

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

M  
R. of S.

L.D. 1571

DATE: *May 30, 1997*

(Filing No. S- 423)

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE  
SENATE  
118TH LEGISLATURE  
FIRST SPECIAL SESSION

COMMITTEE OF CONFERENCE 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.

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 ~~or~~ 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:

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

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

R. O. S.

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~~

COMMITTEE OF CONFERENCE AMENDMENT "A" to S.P. 509, L.D. 1571

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

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

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

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

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

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

D. The defendant's failure to pay fines;

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

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

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

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

COMMITTEE OF CONFERENCE AMENDMENT "A" to S.P. 509, L.D. 1571

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,  
 including a public official, public agency or publicly  
 18 funded organization, if the designated person or  
 organization is able to reasonably ensure both the  
 20 appearance of the defendant as required and the  
 integrity of the judicial process. When feasible, the  
 22 judicial officer shall impose the responsibility upon  
 the defendant to produce the designated person or  
 24 organization. The judicial officer may interview the  
 designated person or organization to ensure  
 26 satisfaction of both the willingness and ability  
 required. The designated person or organization shall  
 28 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  
 or with any other family or household members of the  
 42 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;

**CONFERENCE AMENDMENT**

R. of S.

COMMITTEE OF CONFERENCE AMENDMENT "A" to S.P. 509, L.D. 1571

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

# CONFERENCE AMENDMENT

R. O. S.

COMMITTEE OF CONFERENCE AMENDMENT "A" to S.P. 509, L.D. 1571

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  
46 history relating to drug or alcohol abuse;
  - 48 (7) The defendant's criminal history, if any;
  - 50 (8) The defendant's record concerning appearances at  
court proceedings;

# CONFERENCE AMENDMENT



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  
12 or intimidating a victim or a prospective witness,  
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,  
18 including, but not limited to, violating protection  
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  
22 under subsection 2 or 3, the judicial officer shall:

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

28 B. Advise the defendant of:

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

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

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

42 **7. Applicability of conditions of release.** A condition of  
44 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.

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

COMMITTEE OF CONFERENCE AMENDMENT "A" to S.P. 509, L.D. 1571

2 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

4  
6 B. There is a substantial risk that the capital defendant  
will pose a danger to another or to the community; or

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

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

12  
14 **Sec. 10. 15 MRSA §1028, sub-§1, ¶A**, as enacted by PL 1987, c.  
758, §20, is amended to read:

16 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  
20 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.

24  
26 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.

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

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

40 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.

46  
48 **Sec. 12. 15 MRSA §1051, sub-§1**, as amended by PL 1995, c. 356,  
§8, is further amended to read:

COMMITTEE OF CONFERENCE AMENDMENT "A" to S.P. 509, L.D. 1571

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

# CONFERENCE AMENDMENT

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

4  
5 In determining whether to admit a defendant to bail, the judge or  
6 justice shall consider the factors relevant to preconviction bail  
7 listed in section 1026, as well as the facts proved at trial, the  
8 length of the term of imprisonment imposed, any history of  
9 dangerousness and any previous unexcused failure to appear as  
10 required before any court or ~~to submit as required to~~ the  
11 defendant's prior failure to obey an order or judgment of any  
12 court, including, but not limited to, violating a protection from  
13 abuse order pursuant to Title 19, section 769 or Title 19-A,  
14 section 4011.

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

18  
19 **Sec. 14. 15 MRSA §1051, sub-§3,** as amended by PL 1995, c. 356,  
20 §9, is further amended to read:

21  
22 **3. Conditions of release.** Except as provided in subsection  
23 4, the judge or justice may impose, in lieu of or in addition to  
24 an appearance or bail bond, any condition considered reasonably  
25 necessary to minimize the risk that the defendant may fail to  
26 appear as required, may compromise the integrity of the judicial  
27 process, may commit new criminal conduct, may fail to comply with  
28 conditions of release or may constitute a danger to another  
29 person or the community.

30  
31 **Sec. 15. 15 MRSA §1071, sub-§1,** as amended by PL 1989, c. 147,  
32 §4, is further amended to read:

33  
34 **1. Statement by surety.** Any person who offers to act as  
35 surety ~~for the appearance before~~ in the Superior Court ~~of~~ for any  
36 defendant in a criminal prosecution, whether or not the defendant  
37 is an appellant from the finding of a Judge of the District  
38 Court, is to be admitted to bail to await the action of the grand  
39 jury, or is arrested in vacation on a warrant issued on an  
40 indictment pending in the Superior Court, may be required to file  
41 with the judicial officer a written statement signed and sworn to  
42 by the surety describing all real estate owned by the surety  
43 within the State with sufficient accuracy to identify it.

44  
45 A. The statement shall ~~shall~~ must provide in detail all  
46 encumbrances and the value of the land. The value of the  
47 land shall ~~shall~~ must be based on the judgment of the surety.

COMMITTEE OF CONFERENCE AMENDMENT "A" to S.P. 509, L.D. 1571

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  
32 to bail after conviction is responsible for the defendant's  
appearance at all times until the defendant enters into execution  
34 of any sentence of imprisonment as well as the defendant's  
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. Appearance and conditions of release.** Orally advised of  
52 the appearance requirement and of each of the conditions of  
release pertaining to the defendant for which the

R. G. S.

COMMITTEE OF CONFERENCE AMENDMENT "A" to S.P. 509, L.D. 1571

surety is responsible and the consequences to the surety if the defendant fails to appear as required or violates any condition of release; and

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

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

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

The judge or justice may absolve the person of 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 the responsibility to pay all or part of the bond, or receive any cash deposited as bail, if, prior to terminating the agreement, the defendant has failed to appear as required or, if the precondition in section 1073-A has been satisfied, the defendant has failed to comply with each condition of release. Nothing in this section may be construed to relieve or release a person of the responsibility for the appearance of the defendant, notwithstanding the termination of the agreement, until the defendant is in the custody of the sheriff of the county in which the case is pending, new or substitute sureties have appeared, new cash bail has been deposited or the defendant has otherwise been admitted to bail.

Sec. 19. 15 MRSA §1073-A is enacted to read:

§1073-A. Precondition to forfeiture of cash or other property of surety if a defendant violates a condition of release; notice

1. Precondition. A person responsible for a defendant's compliance with each condition of release under section 1072 and who has agreed to act as surety or has deposited cash bail for a defendant who subsequently is admitted to preconviction or post-conviction bail and fails to comply with each condition of release must be absolved by the judge or justice of the responsibility to pay the bond and must have returned the deposited cash bail unless the person had, on a prior occasion, acted as surety or deposited cash bail for the defendant's

## COMMITTEE OF CONFERENCE AMENDMENT "A" to S.P. 509, L.D. 1571

compliance with each condition of release and that defendant on that prior occasion failed to comply with each condition.

2. Notice. Prior to a hearing under section 1096 or 1099, the attorney for the State shall make a good faith effort to give a surety notice of the upcoming hearing and notice that the result of that hearing may affect whether or not the surety may wish to continue to act as surety. At that hearing, the court shall orally advise the surety of the consequences of subsection 1 if:

A. The surety is present;

B. The court finds that the defendant violated a condition of release; and

C. The court finds that the defendant's bail should be reset.

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

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

**Sec. 21. 15 MRSA §1094, first ¶**, as repealed and replaced by PL 1991, c. 393, §4, is amended to read:

When a defendant who has been admitted to either preconviction or post-conviction bail in a criminal case fails to appear as required, or has violated the conditions of release, the court shall declare a forfeiture of the bail. The obligation of the defendant and any sureties may be enforced in such manner as the Supreme Judicial Court shall by rule provide and in accordance with section 224-A. The rules adopted by the Supreme Judicial Court must provide for notice to the defendant and any sureties of the consequences of failure to comply with the conditions of bail.

COMMITTEE OF CONFERENCE AMENDMENT "A" to S.P. 509, L.D. 1571

2           **Sec. 22. 15 MRSA §1095, sub-§2**, as enacted by PL 1995, c. 356, §19, is amended to read:

4           **2. Arrest.** A law enforcement officer may arrest with a  
6 warrant, or without a warrant pursuant to Title 17-A, section 15,  
8 any defendant who the law enforcement officer has probable cause  
10 to believe has failed to appear as required, has violated a  
12 condition of preconviction bail or has been charged with a crime  
14 allegedly committed while released on preconviction bail. If the  
16 defendant is charged with new criminal conduct, a bail  
18 commissioner is authorized only to set bail for the new charged  
20 crimes in accordance with this chapter. A defendant under arrest  
22 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.

24           **Sec. 23. 15 MRSA §1097, sub-§§1 and 2**, as enacted by PL 1995,  
26 c. 356, §19, are repealed and the following enacted in their  
place:

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

34           **2. Appearance of the defendant; ensuring the integrity of**  
36 **the judicial process.** If the judge or justice finds that there  
38 are conditions of release that will reasonably ensure the  
40 defendant's appearance when required and will otherwise ensure  
the integrity of the judicial process, the judge or justice shall  
issue an order under section 1026. If the judicial finding is  
otherwise, the judge or justice shall issue an order denying  
bail.'

42           Further amend the bill by inserting at the end before the  
44 summary the following:



**FISCAL NOTE**

2

The Judicial Department may require additional General Fund appropriations to provide training and cover additional printing costs to implement these changes to the Maine Bail Code.

6

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

8

10

A fiscal note must be amended to the bill pursuant to Joint Rule 312.'

12

14

**SUMMARY**

16

This amendment replaces the bill and is the report of the Committee of Conference. In addition to making a number of nonsubstantive changes to the Maine Bail Code, the amendment does the following.

18

20

22

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

24

26

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

28

30

3. It defines new criminal conduct.

32

34

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

36

38

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

40

42

44

6. It clarifies that a judicial officer is authorized to require a defendant preconviction to execute an agreement to 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.

46

48

## COMMITTEE OF CONFERENCE AMENDMENT "A" to S.P. 509, L.D. 1571

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

8 8. It adds the factor of whether the defendant has  
10 previously violated conditions of release, probation or other  
12 court orders, including protection from abuse orders to the list  
14 of factors to be considered in the preconviction and  
16 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  
22 of violating a condition of release.

24 10. It requires, both in the post-conviction context and  
26 when the conditional right to have preconviction bail set has  
28 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.

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

46 12. It makes both preconviction and post-conviction  
48 sureties responsible for ensuring a defendant's compliance with  
each condition of release imposed by the judicial officer,  
including that the defendant refrain from new criminal conduct,  
in addition to being responsible for ensuring the appearance of  
the defendant at all times. Notwithstanding this new  
responsibility of sureties, the amendment also establishes a  
precondition to forfeiture of cash or other property of a surety  
if the defendant violates a condition of release. The  
precondition requires the court to absolve a surety of the  
responsibility to pay bond and to return deposited cash bail to  
the surety, unless the surety had on a prior occasion, acted as a  
surety or deposited cash bail for the defendant's compliance with  
each condition of release and on that occasion the defendant  
failed to comply with each condition. This precondition does not  
apply to a defendant's failure to appear. The attorney for the  
State shall make a good faith effort to notify the surety of a  
bail revocation hearing and, if the surety appears at the  
hearing, the court must explain the consequences of the  
precondition to the surety. If bail is reset and the surety  
elects to continue to act as surety, that person will receive

COMMITTEE OF CONFERENCE AMENDMENT "A" to S.P. 509, L.D. 1571

notice of surety responsibilities pursuant to the Maine Revised Statutes, Title 15, section 1072-A.

4           13. It states that, prior to undertaking the responsibility  
6 as a surety for a defendant, a surety must be provided a copy of  
8 the defendant's written release order and a written statement  
10 containing an explanation of both the general responsibilities of  
12 a surety and the potential consequences to a surety if a  
14 defendant violates a condition of release and must be verbally  
16 advised of each condition in the defendant's written release  
order as well as the potential consequences to the surety if the  
defendant fails to abide by each condition of release. It  
further requires the Supreme Judicial Court to specify by rule  
who will be responsible for advising the surety and providing to  
the surety a copy of the written order and the written  
explanation.

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

28           15. It adds a fiscal note.  
30