

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 640

H.P. 454

House of Representatives, February 28, 2017

**An Act To Require an Ontario Domestic Assault Risk Assessment
prior to Setting Bail in Domestic Violence Arrests in Which the
Alleged Abuser Has Been Taken into Custody**

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative RECKITT of South Portland.
Cosponsored by Senator KEIM of Oxford and
Representatives: BROOKS of Lewiston, DENNO of Cumberland, JOHANSEN of Monticello,
TALBOT ROSS of Portland.

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

2 **Sec. 1. 15 MRSA §1023, sub-§4, ¶C**, as repealed and replaced by PL 2013, c.
3 424, Pt. A, §6, is amended to read:

4 C. In a case involving domestic violence, set preconviction bail for a defendant
5 before making a good faith effort to obtain from the arresting officer, the responsible
6 prosecutorial office, a jail employee or other law enforcement officer:

- 7 (1) A brief history of the ~~alleged abuser~~ defendant;
- 8 (2) The relationship of the parties;
- 9 (3) The name, address, phone number and date of birth of the victim;
- 10 (4) Existing conditions of protection from abuse orders, conditions of bail and
11 conditions of probation;
- 12 (5) Information about the severity of the alleged offense; and
- 13 (6) ~~Beginning no later than January 1, 2015~~ In a case in which the defendant has
14 not been taken into custody, the results of a validated, evidence-based domestic
15 violence risk assessment recommended by the Maine Commission on Domestic
16 and Sexual Abuse, established in Title 5, section 12004-I, subsection 74-C, and
17 approved by the Department of Public Safety conducted on the ~~alleged abuser~~
18 defendant when the results are available;

19 **Sec. 2. 15 MRSA §1023, sub-§4, ¶C-1** is enacted to read:

20 C-1. In a case involving a Class B, Class C or Class D crime in which the defendant
21 is alleged to have committed a domestic violence assault or criminal threatening with
22 a dangerous weapon, set preconviction bail for the defendant who has been taken into
23 custody before obtaining the results of a validated, evidence-based domestic violence
24 risk assessment recommended by the Maine Commission on Domestic and Sexual
25 Abuse, established in Title 5, section 12004-I, subsection 74-C and approved by the
26 Department of Public Safety conducted on the defendant;

27 **Sec. 3. 15 MRSA §1024**, as enacted by PL 1987, c. 758, §20, is amended by
28 adding at the end a new paragraph to read:

29 Notwithstanding any provision of law to the contrary, in a case involving a Class B,
30 Class C or Class D crime in which the defendant is alleged to have committed a domestic
31 violence assault or criminal threatening with a dangerous weapon in which the defendant
32 has been taken into custody pending trial, a clerk of the Unified Criminal Docket may not
33 take the personal recognizance of the defendant before obtaining the results of a
34 validated, evidence-based domestic violence risk assessment recommended by the Maine
35 Commission on Domestic and Sexual Abuse, established in Title 5, section 12004-I,
36 subsection 74-C and approved by the Department of Public Safety conducted on the
37 defendant.

1 **Sec. 4. 15 MRSA §1025**, as amended by PL 2003, c. 414, Pt. B, §28 and affected
2 by Pt. D, §7 and c. 614, §9, is further amended by adding at the end a new paragraph to
3 read:

4 Notwithstanding any provision of law to the contrary, in a case involving a Class B,
5 Class C or Class D crime in which the defendant is alleged to have committed a domestic
6 violence assault or criminal threatening with a dangerous weapon in which the defendant
7 has been taken into custody pending trial, a law enforcement officer may not take the
8 personal recognizance of the defendant before obtaining the results of a validated,
9 evidence-based domestic violence risk assessment recommended by the Maine
10 Commission on Domestic and Sexual Abuse, established in Title 5, section 12004-I,
11 subsection 74-C and approved by the Department of Public Safety conducted on the
12 defendant.

13 **Sec. 5. 15 MRSA §1025-A**, as enacted by PL 2005, c. 541, §1, is amended by
14 adding at the end a new paragraph to read:

15 Notwithstanding any provision of law to the contrary, in a case involving a Class B,
16 Class C or Class D crime in which the defendant is alleged to have committed a domestic
17 violence assault or criminal threatening with a dangerous weapon, an employee of the
18 county jail having custody of the defendant may not, pending trial, release the defendant
19 before obtaining the results of a validated, evidence-based domestic violence risk
20 assessment recommended by the Maine Commission on Domestic and Sexual Abuse,
21 established in Title 5, section 12004-I, subsection 74-C and approved by the Department
22 of Public Safety conducted on the defendant.

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

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

- 28 A. On personal recognizance or upon execution of an unsecured appearance bond
29 under subsection 2-A;
- 30 B. On a condition or combination of conditions under subsection 3; or
- 31 C. On personal recognizance or execution of an unsecured appearance bond,
32 accompanied by one or more conditions under subsection 3.

33 Every order for the pretrial release of any defendant must include a waiver of extradition
34 by the defendant and the conditions that the defendant refrain from new criminal conduct
35 and not violate any pending protection from abuse orders pursuant to Title 19, section
36 769 or Title 19-A, section 4011.

37 In a case involving a Class B, Class C or Class D crime in which the defendant is alleged
38 to have committed a domestic violence assault or criminal threatening with a dangerous
39 weapon and has been taken into custody, a judicial officer may not issue an order that the
40 defendant be released pending trial before obtaining the results of a validated, evidence-
41 based domestic violence risk assessment recommended by the Maine Commission on

1 Domestic and Sexual Abuse, established in Title 5, section 12004-I, subsection 74-C and
2 approved by the Department of Public Safety conducted on the defendant.

3 **Sec. 7. Effective date.** This Act takes effect January 1, 2018.

4 **SUMMARY**

5 This bill requires that in every arrest for a Class B, C or D crime in which the
6 defendant is alleged to have committed a domestic violence assault or criminal
7 threatening with a dangerous weapon and the defendant has been taken into custody, the
8 defendant may not be released until the results have been obtained from a validated,
9 evidence-based domestic violence risk assessment recommended by the Maine
10 Commission on Domestic and Sexual Abuse, established in the Maine Revised Statutes,
11 Title 5, section 12004-I, subsection 74-C and approved by the Department of Public
12 Safety conducted on the defendant. The validated, evidence-based domestic violence risk
13 assessment that is recommended by the Maine Commission on Domestic and Sexual
14 Abuse and approved by the Department of Public Safety is known as the Ontario
15 Domestic Assault Risk Assessment, ODARA. The bill amends current law that requires
16 the results of the ODARA, when the results are available, to apply the results only to
17 arrests in which the defendant has not been taken into custody. The bill contains a
18 delayed effective date of January 1, 2018.