

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 1571

S.P. 509

In Senate, March 18, 1997

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### An Act to Amend the Maine Bail Code.

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Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator BENOIT of Franklin.  
Cosponsored by Representative WATERHOUSE of Bridgton.

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

2  
4       **Sec. 1. 15 MRSA §1002, last ¶**, as enacted by PL 1987, c. 870, §1, is amended to read:

6       It is the purpose and intent of this chapter that bail be  
8       set for a defendant in order to reasonably ensure the appearance  
10       of the defendant as required, to otherwise reasonably ensure the  
12       integrity of the judicial process and, when applicable, to  
14       reasonably ensure the safety of others in the community.  
16       ~~Finally, it is also the purpose and intent of this chapter that~~  
18       ~~the judicial officer consider, relative to crimes bailable as of~~  
20       ~~right preconviction, the least restrictive release alternative~~  
22       ~~which will reasonably ensure the attendance of the defendant as~~  
      ~~required, or otherwise reasonably ensure the integrity of the~~  
      ~~judicial process.~~ The Legislature finds that the increase in the  
      engagement in new criminal conduct by defendants who are out on  
      bail, on probation or subject to court orders is subjecting the  
      judicial process to ridicule and disdain. It is the purpose and  
      intent of this chapter that the judicial officer shall give  
      serious consideration for first-time defendants to receive  
      personal recognizance bail.

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

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

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

36       **Sec. 3. 15 MRSA §1003, sub-§1, ¶A**, as amended by PL 1987, c.  
38       870, §2, is further amended to read:

40       A. In the preconviction context, "bail" means the obtaining  
42       of the release of the defendant upon an undertaking that the  
44       defendant shall appear at the time and place required and  
46       ~~may include, that the defendant shall refrain from new~~  
48       ~~criminal conduct and that the defendant shall conform to~~  
      ~~conditions imposed, in accordance with section 1026, that~~  
      ~~are designed to ensure the integrity of the judicial~~  
      ~~process.~~ For crimes bailable only as a matter of discretion  
      ~~preconviction, bail may also include conditions designed and~~  
      to ensure the safety of others in the community.

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

4           B. In the post-conviction context, "bail" means the  
6           obtaining of the release of the defendant upon an  
          undertaking that the defendant shall appear and surrender  
8           into custody at the time and place required and shall  
          refrain from new criminal conduct and ~~may--include that~~  
10          includes conditions designed to otherwise ensure the  
          integrity of the judicial process ~~or~~ as well as the safety  
12          of others in the community.

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

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

20          A. Safeguarding the role of the courts in adjudicating the  
22          guilt or innocence of defendants by ensuring the presence of  
          the defendant in court and otherwise preventing the  
24          defendant from obstructing or attempting to obstruct justice  
          by threatening, injuring or intimidating a victim,  
26          prospective witness, juror, attorney for the State, judge,  
          justice or other officer of the court or otherwise affecting  
28          public safety; and

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

38          **Sec. 6. 15 MRSA §1026,** as amended by PL 1995, c. 356, §5, is  
further amended to read:

40          **§1026. Standards for release for crime bailable as of right**  
42          **preconviction**

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

48          A. On personal recognizance or upon execution of an  
50          unsecured appearance bond under subsection 2; ~~or~~

2 B. On a condition or combination of conditions under  
3 subsection 3,; or

4  
5 C. On personal recognizance or upon execution of an  
6 unsecured appearance bond and a combination of conditions  
7 under subsection 3.

8  
9 Every order for the pretrial release of any defendant shall must  
10 include a waiver of extradition by the defendant and the  
11 conditions that the defendant refrain from new criminal conduct  
12 and not violate any pending protection from abuse orders pursuant  
13 to Title 19, section 769 or Title 19-A, section 4011.

14  
15 **2. Release on personal recognizance or unsecured appearance**  
16 **bond.** The judicial officer shall may order the pretrial release  
17 of the defendant on personal recognizance or upon execution of an  
18 unsecured appearance bond in an amount specified by the judicial  
19 officer, ~~unless the judicial officer determines that the release~~  
20 ~~will not reasonably ensure the appearance of the defendant as~~  
21 ~~required or will not otherwise reasonably ensure the integrity of~~  
22 ~~the judicial process.~~ Before any defendant is released on  
23 personal recognizance or unsecured appearance bond, the judicial  
24 officer must determine that the defendant will appear as required  
25 and that the defendant's release will not otherwise affect the  
26 integrity of the judicial process.

27  
28 The judicial officer may not order the pretrial release of the  
29 defendant on personal recognizance or upon execution of an  
30 unsecured appearance bond on new criminal conduct if the  
31 defendant has pending criminal charges.

32  
33 In determining whether the pretrial release of the defendant on  
34 personal recognizance or upon execution of an unsecured  
35 appearance bond is appropriate, the judicial officer shall  
36 consider:

37  
38 A. The defendant's prior criminal history, including, but  
39 not limited to, whether the defendant has previously  
40 violated conditions of release, whether the defendant has  
41 been or is on probation and whether the defendant has  
42 previously violated court orders, such as protection from  
43 abuse orders pursuant to Title 19, section 769 or Title  
44 19-A, section 4011;

45  
46 B. The severity, nature and circumstances of the crime  
47 charged;

48  
49 C. The defendant's failures to appear when required;  
50

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

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

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

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

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

24          A. If the judicial officer determines that the release  
26          described in subsection 2 will not reasonably ensure the  
28          appearance of the defendant as required or will not  
30          otherwise reasonably ensure the integrity of the judicial  
32          process, the judicial officer shall order the pretrial  
34          release of the defendant subject to the least restrictive  
36          further condition or combination of conditions that the  
38          judicial officer determines will reasonably ensure the  
40          appearance of the defendant as required and will otherwise  
42          reasonably ensure the integrity of the judicial process.  
44          These conditions may include that the defendant:

46                   (1) Remain in the custody of a designated person or  
48                   organization agreeing to supervise the defendant,  
50                   including a public official, public agency or publicly  
                  funded organization, if the designated person or  
                  organization is able to reasonably ensure both the  
                  appearance of the defendant as required and the  
                  integrity of the judicial process. When feasible, the  
                  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;

- 2 (2) Maintain employment or, if unemployed, actively  
4 seek employment;
- 6 (3) Maintain or commence an educational program;
- 8 (4) Abide by specified restrictions on personal  
10 associations, place of abode or travel;
- 12 (5) Avoid all contact with a victim of the alleged  
14 crime, a potential witness regarding the alleged crime  
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;
- 16 (6) Report on a regular basis to a designated law  
18 enforcement agency or other governmental agency;
- 20 (7) Comply with a specified curfew;
- 22 (8) Refrain from possessing a firearm or other  
dangerous weapon;
- 24 (9) Refrain from use or excessive use of alcohol and  
26 from any use of drugs;
- 28 (10) Undergo, as an outpatient, available medical or  
30 psychiatric treatment, or enter and remain, as a  
voluntary patient, in a specified institution when  
required for that purpose;
- 32 (11) Execute an agreement to forfeit, upon failing to  
34 appear as required, upon violating any conditions of  
release or upon the engagement in new criminal conduct  
while on release, such designated property, including  
36 money, as is reasonably necessary to ensure the  
appearance of the defendant as required, conformance to  
38 court orders and conformance to any conditions of  
release and post with an appropriate court such  
40 evidence of ownership of the property or such  
percentage of the money as the judicial officer  
42 specifies;
- 44 (12) Execute a bail bond with sureties in such amount  
46 as is reasonably necessary to ensure the appearance of  
the defendant as required, conformance to court orders  
and conformance to any condition of release;
- 48

- 2 (13) Return to custody for specified hours following  
release for employment, schooling or other limited  
4 purposes;
- 6 (14) Report on a regular basis to the defendant's  
attorney;
- 8 (15) Notify the court of any changes of address or  
employment;
- 10 (16) Provide to the court the name, address and  
12 telephone number of a designated person or organization  
that will know the defendant's whereabouts at all times;
- 14 (17) Inform any law enforcement officer of the  
16 defendant's condition of release if the defendant is  
subsequently arrested or summoned for new criminal  
18 conduct; and
- 20 (18) Satisfy any other condition that is reasonably  
22 necessary to ensure the appearance of the defendant as  
required and, to otherwise reasonably ensure the  
24 integrity of the judicial process, and to prevent the  
defendant from engaging in criminal conduct;
- 26 (19) Satisfy any other condition or combination of  
28 conditions that will encourage rehabilitation or public  
safety; and
- 30 (20) Refrain from violating any protection from abuse  
32 orders pursuant to Title 19, section 769 or Title 19-A,  
section 4011.

34 B. The judicial officer may not impose a financial  
36 condition which that, either alone or in combination with  
other conditions of bail, is in excess of that reasonably  
38 necessary to ensure the appearance of the defendant as  
required or to otherwise ensure the integrity of the  
judicial process.

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



2           4.   **Factors to be considered in release decision.** In  
3 setting bail, the judicial officer shall, on the basis of an  
4 interview with the defendant, the information provided by the  
5 prosecuting attorney or an informed law enforcement officer if  
6 the prosecuting attorney is not available and other reliable  
7 information which that can be obtained, take into account the  
8 available information concerning the following:

10           A. The severity, nature and circumstances of the crime  
11 charged;

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

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

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

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

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

19                   (4) The defendant's financial resources;

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

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

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

25                   (8) The defendant's record concerning appearances at  
26 court proceedings and the defendant's failure to pay  
27 finest or restitution;

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

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

2           (11) Whether the defendant has previously violated  
3           conditions of release, probation or other court orders,  
4           including, but not limited to, violations of protection  
5           from abuse orders pursuant to Title 19, section 769 or  
6           Title 19-A, section 4011; and

7           (12) Any other factors that may enhance a sentence of  
8           incarceration.

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

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

16           B. Advise the defendant of:

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

19                   (2) The penalties and consequences of violating a  
20                   condition of release or engaging in new criminal  
21                   conduct, including the immediate issuance of a warrant  
22                   for the defendant's arrest.

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

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

31           **Sec. 7. 15 MRSA §1028**, as enacted by PL 1987, c. 758, §20, is  
32           amended to read:

33           **§1028. Review of bail under section 1026**

34           **1. By defendant in custody.** Any defendant aggrieved by the  
35           refusal of a Judge of the District Court or a bail commissioner  
36           acting under section 1026 to authorize the defendant's release on  
37           personal recognizance or on the execution of an unsecured  
38           appearance bond and who is in custody for that crime may ~~petition~~  
39           appeal to the Superior Court for a de novo determination of that  
40           refusal to review whether the District Court or bail commissioner  
41           abused the court's or commissioner's discretion in setting the  
42           release conditions.

2 bail. The District Court Judge or bail commissioner making the  
3 decision shall advise the defendant of the right to obtain a de  
4 nevo-determination-in appeal to the Superior Court.

5  
6 A. If the defendant chooses to have a de novo determination  
7 of bail appeal the bail decision, the defendant shall must  
8 be furnished with a petition an appeal form and, upon  
9 execution of the petition appeal form and without the  
10 issuance of any writ or other process, the sheriff of the  
11 county in which the decision was made shall provide for the  
12 transportation of the defendant together with the petition  
13 and all papers relevant to the petition or copies of the  
14 petition or papers at the date and time scheduled by the  
15 clerk of the Superior Court to the Superior Court.

16 A hearing must be scheduled within 96 hours of the filing of  
17 the appeal but may not be heard until 24 hours after notice  
18 has been served upon the attorney for the State. If no  
19 Justice of the Superior Court will be available within 24 96  
20 hours, excluding Saturdays, Sundays and holidays,  
21 arrangements shall must be made for a de novo determination  
22 the appeal of bail to be heard in the nearest county in  
23 which a Justice of the Superior Court is then sitting. The  
24 defendant's custodian shall provide transportation to the  
25 Superior Court as required by this chapter without the  
26 issuance of any writ or other process.

27  
28 If there is no Justice of the Superior Court available, the  
29 defendant shall must be retained in custody until the  
30 petition appeal can be considered.

31  
32 B. The petition appeal form and such other papers as may  
33 accompany it shall must be delivered to the clerk of the  
34 Superior Court to which the defendant is transported and  
35 upon receipt the clerk shall notify the attorney for the  
36 State. The petition shall have priority over any other  
37 matter before the Justice of the Superior Court. Upon  
38 request of the attorney for the State, an appeal hearing may  
39 not be held before the expiration of 24 hours after  
40 notification has been given to the attorney for the State,  
41 excluding Saturdays, Sundays and holidays. The Superior  
42 Court Justice considering the petition appeal shall issue an  
43 order in accordance with section 1026.

44  
45 C. The bail appeal form is the only document required in  
46 the appeal. Both parties must be heard at oral argument but  
47 either party may supplement the record with written argument  
48 or documents. This appeal is not governed by the Maine  
49 Rules of Criminal Procedure, Rules 36 to 39D. The Superior  
50 Court Justice hearing the appeal shall review the District

2           Court or bail commissioner's bail decision only for an abuse  
3           of discretion.

4           **2. By defendant not in custody.** Any defendant aggrieved by  
5           the refusal of a Judge of the District Court or a bail  
6           commissioner to authorize the defendant's release on personal  
7           recognizance or on the execution of an unsecured bond, and who is  
8           not in custody as a result of that refusal, may petition appeal  
9           to the Superior Court for a de-novo determination of bail. The  
10          ~~petition shall~~ appeal must be considered as scheduled by the  
11          clerk. The Superior Court Justice hearing the appeal shall  
12          review the District Court or bail commissioner's bail decision  
13          only for an abuse of discretion.

14                   **Sec. 8. 15 MRSA §1051, sub-§2,** as enacted by PL 1987, c. 758,  
15                   §20, is amended to read:

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

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

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

25                   C. There is no substantial risk that the defendant will  
26                   violate the conditions of release or commit a new crime.

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

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

40                   **Sec. 9. 15 MRSA §1051, sub-§3,** as amended by PL 1995, c. 356,  
41                   §9, is further amended to read:

2           **3. Conditions of release.** Except as provided in subsection  
4 an appearance or bail bond, any condition considered reasonably  
6 necessary to minimize the risk that the defendant may fail to  
8 appear as required, may compromise the integrity of the judicial  
process, may engage in new criminal conduct, may fail to comply  
with conditions of release or may constitute a danger to another  
person or the community.

10           **Sec. 10. 15 MRSA §1071, sub-§1**, as amended by PL 1989, c. 147,  
§4, is further amended to read:

12  
14           **1. Statement by surety.** Any person who offers to act as  
16 surety for the appearance before the Superior Court of any  
18 defendant in a criminal prosecution, for the compliance by that  
defendant with any conditions of release and for the defendant's  
refraining from engaging in new criminal conduct, whether or not  
20 the defendant is an appellant from the finding of a Judge of the  
District Court, is to be admitted to bail to await the action of  
22 the grand jury, or is arrested in vacation on a warrant issued on  
24 an indictment pending in the Superior Court, may be required to  
file with the judicial officer a written statement signed and  
sworn to by the surety describing all real estate owned by the  
surety within the State with sufficient accuracy to identify it.

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

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

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

40           **Sec. 11. 15 MRSA §1072**, as amended by PL 1995, c. 356, §13,  
is further amended to read:

42           **§1072. Responsibility of sureties**

44  
46           **1. Preconviction.** Each surety for a defendant admitted to  
48 preconviction bail is responsible for the appearance of the  
defendant at all times, the defendant's compliance with the  
conditions of release and ensuring that the defendant refrains  
from engaging in new criminal conduct until a verdict or finding  
50 or plea of guilty or until the acceptance of a plea of guilty or

2 nolo contendere, unless the surety has sooner terminated the  
3 agreement to act as surety and has been relieved of the  
4 responsibility in accordance with section 1073.

5 A preconviction surety is not responsible for the appearance of a  
6 defendant after conviction, the defendant's compliance with the  
7 conditions of release and ensuring that the defendant refrains  
8 from engaging in new criminal conduct, unless the surety has  
9 agreed to act as postconviction surety.

10 **2. Post-conviction.** Each surety for a defendant admitted  
11 to bail after conviction is responsible for the defendant's  
12 appearance at all times, the defendant's compliance with the  
13 conditions of release and ensuring that the defendant refrains  
14 from engaging in new criminal conduct until the defendant enters  
15 into execution of any sentence of imprisonment, unless the surety  
16 has sooner terminated the agreement to act as surety and has been  
17 relieved of the responsibility in accordance with section 1073.

18 **Sec. 12. 15 MRSA §1073, 3rd ¶**, as amended by PL 1995, c. 356,  
19 §14, is further amended to read:

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

34 **Sec. 13. 15 MRSA §1074, sub-§1**, as enacted by PL 1987, c. 758,  
35 §20, is amended to read:

36 **1. Cash.** Whenever cash is deposited as bail to secure the  
37 appearance of and conformance to conditions of release of a  
38 defendant in a criminal proceeding, either preconviction or  
39 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  
41 defendant or the person offering the cash as bail, designates  
42 under oath another person to whom the cash belongs. If a person  
43 other than the defendant has been designated as the owner of the  
44 cash, it shall must be returned to that person unless otherwise  
45 forfeited. If the defendant is deemed to be the owner of the  
46

2 cash, it shall must be returned to the defendant unless otherwise  
forfeited or subject to setoff as provided in this section.

4 **Sec. 14. 15 MRSA §1094, first ¶**, as repealed and replaced by PL  
1991, c. 393, §4, is amended to read:

6  
8 When a defendant who has been admitted to either  
preconviction or post-conviction bail in a criminal case fails to  
appear as required, has violated the conditions of release or has  
10 engaged in new criminal conduct, the court shall declare a  
forfeiture of the bail. The obligation of the defendant and any  
12 sureties may be enforced in such manner as the Supreme Judicial  
Court shall by rule provide and in accordance with section  
14 224-A. The rules adopted by the Supreme Judicial Court must  
provide for notice to the defendant and any sureties of the  
16 consequences of failure to comply with the conditions of bail.

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

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

40 **Sec. 16. 17-A MRSA §1205, sub-§8** is enacted to read:

42 **8.** In deciding whether to release a person on bail as  
provided in this section, the court must be guided by the  
44 standards of post-conviction bail in Title 15, section 1051 and  
the revocation procedure in Title 15, section 1098.

46  
48 **Sec. 17. 17-A MRSA §1206, sub-§3**, as amended by PL 1993, c.  
234, §1, is further amended to read:

2 3. If a hearing is ordered, the person on probation must be  
4 notified, and the court may issue a summons or may issue a  
6 warrant for the person's arrest and order the person committed,  
8 with or without bail, pending the hearing. In deciding whether  
to release a person on bail as provided in this subsection, the  
court must be guided by the standards of post-conviction bail in  
Title 15, section 1051 and the revocation procedure in Title 15,  
section 1098.

10 **Sec. 18. 17-A MRSA §1207**, as amended by PL 1993, c. 234, §3,  
12 is further amended to read:

14 **§1207. Review**

16 Review of a revocation of probation pursuant to section 1206  
18 must be by appeal. In a probation revocation proceeding in the  
20 District Court, a person whose probation is revoked may appeal,  
22 as under Title 15, section 2111 and the applicable Maine Rules of  
24 Criminal Procedure, to the Superior Court and if unsuccessful to  
26 the Supreme Judicial Court, sitting as the Law Court, as under  
28 Title 15, section 2115 and the applicable Maine Rules of Criminal  
30 Procedure. In a probation revocation proceeding in the Superior  
32 Court, a person whose probation is revoked may appeal, as under  
34 Title 15, section 2115 and the applicable Maine Rules of Criminal  
36 Procedure, to the Supreme Judicial Court, sitting as the Law  
38 Court. Assignment and withdrawal of counsel must be in  
40 accordance with the Maine Rules of Criminal Procedure. Bail is  
not available to any person pending the appeal of a revocation of  
probation pursuant to this section.

32 **SUMMARY**

34 This bill amends the Maine Bail Code in the following ways.

36 1. It amends the definitions of the terms "bail" and  
38 "ensure the integrity of the judicial process."

40 2. It changes the standards for release of a defendant in  
custody for a crime bailable as of right preconviction.

42 3. It provides that a judicial officer may not order the  
44 pretrial release of a defendant on personal recognizance or upon  
46 execution of an unsecured appearance bond on new criminal conduct  
if the defendant has pending criminal charges.

48 4. It lists criteria for a judicial officer to consider in  
50 determining whether the pretrial release of a defendant on  
personal recognizance or an unsecured appearance bond is  
appropriate.



2           5. It provides that a judicial officer may not order the  
defendant released on personal recognizance or unsecured  
4 appearance bond if the defendant's crime is serious or the  
judicial officer finds the defendant's criminal record  
6 inappropriate for granting the defendant release on personal  
recognizance or unsecured appearance bond.

8  
10           6. It repeals the provision that permits the Superior Court  
to make a de novo determination of the refusal of a judge of the  
District Court or a bail commissioner acting under the Maine  
12 Revised Statutes, Title 15, section 1026 to authorize the  
defendant's release on personal recognizance or on the execution  
14 of an unsecured appearance bond and replaces it with a provision  
that permits a defendant to appeal to the Superior Court to  
16 review whether the District Court or bail commissioner abused the  
court's or commissioner's discretion in setting the bail. It  
18 provides that for a defendant in custody, an appeal hearing must  
be scheduled within 96 hours of the filing of the appeal.

20  
22           7. It changes the standards admitting a defendant to  
post-conviction bail.

24           8. It provides that a surety for a defendant admitted to  
bail is responsible for the appearance of the defendant at all  
26 times, the defendant's compliance with the conditions of release  
and ensuring that the defendant refrains from engaging in new  
28 criminal conduct.

30           9. It changes the standards for determining whether to  
release a person on bail in connection with probation revocation  
32 proceedings and provides that bail is not available to any person  
pending the appeal of a revocation of probation pursuant to Title  
34 17-A, section 1207.