

# MAINE STATE LEGISLATURE

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# 131st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2023

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Legislative Document

No. 1299

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H.P. 824

House of Representatives, March 23, 2023

### An Act to Amend the Maine Bail Code

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Reference to the Committee on Judiciary suggested and ordered printed.

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

ROBERT B. HUNT  
Clerk

Presented by Representative CAMPBELL of Orrington. (BY REQUEST)  
Cosponsored by Senator LYFORD of Penobscot and  
Representatives: NUTTING of Oakland, THORNE of Carmel.

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

2 **Sec. 1. 15 MRSA §1023, sub-§5**, as amended by PL 2021, c. 397, §1, is further  
3 amended to read:

4 **5. Fees.** A bail commissioner is entitled to receive a fee not to exceed \$60 for the  
5 charges pursuant to which the defendant is presently in custody, ~~unless the defendant lacks~~  
6 ~~the present financial ability to pay the fee. A defendant presently in custody who is~~  
7 ~~qualified to be released upon personal recognizance or upon execution of an unsecured~~  
8 ~~appearance bond, whether or not accompanied by one or more conditions of bail that have~~  
9 ~~been set by a judicial officer, but who in fact lacks the present financial ability to pay a bail~~  
10 ~~commissioner fee, must nonetheless be released upon personal recognizance or upon~~  
11 ~~execution of an unsecured appearance bond. A bail commissioner may not refuse to~~  
12 ~~examine a person to determine the person's eligibility for bail, set bail, prepare the personal~~  
13 ~~recognizance or bond or take acknowledgement of the person in custody because the person~~  
14 ~~in custody lacks the present financial ability to pay a bail commissioner fee. The bail~~  
15 ~~commissioner shall submit such forms as the Judicial Department directs to verify the~~  
16 ~~amount of fees received under this subsection. The sheriff of the county in which the~~  
17 ~~defendant is detained may create a fund for the distribution by the sheriff or the sheriff's~~  
18 ~~designee for the payment in whole or in part of the \$60 bail commissioner fee for those~~  
19 ~~defendants who do not have the financial ability to pay that fee.~~

20 ~~A bail commissioner fee under this subsection is not a financial condition of release for the~~  
21 ~~purposes of section 1026, subsection 3, paragraph B-1.~~

22 **Sec. 2. 15 MRSA §1026, sub-§3, ¶A**, as amended by PL 2021, c. 397, §§2 and 3,  
23 is further amended by amending subparagraph (9-A) to read:

24 (9-A) Submit to:

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

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

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

34 **Sec. 3. 15 MRSA §1026, sub-§3, ¶A**, as amended by PL 2021, c. 397, §§2 and 3,  
35 is further amended by enacting a new subparagraph (14) to read:

36 (14) Report on a regular basis to the defendant's attorney;

37 **Sec. 4. 15 MRSA §1026, sub-§3, ¶B-1**, as enacted by PL 2021, c. 397, §4, is  
38 repealed.

39 **Sec. 5. 15 MRSA §1026, sub-§4, ¶C**, as amended by PL 2021, c. 397, §5 and c.  
40 647, Pt. B, §10 and affected by §65, is further amended to read:

41 C. The history and characteristics of the defendant, including, but not limited to:

- 1 (1) The defendant's character and physical and mental condition;
- 2 (2) The defendant's family ties in the State;
- 3 (3) The defendant's employment history in the State;
- 4 (4) The defendant's financial resources, ~~including the ability of the defendant to~~  
5 ~~afford a financial condition imposed by the judicial officer;~~
- 6 (5) The defendant's length of residence in the community and the defendant's  
7 community ties;
- 8 (6) The defendant's past conduct, including any history of substance use disorder;
- 9 (7) The defendant's criminal history, if any;
- 10 (8) The defendant's record concerning appearances at court proceedings;
- 11 (9) Whether, at the time of the current offense or arrest, the defendant was on  
12 probation, parole or other release pending trial, sentencing, appeal or completion  
13 of a sentence for an offense in this jurisdiction or another;
- 14 (9-A) Any evidence that the defendant poses a danger to the safety of others in the  
15 community, including the results of a validated, evidence-based domestic violence  
16 risk assessment recommended by the Maine Commission on Domestic and Sexual  
17 Abuse, established in Title 5, section 12004-I, subsection 74-C, and approved by  
18 the Department of Public Safety;
- 19 (10) Any evidence that the defendant has obstructed or attempted to obstruct  
20 justice by threatening, injuring or intimidating a victim or a prospective witness,  
21 juror, attorney for the State, judge, justice or other officer of the court; and
- 22 (11) Whether the defendant has previously violated conditions of release,  
23 probation or other court orders, including, but not limited to, violating protection  
24 from abuse orders pursuant to former Title 19, section 769 or Title 19-A, former  
25 section 4011 or Title 19-A, section 4113;.
- 26 ~~(12) Whether the defendant is the person primarily responsible for the care of~~  
27 ~~another person;~~
- 28 ~~(13) Whether the defendant has a specific health care need, including a mental~~  
29 ~~health care need, that is being met or would be better met outside of custody; and~~
- 30 ~~(14) Whether being placed or remaining in custody would prevent the defendant~~  
31 ~~from maintaining employment.~~

32 **Sec. 6. 15 MRSA §1026, sub-§5, ¶A**, as amended by PL 2021, c. 608, Pt. C, §1,  
33 is further amended to read:

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

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

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~~(2) If an agreement to forfeit money under subsection 3, paragraph A, subparagraph (11) or (12) is ordered, the reason the judicial officer has set the amount of money ordered to be forfeited under the agreement; and~~

**SUMMARY**

This bill reverses the changes to the Maine Bail Code enacted by Public Law 2021, chapter 397.