

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1639

S.P. 666

In Senate, March 8, 2016

An Act To Implement the Recommendations of the Intergovernmental Pretrial Justice Reform Task Force

Reported by Senator BURNS of Washington for the Joint Standing Committee on Judiciary pursuant to Joint Order 2016, S.P. 650.

Reference to the Committee on Judiciary 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
Secretary of the Senate

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

2 **Sec. 1. 15 MRSA §1023, sub-§4, ¶D**, as amended by PL 2013, c. 519, §2, is
3 further amended to read:

4 D. Set preconviction or post-conviction bail for a violation of condition of release
5 pursuant to section 1092, except as provided in section 1092, subsection 4; ~~or~~

6 **Sec. 2. 15 MRSA §1023, sub-§4, ¶E**, as enacted by PL 2011, c. 341, §2, is
7 amended to read:

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

11 **Sec. 3. 15 MRSA §1023, sub-§4, ¶¶F and G** are enacted to read:

12 F. Set preconviction bail for crimes involving allegations of domestic violence
13 without specifying a court date within 5 weeks of the date of the bail order; or

14 G. Notwithstanding section 1026, subsection 3, paragraph A, subparagraph (9-A),
15 impose a condition of preconviction bail that a defendant submit to random search
16 with respect to a prohibition on the possession, use or excessive use of alcohol or
17 illegal drugs.

18 **Sec. 4. 15 MRSA §1023, sub-§5**, as amended by PL 2009, c. 23, §1, is further
19 amended to read:

20 **5. Fees.** A bail commissioner is entitled to receive a fee not to exceed \$60 for the
21 charges pursuant to which the defendant is presently in custody. The bail commissioner
22 shall submit such forms as the Judicial Department directs to verify the amount of fees
23 ~~received to be paid~~ under this subsection. ~~The sheriff of the county in which the~~
24 ~~defendant is detained may create a fund for the distribution by the sheriff or the sheriff's~~
25 ~~designee for the payment in whole or in part of the \$60 bail commissioner fee for those~~
26 ~~defendants who do not have the financial ability to pay that fee~~ The Judicial Department
27 shall pay the bail commissioner's fee.

28 **Sec. 5. 15 MRSA §1025-A**, as enacted by PL 2005, c. 541, §1, is amended to
29 read:

30 **§1025-A. County jail employees**

31 If a court or a bail commissioner issues an order that a defendant in custody be
32 released, pending trial, on a personal recognizance ~~or upon execution of an unsecured~~
33 ~~appearance~~ bond, whether or not accompanied by one or more conditions under section
34 1026, subsection 3, an employee of the county jail having custody of the defendant, if
35 authorized to do so by the sheriff, may, without fee, prepare the personal recognizance ~~or~~
36 bond and take the acknowledgement of the defendant.

37 **Sec. 6. 15 MRSA §1026, sub-§1**, as amended by PL 2007, c. 374, §3, is further
38 amended to read:

1 **1. In general.** At the initial appearance before a judicial officer of a defendant in
2 custody for a crime bailable as of right preconviction, the judicial officer may issue an
3 order that, pending trial, the defendant be released:

4 A. On personal recognizance or upon execution of an ~~unsecured~~ appearance bond
5 under subsection 2-A;

6 B. On a condition or combination of conditions under subsection 3; or

7 C. On personal recognizance or execution of an ~~unsecured~~ appearance bond,
8 accompanied by one or more conditions under subsection 3.

9 Every order for the pretrial release of any defendant must include a waiver of extradition
10 by the defendant and the conditions that the defendant refrain from new criminal conduct
11 and not violate any pending protection from abuse orders pursuant to Title 19, section
12 769 or Title 19-A, section 4011.

13 **Sec. 7. 15 MRSA §1026, sub-§2-A,** as enacted by PL 2007, c. 374, §5, is
14 amended to read:

15 **2-A. Release on personal recognizance or appearance bond.** The judicial officer
16 shall order the pretrial release of the defendant on personal recognizance or upon
17 execution of an ~~unsecured~~ appearance bond in an amount specified by the judicial officer,
18 unless, after consideration of the factors listed in subsection 4, the judicial officer
19 determines that:

20 A. The release would not reasonably ensure the appearance of the defendant as
21 required;

22 B. The release would not reasonably ensure that the defendant would refrain from
23 any new criminal conduct;

24 C. The release would not reasonably ensure the integrity of the judicial process; or

25 D. The release would not reasonably ensure the safety of others in the community.

26 **Sec. 8. 15 MRSA §1026, sub-§3, ¶A,** as amended by PL 2013, c. 227, §1, is
27 further amended to read:

28 A. If, after consideration of the factors listed in subsection 4, the judicial officer
29 determines that the release described in subsection 2-A will not reasonably ensure the
30 appearance of the defendant at the time and place required, will not reasonably ensure
31 that the defendant will refrain from any new criminal conduct, will not reasonably
32 ensure the integrity of the judicial process or will not reasonably ensure the safety of
33 others in the community, the judicial officer shall order the pretrial release of the
34 defendant subject to the least restrictive further condition or combination of
35 conditions that the judicial officer determines will reasonably ensure the appearance
36 of the defendant at the time and place required, will reasonably ensure that the
37 defendant will refrain from any new criminal conduct, will reasonably ensure the
38 integrity of the judicial process and will reasonably ensure the safety of others in the
39 community. These conditions may include that the defendant:

- 1 (1) Remain in the custody of a designated person or organization agreeing to
2 supervise the defendant, including a public official, public agency or publicly
3 funded organization, if the designated person or organization is able to
4 reasonably ensure the appearance of the defendant at the time and place required,
5 that the defendant will refrain from any new criminal conduct, the integrity of the
6 judicial process and the safety of others in the community. When it is feasible to
7 do so, the judicial officer shall impose the responsibility upon the defendant to
8 produce the designated person or organization. The judicial officer may
9 interview the designated person or organization to ensure satisfaction of both the
10 willingness and ability required. The designated person or organization shall
11 agree to notify immediately the judicial officer of any violation of release by the
12 defendant. If the judicial officer imposes this condition, the State shall reimburse
13 the designated organization for costs of supervision of the defendant;
- 14 (2) Maintain employment or, if unemployed, actively seek employment;
- 15 (3) Maintain or commence an educational program;
- 16 (4) Abide by specified restrictions on personal associations, place of abode or
17 travel;
- 18 (5) Avoid all contact with a victim of the alleged crime, a potential witness
19 regarding the alleged crime or with any other family or household members of
20 the victim or the defendant or to contact those individuals only at certain times or
21 under certain conditions;
- 22 (6) Report on a regular basis to a designated law enforcement agency or other
23 governmental agency;
- 24 (7) Comply with a specified curfew;
- 25 (8) Refrain from possessing a firearm or other dangerous weapon;
- 26 (9) Refrain from the possession, use or excessive use of alcohol and from any
27 use of illegal drugs. A condition under this subparagraph may be imposed only
28 upon the presentation to the judicial officer of specific facts demonstrating the
29 need for such condition;
- 30 (9-A) Submit to:
- 31 (a) A random search for possession or use prohibited by a condition imposed
32 under subparagraph (8) or (9); or
- 33 (b) A search upon articulable suspicion for possession or use prohibited by a
34 condition imposed under subparagraph (8) or (9);
- 35 (10) Undergo, as an outpatient, available medical or psychiatric treatment, or
36 enter and remain, as a voluntary patient, in a specified institution when required
37 for that purpose;
- 38 (10-A) Enter and remain in a long-term residential facility for the treatment of
39 substance abuse;
- 40 (11) Execute an agreement to forfeit, in the event of noncompliance, such
41 designated property, including money, as is reasonably necessary to ensure the

- 1 appearance of the defendant at the time and place required, to ensure that the
- 2 defendant will refrain from any new criminal conduct, to ensure the integrity of
- 3 the judicial process and to ensure the safety of others in the community and post
- 4 with an appropriate court such evidence of ownership of the property or such
- 5 percentage of the money as the judicial officer specifies;
- 6 (12) Execute a bail bond with sureties in such amount as is reasonably necessary
- 7 to ensure the appearance of the defendant at the time and place required, to
- 8 ensure that the defendant will refrain from any new criminal conduct, to ensure
- 9 the integrity of the judicial process and to ensure the safety of others in the
- 10 community;
- 11 (13) Return to custody for specified hours following release for employment,
- 12 schooling or other limited purposes;
- 13 (14) Report on a regular basis to the defendant's attorney;
- 14 (15) Notify the court of any changes of address or employment;
- 15 (16) Provide to the court the name, address and telephone number of a
- 16 designated person or organization that will know the defendant's whereabouts at
- 17 all times;
- 18 (17) Inform any law enforcement officer of the defendant's condition of release
- 19 if the defendant is subsequently arrested or summonsed for new criminal
- 20 conduct;
- 21 (18) Satisfy any other condition that is reasonably necessary to ensure the
- 22 appearance of the defendant at the time and place required, to ensure that the
- 23 defendant will refrain from any new criminal conduct, to ensure the integrity of
- 24 the judicial process and to ensure the safety of others in the community; and
- 25 (19) Participate in an electronic monitoring program, if available.

26 **Sec. 9. 15 MRSA §1051, sub-§2-A** is enacted to read:

27 **2-A. Violation of probation; standards.** This subsection governs bail with respect
28 to a motion to revoke probation.

- 29 A. A judge or justice may deny or grant bail.
- 30 B. In determining whether to admit the defendant to bail and, if so, the kind and
- 31 amount of bail, the judge or justice shall consider the nature and circumstances of the
- 32 crime for which the defendant was sentenced to probation, the nature and
- 33 circumstances of the alleged violation and any record of prior violations of probation
- 34 as well as the factors relevant to the setting of preconviction bail listed in section
- 35 1026.

36 **Sec. 10. 15 MRSA §1073, 3rd ¶**, as amended by PL 1997, c. 543, §18, is further
37 amended to read:

38 The judge or justice may absolve the person of responsibility to pay all or part of the
39 bond or may order the return of cash bail, except that a person may not be absolved of the
40 responsibility to pay all or part of the bond, or receive any cash deposited as bail, if, prior

1 to terminating the agreement, the defendant has failed to appear as required or, ~~if the~~
2 ~~precondition in section 1073-A has been satisfied~~, the defendant has failed to comply
3 with each condition of release. Nothing in this section may be construed to relieve or
4 release a person of the responsibility for the appearance of the defendant, notwithstanding
5 the termination of the agreement, until the defendant is in the custody of the sheriff of the
6 county in which the case is pending, new or substitute sureties have appeared, new cash
7 bail has been deposited or the defendant has otherwise been admitted to bail.

8 **Sec. 11. 15 MRSA §1073-A**, as enacted by PL 1997, c. 543, §19, is repealed.

9 **Sec. 12. 17-A MRSA §1205-C, sub-§§4 and 5**, as enacted by PL 1999, c. 246,
10 §3, are amended to read:

11 **4.** At the initial appearance, the court shall advise the probationer of the contents of
12 the motion, the right to a hearing on the motion, the right to be represented by counsel at
13 a hearing and the right to appointed counsel. If the probationer can not afford counsel,
14 the court shall appoint counsel for the probationer. The court shall call upon the
15 probationer to admit or deny the alleged violation. If the probationer refuses to admit or
16 deny, a denial must be entered. In the case of a denial, the court shall set the motion for
17 hearing and may commit the ~~person~~ probationer, with or without bail, pending hearing. If
18 the probationer is committed without bail pending hearing, the date of the hearing must
19 be set no later than 45 days from the date of the initial appearance unless otherwise
20 ordered by the court.

21 **5.** In deciding whether to set bail under this section and in setting the kind and
22 amount of that bail, the court must be guided by the standards of post-conviction bail in
23 Title 15, section 1051, ~~subsections 2 and 3~~ subsection 2-A. Appeal is governed by Title
24 15, section 1051, subsections 5 and 6. Bail set under this section is also governed by the
25 sureties and other forms of bail provisions in Title 15, chapter 105-A, subchapter ~~IV~~ 4
26 and the enforcement provisions in Title 15, chapter 105-A, subchapter ~~V~~ 5, articles 1 and
27 3, including the appeal provisions in Title 15, section 1099-A, subsection 2.

28 **Sec. 13. 17-A MRSA §1302, sub-§3** is enacted to read:

29 **3.** Notwithstanding any other provision of law, the court may suspend all or a portion
30 of a minimum fine under section 1301, subsection 6 or under section 207, subsection 3 or
31 under Title 29-A, section 2412-A, subsection 3, and the court may impose a fine other
32 than the mandatory fine if the court finds by a preponderance of the evidence that there
33 are exceptional circumstances that justify imposition of a lesser financial penalty. In
34 making a finding of exceptional circumstances, the court may consider:

35 A. Reliable evidence of financial hardship on the part of the offender and the
36 offender's family and dependents;

37 B. Reliable evidence of special needs of the offender or the offender's family and
38 dependents;

39 C. Reliable evidence of the offender's income and future earning capacity and the
40 offender's assets and financial resources from whatever source;

1 D. Reliable evidence regarding any pecuniary gain derived from the commission of
2 the offense; and

3 E. The impact of imposition of the mandatory fine on the offender's reasonable
4 ability to pay restitution under chapter 54.

5 **Sec. 14. 17-A MRSA §1304, sub-§3, ¶A**, as amended by PL 2011, c. 568, §1, is
6 further amended to read:

7 A. Unless the offender shows by a preponderance of the evidence that the default
8 was not attributable to an intentional or knowing refusal to obey the court's order or
9 to a failure on the offender's part to make a good faith effort to obtain the funds
10 required for the payment, the court shall find that the default was unexcused and may:

11 (1) Commit the offender to the custody of the sheriff until all or a specified part
12 of the fine is paid. The length of confinement in a county jail for unexcused
13 default must be specified in the court's order and may not exceed 6 months. An
14 offender committed for nonpayment of a fine is given credit toward the payment
15 of the fine for each day of confinement that the offender is in custody at the rate
16 specified in the court's order, which may not be less than \$25 or more than \$100
17 of unpaid fine for each day of confinement. The offender is also given credit for
18 each day that the offender is detained as the result of an arrest warrant issued
19 pursuant to this section. An offender is responsible for paying any fine remaining
20 after receiving credit for confinement and detention. A default on the remaining
21 fine is also governed by this section; or

22 (2) If the unexcused default relates to a fine imposed for a Class D or Class E
23 crime, as authorized by chapter 53, order the offender to perform community
24 service work, as authorized in chapter 54-C, until all or a specified part of the
25 fine is paid. The number of hours of community service work must be specified
26 in the court's order and the offender must receive a credit against the unpaid fine
27 ~~of no less than \$25 for every 8 hours of community service work completed,~~
28 ~~which may not exceed one hundred 8-hour days at a rate equal to the current~~
29 hourly minimum wage. An offender ordered to perform community service work
30 pursuant to this subparagraph is given credit toward the payment of the fine for
31 each 8-hour day of community service work performed at the rate specified in the
32 court's order. The offender is also given credit toward the payment of the fine for
33 each day that the offender is detained as a result of an arrest warrant issued
34 pursuant to this section at a rate specified in the court's order that is up to \$100 of
35 unpaid fine per day of confinement. An offender is responsible for paying any
36 fine remaining after receiving credit for any detention and for community service
37 work performed. A default on the remaining fine is also governed by this
38 section.

39 **SUMMARY**

40 This bill implements the recommendations of the Intergovernmental Pretrial Justice
41 Reform Task Force. The bill does the following.

1 1. It specifies that a bail commissioner may not set preconviction bail for crimes
2 involving domestic violence without specifying a court date within 5 weeks of the date of
3 the bail order.

4 2. It specifies that, notwithstanding the Maine Revised Statutes, Title 15, section
5 1026, subsection 3, paragraph A, subparagraph (9-A), a bail commissioner may not
6 impose as a condition of preconviction bail that a defendant submit to random search with
7 respect to a prohibition on the possession, use or excessive use of alcohol or illegal drugs.

8 3. It authorizes a properly trained county jail employee to prepare and execute a
9 personal recognizance bond when a bail commissioner orders bail.

10 4. It eliminates the availability of unsecured bail bonds for bail.

11 5. It amends standards for release on preconviction bail to include language in the
12 conditions that specifies that a defendant refrain from the possession of alcohol and
13 illegal drugs, in addition to the current condition that prohibits use or excessive use of
14 alcohol or any drugs. The bill also specifies that this condition be imposed only if
15 specific facts are provided to the judicial officer to support the imposition of the
16 condition.

17 6. It adds to the standards for release on preconviction bail language that a defendant
18 be required to submit to a random search or a search upon articulable suspicion for
19 possession of firearms or other dangerous weapons or possession or use of alcohol or
20 illegal drugs.

21 7. It amends post-conviction bail to specify standards for bail with respect to a
22 motion to revoke probation. A judge or justice may deny or grant bail and, in
23 determining whether to admit the defendant to bail, the judge or justice shall consider the
24 nature of the circumstances of the crime for which the defendant was sentenced to
25 probation and the nature of the alleged violation of and any records of prior violations of
26 probation.

27 8. It repeals Title 15, section 1073-A, which provides that if a defendant violated a
28 condition of bail then the person who posted the bail or the surety must have the bond
29 released or all of the money returned, unless the person previously acted as surety for the
30 same defendant and the defendant previously failed to comply with conditions.

31 9. It requires that in an initial proceeding on a probation violation for which a person
32 is committed without bail pending hearing, the date of the hearing must be set no later
33 than 45 days from the date of the initial appearance unless otherwise ordered by the court.

34 10. It allows the court to suspend all or part of the minimum mandatory fine for
35 assault, certain drug crimes and operating a motor vehicle while a person's license is
36 suspended or revoked, and it lists criteria that a court may consider in making the
37 decision to suspend the fine.

38 11. It amends the amount of payment for community service that may be credited
39 against the unpaid fine for offenders who have been sentenced to pay a fine and who have

1 defaulted from no less than \$25 for every 8 hours to a rate equal to the current hourly
2 minimum wage.

3 12. It specifies that bail commissioners' fees must be paid for by the Judicial
4 Department, instead of being paid for by the defendant seeking bail or by a county fund
5 that may be created for defendants who cannot pay the fee.

6 13. It specifies that if a defendant is released on preconviction bail and the judicial
7 officer imposes a condition that the person remain in the custody of a designated
8 organization agreeing to supervise the defendant, the State is required to reimburse the
9 designated organization for the costs of the supervision of the defendant.