

MAINE STATE LEGISLATURE

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L.D. 844

Date: 6/16/21

(Filing No. H-704)

Majority
JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 612, L.D. 844, "An Act To Examine and Amend the Conditions of Release and Probation"

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 15 MRSA §1026, sub-§1, as amended by PL 2007, c. 374, §3, is further amended by amending the first blocked paragraph to read:

Every order for the pretrial release of any defendant may include only the least restrictive further condition or combination of conditions and must include a waiver of extradition by the defendant and the conditions that the defendant refrain from new criminal conduct and not violate any pending protection from abuse orders pursuant to Title 19, section 769 or Title 19-A, section 4011.

Sec. 2. 15 MRSA §1026, sub-§3, ¶A, as amended by PL 2017, c. 407, Pt. A, §51, is further amended to read:

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

- (1) Remain in the custody of a designated person or organization agreeing to supervise the defendant, including a public official, public agency or publicly funded organization, if the designated person or organization is able to reasonably

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ensure the appearance of the defendant at the time and place required, that the defendant will refrain from any new criminal conduct, the integrity of the judicial process and the safety of others in the community. When it is feasible to do so, the judicial officer shall impose the responsibility upon the defendant to produce the designated person or organization. The judicial officer may interview the designated person or organization to ensure satisfaction of both the willingness and ability required. The designated person or organization shall agree to notify immediately the judicial officer of any violation of release by the defendant;

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

~~(3) Maintain or commence an educational program;~~

(4) Abide by specified restrictions on personal associations, place of abode or travel;

(5) Avoid all contact with a victim of the alleged crime, a potential witness regarding the alleged crime or with any other family or household members of the victim or the defendant or to contact those individuals only at certain times or under certain conditions;

~~(6) Report on a regular basis to a designated law enforcement agency or other governmental agency;~~

(7) Comply with a specified curfew;

(8) Refrain from possessing a firearm or other dangerous weapon;

(9) Refrain from the ~~possession, use or~~ excessive use of alcohol and from any use of illegal drugs. A condition under this subparagraph may be imposed only upon the presentation to the judicial officer of specific facts demonstrating the need for such condition. A condition requiring that the defendant refrain from possession or any use of alcohol may be imposed only if the defendant is a participant in a specialty court docket under Title 4, chapter 8, 8-A or 8-B, or any other specialty docket established by the Judicial Department, or by agreement of the parties as part of a deferred disposition under Title 17-A, section 1902;

(9-A) Submit to:

(a) A random search for possession ~~or use~~ prohibited by a condition imposed under subparagraph (8) ~~or (9)~~; ~~or~~

(a-1) A random search for possession or use prohibited by a condition imposed under subparagraph (9) if the defendant is a participant in a specialty court docket under Title 4, chapter 8, 8-A or 8-B, or any other specialty docket established by the Judicial Department, or by agreement of the parties as part of a deferred disposition under Title 17-A, section 1902; or

(b) A search upon articulable suspicion for possession ~~or use~~ prohibited by a condition imposed under subparagraph (8) or excessive use imposed under subparagraph (9);

(10) Undergo, as an outpatient, available medical or psychiatric treatment, or enter and remain, as a voluntary patient, in a specified institution when required for that purpose;

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

27 **Sec. 3. 15 MRSA §1092, sub-§1, ¶B**, as amended by PL 2005, c. 449, §2, is further
 28 amended to read:

29 B. A Class C crime if the underlying crime was punishable by a maximum period of
 30 imprisonment of one year or more and the condition of release violated is one specified
 31 in section 1026, subsection 3, paragraph A, subparagraph (5), (8); or (10-A) or (13).

32 **Sec. 4. 17-A MRSA §1752**, as enacted by PL 2019, c. 113, Pt. A, §2, is repealed.

33 **Sec. 5. 17-A MRSA §1753**, as enacted by PL 2019, c. 113, Pt. A, §2, is repealed.

34 **Sec. 6. 17-A MRSA §1807, sub-§2**, as enacted by PL 2019, c. 113, Pt. A, §2, is
 35 amended to read:

36 **2. Specific conditions of probation authorized.** As a condition of probation, the
 37 court in its sentence may require the person to:

38 A. Support the person's dependents and to meet the person's family responsibilities
 39 Comply with spousal support and child support orders;

- 1 B. Make restitution pursuant to chapter 69 to each victim of the person's crime, or to
- 2 the county where the offense is prosecuted if the identity of the victim cannot be
- 3 ascertained or if the victim voluntarily refuses the restitution. If the court orders as a
- 4 condition of probation that the person forfeit and pay a specific amount of restitution,
- 5 that order, as a matter of law, also constitutes the imposition of restitution pursuant to
- 6 chapter 69 as a sentencing alternative and an additional order regarding restitution is
- 7 unnecessary;
- 8 C. Pursue and maintain ~~approved~~ employment or an ~~approved~~ occupation;
- 9 D. Undergo, as an outpatient, available medical or psychiatric treatment, or to enter
- 10 and remain, as a voluntary patient, in a specified institution when required for that
- 11 purpose. ~~Failure~~ Except with regard to participation in sex offender treatment, failure
- 12 to comply with this condition is not considered only as a violation of probation and
- 13 may not, in itself, authorize involuntary treatment or hospitalization. The court may
- 14 not order and the State may not pay for the person to attend a batterers' intervention
- 15 program unless the program is certified under Title 19-A, section 4014;
- 16 D-1. Complete a batterers' intervention program. The court may not order and the
- 17 State may not pay for the person to attend a batterers' intervention program unless the
- 18 program is certified under Title 19-A, section 4014;
- 19 E. Pursue a ~~prescribed secular course of study~~ an educational program or vocational
- 20 training;
- 21 F. Refrain from frequenting specified places or consorting with specified persons;
- 22 G. Refrain from possessing any firearm or other dangerous weapon;
- 23 H. Remain within the ~~jurisdiction of the court~~ State, unless permission to leave
- 24 temporarily is granted in writing by the person's probation officer, and to notify the
- 25 probation officer of any change in the person's address or employment;
- 26 I. Refrain from illegal drug use and ~~use of~~ excessive use of alcohol;
- 27 J. Report as directed to the court or the person's probation officer, to answer all
- 28 reasonable inquiries by the probation officer and to permit the probation officer to visit
- 29 at reasonable times at the person's home or elsewhere;
- 30 ~~K. Pay any monetary penalty imposed by the court as part of the sentence;~~
- 31 L. Perform specified work for the benefit of the State, a county, a municipality, a
- 32 school administrative district, other public entity or a charitable institution;
- 33 M. Participate in an electronic monitoring program, if available; or
- 34 N. Satisfy any conditions reasonably related to the rehabilitation of the person or the
- 35 public safety or security.

36 **Sec. 7. 17-A MRSA §1807, sub-§6**, as enacted by PL 2019, c. 113, Pt. A, §2, is
37 repealed.

38 **Sec. 8. 17-A MRSA §1807, sub-§7**, as enacted by PL 2019, c. 113, Pt. A, §2, is
39 repealed.

40 **Sec. 9. Appropriations and allocations.** The following appropriations and
41 allocations are made.

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JUDICIAL DEPARTMENT

Courts - Supreme, Superior and District 0063

Initiative: Provides one-time funding for increased technology costs associated with revising forms and updating applications.

GENERAL FUND	2021-22	2022-23
All Other	\$204,700	\$0
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GENERAL FUND TOTAL	\$204,700	\$0

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment is the majority report of the committee. It replaces the bill.

This amendment amends the Maine Bail Code to provide that every order for the pretrial release of any defendant may include only the least restrictive further condition or combination of conditions. It also repeals certain potential pretrial release bail conditions, including: maintaining or seeking employment; maintaining or commencing an educational program; reporting on a regular basis to a law enforcement agency or other governmental agency; returning to custody after release for employment, schooling or other limited purposes; reporting on a regular basis to the defendant's attorney; notifying the court of any change of employment; providing the contact information for a person who will always know the whereabouts of the defendant; and informing a law enforcement officer of the defendant's condition of release if arrested or summonsed for new criminal conduct. It also revises the conditions of pretrial release bail by repealing the prohibition on the possession of alcohol, except for those participating in a specialty docket or for those with the condition as a part of deferred disposition while retaining the prohibition on the excessive use of alcohol. The prohibition on the use of illegal drugs is retained. It limits the condition that a person submit to a random search for the possession or use of alcohol or illegal drugs to those participating in specialty dockets established by the Judicial Department or by agreement of the parties as part of a deferred disposition.

This amendment also amends conditions of probation. It clarifies the condition that a person on probation comply with child support and spousal support orders. It removes the approval requirement for employment and occupations. It provides that, except with regard to participation in sex offender treatment, failure to complete treatment is not considered a violation of probation. It changes terminology with regard to educational programs. It requires a person to remain within the State, rather than within the jurisdiction of the court, without the written permission of the probation officer. It amends the condition with regard to alcohol and illegal drugs to correspond to the change in the pretrial release bail conditions regarding illegal drug use and excessive use of alcohol. It also removes as a condition of probation that a person pay any monetary penalty imposed as part of the sentence.

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COMMITTEE AMENDMENT "A" to H.P. 612, L.D. 844

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This amendment repeals the requirement that persons on probation pay a supervision fee and the fee for electronic monitoring.

The amendment adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)

COMMITTEE AMENDMENT



130th MAINE LEGISLATURE

LD 844

LR 1110(02)

An Act To Examine and Amend the Conditions of Release and Probation

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-704)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

	FY 2021-22	FY 2022-23	Projections FY 2023-24	Projections FY 2024-25
Net Cost (Savings) General Fund	\$204,700	\$0	\$0	\$0
Appropriations/Allocations General Fund	\$204,700	\$0	\$0	\$0

Fiscal Detail and Notes

The bill includes General Fund appropriations to the Judicial Department of \$204,700 in fiscal year 2021-22 for increased technology costs associated with needing to revise forms and update applications as a result of changing probation requirements. Additionally, the bill removes the payment of a monetary penalty imposed by the court as a condition of probation, but any revenue decrease as a result of this change is expected to be minor.