

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

AS PUBLIC LAWS AND CONSTITUTIONAL RESOLUTIONS

at the

THIRD SPECIAL SESSION

September 15, 1988 to September 16, 1988

and the

FOURTH SPECIAL SESSION

November 28, 1988

AND

AS PRIVATE AND SPECIAL LAWS AND RESOLVES

at the

FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

THIRD SPECIAL SESSION

September 15, 1988 to September 16, 1988

and the

FOURTH SPECIAL SESSION

November 28, 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
1989

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
THIRD SPECIAL SESSION
of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

CHAPTER 870

H.P. 1984 — L.D. 2687

AN ACT to Ensure the Integrity of the Judicial Process under the Bail Law.

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

Whereas, changes are necessary to the Maine Bail Code, enacted by Public Law 1987, chapter 758, section 20, which need to be enacted as emergencies to accomplish the intent of the Legislature; 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. 15 MRSA §1002, as enacted by PL 1987, c. 758, §20, is amended to read:

§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.

It is the purpose and intent of this chapter that bail be set for a defendant in order to reasonably ensure the appearance of the defendant as required, to otherwise reasonably ensure the integrity of the judicial process and, when applicable, to reasonably ensure the safety of others in the community. Finally, it is also the purpose and intent of this chapter that the judicial officer consider, relative to crimes bailable as of right preconviction, the least restrictive release alternative which will reasonably ensure the attendance of the defendant as required, or otherwise reasonably ensure the integrity of

the judicial process.

Sec. 2. 15 MRSA §1003, sub-§1, ¶A, as enacted by PL 1987, c. 758, §20, is amended to read:

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, in accordance with section 1026, 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.

Sec. 3. 15 MRSA §1023, sub-§5, as enacted by PL 1987, c. 758, §20, is amended to read:

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. The sheriff of the county in which the defendant is detained may create a fund for the distribution by the sheriff or the sheriff's designee for the payment in whole or in part of the \$17 bail commissioner fee for those defendants who do not have the financial ability to pay that fee.

Sec. 4. 15 MRSA §1026, sub-§3, ¶¶A and B, as enacted by PL 1987, c. 758, §20, are amended to read:

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. When feasible, 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 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.~~
- (14) Report on a regular basis to the defendant's attorney;
- (15) Notify the court of any changes of address or employment;
- (16) Provide to the court the name, address and telephone number of a designated person or organization that will know the defendant's whereabouts at all times;

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

(18) 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, either alone or in combination with other conditions of bail, is in excess of that reasonably necessary to ensure the appearance of the defendant as required or to otherwise ensure the integrity of the judicial process.

Sec. 5. 15 MRSA §1030, 2nd ¶, as enacted by PL 1987, c. 758, §20, is amended to read:

An attorney for the State or law enforcement officer familiar with the charges 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.

Sec. 6. 15 MRSA §1051, sub-§1, as enacted by PL 1987, c. 758, §20, is amended to read:

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.

Every order for post-conviction release of a defendant shall include a waiver of extradition by the defendant as well as a condition of bail that the defendant refrain from criminal conduct.

Sec. 7. 15 MRSA §1051, sub-§9, as enacted by PL 1987, c. 758, §20, is repealed and the following enacted in its place:

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 commits:

A. A Class E crime; or

B. A Class C crime if the release order was granted for a crime punishable by a maximum period of imprisonment of one year or more and the condition of release violated is one specified in section 1026, subsection 3, paragraph A, subparagraphs (5), (8) or (13).

It is an affirmative defense that the violation resulted from just cause.

Sec. 8. 15 MRSA §1071, sub-§1, ¶C is enacted to read:

C. Upon motion to the court and notice to the defendant, the defendant shall produce and the State shall have the right to examine all evidence of ownership, valuation and all encumbrances on the land.

Sec. 9. 15 MRSA §1092, as enacted by PL 1987, c. 758, §20, is amended to read:

§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 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 and the condition of release violated is one specified in section 1026, subsection 3, paragraph A, subparagraphs (5), (8) or (13). It is an affirmative defense that the violation resulted from just cause.

Sec. 10. 15 MRSA §1093, sub-§2, as enacted by PL 1987, c. 758, §20, is repealed and the following enacted in its place:

2. Arrest. A law enforcement officer may arrest with a warrant or without a warrant pursuant to Title 17-A, section 15, any defendant who the law enforcement officer has probable cause to believe 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. Any defendant under arrest shall be brought before a judge or justice of the same court. The judge or justice shall make a determination as to whether or not the setting of bail upon

the violation is appropriate pending a revocation proceeding.

Sec. 11. 17-A MRSA §15, sub-§1, ¶A, as amended by PL 1987, c. 758, §22, is further amended to read:

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 1026, subsection 3 and, section 1051, subsection 2, section 1051, subsection 9 and section 1092; and

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective September 16, 1988.

CHAPTER 871

H.P. 1967 — L.D. 2664

AN ACT to Correct the Expiration Date for the Term of Office for a Washington County Commissioner.

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