

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

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Legislative Document

No. 1703

H.P. 1266

House of Representatives, May 13, 2021

An Act To Amend the Bail Code

Received by the Clerk of the House on May 11, 2021. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

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

ROBERT B. HUNT
Clerk

Presented by Representative TALBOT ROSS of Portland.
Cosponsored by Senator BAILEY of York and
Representatives: Speaker FECTEAU of Biddeford, HARNETT of Gardiner, PIERCE of
Falmouth, SHEEHAN of Biddeford, Senators: BREEN of Cumberland, CARNEY of
Cumberland, LAWRENCE of York.

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

2 **Sec. 1. 15 MRSA §1023, sub-§4, ¶F**, as enacted by PL 2015, c. 436, §3, is
3 amended to read:

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

6 **Sec. 2. 15 MRSA §1023, sub-§4, ¶G**, as enacted by PL 2015, c. 436, §3, is
7 amended to read:

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

12 **Sec. 3. 15 MRSA §1023, sub-§4, ¶H** is enacted to read:

13 H. Notwithstanding section 1026, subsection 3, paragraph A, subparagraphs (11), (12)
14 and (18) and subsection 3, paragraph B, impose a financial condition of release on a
15 defendant for whom the highest class of crime charged was a Class E crime, except
16 that a financial condition may be imposed on a defendant charged with a Class E crime:

17 (1) That is a violation of Title 17-A, chapter 11;

18 (2) That was committed against a family or household member as defined in Title
19 19-A, section 4002, subsection 4 or a dating partner as defined in Title 19-A,
20 section 4002, subsection 3-A;

21 (3) That is a violation of a condition of release committed while the defendant is
22 released on bail for a charge that involves: a violation of Title 17-A, chapter 11; a
23 crime against a family or household member as defined in Title 19-A, section 4002,
24 subsection 4; or a crime against a dating partner as defined in Title 19-A, section
25 4002, subsection 3-A;

26 (4) That is a violation of a condition of release premised on an allegation of new
27 criminal conduct; or

28 (5) That is a violation of section 1091, subsection 1.

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

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

38 A. A defendant who is qualified to be released pursuant to section 1026 upon personal
39 recognizance or upon execution of an unsecured appearance bond but who in fact lacks
40 the present financial ability to pay a bail commissioner fee must nonetheless be released
41 upon personal recognizance or upon execution of an unsecured appearance bond.

1 which may include conditions of bail other than cash or security. A bail commissioner
2 may not refuse to examine a person to determine a person's eligibility for bail, set bail,
3 prepare the personal recognizance bond or take the acknowledgement of the defendant
4 because the defendant lacks the present financial ability to pay a bail commissioner
5 fee.

6 B. The sheriff of the county in which the defendant is detained may create a fund for
7 the distribution by the sheriff or the sheriff's designee for the payment in whole or in
8 part of the \$60 bail commissioner fee for those defendants who do not have the
9 financial ability to pay that fee.

10 A bail commissioner fee under this subsection is not a financial condition of release for the
11 purposes of subsection 4, paragraph H or section 1026, subsection 3, paragraph B-1.

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

14 **2-A. Release on personal recognizance or unsecured appearance bond.** Except
15 for a formerly capital offense under section 1027, there is a rebuttable presumption that a
16 defendant must be released on personal recognizance under this section without a condition
17 imposed under subsection 3. The judicial officer shall order the pretrial release of the
18 defendant on personal recognizance or upon execution of an unsecured appearance bond in
19 an amount specified by the judicial officer, unless, after consideration of the factors listed
20 in subsection 4, the judicial officer determines that:

21 A. The release would ~~not reasonably ensure the appearance~~ result in an imminent risk
22 of willful flight of the defendant ~~as required~~;

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

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

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

27 **Sec. 6. 15 MRSA §1026, sub-§3, ¶A**, as amended by PL 2017, c. 407, Pt. A, §51,
28 is further amended to read:

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

42 (1) Remain in the custody of a designated person or organization agreeing to
43 supervise the defendant, including a public official, public agency or publicly

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

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

11 (3) Maintain or commence an educational program;

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

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

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

20 (7) Comply with a specified curfew;

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

22 (9) Refrain from the possession, use or excessive use of alcohol and from any use
23 of illegal drugs. A condition under this subparagraph may be imposed only upon
24 the presentation to the judicial officer of specific facts demonstrating the need for
25 such condition;

26 (9-A) Submit to:

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

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

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

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

39 (10-A) Enter and remain in a long-term residential facility for the treatment of
40 substance use disorder;

41 (11) Execute an agreement to forfeit, in the event of willful noncompliance, such
42 designated property, including money, as is reasonably necessary to ensure ~~the~~

1 ~~appearance of that the defendant at the time and place required does not willfully~~
2 ~~flee the jurisdiction,~~ to ensure that the defendant will refrain from any new criminal
3 conduct, to ensure the integrity of the judicial process and to ensure the safety of
4 others in the community and post with an appropriate court such evidence of
5 ownership of the property or such percentage of the money as the judicial officer
6 specifies;

7 (12) Execute a bail bond with sureties in such amount as is reasonably necessary
8 to ensure the appearance of the defendant at the time and place required, to ensure
9 that the defendant will refrain from any new criminal conduct, to ensure the
10 integrity of the judicial process and to ensure the safety of others in the 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 designated
16 person or organization that will know the defendant's whereabouts at all times;

17 (17) Inform any law enforcement officer of the defendant's condition of release if
18 the defendant is subsequently arrested or summonsed for new criminal conduct;

19 (18) Satisfy any other condition that is reasonably necessary to ensure that the
20 ~~appearance of the defendant at the time and place required does not willfully flee~~
21 ~~the jurisdiction,~~ to ensure that the defendant will refrain from any new criminal
22 conduct, to ensure the integrity of the judicial process and to ensure the safety of
23 others in the community; and

24 (19) Participate in an electronic monitoring program, if available.

25 **Sec. 7. 15 MRSA §1026, sub-§3, ¶B,** as repealed and replaced by PL 2007, c. 518,
26 §3, is amended to read:

27 ~~B. The~~ If the judicial officer imposes a financial condition, the judicial officer may not
28 impose a must find by clear and convincing evidence that the imposition of the
29 financial condition that, either alone or in combination with other conditions of bail, is
30 not in excess of that reasonably necessary to ensure the appearance of that the
31 defendant at the time and place required does not willfully flee the jurisdiction, to
32 ensure that the defendant will refrain from any new criminal conduct, to ensure the
33 integrity of the judicial process or to ensure the safety of others in the community. In
34 making a finding under this paragraph, the judicial officer shall consider the amount of
35 money from a defendant's personal resources a defendant is able to pay within 24 hours
36 of the finding. The judicial officer shall state any findings of fact under this paragraph
37 on the record or in writing.

38 **Sec. 8. 15 MRSA §1026, sub-§3, ¶B-1** is enacted to read:

39 B-1. Notwithstanding paragraph A, subparagraphs (11), (12) and (18) and paragraph
40 B, a judicial officer may not impose a financial condition on a defendant for whom the
41 highest class of crime charged is a Class E crime, except that a financial condition may
42 be imposed on a defendant charged with a Class E crime:

- 1 (1) That is a violation of Title 17-A, chapter 11;
- 2 (2) That was committed against a family or household member as defined in Title
- 3 19-A, section 4002, subsection 4 or a dating partner as defined in Title 19-A,
- 4 section 4002, subsection 3-A;
- 5 (3) That is a violation of a condition of release committed while the defendant is
- 6 released on bail for a charge that involves: a violation of Title 17-A, chapter 11; a
- 7 crime against a family or household member as defined in Title 19-A, section 4002,
- 8 subsection 4; or a crime against a dating partner as defined in Title 19-A, section
- 9 4002, subsection 3-A;
- 10 (4) That is a violation of a condition of release premised on an allegation of new
- 11 criminal conduct; or
- 12 (5) That is a violation of section 1091, subsection 1.

13 **Sec. 9. 15 MRSA §1026, sub-§3, ¶C**, as repealed and replaced by PL 2007, c. 518,
 14 §3, is amended to read:

15 C. Upon motion by the attorney for the State or the defendant and after notice and
 16 upon a showing of changed circumstances or upon the discovery of new and significant
 17 information, the court may amend the bail order to relieve the defendant of any
 18 condition of release, modify the conditions imposed or impose further conditions
 19 authorized by this subsection as that the court determines ~~to reasonably ensure the~~
 20 ~~appearance of~~ will not result in an imminent risk of willful flight of the defendant at
 21 ~~the time and place required,~~ and will reasonably ensure that the defendant will refrain
 22 from any new criminal conduct, the integrity of the judicial process and the safety of
 23 others in the community.

24 **Sec. 10. 15 MRSA §1026, sub-§4, ¶C**, as amended by PL 2017, c. 407, Pt. A, §52,
 25 is further amended to read:

- 26 C. The history and characteristics of the defendant, including, but not limited to:
- 27 (1) The defendant's character and physical and mental condition;
 - 28 (2) The defendant's family ties in the State;
 - 29 (3) The defendant's employment history in the State;
 - 30 (4) The defendant's financial resources, including the ability of the defendant to
 31 afford a financial condition imposed by the judicial officer;
 - 32 (5) The defendant's length of residence in the community and the defendant's
 33 community ties;
 - 34 (6) The defendant's past conduct, ~~including any history of substance use disorder;~~
 - 35 (7) The defendant's criminal history, if any;
 - 36 (8) The defendant's record concerning appearances at court proceedings;
 - 37 (9) Whether, at the time of the current offense or arrest, the defendant was on
 38 probation, parole or other release pending trial, sentencing, appeal or completion
 39 of a sentence for an offense in this jurisdiction or another;

1 (9-A) Any evidence that the defendant poses a danger to the safety of others in the
2 community, including the results of a validated, evidence-based domestic violence
3 risk assessment recommended by the Maine Commission on Domestic and Sexual
4 Abuse, established in Title 5, section 12004-I, subsection 74-C, and approved by
5 the Department of Public Safety;

6 (10) Any evidence that the defendant has obstructed or attempted to obstruct
7 justice by threatening, injuring or intimidating a victim or a prospective witness,
8 juror, attorney for the State, judge, justice or other officer of the court; ~~and~~

9 (11) Whether the defendant has previously violated conditions of release,
10 probation or other court orders, including, but not limited to, violating protection
11 from abuse orders pursuant to former Title 19, section 769 or Title 19-A, section
12 4011-;

13 (12) Whether the defendant is the person primarily responsible for the care of
14 another person;

15 (13) Whether the defendant has a specific health care need, including a mental
16 health care need, that is being met or would be better met outside of custody; and

17 (14) Whether being placed or remaining in custody would prevent the defendant
18 from maintaining employment.

19 **Sec. 11. 15 MRSA §1026, sub-§5, ¶A**, as enacted by PL 1987, c. 758, §20, is
20 amended to read:

21 A. Include a written statement that sets forth ~~all the conditions to which the release is~~
22 ~~subject in a manner sufficiently clear and specific to serve as a guide for the defendant's~~
23 ~~conduct; and:~~

24 (1) All the conditions to which the release is subject in a manner sufficiently clear
25 and specific to serve as a guide for the defendant's conduct; and

26 (2) If an agreement to forfeit money under subsection 3, paragraph A,
27 subparagraph (11) is ordered, the reason for the amount of money ordered to be
28 forfeited under the agreement; and

29 **Sec. 12. 15 MRSA §1095, sub-§2**, as amended by PL 2011, c. 640, Pt. A, §3, is
30 further amended to read:

31 **2. Arrest.** Prior to the filing of a motion to revoke a defendant's preconviction bail
32 under subsection 1, a law enforcement officer when requested by the attorney for the State
33 may arrest with a warrant, or without a warrant pursuant to Title 17-A, section 15, any
34 defendant who the law enforcement officer has probable cause to believe has failed to
35 appear as required, has violated a condition of preconviction bail or has been charged with
36 a crime allegedly committed while released on preconviction bail. A defendant under
37 arrest pursuant to this section must be brought before any judge or justice of the appropriate
38 court. The judge or justice shall determine without hearing whether the existing
39 preconviction bail order should be modified or whether the defendant should be committed
40 without bail pending the bail revocation hearing. If either the underlying crime or the new
41 criminal conduct alleged is an offense specified in section 1023, subsection 4, paragraph
42 B-1, the judge or justice shall order that the defendant be committed without bail pending
43 the bail revocation hearing, unless the judge or justice makes findings on the record that

1 there are conditions of release that will reasonably ensure that the defendant will not
2 commit new crimes while out on bail, that will reasonably ensure that the defendant's
3 appearance at the time and place required defendant will not willfully flee and that will
4 ensure the integrity of the judicial process and the safety of others in the community
5 pending the bail revocation hearing. A copy of the motion for revocation must be furnished
6 to the defendant prior to the hearing on the alleged violation, unless the hearing must be
7 conducted in the absence of the defendant.

8 **Sec. 13. 15 MRSA §1097, sub-§2**, as amended by PL 2007, c. 374, §13, is further
9 amended to read:

10 **2. ~~Appearance of the defendant~~ No risk of willful flight; ensuring the integrity of**
11 **the judicial process; ensuring the safety of others in the community.** If the judge or
12 justice finds that there are conditions of release that will ~~reasonably ensure the defendant's~~
13 ~~appearance at the time and place required~~ not result in an imminent risk of willful flight of
14 the defendant and ensure the integrity of the judicial process and the safety of others in the
15 community, the judge or justice shall issue an order under section 1026. If the judicial
16 finding is otherwise, the judge or justice shall issue an order denying bail.

17 SUMMARY

18 This bill prohibits a bail commissioner or judicial officer from imposing a financial
19 condition of release on a defendant whose most serious crime charged is a Class E crime.
20 However, the prohibition on financial conditions of release does not apply when the Class
21 E crime was any of the following:

22 1. A violation of the Maine Criminal Code, chapter 11, which covers sexual assault
23 crimes;

24 2. A crime committed against a family or household member or a dating partner;

25 3. A violation of a condition of release when the underlying crime for which the
26 defendant has been released on bail is a violation of the Maine Criminal Code, chapter 11
27 or a crime against a family or household member or a dating partner;

28 4. A violation of a condition of release that is premised on an allegation of new criminal
29 conduct; or

30 5. A violation of the Maine Revised Statutes, Title 15, section 1091, subsection 1,
31 which makes failure to appear in court when required to do so a crime.

32 The bill provides that a defendant who is otherwise eligible to be released on personal
33 recognizance or upon the execution of an unsecured appearance bond, whether or not
34 accompanied by one or more conditions of bail, must be released if the defendant cannot
35 afford to pay the bail commissioner fee. The bill clarifies that the bail commissioner fee is
36 not a financial condition of release for the purposes of the prohibition on financial
37 conditions of release for certain Class E crimes and provides that except for a formerly
38 capital offense, there is a rebuttable presumption that a defendant must be released on
39 personal recognizance with no conditions. The bill changes the requirements for setting
40 personal recognizance bail from a determination that the release would reasonably ensure
41 the appearance of the defendant to a determination that the release would not result in an
42 imminent risk of willful flight by the defendant.

1 The bill removes from the list of potential conditions of release for preconviction bail
2 being required to submit to a random search for possession or use of alcohol or use of illegal
3 drugs when use or possession is prohibited by a condition of release, unless the defendant
4 is a participant in a specialty court docket or as agreed by the parties as a part of a deferred
5 disposition. The bill also eliminates the condition that requires the defendant to report on
6 a regular basis to the defendant's attorney. The bill requires a court when imposing a
7 financial condition to find by clear and convincing evidence that the condition is not in
8 excess of that necessary to ensure that the defendant does not willfully flee the jurisdiction
9 and the defendant has the resources to pay within 24 hours. The court is required to state
10 its findings on the record or in writing,

11 The bill revises the list of factors a judicial officer considers when setting preconviction
12 bail to remove consideration of the defendant's family ties in the State, although it retains
13 consideration of the defendant's ties to the State; although the judicial officer is still
14 required to consider the defendant's past conduct, the bill eliminates the consideration of
15 any history of substance use disorder. It also adds 3 new factors to be considered by the
16 judicial officer:

- 17 1. Whether the defendant is the person primarily responsible for the care of another
18 person;
- 19 2. Whether the defendant has a specific health care need, including a mental health
20 care need, that is being met or would be better met outside of custody; and
- 21 3. Whether being placed or remaining in custody would prevent the defendant from
22 maintaining employment.