

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1998

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Legislative Document

No. 2022

S.P. 744

In Senate, January 14, 1998

**An Act to Make Corrections to the Laws Governing the Maine Bail Code.**

(EMERGENCY)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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 MURRAY of Penobscot.  
Cosponsored by Representative POVICH of Ellsworth.

2           **Emergency preamble.** Whereas, Acts of the Legislature do not  
become effective until 90 days after adjournment unless enacted  
as emergencies; and

4  
6           **Whereas,** it is imperative that the changes made to the Maine  
Bail Code by this Act take effect immediately; and

8           **Whereas,** in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
10       Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
12       safety; now, therefore,

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

16           **Sec. 1. 15 MRSA §1002, last 2 ¶¶,** as enacted by PL 1997, c.  
543, §2, are repealed.

18           **Sec. 2. 15 MRSA §1003, sub-§5,** as repealed and replaced by PL  
20       1997, c. 543, §5, is repealed.

22           **Sec. 3. 15 MRSA §1026, sub-§2,** as amended by PL 1997, c. 543,  
§7, is further amended to read:

24           2. **Release on personal recognizance or unsecured appearance**  
26       **bond.** The judicial officer ~~may~~ shall order the pretrial release  
of the defendant on personal recognizance or upon execution of an  
28       unsecured appearance bond in an amount specified by the judicial  
officer, unless the judicial officer determines that the release  
30       will not reasonably ensure the appearance of the defendant as  
required or will not otherwise reasonably ensure the integrity of  
32       the judicial process. ~~Before--any--defendant--is--released--on~~  
~~personal--recognizance--or--an--unsecured--appearance--bond,--the~~  
34       ~~judicial--officer--must--determine--that--the--defendant--will--appear--as~~  
~~required--and--that--the--defendant's--release--will--not--otherwise~~  
36       ~~affect--the--integrity--of--the--judicial--process.~~

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

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

48           ~~A. The defendant's prior criminal history, including, but~~  
~~not--limited--to, whether the defendant has previously~~  
50       ~~violated conditions of release, whether the defendant has~~

2 been--or--is--on--probation--and--whether--the--defendant--has  
previously--violated--court--orders,--such--as--protection--from  
4 abuse--orders--pursuant--to--Title--19,--section--769--or--Title  
19-A,--section--4011;

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

8 C,--The--defendant's--failures--to--appear--when--required;

10 D,--The--defendant's--failure--to--pay--fines;

12 E,--Any--other--factors--that--may--enhance--a--sentence--of  
14 incarceration;--and

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

20 In--considering--all--the--factors--enumerated--in--paragraphs--A--to--F,  
22 the--judicial--officer--shall--give--the--greatest--weight--to--the  
defendant's--criminal--history--and--the--severity--of--the--crime. The  
24 judicial--officer--may--not--order--the--defendant--released--on--personal  
recognizance--or--an--unsecured--appearance--bond--if--the--defendant's  
26 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.

28 Sec. 4. 15 MRSA §1028, sub-§1, ¶A, as amended by PL 1997, c.  
30 543, §10, is further amended to read:

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

40 If no Justice of the Superior Court will be available within  
42 24 48 hours, excluding Saturdays, Sundays and holidays,  
arrangements must be made for a de novo determination of  
44 bail in the nearest county in which a Justice of the  
Superior Court is then sitting. The defendant's custodian  
46 shall provide transportation to the Superior Court as  
required by this chapter without the issuance of any writ or  
48 other process.

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

4  
6 **Emergency clause.** In view of the emergency cited in the  
preamble, this Act takes effect when approved.

8  
10 **SUMMARY**

12 This bill makes changes to the laws enacted by Public Law  
1997, chapter 543 governing the Maine Bail Code to correctly  
reflect legislative intent.