41 recognizance or execution of an unsecured bond and imposes
42 additional release conditions.

43
44 5. It requires that every preconviction and post-conviction
45 order of release contain, in addition to a waiver of extradition
46 by the defendant, a condition that the defendant refrain from new
47 criminal conduct and not violate any pending protection from
48 abuse orders.

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2 6. It clarifies that a judicial officer is authorized to
4 require a defendant preconviction to execute an agreement to
6 forfeit designated property or execute a bail bond with sureties
to ensure the integrity of the judicial process as well as the
defendant's appearance.

8 7. It recognizes additional sources of information from
10 which the judicial officer may gather reliable information needed
to make the release decision.

12 8. It adds the factor of whether the defendant has
14 previously violated conditions of release, probation or other
16 court orders, including protection from abuse orders to the list
of factors to be considered in the preconviction and
post-conviction release decision.

18 9. It clarifies that the judicial officer must advise the
20 defendant of the potential penalties as well as the consequences
of violating a condition of release.

22 10. It requires, both in the post-conviction context and
24 when the conditional right to have preconviction bail set has
been extinguished at a Harnish bail proceeding, that bail be
denied in the event a substantial risk exists that the defendant
will commit new criminal conduct.

26 11. It increases from 24 to 48 hours the time within which
28 a confined defendant must be transported to a different county if
no Justice of the Superior Court is locally available to make a
30 de novo determination of preconviction bail. It additionally
32 requires the clerk to provide notice to the attorney for the
State of the upcoming hearing and to schedule that hearing for a
34 time not less than 24 hours but not more than 48 hours after the
attorney for the State has been notified.

36 12 It makes both preconviction and post-conviction sureties
38 responsible for ensuring a defendant's compliance with each
condition of release imposed by the judicial officer, including
40 that the defendant refrain from new criminal conduct, in addition
to being responsible for ensuring the appearance of the defendant
at all times.

42 13. It states that, prior to undertaking the responsibility
44 as a surety for a defendant, a surety must be provided a copy of
the defendant's written release order and a written statement
46 containing an explanation of both the general responsibilities of
a surety and the potential consequences to a surety if a
48 defendant violates a condition of release and must be verbally
advised of each condition in the defendant's written release
50 order as well as the potential consequences to the surety if the

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2 defendant fails to abide by each condition of release. It
further requires the Supreme Judicial Court to specify by rule
4 who will be responsible for advising the surety and providing to
the surety a copy of the written order and the written
6 explanation.

8 14. It specifically addresses the consequences to a
defendant who fails to refrain from new criminal conduct. If a
judge or justice finds probable cause exists to believe that the
10 defendant has committed a new crime following the setting of
preconviction bail, the judge or justice must issue an order
12 denying bail unless the court finds that there are conditions of
release that will reasonably ensure that the defendant will not
14 continue to commit new crimes while out on bail in which case,
the court must issue an order under the Maine Revised Statutes,
16 Title 15, section 1026.

18 15. It adds a fiscal note.