

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

and the

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1988

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST AND SECOND SPECIAL SESSIONS
and
SECOND REGULAR SESSION
of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

The University of Maine System and the bureau shall develop an aggressive schedule, consistent with the Office of Energy Resources 1987 comprehensive plan and available funding, to take advantage of all energy conservation promotional programs which are cost effective for the State and which are offered by public utilities supplying electrical energy, including, without limitation, rebates and cost-sharing programs.

The University of Maine System and the bureau shall report annually by January 1st to the joint standing committee of the Legislature having jurisdiction over energy on progress in reducing or conserving the State's use of electrical energy.

Effective August 4, 1988.

CHAPTER 758

H.P. 1792 — L.D. 2456

AN ACT to Address Comprehensively Bail Relative to a Defendant in a Criminal Proceeding.

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

Sec. 1. 4 MRSA §160, as amended by PL 1967, c. 134, is repealed.

Sec. 2. 4 MRSA §164, sub-§1-A, as enacted by PL 1985, c. 506, Pt. B, §2, is amended to read:

1-A. Appoint bail commissioners. Appoint bail commissioners pursuant to Title 14 15, section 5541 1023, for any district when the resident judge for that district, because of illness, absence or disability, is unable to appoint.

Sec. 3. 4 MRSA §171, 2nd ¶, as repealed and replaced by PL 1979, c. 663, §9, is amended to read:

He may, and on complaint shall, cause to be arrested persons found within his county or in an adjoining county under the conditions specified in the first paragraph of section 161 charged with offenses; and those having committed offenses therein or in an adjoining county who have escaped therefrom or from an adjoining county; and all persons charged with offenses and crimes, and all affrayers, rioters, breakers of the peace and violators of the law, and may require such offenders to find sureties for keeping the peace. ~~When the offense upon examination is found to be one not within the jurisdiction of the District Court, the district judge may admit the offender to bail to appear before the Superior Court, and, in default thereof, shall commit him.~~

Sec. 4. 4 MRSA §569, as enacted by PL 1965, c. 356, §7, is repealed.

Sec. 5. 14 MRSA §5524, as amended by PL 1981, c. 456, Pt. A, §54, is repealed.

Sec. 6. 14 MRSA §5540 is repealed.

Sec. 7. 14 MRSA §5541, as repealed and replaced by PL 1987, c. 162, is repealed.

Sec. 8. 14 MRSA §5542, as amended by PL 1985, c. 35, is repealed.

Sec. 9. 14 MRSA §5544, as amended by PL 1979, c. 663, §81, is repealed.

Sec. 10. 14 MRSA §5547, as enacted by PL 1987, c. 300, is repealed.

Sec. 11. 15 MRSA §101-B, sub-§4, ¶B, as enacted by PL 1987, c. 402, Pt. A, §109, is amended to read:

~~B. Except in the case of a defendant who is charged with the commission of an offense, the only punishment for which is life imprisonment, order the defendant's release on bail~~ Issue a bail order in accordance with chapter 105-A, with or without the further order that the defendant undergo observation at a state mental hospital or mental health facility approved by the Department of Mental Health and Mental Retardation, or by arrangement with a private psychiatrist and treatment when it is deemed appropriate by the head of the hospital or clinic or by the private psychiatrist. When such outpatient observation and treatment is ordered, the head of the hospital or clinic or the psychiatrist shall, within the time specified in subsection 1, forward a report to the court containing the opinion of the head of the hospital or clinic or of the psychiatrist, relative to the defendant's competence to stand trial and his reasons therefor. The court shall forthwith set a date for and shall hold a hearing on the question of the defendant's competence to stand trial, which shall be held pursuant to and consistent with the standards set out in paragraph A.

Sec. 12. 15 MRSA §808 is repealed.

Sec. 13. 15 MRSA §813, as repealed and replaced by PL 1983, c. 862, §43, is repealed.

Sec. 14. 15 MRSA §814, as amended by PL 1983, c. 862, §44, is repealed.

Sec. 15. 15 MRSA §851, as amended by PL 1983, c. 862, §45, is repealed.

Sec. 16. 15 MRSA §852, as amended by PL 1965, c. 356, §34, is repealed.

Sec. 17. 15 MRSA §855, as amended by PL 1965, c. 356, §36, is repealed.

Sec. 18. 15 MRSA §931, as repealed and replaced by PL 1965, c. 356, §40, is repealed.

Sec. 19. 15 MRSA §942, as amended by PL 1983, c. 862, §46, is repealed.

Sec. 20. 15 MRSA c. 105-A is enacted to read:

CHAPTER 105-A

MAINE BAIL CODE

SUBCHAPTER I

GENERAL PROVISIONS

§1001. Title

This chapter shall be known and may be cited as the "Maine Bail Code."

§1002. Legislative findings; statement of purpose

The Legislature finds that the statutory provisions relative to bail for a defendant in a criminal case are scattered throughout numerous provisions of Maine's statutory law and that many such statutory provisions have not been updated to reflect the modern development of the law. The Legislature finds that the Supreme Judicial Court sitting as the Law Court has recently decided cases interpreting the various constitutional provisions dealing with bail for a defendant in a criminal proceeding and has provided guidance as to the proper interpretation of those constitutional provisions. The Legislature finds that it is in the interest of the State and of individual criminal defendants that the law relative to bail be incorporated into a modern, integrated and consistent code that will provide a comprehensive statement of the law of bail. It is the purpose and intent of this chapter to consolidate and clarify the various provisions of Maine law dealing with the subject of bail for a defendant in a criminal case.

§1003. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Bail. "Bail" is defined as follows.

A. In the preconviction context, "bail" means the obtaining of the release of the defendant upon an undertaking that the defendant shall appear at the time and place required and may include conditions designed to ensure the integrity of the judicial process. For crimes bailable only as a matter of discretion preconviction, bail may also include conditions designed to ensure the safety of others in the community.

B. In the post-conviction context, "bail" means the obtaining of the release of the defendant upon an undertaking that the defendant shall appear and surrender into custody at the time and place required and may include conditions designed to otherwise ensure the integrity of the judicial process or the safety of others in the community.

2. Court. "Court" means any Justice of the Supreme Judicial Court or Superior Court or any active retired justice and any District Court Judge or active retired judge, or any Administrative Court Judge or active retired judge when assigned under Title 4, section 157-C or 1158.

3. Crime bailable as of right preconviction. "Crime bailable as of right preconviction" means a crime for which, under the Constitution of Maine, Article I, Section 10, a defendant has an absolute right to have bail set at the preconviction stage of any criminal proceeding.

4. Crime bailable only as a matter of discretion preconviction. "Crime bailable only as a matter of discretion preconviction" means a formerly capital offense for which, pursuant to a Harnish bail proceeding, a capital defendant's conditional constitutional right to have bail set at the preconviction stage of a criminal proceeding has been extinguished.

5. Ensure the integrity of the judicial process. To "ensure the integrity of the judicial process," when used in the context of the granting or denial of bail, means safeguarding the role of the courts in adjudicating the guilt or innocence of defendants by assuring the presence of the defendant in court and otherwise preventing the defendant from obstructing or attempting to obstruct justice, by threatening, injuring or intimidating a victim, prospective witness, juror, attorney for the State, judge, justice or other officer of the court.

6. Formerly capital offenses. "Formerly capital offenses" means crimes which have been denominated capital offenses since the adoption of the Constitution of Maine.

7. Harnish bail proceeding. "Harnish bail proceeding" means a preconviction bail proceeding in which the State is offered the opportunity to obtain a judicial finding of probable cause that the defendant has committed a formerly capital offense, and the defendant, at the same proceeding, is afforded the opportunity to know and rebut the case against the defendant.

8. Judicial officer. "Judicial officer" includes the court, as defined in subsection 2, and a bail commissioner.

9. Post-conviction. "Post-conviction" means any point in a criminal proceeding after a verdict or finding of guilty.

10. Preconviction. "Preconviction" means any point in a criminal proceeding before a verdict in the context of a jury trial or finding of guilty in the context of a jury-waived trial or plea.

§1004. Applicability and exclusions

This chapter applies to the setting of bail for a defendant in a criminal proceeding. It does not apply to the setting of bail in extradition proceedings under sections

201 to 229 or post-conviction review proceedings under sections 2121 to 2132 or probation revocation proceedings under Title 17-A, sections 1205 to 1207, except to the extent and under the conditions stated in those sections.

SUBCHAPTER II

PRECONVICTION BAIL

§1021. Superior Court and Supreme Judicial Court Justices

Any Justice of the Supreme Judicial Court or Superior Court or any active retired justice shall set preconviction bail for a defendant in a criminal proceeding in accordance with this chapter.

§1022. District Court Judges

Any District Court Judge or active retired judge shall set preconviction bail for a defendant in a criminal proceeding in accordance with this chapter. When the crime upon examination is found to be one not within the jurisdiction of the District Court, the judge shall set preconviction bail for the defendant to appear before the Superior Court in accordance with this chapter.

§1023. Bail commissioners

1. Authority. A bail commissioner, appointed under this section, shall set preconviction bail for a defendant in a criminal proceeding in accordance with this chapter, provided that a bail commissioner may not set preconviction bail for a defendant:

A. Who is charged with murder;

B. If the attorney for the State requests a Harnish bail proceeding for a defendant charged with any other formerly capital offense; or

C. As otherwise provided in subsection 4.

2. Appointment. The District Court Judge resident in each district, with the concurrence of the Chief Judge of the District Court, may appoint one or more residents of the district as bail commissioners. A bail commissioner shall serve at the pleasure of the District Court Judge resident in the district or the Chief Judge of the District Court, but no term for which a bail commissioner is appointed may exceed 5 years. The District Court Judge or the Chief Judge of the District Court shall require bail commissioners to complete the necessary training requirements set out in this section. Bail commissioners have the powers of notaries public to administer oaths or affirmations in carrying out their duties.

3. Immunity from liability. A person appointed and serving as a bail commissioner is immune from any civil liability for acts described in Title 14, section 8111, subsection 1, performed within the scope of the bail commissioner's duties.

4. Limitations on authority. A bail commissioner may not set preconviction bail for any defendant confined in jail or held under arrest by virtue of any order issued by a court in which bail has not been authorized. A bail commissioner may not change the bail that has been set by a court.

5. Fees. A bail commissioner shall receive a fee not to exceed \$17 for the charges pursuant to which the defendant is presently in custody. The bail commissioner shall submit such forms as the Judicial Department shall direct to verify the amount of fees received under this subsection.

6. Attorneys-at-law. No attorney-at-law who has acted as bail commissioner in any proceeding may act as attorney for or on behalf of any defendant for whom that attorney-at-law has taken bail in any such proceeding, nor may any attorney-at-law who has acted as attorney for a defendant in any offense act as bail commissioner in any proceeding arising out of the offense with which the defendant is charged.

7. Mandatory training. As a condition of appointment and continued service, a bail commissioner must successfully complete a bail training program as prescribed and scheduled by the Chief Judge of the District Court. The Maine Criminal Justice Academy shall provide assistance to the Chief Judge of the District Court in establishing an appropriate training program for bail commissioners. The program shall include instruction on the provisions of this chapter, the relevant constitutional provisions on bail and any other matters pertinent to bail that the Chief Judge of the District Court considers appropriate and necessary. The Chief Judge of the District Court may establish a continuing education program for bail commissioners.

§1024. Clerks of court

Clerks of the District Court and clerks of the Superior Court, during the hours when the clerk's office is open for business and subject to the control of the District Court Judge or Superior Court Justice, may, without fee, take the personal recognizance of any defendant for appearance on a charge of a Class D or Class E crime. Nothing in this section may be construed to prohibit the appointment of any clerk of the District Court or the Superior Court as a bail commissioner, except that no fee may be charged by the clerk while the clerk's office is open for business.

In any case when the District Judge or the Superior Court Justice has set bail for a defendant in a criminal case, the clerk of the District Court or of the Superior Court may, subject to the approval of the District Court Judge or Superior Court Justice, accept the bail, prepare the bond and take the acknowledgement of the defendant and sureties, if any, on the bond.

§1025. Law enforcement officers

A law enforcement officer may, without fee, take the personal recognizance of any defendant for appearance on a charge of a Class D or Class E crime. If authorized, a law enforcement officer may, without fee, take the personal recognizance with deposit in accordance with Title 12, section 7053, subsection 2, paragraph C.

\$1026. Standards for release for crime bailable as of right preconviction

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

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

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

Every order for the pretrial release of any defendant shall include a waiver of extradition by the defendant.

2. Release on personal recognizance or unsecured appearance bond. The judicial officer shall order the pretrial release of the defendant on personal recognizance or upon execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the judicial officer determines that the release will not reasonably ensure the appearance of the defendant as required or will not otherwise reasonably ensure the integrity of the judicial process.

3. Release on conditions. Conditions that will reasonably ensure the appearance of the defendant and ensure the integrity of the judicial process shall be imposed as provided in this subsection.

A. If the judicial officer determines that the release described in subsection 2 will not reasonably ensure the appearance of the defendant as required or will not otherwise reasonably ensure the integrity of the judicial process, 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 as required and will otherwise reasonably ensure the integrity of the judicial process. 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 ensure both the appearance of the defendant as required and the integrity of the judicial process;

(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 use or excessive use of alcohol and from any use of drugs;

(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;

(11) Execute an agreement to forfeit, upon failing to appear as required, such designated property, including money, as is reasonably necessary to ensure the appearance of the defendant as required and post with an appropriate court such evidence of ownership of the property or such percentage of the money as the judicial officer specifies;

(12) Execute a bail bond with sureties in such amount as is reasonably necessary to ensure the appearance of the defendant as required;

(13) Return to custody for specified hours following release for employment, schooling or other limited purposes; and

(14) Satisfy any other condition that is reasonably necessary to ensure the appearance of the defendant as required and to otherwise reasonably ensure the integrity of the judicial process.

B. The judicial officer may not impose a financial condition which the defendant cannot meet.

C. Upon motion by the attorney for the State or the defendant and after notice and upon a showing of changed circumstances or upon the discovery of new and significant information, the court may amend the bail order to relieve the defendant of any condition of release, modify the conditions imposed or impose further conditions authorized by this subsection as the court determines will reasonably ensure the appearance of the defendant as required and will otherwise reasonably ensure the integrity of the judicial process.

4. Factors to be considered in release decision. In setting bail, the judicial officer shall, on the basis of an interview with the defendant and other reliable information which can be obtained, take into account the available information concerning the following:

A. The nature and circumstances of the crime charged;

B. The nature of the evidence against the defendant; and

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

(1) The defendant's character and physical and mental condition;

(2) The defendant's family ties in the State;

(3) The defendant's employment history in the State;

(4) The defendant's financial resources;

(5) The defendant's length of residence in the community and the defendant's community ties;

(6) The defendant's past conduct, including any history relating to drug or alcohol abuse;

(7) The defendant's criminal history, if any;

(8) The defendant's record concerning appearances at court proceedings;

(9) Whether, at the time of the current offense or arrest, the defendant was on probation, parole or other release pending trial, sentencing, appeal or completion of a sentence for an offense in this jurisdiction or another; and

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

5. Contents of release order. In a release order issued under subsection 2 or 3, the judicial officer shall:

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

B. Advise the defendant of:

(1) The penalties if the defendant fails to appear as required; and

(2) The consequences of violating a condition of

release, including the immediate issuance of a warrant for the defendant's arrest.

§1027. Standards for release for formerly capital offenses

1. In general. At the initial appearance before a judicial officer of a defendant in custody preconviction for a formerly capital offense, the judicial officer shall issue an order under section 1026, unless the attorney for the State moves for a Harnish bail proceeding. If the attorney for the State requests a Harnish bail proceeding before bail has been set, the judicial officer shall order the defendant held pending a hearing under subsection 2. The attorney for the State may move for a Harnish bail proceeding at any time preconviction. If the attorney for the State moves for a Harnish bail proceeding after bail has been set, the court may hold the defendant pending a hearing under subsection 2 or may continue the defendant's bail.

2. Harnish bail proceeding. A Harnish bail proceeding shall be held within 5 court days of the State's request unless the court, for good cause shown and at the request of either the defendant or the attorney for the State, grants a continuance. Evidence presented at a Harnish bail proceeding may include testimony, affidavits and other reliable hearsay evidence as permitted by the court. If, after the hearing, the court finds probable cause to believe that the defendant has committed a formerly capital offense, it shall issue an order under subsection 3. If, after the hearing, the court does not find probable cause to believe that the defendant's alleged criminal conduct was formerly a capital offense, it shall issue an order under section 1026.

3. When conditional right has been extinguished at Harnish bail proceeding. The court's finding that probable cause exists to believe that the defendant committed a formerly capital offense extinguishes the defendant's right to have bail set. The court shall make a determination as to whether or not the setting of bail is appropriate as a matter of discretion. The court may set bail unless the State establishes by clear and convincing evidence that:

A. There is a substantial risk that the capital defendant will not appear as required or will otherwise pose a substantial risk to the integrity of the judicial process; or

B. There is a substantial risk that the capital defendant will pose a danger to another or to the community.

In exercising its discretion, the court shall consider the factors listed in section 1026 and any prior history of dangerousness. The court may amend any bail order as provided under section 1026, subsection 3, paragraph C.

§1028. De novo determination of bail under section 1026

1. By defendant in custody. Any defendant aggrieved by the refusal of a Judge of the District Court

or a bail commissioner acting under section 1026 to authorize the defendant's release on personal recognizance or on the execution of an unsecured appearance bond and who is in custody for that crime may petition the Superior Court for a de novo determination of that refusal. The District Court Judge or bail commissioner making the decision shall advise the defendant of the right to obtain a de novo determination in the Superior Court.

A. If the defendant chooses to have a de novo determination of bail, the defendant shall be furnished with a petition and, upon execution of the petition and without the issuance of any writ or other process, the sheriff of the county in which the decision was made shall provide for the transportation of the defendant together with the petition and all papers relevant to the petition or copies of the petition or papers to the Superior Court.

If no Justice of the Superior Court will be available within 24 hours, excluding Saturdays, Sundays and holidays, arrangements shall be made for a de novo determination of bail in the nearest county in which a Justice of the Superior Court is then sitting. The defendant's custodian shall provide transportation to the Superior Court as required by this chapter without the issuance of any writ or other process.

If there is no Justice of the Superior Court available, the defendant shall be retained in custody until the petition can be considered.

B. The petition and such other papers as may accompany it shall be delivered to the clerk of the Superior Court to which the defendant is transported and upon receipt the clerk shall notify the attorney for the State. The petition shall have priority over any other matter before the Justice of the Superior Court. The Superior Court Justice considering the petition shall issue an order in accordance with section 1026.

2. By defendant not in custody. Any defendant aggrieved by the refusal of a Judge of the District Court or a bail commissioner to authorize the defendant's release on personal recognizance or on the execution of an unsecured bond, and who is not in custody as a result of that refusal, may petition the Superior Court for a de novo determination of bail. The petition shall be considered as scheduled by the clerk.

§1029. Review of bail under section 1027

1. Petition for review. Any defendant in custody following a Harnish bail proceeding under section 1027 may petition for review as provided in this subsection.

A. If the Harnish bail proceeding was conducted in the District Court, the defendant may petition a Justice of the Superior Court for review under this section.

B. If the Harnish bail proceeding was conducted in the Superior Court, the defendant may petition a sin-

gle Justice of the Supreme Judicial Court for review under this section.

2. Standard of review. With respect to the finding of probable cause to believe that the defendant committed a formerly capital offense, the finding of the lower court shall be upheld unless it is clearly erroneous. With respect to all other issues, the review shall be de novo.

3. Evidence. The evidence shall consist of the information of record submitted in the Harnish bail proceeding under section 1027 and any additional information the parties may chose to present.

§1030. State's attorney present at certain proceedings; opportunity to present relevant information

Before making a determination as to whether or not to set bail for a defendant charged with murder or a Class A, Class B or Class C crime, the judicial officer shall afford the attorney for the State or a law enforcement officer familiar with the charges the opportunity to present any information relevant to bail considerations. This opportunity shall be in addition to the availability of a Harnish bail proceeding as otherwise provided in this chapter.

An attorney for the State shall be present in District Court at all proceedings governed by Maine District Court Criminal Rules, Rule 5, and Maine Rules of Criminal Procedure, Rule 5, at which bail is being set, except when the offense charged is a Class D or Class E crime.

§1031. Bail if no indictment

Any defendant charged with a formerly capital offense who has been denied bail in accordance with section 1027 shall have bail set under section 1026 if the defendant is not indicted in the county where the crime is alleged to have been committed at the 2nd regularly scheduled session of the grand jury next after the date of the denial of bail.

SUBCHAPTER III

POST-CONVICTION BAIL

§1051. Post-conviction bail

1. Application to presiding judge or justice. Except as provided in this section, after a verdict or finding of guilty, a defendant may apply to the judge or justice who presided at the trial for bail pending imposition or execution of sentence or entry of judgment or appeal. If the trial judge or justice is not available, the defendant may apply for bail under this section to another judge or justice of the court in which the defendant was convicted. Post-conviction bail shall not be available to a defendant convicted of:

A. Murder;

B. Any other formerly capital offense for which bail was denied preconviction under section 1027; or

C. Any crime when the defendant's preconviction bail was revoked and denied under section 1093.

The judge or justice shall hold a hearing on the record on the bail application and shall state in writing or on the record the reasons for denying or granting bail. If bail is granted, the judge or justice shall also state, in writing or on the record, the reasons for the kind and amount of bail set, for any condition of release imposed and for the omission of any condition of release sought by the State.

The judge or justice may enter an order for bail pending appeal before a notice of appeal is filed, but conditioned upon its timely filing.

2. Standards. Except as provided in subsection 4, a defendant may not be admitted to bail under this section unless the judge or justice has probable cause to believe that:

A. There is no substantial risk that the defendant will fail to appear as required and will not otherwise pose a substantial risk to the integrity of the judicial process; and

B. There is no substantial risk that the defendant will pose a danger to another or to the community.

In determining whether to admit a defendant to bail, the judge or justice shall consider the factors relevant to preconviction bail listed in section 1026, as well as the facts proved at trial, the length of the term of imprisonment imposed, any history of dangerousness and any previous unexcused failure to appear as required before any court or to submit as required to an order or judgment of any court.

If the judge or justice decides to set post-conviction bail for a defendant, the judge or justice shall apply the same factors in setting the kind and amount of that bail.

3. Conditions of release. Except as provided in subsection 4, the judge or justice may impose, in lieu of or in addition to an appearance or bail bond, any condition considered reasonably necessary to minimize the risk of flight or danger.

4. Standards applicable to bail arising out of State's appeal under section 2115-A, subsection 2. If the State initiates an appeal under section 2115-A, subsection 2, the judge or justice shall apply subchapter II to a defendant's application for bail pending that appeal.

5. Appeal by defendant. A defendant may appeal to a single Justice of the Supreme Judicial Court a denial of bail, the kind or amount of bail set or the conditions of release imposed by which the defendant is aggrieved. The single justice shall not conduct a hearing

de novo respecting bail, but shall review the lower court's order. The defendant has the burden of showing that there is no rational basis in the record for the lower court's denial of bail, the kind or amount of bail set or the conditions of release imposed of which the defendant complains.

6. Appeal by State. The State may appeal to a single Justice of the Supreme Judicial Court the granting of bail, the kind or amount of bail set or the lower court's failure to impose a condition of release. The single justice shall not conduct a hearing de novo respecting bail, but shall review the lower court's order. The State has the burden of showing that there is no rational basis in the record for the lower court's granting of bail, the kind or amount of bail set or the omission of the conditions of which the State complains.

7. Revocation of bail. An order of post-conviction bail entered by a judge or justice may be revoked by that judge or justice or, if that judge or justice is not available, by another judge or justice of the same court, upon a determination made after notice and opportunity for hearing that:

A. The defendant has violated a condition of bail, as shown by a preponderance of the evidence;

B. The defendant has been charged with a crime allegedly committed while the defendant was released under this section; or

C. The defendant's appeal has been taken for purposes of delay, as shown by a preponderance of the evidence.

If bail is revoked, the defendant may appeal to a single Justice of the Supreme Judicial Court, who shall review the revocation as under subsection 5.

8. Failure to appear; penalty. Any defendant who has been ordered released under this section and who, in fact, fails to appear before any court as required is guilty of:

A. A Class E crime if the underlying crime was punishable by a maximum period of imprisonment of less than one year; or

B. A Class C crime if the underlying crime was punishable by a maximum period of imprisonment of one year or more.

It is an affirmative defense that the failure to appear resulted from just cause.

9. Violation of condition of release; penalty. Any defendant who has been ordered released under this section and who, in fact, violates a condition of release is guilty of a Class E crime. It is an affirmative defense that the violation resulted from just cause.

SUBCHAPTER IV

SURETIES AND OTHER FORMS OF BAIL

§1071. Sureties to make statement of property

1. Statement by surety. Any person who offers to act as surety for the appearance before the Superior Court of any defendant in a criminal prosecution, whether or not the defendant is an appellant from the finding of a Judge of the District Court, is to be admitted to bail to await the action of the grand jury, or is arrested in vacation on a warrant issued on an indictment pending in the Superior Court, may be required to file with the judicial officer a written statement signed and sworn to by the surety describing all real estate owned by the surety within the State with sufficient accuracy to identify it.

A. The statement shall provide in detail all encumbrances and the value of the land. The value of the land shall be based on the judgment of the surety.

B. The certificate shall remain on file with the original papers in the case and a certified copy shall be transmitted by the magistrate taking the bail to the clerk of court before which the defendant is to appear.

2. Bail lien required. Any person who offers real estate as surety for the appearance before a court of a defendant charged with murder or a Class A, Class B or Class C crime must file a bail lien with the register of deeds in the county where the real estate lies.

A. If the defendant is to be bailed prior to appearance in a court for the first time, the person offering the real estate shall file with that court a copy of the lien attested by the register of deeds, stating the date of recording and the book and page number at which the lien is recorded, on the next business day after which the real estate is offered.

(1) If a defendant is released from custody, prior to the defendant's first appearance in court, upon a person offering real estate as surety and that person fails to file with the court a duly attested copy of the lien required by this paragraph within the prescribed time limit, the defendant may be taken into custody without the issuance of further process and shall be held as though the surety had not offered real estate as surety.

B. If the defendant is bailed after having appeared in court for the first time, the defendant shall not be released from custody until the person offering real estate has filed with the court, with which the bail is posted, a copy of the lien attested by the register of deeds, stating the date of recording and the book and page number at which the lien is recorded.

C. The person filing the lien is responsible for the fee to be paid to the register of deeds for receiving, record-

ing and indexing the bail lien and for discharge of the bail lien as provided in Title 33, chapter 11, subchapter IV.

D. A bail lien is not required if bail is posted through a nonprofit bail assistance project.

3. Limitation on real estate. As used in this chapter, real estate is limited to real property located in the State.

§1072. Responsibility of sureties

1. Preconviction. Each surety for a defendant admitted to preconviction bail is responsible for the appearance of the defendant at all times until a verdict or finding or plea of guilty, unless the surety has sooner terminated the agreement to act as surety and has been relieved of the responsibility in accordance with section 1073.

In no case may a preconviction surety be responsible for the appearance of a defendant after conviction, unless the surety has agreed anew to act as surety following conviction.

2. Post-conviction. Each surety for a defendant admitted to bail after conviction is responsible for the defendant's appearance at all times until the defendant enters into execution of any sentence of imprisonment, unless the surety has sooner terminated the agreement to act as surety and has been relieved of the responsibility in accordance with section 1073.

§1073. Termination of surety agreement

Any person who has agreed to act as surety for a defendant who has been admitted to preconviction bail may terminate the agreement by appearing before the clerk of the court having jurisdiction over the offense with which the defendant is charged and executing a statement under oath terminating the surety agreement. The statement shall include a certification by the surety that the surety has notified the defendant or the defendant's attorney of the surety's intention to terminate the surety agreement.

Upon execution of the statement terminating the surety agreement, the clerk shall bring the matter to the attention of a judge or justice of the court who, unless new and sufficient sureties have appeared, shall order the defendant committed for failure to furnish bail and shall issue a warrant for the defendant's arrest.

The judge or justice may absolve the surety of responsibility to pay all or part of the bond, provided that no surety may be absolved of the responsibility to pay all or part of the bond if, prior to terminating the surety agreement, the defendant has failed to appear as required. Nothing in this section may be construed to relieve or release a surety of the responsibility for the appearance of the defendant, notwithstanding the ter-

mination of the surety agreement, until the defendant is in the custody of the sheriff of the county in which the case is pending, new or substitute sureties have appeared or the defendant has otherwise been admitted to bail.

A person who has agreed to act as surety for a defendant who has been admitted to post-conviction bail may terminate the surety agreement by following the procedure set forth in this section.

§1074. Property of defendant as bail

1. Cash. Whenever cash is deposited as bail to secure the appearance of a defendant in a criminal proceeding, either preconviction or post-conviction, the cash shall be deemed to be the property of the defendant unless, at the time the cash is deposited, the defendant or the person offering the cash as bail, designates under oath another person to whom the cash belongs. If a person other than the defendant has been designated as the owner of the cash, it shall be returned to that person unless otherwise forfeited. If the defendant is deemed to be the owner of the cash, it shall be returned to the defendant unless otherwise forfeited or subject to setoff as provided in this section.

2. Real estate. When a defendant in a criminal proceeding is the owner of real estate and offers that real estate as security for appearance before any court, the defendant must file a bail lien and otherwise comply with the requirements of section 1071 as if the defendant were a surety. A discharge of the bail lien is governed by section 1071, unless the bail has been forfeited or is subject to setoff in accordance with this section.

3. Setoff. When a defendant has deposited cash or other property owned by the defendant as bail or has offered real estate owned by the defendant and subject to a bail lien as bail and the cash, other property or real estate has not been forfeited, the court, before ordering the cash or other property returned to the defendant or discharging the real estate bail lien, shall determine whether the cash, other property or real estate or any portion of the cash, other property or real estate is subject to setoff as authorized by this section. The court may order all or a portion of the bail owned by a defendant that has not been forfeited to be first paid and applied to one or more of the following:

A. Any fine, forfeiture, penalty or fee imposed upon a defendant as part of the sentence for conviction of any offense arising out of the criminal proceeding for which the bail has been posted;

B. Any amount of restitution the defendant has been ordered to pay as part of the sentence imposed;

C. Any amount of attorneys' fees or other expense authorized by the court at the request of the defendant or attorney and actually paid by the State on behalf of the defendant on the ground that the defendant has been found to be indigent; and

D. Any surcharge imposed by Title 4, section 1057.

4. Enforcement orders. If the court determines that bail owned by a defendant should be ordered set off as authorized by this section, the court may issue any appropriate orders considered necessary to enforce the setoff. The orders may include, but are not limited to:

A. A direction to the clerk of courts to pay cash bail directly to a specified person, organization or government;

B. An order directed to a public official or the defendant requiring that other property or real estate be sold and the proceeds paid to a specified person, organization or government; and

C. An order requiring the defendant to convey clear and marketable title or other evidence of ownership of interest in real estate or other property to a specified person, organization or government.

SUBCHAPTER V

ENFORCEMENT

§1091. Failure to appear; penalty

Any defendant charged with an offense who has been admitted to preconviction bail and who, in fact, fails to appear as required is guilty of a Class E crime if the offense charged was punishable by a maximum period of imprisonment of less than one year, or is guilty of a Class C crime if the offense charged was punishable by a maximum period of imprisonment of one year or more. It is an affirmative defense that the failure to appear resulted from just cause.

§1092. Violation of condition of release

Any person charged with an offense who has been admitted to preconviction bail and who, in fact, violates a condition of release is guilty of a Class E crime. It is an affirmative defense that the violation resulted from just cause.

§1093. Revocation of preconviction bail

1. In general. The attorney for the State, or the court on its own motion, may initiate a proceeding for the revocation of a defendant's preconviction bail by complying with this section.

2. Arrest. A warrant for the arrest of a defendant who has been released on preconviction bail may be issued upon a showing of probable cause that the defendant has failed to appear as required, has violated a condition of preconviction bail or has been charged with a crime allegedly committed while released on preconviction bail. The warrant shall direct that the defendant be brought before the judge or justice who set bail or, if that judge or justice is not available, before another

judge or justice of the same court. If bail had been set by a bail commissioner, the warrant shall direct that the defendant be brought before a judge or justice of the appropriate court.

3. Revocation. After notice and opportunity for hearing, the judge or justice may revoke the defendant's preconviction bail and order the defendant held without bail if the judge or justice finds that there is no condition or combination of conditions of release that will reasonably ensure the defendant's appearance when required or will otherwise reasonably ensure the integrity of the judicial process, and if the judge or justice finds that there is:

A. Probable cause to believe that the defendant has committed a crime while on release; or

B. Clear and convincing evidence that the defendant has failed to appear as required or has violated any other condition of the preconviction bail.

If the judge or justice finds that there are conditions of release that will reasonably ensure the defendant's appearance when required and will otherwise reasonably ensure the integrity of the judicial process, the judge or justice shall issue an order under section 1026.

4. Appeal. A defendant in custody as a result of an order issued under subsection 3 by the District Court may appeal to the Superior Court and a defendant in custody as a result of an order issued under subsection 3 by the Superior Court may appeal to a single Justice of the Supreme Judicial Court. The appeal shall be in accordance with the procedures set forth in section 1028, as far as applicable, except that the review shall be limited to a review of the record to determine if the order was rationally supported by the evidence.

§1094. Forfeiture of bail; enforcement

When a defendant who has been admitted to either preconviction or post-conviction bail in a criminal case fails to appear as required, the court shall declare a forfeiture of the bail. The obligation of the defendant and any sureties may be enforced by motion in the court in which the bail was posted or in the Superior Court in the same county, in such manner as the Supreme Judicial Court shall by rule provide and in accordance with section 224-A.

SUBCHAPTER VI

MISCELLANEOUS

§1101. Forms and rules

The Supreme Judicial Court shall develop forms and adopt such rules as may be necessary to implement this chapter.

§1102. Detention of juveniles charged as adults

Unless they have attained their 18th birthday, persons who are arrested for crimes defined under Title 12 or Title 29, which are not juvenile crimes as defined in section 3103, may not be detained unless a juvenile case-worker has been notified within 2 hours after the person's arrest and has approved the detention. Section 3203-A, subsection 7, paragraphs A and B, governing the facilities in which juveniles may be detained, apply to any detention of such juveniles following arrest.

Sec. 21. 15 MRSA §1701-B, as enacted by PL 1985, c. 743, is repealed.

Sec. 22. 17-A MRSA §15, sub-§1, as amended by PL 1985, c. 737, Pt. A, §40, is further amended to read:

1. Except as otherwise specifically provided, a law enforcement officer may arrest without a warrant:

A. Any person who he has probable cause to believe has committed or is committing:

- (1) Murder;
- (2) Any Class A, Class B or Class C crime;
- (3) Assault while hunting;
- (4) Any offense defined in chapter 45;
- (5) Assault, if the officer reasonably believes that the person may cause injury to others unless immediately arrested;
- (5-A) Assault, criminal threatening, terrorizing or reckless conduct, if the officer reasonably believes that the person and the victim are family or household members, as defined in Title 15, section 321;
- (6) Theft as defined in section 357, when the value of the services is \$1,000 or less, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;
- (7) Forgery, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;
- (8) Negotiating a worthless instrument, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;
- (9) A violation of a condition of his probation when requested by an official of the Division of Probation and Parole; or
- (10) Violation of a condition of release in violation of Title 15, ~~section 942, subsection 5~~ section 1026, subsection 3 and section 1051, subsection 2; and

B. Any person who has committed in his presence or is committing in his presence any Class D or Class E crime.

~~A law enforcement officer may, without fee, take the personal recognizance of any person for his appearance on a charge of a Class D or Class E crime.~~

Sec. 23. Transition. A bail commissioner appointed under the Maine Revised Statutes, Title 14, section 5541, prior to the effective date of this Act, may continue to act with all powers of a bail commissioner under this Act until 60 days after the effective date of this Act, at which time that appointment shall terminate.

Effective August 4, 1988.

CHAPTER 759

H.P. 1781 — L.D. 2434

AN ACT Relating to Horse Racing and Racing Facilities.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, harness racing is one of Maine's most important recreational activities; and

Whereas, harness racing is vital for the continued prosperity of those agricultural societies which conduct pari-mutuel racing; and

Whereas, the harness racing industry is in jeopardy because of increased costs of maintenance and labor and is in immediate need of relief; and

Whereas, this Act should become effective for the harness racing season of 1988 in order to provide additional funds for the State Harness Racing Commission to operate efficiently; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 7 MRSA §62, first ¶, as amended by PL 1987, c. 395, Pt. A, §31, is further amended to read:

There shall be appropriated annually from the State Treasury a sum of money equal to 5% of the amount contributed under Title 8, section 275, and additional sums of money as provided and limited by Title 8, section 274, which shall be known as the state stipend for aid and encouragement to agricultural societies and hereafter designated as the "stipend." Forty-four percent of the amounts contributed under Title 8, section 274, shall be

divided for reimbursements in equal amounts to each recipient of the Stipend Fund which conducts ~~parimutuel~~ pari-mutuel racing in conjunction with its annual fair if the recipient has improved its racing facilities and has met the standards for facility improvements set by the commissioner for the recipients. If a recipient has not complied with the individual standards set by the commissioner, yearly reimbursements shall be paid in equal amounts to those recipients which have met such standards. A sum equal to 8% of the amount collected under Title 8, section 274 shall be divided for reimbursement in amounts in proportion to the sums expended for premiums in the current year to each recipient of the Stipend Fund which does not conduct ~~parimutuel~~ pari-mutuel racing, if the recipient has improved its facilities and has met the standards for facility improvements set by the commissioner for the recipients. From the state stipend the commissioner may expend annually a sum not to exceed ~~2%~~ 13% for administrative and inspection services and for administration of the State's standardbred horses program and the Sire Stakes Fund, as established by Title 8, section 281. The balance of this stipend shall be divided among the legally incorporated agricultural clubs, societies, counties and fair associations of the State, hereafter in this Title designated as "societies," according to the following schedule and method. The stipend shall be divided pro rata among the legally incorporated societies according to the amount of premiums and gratuities actually paid in full and in cash or valuable equivalent by those societies upon horses, cattle, sheep, swine, poultry and agricultural and domestic ~~product~~ products, provided that each of the qualifying societies which do not conduct ~~parimutuel~~ pari-mutuel racing shall receive shares which, considering the amount of premiums and gratuities actually paid during the fair season in question, are not less than the equivalent amount received by such societies during the 1976 fair season, and provided further, that no such society whether specifically mentioned in this Title or otherwise is entitled to any share of the stipend unless it shall have complied with the following requirements, which shall be considered by the commissioner as the basis upon which his apportionment of the stipend shall be made as provided in this section. No premiums or gratuities may be considered by the commissioner in apportioning the amount of stipend to which any society is entitled except those offered and paid upon horses, cattle, sheep, swine, poultry, vegetables, grain, fruit, flowers, products derived from horses, cattle, sheep, swine, home canned foods, grange exhibits, farm exhibits, boys' and girls' club exhibits, exhibits of the mechanical arts, domestic and fancy articles produced in the farm home and pulling contests by horses and oxen. No society is entitled to any share of the stipend unless it has first obtained a license issued pursuant to section 65. No society, the Maine State Pomological Society excepted, may receive from the State a sum greater than that actually raised and paid by the society as premiums and gratuities in the classes provided and in no case may any society be entitled to any share of the stipend unless it has raised and paid in premiums in the classes set forth at least \$200. No society may receive