

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION-2008

Legislative Document

No. 2240

H.P. 1600

House of Representatives, February 28, 2008

An Act Containing the Recommendations of the Criminal Law Advisory Commission

Reported by Representative GERZOFKY of Brunswick for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed under Joint Rule 218.

Millicent M. MacFarland

MILLICENT M. MacFARLAND

Clerk

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

2 **Sec. 1. 4 MRSA §51**, as repealed and replaced by PL 1969, c. 354, is amended to
3 read:

4 **§51. Constitution of court; concurrence required**

5 When sitting as a ~~law court~~ Law Court to determine questions of law arising in any
6 civil actions and in criminal trials and proceedings or criminal action or proceeding, the
7 Supreme Judicial Court ~~shall~~ must be composed as provided by rules ~~promulgated~~
8 adopted by that court and shall hear and determine such questions by the concurrence of a
9 majority of the justices sitting and qualified to act.

10 **Sec. 2. 15 MRSA §1026, sub-§2**, as repealed by PL 2007, c. 374, §4 and
11 amended by c. 377, §4, is repealed.

12 **Sec. 3. 15 MRSA §1026, sub-§3**, as amended by PL 2007, c. 374, §§6 to 8 and c.
13 377, §5 and c. 377, §5, is repealed and the following enacted in its place:

14 **3. Release on conditions.** Release on a condition or combination of conditions
15 pursuant to subsection 1, paragraph B or C must be as provided in this subsection.

16 A. If, after consideration of the factors listed in subsection 4, the judicial officer
17 determines that the release described in subsection 2-A will not reasonably ensure the
18 appearance of the defendant at the time and place required, will not reasonably ensure
19 that the defendant will refrain from any new criminal conduct, will not reasonably
20 ensure the integrity of the judicial process or will not reasonably ensure the safety of
21 others in the community, the judicial officer shall order the pretrial release of the
22 defendant subject to the least restrictive further condition or combination of
23 conditions that the judicial officer determines will reasonably ensure the appearance
24 of the defendant at the time and place required, will reasonably ensure that the
25 defendant will refrain from any new criminal conduct, will reasonably ensure the
26 integrity of the judicial process and will reasonably ensure the safety of others in the
27 community. These conditions may include that the defendant:

28 (1) Remain in the custody of a designated person or organization agreeing to
29 supervise the defendant, including a public official, public agency or publicly
30 funded organization, if the designated person or organization is able to
31 reasonably ensure the appearance of the defendant at the time and place required,
32 that the defendant will refrain from any new criminal conduct, the integrity of the
33 judicial process and the safety of others in the community. When it is feasible to
34 do so, the judicial officer shall impose the responsibility upon the defendant to
35 produce the designated person or organization. The judicial officer may
36 interview the designated person or organization to ensure satisfaction of both the
37 willingness and ability required. The designated person or organization shall
38 agree to notify immediately the judicial officer of any violation of release by the
39 defendant;

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

- 1 (3) Maintain or commence an educational program;
- 2 (4) Abide by specified restrictions on personal associations, place of abode or
- 3 travel;
- 4 (5) Avoid all contact with a victim of the alleged crime, a potential witness
- 5 regarding the alleged crime or with any other family or household members of
- 6 the victim or the defendant or to contact those individuals only at certain times or
- 7 under certain conditions;
- 8 (6) Report on a regular basis to a designated law enforcement agency or other
- 9 governmental agency;
- 10 (7) Comply with a specified curfew;
- 11 (8) Refrain from possessing a firearm or other dangerous weapon;
- 12 (9) Refrain from use or excessive use of alcohol and from any use of drugs;
- 13 (10) Undergo, as an outpatient, available medical or psychiatric treatment, or
- 14 enter and remain, as a voluntary patient, in a specified institution when required
- 15 for that purpose;
- 16 (10-A) Enter and remain in a long-term residential facility for the treatment of
- 17 substance abuse;
- 18 (11) Execute an agreement to forfeit, in the event of noncompliance, such
- 19 designated property, including money, as is reasonably necessary to ensure the
- 20 appearance of the defendant at the time and place required, to ensure that the
- 21 defendant will refrain from any new criminal conduct, to ensure the integrity of
- 22 the judicial process and to ensure the safety of others in the community and post
- 23 with an appropriate court such evidence of ownership of the property or such
- 24 percentage of the money as the judicial officer specifies;
- 25 (12) Execute a bail bond with sureties in such amount as is reasonably necessary
- 26 to ensure the appearance of the defendant at the time and place required, to
- 27 ensure that the defendant will refrain from any new criminal conduct, to ensure
- 28 the integrity of the judicial process and to ensure the safety of others in the
- 29 community;
- 30 (13) Return to custody for specified hours following release for employment,
- 31 schooling or other limited purposes;
- 32 (14) Report on a regular basis to the defendant's attorney;
- 33 (15) Notify the court of any changes of address or employment;
- 34 (16) Provide to the court the name, address and telephone number of a
- 35 designated person or organization that will know the defendant's whereabouts at
- 36 all times;
- 37 (17) Inform any law enforcement officer of the defendant's condition of release
- 38 if the defendant is subsequently arrested or summonsed for new criminal
- 39 conduct; and

1 (18) Satisfy any other condition that is reasonably necessary to ensure the
2 appearance of the defendant at the time and place required, to ensure that the
3 defendant will refrain from any new criminal conduct, to ensure the integrity of
4 the judicial process and to ensure the safety of others in the community.

5 B. The judicial officer may not impose a financial condition that, either alone or in
6 combination with other conditions of bail, is in excess of that reasonably necessary to
7 ensure the appearance of the defendant at the time and place required, to ensure that
8 the defendant will refrain from any new criminal conduct, to ensure the integrity of
9 the judicial process or to ensure the safety of others in the community.

10 C. Upon motion by the attorney for the State or the defendant and after notice and
11 upon a showing of changed circumstances or upon the discovery of new and
12 significant information, the court may amend the bail order to relieve the defendant
13 of any condition of release, modify the conditions imposed or impose further
14 conditions authorized by this subsection as the court determines to reasonably ensure
15 the appearance of the defendant at the time and place required, that the defendant will
16 refrain from any new criminal conduct, the integrity of the judicial process and the
17 safety of others in the community.

18 **Sec. 4. 17-A MRSA §15, sub-§1, ¶A,** as amended by PL 2003, c. 102, §1, is
19 further amended to read:

20 A. Any person who the officer has probable cause to believe has committed or is
21 committing:

22 (1) Murder;

23 (2) Any Class A, Class B or Class C crime;

24 (3) Assault while hunting;

25 (4) Any offense defined in chapter 45;

26 (5) Assault, criminal threatening, terrorizing or stalking, if the officer
27 reasonably believes that the person may cause injury to others unless
28 immediately arrested;

29 (5-A) Assault, criminal threatening, terrorizing, stalking, criminal mischief,
30 obstructing the report of a crime or injury or reckless conduct if the officer
31 reasonably believes that the person and the victim are family or household
32 members, as defined in Title 19-A, section 4002, subsection 4;

33 (5-B) Domestic violence assault, domestic violence criminal threatening,
34 domestic violence terrorizing, domestic violence stalking or domestic violence
35 reckless conduct;

36 (6) Theft as defined in section 357, when the value of the services is \$1,000 or
37 less if the officer reasonably believes that the person will not be apprehended
38 unless immediately arrested;

39 (7) Forgery, if the officer reasonably believes that the person will not be
40 apprehended unless immediately arrested;

- 1 (8) Negotiating a worthless instrument if the officer reasonably believes that the
2 person will not be apprehended unless immediately arrested;
- 3 (9) A violation of a condition of probation when requested by a probation
4 officer or juvenile community corrections officer;
- 5 (10) Violation of a condition of release in violation of Title 15, section 1026,
6 subsection 3; Title 15, section 1027, subsection 3; Title 15, section 1051,
7 subsection 2; and Title 15, section 1092;
- 8 (11) Theft involving a detention under Title 17, section 3521;
- 9 (12) Harassment, as set forth in section 506-A;
- 10 (13) Violation of a protection order, as specified in Title 5, section 4659,
11 subsection 2; Title 15, section 321, subsection 6; former Title 19, section 769,
12 subsection 2; former Title 19, section 770, subsection 5; Title 19-A, section 4011,
13 subsection 3; and Title 19-A, section 4012, subsection 5; or
- 14 (14) A violation of a sex offender registration provision under Title 34-A,
15 chapter 15; and
- 16 (15) A violation of a requirement of administrative release when requested by the
17 attorney for the State;
- 18 (16) A violation of a condition of supervised release for sex offenders when
19 requested by a probation officer; or
- 20 (17) A violation of a court-imposed deferment requirement of a deferred
21 disposition when requested by the attorney for the State; and

22 **Sec. 5. 17-A MRSA §16, sub-§2,** as repealed and replaced by PL 2007, c. 466,
23 Pt. B, §11 and affected by §12, is amended to read:

24 **2.** Any person who, in fact, is committing in the private person's presence and in a
25 public place any of the Class D or Class E crimes described in section 207; 209; 211;
26 254; ~~255; 501, subsection 2~~ 255-A; 501-A, subsection 1, paragraph B; 503; 751; 806; or
27 1002.

28 **Sec. 6. 17-A MRSA §261, sub-§2, ¶C,** as enacted by PL 2007, c. 393, §1, is
29 amended to read:

30 C. Intentionally or knowingly has ~~any~~ direct or indirect contact in a sex offender
31 restricted zone with another person who has not in fact attained 14 years of age.

32 **Sec. 7. 17-A MRSA §1205, sub-§4, ¶A,** as enacted by PL 2005, c. 661, §1 and
33 affected by §9, is amended to read:

34 A. Whenever a person arrested pursuant to subsection 1 is entitled to a probable
35 cause hearing pursuant to this subsection, unless the person waives the right to the
36 hearing, that hearing must be afforded at the initial appearance and may be held by
37 either the District Court or the Superior Court ~~located as near to the place where the~~
38 ~~violation is alleged to have taken place as is reasonable under the circumstances that~~
39 placed the person on probation, unless a court orders otherwise. If it is alleged that

1 the person violated probation because of the commission of a new offense, the
2 probable cause hearing is limited to the issue of identification if probable cause on
3 the new offense has already been found by the District Court or by the Superior Court
4 or the person has been indicted, has waived indictment or has been convicted.

5 **Sec. 8. 17-A MRSA §1304, sub-§3**, as repealed and replaced by PL 1999, c. 367,
6 §5, is amended to read:

7 **3.** Either the attorney for the State or the court may initiate a motion to enforce
8 payment of a fine. Notification for the hearing on the motion must be sent by regular
9 mail to the offender's last known address. If the offender does not appear for the hearing
10 after proper notification has been sent, the court may issue a bench warrant. A court need
11 not bring a motion to enforce payment of a fine nor notify the offender by regular mail of
12 the date of the hearing if at the time of sentence imposition the court's order to pay the
13 fine and accompanying warnings to the offender comply with Title 14, section 3141,
14 subsection 3 or 4 and, if the offender fails to appear as directed by the court's fine order,
15 the court may issue a bench warrant.

16 A. Unless the offender shows by a preponderance of the evidence that the default
17 was not attributable to an intentional or knowing refusal to obey the court's order or
18 to a failure on the offender's part to make a good-faith effort to obtain the funds
19 required for the payment, the court shall find that the default was unexcused and may
20 commit the offender to the custody of the sheriff until all or a specified part of the
21 fine is paid. The length of confinement in a county jail for unexcused default must be
22 specified in the court's order and may not exceed one day for every \$5 of unpaid fine
23 or 6 months, whichever is shorter. An offender committed for nonpayment of a fine
24 is given credit toward the payment of the fine for each day of confinement that the
25 offender is in custody, at the rate specified in the court's order. The offender is also
26 given credit for each day that the offender is detained as the result of an arrest
27 warrant issued pursuant to this section. An offender is responsible for paying any
28 fine remaining after receiving credit for confinement and detention. A default on the
29 remaining fine is also governed by this section.

30 B. If it appears that the default is excusable, the court may give the offender
31 additional time for payment or may reduce the amount of each installment.

32 C. If the court commits a person to the custody of the sheriff for nonpayment of a
33 fine, the court may authorize, at the time of its order only, participation of the person
34 in a project under Title 30-A, section 1606 with the agreement of the sheriff of the
35 county jail where the person is committed. The person must be given credit
36 according to Title 30-A, section 1606, subsection 2.

37 D. The confinement ordered under this subsection must be nonconcurrent with any
38 judgment of conviction involving a term of imprisonment.

39 **Sec. 9. 19-A MRSA §4002, sub-§4**, as amended by PL 2005, c. 265, §19, is
40 further amended to read:

41 **4. Family or household members.** "Family or household members" means spouses
42 or domestic partners or former spouses or former domestic partners, individuals presently

1 or formerly living together as spouses, natural parents of the same child, adult household
2 members related by consanguinity or affinity or minor children of a household member
3 when the defendant is an adult household member and, for the purposes of this chapter
4 and Title 17-A, sections 15, 207-A, 209-A, 210-B, 210-C, 211-A, 1201, 1202 and 1253
5 only, includes individuals presently or formerly living together and individuals who are
6 or were sexual partners. Holding oneself out to be a spouse is not necessary to constitute
7 "living as spouses." For purposes of this subsection, "domestic partners" means 2
8 unmarried adults who are domiciled together under long-term arrangements that evidence
9 a commitment to remain responsible indefinitely for each other's welfare.

10 SUMMARY

11 This bill is proposed by the Criminal Law Advisory Commission and does the
12 following.

13 The bill amends the Maine Revised Statutes, Title 4, section 51 to conform the
14 language with Rule 12(a) of the Maine Rules of Appellate Procedure.

15 The bill deletes the first sentence of Title 15, section 1026, subsection 3 as amended
16 by Public Law 2007, chapter 377, corrects a conflict created when Public Law 2007,
17 chapter 374 amended the same section of law and adds a new introductory sentence that
18 more accurately identifies the purpose of subsection 3.

19 The bill adds to subparagraph 12 of Title 15, section 1026, subsection 3, paragraph A
20 language that was unintentionally omitted when that paragraph was amended by Public
21 Law 2007, chapter 374, section 6.

22 The bill modifies Title 17-A, section 15, subsection 1, paragraph A by adding a new
23 subparagraph 5-B to reflect the new domestic violence crimes recently added to chapter 9
24 of the Maine Criminal Code and by adding subparagraphs 15, 16 and 17, allowing a law
25 enforcement officer to make a warrantless arrest of any person who the officer has
26 probable cause to believe has committed or is committing a violation of a requirement of
27 administrative release when requested by the attorney for the State, of a condition of
28 supervised release for sex offenders when requested by a probation officer and of a court-
29 imposed deferment requirement of a deferred disposition when requested by the attorney
30 for the State.

31 The bill strikes the current references in Title 17-A, section 16, subsection 2 to
32 section 255 and section 501, subsection 2, as each has been repealed. It also adds in Title
33 17-A, section 16, subsection 2 a reference to current section 255-A, the section that
34 replaced former section 255.

35 The bill deletes the word "any" in Title 17-A, section 261, subsection 2, paragraph C,
36 which is unnecessary and inconsistent with the parallel paragraph C of section 261,
37 subsection 1.

38 The bill amends Title 17-A, section 1205, subsection 4, paragraph A by changing the
39 current directive as to where a probable cause hearing should take place. Current law
40 provides that the hearing must be held as near to the place where the new violation is

1 alleged to have taken place as is reasonable. This change would create the general rule
2 that the hearing be held in the court where the person was placed on probation, thus
3 facilitating participation at the hearing by the prosecutorial office that prosecuted the
4 underlying criminal case in the first instance rather than an office wholly unfamiliar with
5 the case. A court would be free to order that the hearing be held elsewhere, on request of
6 the State, the defendant or the court, if it is reasonable under the circumstances to hold the
7 hearing in a court other than the court that sentenced the person, based on the availability
8 of resources and familiarity with the defendant, the underlying case, the alleged violation
9 and the person's conduct while under supervision.

10 The bill eliminates in Title 17-A, section 1304, subsection 3 the necessity of a court
11 bringing a motion to enforce payment of a fine and providing notification to the offender
12 if at the time of sentence imposition the court's order to pay the fine and accompanying
13 warnings to the offender comply with Title 14, section 3141, subsection 3 or 4. In that
14 event, if the offender fails to appear as directed by the court's fine order, the court may
15 issue a bench warrant.

16 The bill amends the definition of "family or household members" in Title 19-A,
17 section 4002, subsection 4 by adding Title 17-A, sections 15, 207-A, 209-A, 210-B, 210-
18 C and 211-A to the current list of Maine Criminal Code sections for which the definition
19 includes "individuals presently or formerly living together and individuals who are or
20 were sexual partners."