

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1400

H.P. 1029

House of Representatives, April 4, 2011

An Act To Address Certain Aspects of Bail

Reported by Representative PLUMMER of Windham 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 pursuant to Joint Rule 218.

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

HEATHER J.R. PRIEST
Clerk

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

2 **Sec. 1. 15 MRSA §1003, sub-§3-A** is enacted to read:

3 **3-A. Crime involving domestic violence.** "Crime involving domestic violence"
4 means:

5 A. As defined in Title 17-A, a crime of domestic violence assault, domestic violence
6 criminal threatening, domestic violence terrorizing, domestic violence stalking or
7 domestic violence reckless conduct; and

8 B. A violation of a protective order under Title 19-A, section 4011, the alleged
9 victim of which is a family or household member as defined in Title 19-A, section
10 4002, subsection 4.

11 **Sec. 2. 15 MRSA §1023, sub-§4,** as repealed and replaced by PL 2001, c. 686,
12 Pt. A, §1, is amended to read:

13 **4. Limitations on authority.** A bail commissioner may not:

14 A. Set preconviction bail for a defendant confined in jail or held under arrest by
15 virtue of any order issued by a court in which bail has not been authorized;

16 B. Change bail set by a court; ~~or~~

17 C. In a case involving domestic violence, set preconviction bail for a defendant
18 before making a good faith effort to obtain from the arresting officer, the ~~district~~
19 ~~attorney~~ responsible prosecutorial office, a jail employee or other law enforcement
20 officer:

21 (1) A brief history of the alleged abuser;

22 (2) The relationship of the parties;

23 (3) The name, address, phone number and date of birth of the victim; and

24 (4) Existing conditions of protection from abuse orders, conditions of bail and
25 conditions of probation;

26 D. Set preconviction bail for a violation of condition of release pursuant to section
27 1092, except as provided in section 1092, subsection 4; or

28 E. Set preconviction bail using a condition of release not included in every order for
29 pretrial release without specifying a court date within 8 weeks of the date of the bail
30 order.

31 **Sec. 3. 15 MRSA §1092, sub-§4** is enacted to read:

32 **4. Limitations on authority of bail commissioner to set preconviction bail.** A
33 court may, but a bail commissioner may not, set bail for a defendant granted
34 preconviction bail who has been arrested for an alleged violation of this section if:

35 A. The condition of release alleged to be violated relates to new criminal conduct for
36 a crime classified as Class C or above or for a Class D or Class E crime involving

1 domestic violence, sexual assault pursuant to Title 17-A, chapter 11 or sexual
2 exploitation of minors pursuant to Title 17-A, chapter 12;

3 B. The underlying crime for which preconviction bail was granted is classified as
4 Class C or above; or

5 C. The underlying crime for which preconviction bail was granted is a crime
6 involving domestic violence, sexual assault pursuant to Title 17-A, chapter 11 or
7 sexual exploitation of minors pursuant to Title 17-A, chapter 12.

8 **Sec. 4. 15 MRSA §1095, sub-§2**, as amended by PL 1997, c. 543, §22, is further
9 amended to read:

10 **2. Arrest.** A Prior to the filing of a motion to revoke a defendant's preconviction
11 bail under subsection 1, a law enforcement officer when requested by the attorney for the
12 State, may arrest with a warrant, or without a warrant pursuant to Title 17-A, section 15,
13 any defendant who the law enforcement officer has probable cause to believe has failed to
14 appear as required, has violated a condition of preconviction bail or has been charged
15 with a crime allegedly committed while released on preconviction bail. ~~If the defendant~~
16 ~~is charged with new criminal conduct, a bail commissioner is authorized only to set bail~~
17 ~~for the new charged crimes in accordance with this chapter.~~ A defendant under arrest
18 pursuant to ~~subsection 1~~ or this ~~subsection~~ section must be brought before any judge or
19 justice of the appropriate court. The judge or justice shall determine without hearing
20 whether the existing preconviction bail order should be modified or whether the
21 defendant should be committed without bail pending the bail revocation hearing. A copy
22 of the motion for revocation must be furnished to the defendant prior to the hearing on the
23 alleged violation, unless the hearing must be conducted in the absence of the defendant.

24 **Sec. 5. 15 MRSA §1098, sub-§2**, as enacted by PL 1995, c. 356, §19, is amended
25 to read:

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

40 **Sec. 6. 17-A MRSA §15, sub-§1, ¶A**, as amended by PL 2009, c. 142, §3, is
41 further amended to read:

- 1 A. Any person who the officer has probable cause to believe has committed or is
2 committing:
- 3 (1) Murder;
- 4 (2) Any Class A, Class B or Class C crime;
- 5 (3) Assault while hunting;
- 6 (4) Any offense defined in chapter 45;
- 7 (5) Assault, criminal threatening, terrorizing or stalking, if the officer reasonably
8 believes that the person may cause injury to others unless immediately arrested;
- 9 (5-A) Assault, criminal threatening, terrorizing, stalking, criminal mischief,
10 obstructing the report of a crime or injury or reckless conduct if the officer
11 reasonably believes that the person and the victim are family or household
12 members, as defined in Title 19-A, section 4002, subsection 4;
- 13 (5-B) Domestic violence assault, domestic violence criminal threatening,
14 domestic violence terrorizing, domestic violence stalking or domestic violence
15 reckless conduct;
- 16 (6) Theft as defined in section 357, when the value of the services is \$1,000 or
17 less if the officer reasonably believes that the person will not be apprehended
18 unless immediately arrested;
- 19 (7) Forgery, if the officer reasonably believes that the person will not be
20 apprehended unless immediately arrested;
- 21 (8) Negotiating a worthless instrument if the officer reasonably believes that the
22 person will not be apprehended unless immediately arrested;
- 23 (9) A violation of a condition of probation when requested by a probation officer
24 or juvenile community corrections officer;
- 25 (10) Violation of a condition of release in violation of Title 15, section 1026,
26 subsection 3; Title 15, section 1027, subsection 3; Title 15, section 1051,
27 subsection 2; and Title 15, section 1092;
- 28 (11) Theft involving a detention under Title 17, section 3521;
- 29 (12) Harassment, as set forth in section 506-A;
- 30 (13) Violation of a protection order, as specified in Title 5, section 4659,
31 subsection 2; Title 15, section 321, subsection 6; former Title 19, section 769,
32 subsection 2; former Title 19, section 770, subsection 5; Title 19-A, section 4011,
33 subsection 3; and Title 19-A, section 4012, subsection 5;
- 34 (14) A violation of a sex offender registration provision under Title 34-A,
35 chapter 15;
- 36 (15) A violation of a requirement of administrative release when requested by the
37 attorney for the State;
- 38 (16) A violation of a condition of supervised release for sex offenders when
39 requested by a probation officer;

- 1 (17) A violation of a court-imposed deferment requirement of a deferred
2 disposition when requested by the attorney for the State;
- 3 (18) A violation of a condition of release as provided in Title 15, section
4 3203-A, subsection 9;
- 5 (19) A violation of a condition of supervised community confinement granted
6 pursuant to Title 34-A, section 3036-A when requested by a probation officer;
- 7 (20) A violation of a condition of placement on community reintegration status
8 granted pursuant to Title 34-A, sections 3810 and 4112 when requested by a
9 juvenile community corrections officer; ~~or~~
- 10 (21) A violation of a condition of furlough or other rehabilitative program
11 authorized under Title 34-A, section 3035 when requested by a probation officer
12 or juvenile community corrections officer; ~~and~~
- 13 (22) A violation of preconviction or post-conviction bail pursuant to Title 15,
14 section 1095, subsection 2 or section 1098, subsection 2 upon request of the
15 attorney for the State;
- 16 (23) Failure to appear in violation of Title 15, section 1091, subsection 1,
17 paragraph A; or
- 18 (24) A Class D or Class E crime committed while released on preconviction or
19 post-conviction bail; and

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SUMMARY

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This bill amends the Maine Bail Code in several ways. It adds a new definition of "crime involving domestic violence," which means a crime of domestic violence assault, domestic violence criminal threatening, domestic violence terrorizing, domestic violence stalking or domestic violence reckless conduct, as defined in the Maine Revised Statutes, Title 17-A, as well as a violation of a protective order under Title 19-A, section 4011 in which the alleged victim is a family or household member as defined in Title 19-A, section 4002, subsection 4.

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The bill replaces "district attorney" with "responsible prosecutorial office" to broaden the application to include the Attorney General's Office as well as any district attorney. It adds a new provision addressing the preconviction limitations on a bail commissioner's authority as provided in Title 15, section 1092, subsection 4. It adds a provision requiring that in the preconviction context a bail commissioner specify a court date within 8 weeks of the date of the bail order when that bail order uses one or more release conditions not automatically included in every bail order for pretrial release.

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The bill adds a provision that requires that the court and not a bail commissioner set preconviction bail for a crime if: the condition of release alleged to be violated relates to new criminal conduct for a Class C or above crime or a Class D or Class E crime that involves domestic violence, sexual assault or sexual exploitation of minors; the underlying crime for which preconviction bail was granted is classified as Class C or above; or the underlying crime for which preconviction bail was granted involves domestic violence, sexual assault or sexual exploitation of minors.

1 The bill clarifies that a law enforcement officer may make a warrantless arrest in the
2 context of an anticipated motion to revoke bail by the attorney for the State. It expressly
3 authorizes an arrest under these circumstances when the attorney for the State requests
4 that the defendant be arrested for purposes of instituting a revocation of bail. The bill
5 does not address an arrest for a violation of the crime of violation of a condition of
6 release pursuant to Title 15, section 1092.

7 The bill adds to the list of circumstances in which a law enforcement officer may
8 make a warrantless arrest the following: a violation of preconviction or post-conviction
9 bail pursuant to Title 15, section 1095, subsection 2 or section 1098, subsection 2 upon
10 request of the attorney for the State; failure to appear in violation of Title 15, section
11 1091, subsection 1, paragraph A; and a Class D or Class E crime committed while
12 released on preconviction or post-conviction bail.