

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 936

H.P. 680

House of Representatives, February 2, 1999

An Act to Amend the Bail Code to Imprison Violators of Bail.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative TOBIN of Dexter.
Cosponsored by Senator DAVIS of Piscataquis and
Representatives: CARR of Lincoln, HONEY of Boothbay, LOVETT of Scarborough,
McALEVEY of Waterboro, STANLEY of Medway, WHEELER of Bridgewater.

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

2
4 **Sec. 1. 15 MRSA §1002, 2nd ¶**, as amended by PL 1997, c. 543,
§1, is further 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
of the defendant as required, to otherwise reasonably ensure the
10 integrity of the judicial process and, when applicable, to
reasonably ensure the safety of others in the community. It is
12 also the purpose and intent of this chapter that the judicial
officer ~~consider, relative to crimes bailable as of right~~
14 ~~preconviction, the least restrictive release alternative that~~
~~will reasonably ensure the attendance of the defendant as~~
~~required, or otherwise reasonably ensure the integrity of the~~
16 judicial process shall give serious consideration for first-time
defendants to receive personal recognizance bail. Finally, it is
18 also the intent and purpose of this chapter that a defendant,
while at liberty on bail, refrain from committing new crimes.

20 **Sec. 2. 15 MRSA §1002**, as amended by PL 1997, c. 585, §1, is
22 further amended by adding at the end 2 new paragraphs to read:

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

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

32 **Sec. 3. 15 MRSA §1003, sub-§1, ¶A**, as amended by PL 1997, c.
34 543, §3, is further amended to read:

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

48 **Sec. 4. 15 MRSA §1003, sub-§5**, as repealed and replaced by PL
50 1997, c. 585, §2, is repealed and the following enacted in its
place:

2 5. Ensure the integrity of the judicial process. To
3 "ensure the integrity of the judicial process," when used in the
4 context of the granting or denial of bail, means:

6 A. Safeguarding the role of the courts in adjudicating the
7 guilt or innocence of defendants by ensuring the presence of
8 the defendant in court and otherwise preventing the
9 defendant from obstructing or attempting to obstruct justice
10 by threatening, injuring or intimidating a victim,
11 prospective witness, juror, attorney for the State, judge,
12 justice or other officer of the court or otherwise affecting
13 public safety; and

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

24 Sec. 5. 15 MRSA §1026, sub-§1, ¶A, as amended by PL 1997, c.
25 543, §7, is further amended to read:

26 A. On personal recognizance or upon execution of an
27 unsecured appearance bond under subsection 2 2-A;

30 Sec. 6. 15 MRSA §1026, sub-§2, as amended by PL 1997, c. 585,
31 §3, is repealed.

34 Sec. 7. 15 MRSA §1026, sub-§2-A is enacted to read:

36 2-A. Release on personal recognizance or unsecured
37 appearance bond. The judicial officer shall order the pretrial
38 release of the defendant on personal recognizance or upon
39 execution of an unsecured appearance bond in an amount specified
40 by the judicial officer. Before any defendant is released on
41 personal recognizance or unsecured appearance bond, the judicial
42 officer must determine that the defendant will appear as required
43 and that the defendant's release will not otherwise affect the
44 integrity of the judicial process.

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

50 In determining whether the pretrial release of the defendant on
51 personal recognizance or upon execution of an unsecured

2 appearance bond is appropriate, the judicial officer shall
3 consider:

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

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

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

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

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

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

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

28 **Sec. 8. 15 MRSA §1026, sub-§3, ¶A, as amended by PL 1997, c.**
29 **543, §7, is further amended to read:**

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

41 **(1) Remain in the custody of a designated person or**
42 **organization agreeing to supervise the defendant,**

2 including a public official, public agency or publicly
3 funded organization, if the designated person or
4 organization is able to reasonably ensure both the
5 appearance of the defendant as required and the
6 integrity of the judicial process. When feasible, the
7 judicial officer shall impose the responsibility upon
8 the defendant to produce the designated person or
9 organization. The judicial officer may interview the
10 designated person or organization to ensure
11 satisfaction of both the willingness and ability
12 required. The designated person or organization shall
13 agree to notify immediately the judicial officer of any
14 violation of release by the defendant;

15 (2) Maintain employment or, if unemployed, actively
16 seek employment;

17 (3) Maintain or commence an educational program;

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

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

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

27 (7) Comply with a specified curfew;

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

30 (9) Refrain from use or excessive use of alcohol and
31 from any use of drugs;

32 (10) Undergo, as an outpatient, available medical or
33 psychiatric treatment, or enter and remain, as a
34 voluntary patient, in a specified institution when
35 required for that purpose;

36 (11) Execute an agreement to forfeit, upon failing to
37 appear as required, upon violating any conditions of
38 release or upon the engagement in new criminal conduct
39 while on release, such designated property, including
40 money, as is reasonably necessary to ensure the
41 appearance of the defendant as required and to ensure
42

- 2 the integrity of the judicial process and post with an
 4 appropriate court such evidence of ownership of the
 6 property or such percentage of the money as the
 8 judicial officer specifies;
- 10 (12) Execute a bail bond with sureties in such amount
 12 as is reasonably necessary to ensure the appearance of
 14 the defendant as required and to ensure the integrity
 16 of the judicial process;
- 18 (13) Return to custody for specified hours following
 20 release for employment, schooling or other limited
 22 purposes;
- 24 (14) Report on a regular basis to the defendant's
 26 attorney;
- 28 (15) Notify the court of any changes of address or
 30 employment;
- 32 (16) Provide to the court the name, address and
 34 telephone number of a designated person or organization
 36 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
 42 subsequently arrested or summoned for new criminal
 44 conduct; and
- 46 (18) Satisfy any other condition that is reasonably
 48 necessary to ensure the appearance of the defendant as
 50 required and, to otherwise reasonably ensure the
integrity of the judicial process, and to prevent the
defendant from engaging in criminal conduct;
- (19) Satisfy any other condition or combination of
conditions that will encourage rehabilitation or public
safety; and
- (20) Refrain from violating any protection from abuse
orders pursuant to former Title 19, section 769 or
Title 19-A, section 4011.

44 **Sec. 9. 15 MRSA §1026, sub-§4, ¶A,** as enacted by PL 1987, c.
 46 758, §20, is amended to read:

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

50 **Sec. 10. 15 MRSA §1026, sub-§4, ¶C,** as amended by PL 1997, c.
 543, §7, is further amended to read:

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

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

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

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

12 (4) The defendant's financial resources;

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

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

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

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

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

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

38 (11) Whether the defendant has previously violated
conditions of release, probation or other court orders,
40 including, but not limited to, violating protection
from abuse orders pursuant to former Title 19, section
42 769 or Title 19-A, section 4011.; and

44 (12) Any other factors that may enhance a sentence of
46 incarceration.

48 **Sec. 11. 15 MRSA §1026, sub-§5, as amended by PL 1997, c. 543,**
§7, is further amended to read:

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

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

8 B. Advise the defendant of:

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

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

16 **Sec. 12. 15 MRSA §1028**, as amended by PL 1997, c. 585, §4, is
18 further amended to read:

20 **§1028. Review of bail under section 1026**

22 1. **By defendant in custody.** Any defendant aggrieved by the
24 refusal of a Judge of the District Court or a bail commissioner
acting under section 1026 to authorize the defendant's release on
26 personal recognizance or on the execution of an unsecured
appearance bond and who is in custody for that crime may ~~petition~~
~~appeal to the Superior Court for a de novo determination of that~~
~~refusal to review whether the District Court or bail commissioner~~
~~abused the court's or commissioner's discretion in setting the~~
28 bail. The District Court Judge or bail commissioner making the
30 decision shall advise the defendant of the right to ~~obtain a de~~
~~neve-determination-in~~ appeal to the Superior Court.

32 A. If the defendant chooses to ~~have a de neve-determination~~
34 ~~of bail~~ appeal the bail decision, the defendant must be
36 furnished with a ~~petition~~ an appeal form and, upon execution
of the ~~petition~~ appeal form and without the issuance of any
38 writ or other process, the sheriff of the county in which
the decision was made shall provide for the transportation
40 of the defendant ~~together with the petition and all papers~~
~~relevant to the petition or copies of the petition or papers~~
at the date and time scheduled by the clerk of the Superior
42 Court to the Superior Court.

44 A hearing must be scheduled within 96 hours of the filing of
46 the appeal but may not be heard until 24 hours after notice
has been served upon the attorney for the State. If no
48 Justice of the Superior Court will be available within 48 96
hours, excluding Saturdays, Sundays and holidays,
50 arrangements must be made for a ~~de novo-determination~~ the
appeal of bail to be heard in the nearest county in which a

2 Justice of the Superior Court is then sitting. The
3 defendant's custodian shall provide transportation to the
4 Superior Court as required by this chapter without the
issuance of any writ or other process.

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

10 B. The petition appeal form and such other papers as may
11 accompany it shall must be delivered to the clerk of the
12 Superior Court ~~to which the defendant is transported~~ and
13 upon receipt the clerk shall notify the attorney for the
14 State. ~~The petition shall have priority over any other~~
15 ~~matter before the Justice of the Superior Court.~~ Upon
16 request of the attorney for the State, an appeal hearing may
17 not be held before the expiration of 24 hours after
18 notification has been given to the attorney for the State,
19 excluding Saturdays, Sundays and holidays. The Superior
20 Court Justice considering the petition appeal shall issue an
21 order in accordance with section 1026.

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

30 D. The bail appeal form is the only document required in
31 the appeal. Both parties must be heard at oral argument but
32 either party may supplement the record with written argument
33 or documents. This appeal is not governed by the Maine
34 Rules of Criminal Procedure, Rules 36 to 39D. The Superior
35 Court Justice hearing the appeal shall review the District
36 Court or bail commissioner's bail decision only for an abuse
37 of discretion.

38
39
40 2. **By defendant not in custody.** Any defendant aggrieved by
41 the refusal of a Judge of the District Court or a bail
42 commissioner to authorize the defendant's release on personal
43 recognizance or on the execution of an unsecured bond, and who is
44 not in custody as a result of that refusal, may petition appeal
45 to the Superior Court for a de novo determination of bail. The
46 petition shall appeal must be considered as scheduled by the
47 clerk. The Superior Court Justice hearing the appeal shall
48 review the District Court or bail commissioner's bail decision
only for an abuse of discretion.

50 **Sec. 13. 15 MRS §1071, sub-§1, as amended by PL 1997, c. 543,**
§15, is further amended to read:

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

14

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

18

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

24

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

28

Sec. 14. 15 MRSA §1095, sub-§2, as amended by PL 1997, c. 543,
30 §22, is further amended to read:

32

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

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

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

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

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

32 8. It changes the standards for determining whether to
release a person on bail in connection with probation revocation
34 proceedings and provides that bail is not available to any person
pending the appeal of a revocation of probation pursuant to Title
36 17-A, section 1207.