

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 380

H.P. 306

House of Representatives, February 8, 2011

An Act To Enhance Enforcement of Civil Orders of Arrest

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative MOULTON of York.
Cosponsored by Senator SHERMAN of Aroostook and
Representatives: FOSTER of Augusta, MALONEY of Augusta.

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

2 **Sec. 1. 14 MRSA §3135**, as amended by PL 2009, c. 205, §§1 and 2, is further
3 amended to read:

4 **§3135. Civil order of arrest**

5 A civil order of arrest issued under section 3134, subsection 1, or section 3136, must
6 direct the sheriff to arrest the individual named in the order and bring the individual to a
7 hearing any day the court is in session. In the case of a nonindividual debtor, the civil
8 order of arrest must be issued for the arrest of any officer, director or managing agent of
9 the debtor or other agent appointed by the debtor to accept service and who was served
10 with the disclosure subpoena.

11 After a civil order of arrest has been issued, the sheriff shall cause the ~~individual~~
12 debtor named in the order to be arrested and shall deliver the ~~individual debtor~~ without
13 undue delay to the division of the District Court designated in the civil order of arrest or
14 obtain from the debtor a personal recognizance bond to appear in court at the specified
15 date and time. Should the debtor fail to appear at that time a bench warrant may issue for
16 the debtor's arrest. The sheriff may take such steps determined necessary for the sheriff's
17 safety or the safety of others then present, including searching the debtor for weapons, if
18 the sheriff has a reasonable suspicion that the debtor has a weapon, and handcuffing the
19 debtor if that is necessary to transport the debtor to the court or to cause the debtor to
20 remain peaceably at the court. Upon arrival at the court, the sheriff shall notify the clerk
21 or bailiff that the debtor is present and may release the debtor into the custody of the
22 bailiff. The sheriff shall instruct the debtor that the debtor must wait at the court until
23 released by the court or clerk. Upon release of the debtor into the custody of the bailiff,
24 the sheriff need not remain with the debtor at the court. ~~A debtor who fails to appear for~~
25 ~~the disclosure hearing after being released upon the debtor's personal recognizance~~
26 ~~commits a Class E crime.~~

27 After the judgment debtor is brought to the court, the clerk shall promptly notify the
28 judgment creditor or the judgment creditor's attorney of record in person or by telephone
29 that the presence of one of them is required for a hearing. If a disclosure or contempt
30 hearing cannot be held that day due to the inability of the judgment creditor or the
31 judgment creditor's attorney to appear or due to the absence of the judge or the inability
32 of the court to hear the matter because of other business, the court or clerk shall release
33 the debtor upon the debtor's personal recognizance for appearance on a date certain. ~~A~~
34 ~~debtor who fails to appear for the disclosure or contempt hearing after being released~~
35 ~~upon the debtor's personal recognizance commits a Class E crime.~~ If a debtor fails to
36 appear on that date certain, the court may issue a bench warrant for the debtor's arrest. A
37 bench warrant may issue under this section even if a debtor is separately charged with a
38 Class E crime under this section.

39 A debtor who fails to appear for a disclosure or contempt hearing after being released
40 upon the debtor's personal recognizance commits a Class E crime.

41 Unless the judgment debtor shows good cause for failure to appear after being duly
42 served with a disclosure subpoena under section 3123, a contempt subpoena under

1 section 3136 or an order to appear and disclose under Title 19-A, section 2361, the debtor
2 must be ordered to pay the costs of issuing and serving the civil order for arrest. The
3 costs of issuing and serving the civil order for arrest are \$25 plus mileage at a rate of 42¢
4 per mile. The fee payable to sheriffs and their deputies for civil orders for arrest is
5 governed by Title 30-A, section 421, subsection 6.

6 **Sec. 2. 15 MRSA §1004**, as amended by PL 2007, c. 552, §1, is further amended
7 to read:

8 **§1004. Applicability and exclusions**

9 This chapter applies to the setting of bail for a defendant in a criminal proceeding,
10 including the setting of bail for an alleged contemnor in a plenary contempt proceeding
11 involving a punitive sanction under the Maine Rules of Civil Procedure, Rule 66. It does
12 not apply to the setting of bail in extradition proceedings under sections 201 to 229, post-
13 conviction review proceedings under sections 2121 to 2132, probation revocation
14 proceedings under Title 17-A, sections 1205 to 1207, supervised release revocation
15 proceedings under Title 17-A, section 1233 or administrative release revocation
16 proceedings under Title 17-A, sections 1349 to 1349-F, except to the extent and under the
17 conditions stated in those sections. This chapter applies to the setting of bail for an
18 alleged contemnor in a summary contempt proceeding involving a punitive sanction
19 under the Maine Rules of Civil Procedure, Rule 66 and to the setting of bail relative to a
20 material witness only as specified in sections 1103 and 1104, respectively. This chapter
21 applies to the setting of bail for a bench warrant issued pursuant to Title 14, section 3135.
22 This chapter does not apply to a person under 18 years of age who is arrested for a crime
23 defined under Title 12 or Title 29-A that is not a juvenile crime as defined in section
24 3103.

25 **SUMMARY**

26 This bill provides that a court may issue a bench warrant when an individual fails to
27 appear for a disclosure or contempt hearing concerning the enforcement of a money
28 judgment after having given a personal recognizance bond to do so. This bill also
29 clarifies that a bench warrant may issue even if the individual is separately charged with a
30 Class E crime for failing to appear in court after having given a personal recognizance
31 bond to do so.