

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 29, 1995

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

J.S. McCarthy Company
Augusta, Maine
1995

applicant and record the applicant's name in the roster as a retired registrant, along with the date of retired status.

A retired registrant may retain but not use the seal and may not practice engineering. The board shall reissue a certificate of registration to a retired registrant who pays all application fees, meets all current requirements for registration and demonstrates to the board's satisfaction that, for 2 years preceding the application for registration, the retired registrant met the requirements for maintaining professional competence established under the board rules.

Sec. 18. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	1995-96	1996-97
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
State Board of Registration for Professional Engineers		
All Other	\$750	\$1,000
Provides allocations for the additional costs of adding one member to the board.		

See title page for effective date.

CHAPTER 356

H.P. 1000 - L.D. 1411

An Act to Amend the Maine Bail Code

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

Sec. 1. 15 MRSA §1003, sub-§5-A is enacted to read:

5-A. Failure to appear. "Failure to appear" includes a failure to appear at the time or place required by a release order and the failure to surrender into custody at the time and place required by a release order or by the Maine Rules of Criminal Procedure, Rule 38(c).

Sec. 2. 15 MRSA §1003, sub-§§9 and 10, as enacted by PL 1987, c. 758, §20, are amended to read:

9. Post-conviction. "Post-conviction" means any point in a criminal proceeding after a verdict or finding of guilty or after the acceptance of a plea of guilty or nolo contendere.

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 before the acceptance of a plea of guilty or nolo contendere.

Sec. 3. 15 MRSA §1023, sub-§2, as amended by PL 1993, c. 675, Pt. B, §12, is further amended to read:

2. Appointment. The Chief Judge of the District Court may appoint one or more residents of ~~each district~~ the State as bail commissioners. A bail commissioner serves at the pleasure of the Chief Judge of the District Court, but no term for which a bail commissioner is appointed may exceed 5 years. 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.

Sec. 4. 15 MRSA §1025, as repealed and replaced by PL 1991, c. 824, Pt. A, §23, is amended to read:

§1025. Law enforcement officers

A law enforcement officer making a warrantless arrest under Title 17-A, section 15 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 675; Title 12, section 7053, subsection 2, paragraph C; and Title 12, section 9707. The law enforcement officer's authority under this section continues as long as the arrestee remains in the officer's custody.

Sec. 5. 15 MRSA §1026, sub-§7 is enacted to read:

7. Applicability of conditions of release. A condition of release takes effect and is fully enforceable as of the time the judicial officer sets the condition, unless the bail order expressly excludes it from immediate applicability.

Sec. 6. 15 MRSA §1027, sub-§§2 and 3, as enacted by PL 1987, c. 758, §20, are amended to read:

2. Harnish bail proceeding. A Harnish bail proceeding ~~shall~~ must 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 and may amend its bail order as provided under section 1026, subsection 3, paragraph C.

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.~~ If the court has issued a bail order on the basis of its discretionary authority to set bail in a case involving a formerly capital offense, the court having jurisdiction of the case may modify or deny bail at any time upon motion by the attorney for the State or the defendant or upon its own initiative and upon a showing of changed circumstances or the discovery of new and significant information.

Sec. 7. 15 MRSA §1030, as amended by PL 1987, c. 870, §5, is further amended to read:

§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 and before any bail order is reviewed under section 1028 or 1029, 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~~ is in

addition to the availability of a Harnish bail proceeding as otherwise provided in this chapter.

An attorney for the State or a law enforcement officer familiar with the charges ~~shall~~ must be present in District Court at all proceedings governed by ~~Maine District Court Criminal Rules, Rule 5, and the~~ 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. 8. 15 MRSA §1051, sub-§1, as amended by PL 1987, c. 870, §6, is further amended to read:

1. Application to presiding judge or justice. ~~Except~~ After post-conviction, 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~~ is not ~~be~~ available to a defendant convicted of:

- A. Murder;
- B. Any other formerly capital offense for which preconviction bail was denied ~~preconviction~~ under section 1027; or
- C. Any crime when the defendant's preconviction bail was revoked and denied under ~~section 1093~~ sections 1096 and 1097.

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~~ must include a waiver of extradition by the defendant as well as a condition of bail that the defendant refrain from criminal conduct.

Sec. 9. 15 MRSA §1051, sub-§3, as enacted by PL 1987, c. 758, §20, is amended to read:

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 mini-

mize the risk of flight or danger that the defendant may fail to appear as required, may compromise the integrity of the judicial process or may constitute a danger to another person or the community.

Sec. 10. 15 MRSA §1051, sub-§7-A, as enacted by PL 1991, c. 393, §2, is repealed.

Sec. 11. 15 MRSA §1051, sub-§8, as enacted by PL 1987, c. 758, §20, is repealed.

Sec. 12. 15 MRSA §1051, sub-§9, as repealed and replaced by PL 1987, c. 870, §7, is repealed.

Sec. 13. 15 MRSA §1072, sub-§1, as amended by PL 1989, c. 147, §5, is further amended to read:

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 or until the acceptance of a plea of guilty or nolo contendere, 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~~ A preconviction surety ~~be is not~~ responsible for the appearance of a defendant after conviction, unless the surety has agreed to act as postconviction surety.

Sec. 14. 15 MRSA §1073, as enacted by PL 1987, c. 758, §20, is amended to read:

§1073. Termination of surety or cash bail agreement

~~Any A~~ person who has agreed either to act as surety or to deposit cash bail 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~~ must include a certification by the surety person that the surety person has notified the defendant or the defendant's attorney of the surety's person's intention to terminate the surety agreement. A person may not terminate a cash bail agreement unless the person has been designated as the owner of all of the cash as required by section 1074.

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 or new and sufficient cash has been deposited, 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 person of responsibility to pay all or part of the bond, ~~provided or may order the return of cash bail, except that no surety a person may not~~ be absolved of the responsibility to pay all or part of the bond, or receive any cash deposited as bail, 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 person of the responsibility for the appearance of the defendant, notwithstanding the termination 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, new cash bail has been deposited or the defendant has otherwise been admitted to bail.

A person who has agreed either to act as surety or to deposit cash bail 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.

Sec. 15. 15 MRSA c. 105-A, sub-c. V is amended by repealing the chapter headnote and enacting the following in its place:

SUBCHAPTER V

ENFORCEMENT

ARTICLE 1

GENERAL PROVISIONS

Sec. 16. 15 MRSA §1091, as enacted by PL 1987, c. 758, §20, is amended to read:

§1091. Failure to appear; penalty

~~Any A~~ defendant ~~charged with an offense~~ who has been admitted to either preconviction or post-conviction bail and who, in fact, fails to appear as required is guilty of a Class E crime if the ~~offense~~ charged underlying crime 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 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.

Sec. 17. 15 MRSA §1092, as amended by PL 1987, c. 870, §9, is further amended to read:

§1092. Violation of condition of release

~~Any person charged with an offense~~ A defendant who has been ~~admitted to~~ granted preconviction or post-conviction 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

underlying crime 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~~ subparagraph (5), (8) or (13). It is an affirmative defense that the violation resulted from just cause.

Sec. 18. 15 MRSA §1093, as amended by PL 1991, c. 393, §3, is repealed.

Sec. 19. 15 MRSA c. 105-A, sub-c. V, art. 2 and 3 are enacted to read:

ARTICLE 2

REVOCATION OF PRECONVICTION BAIL

§1095. Proceedings for revocation of preconviction bail

1. In general. The attorney for the State, or the court on its own motion, may move for the revocation of a defendant's preconviction bail based upon probable cause to believe 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 motion must set forth the essential facts underlying the alleged violation. If the defendant has not already been arrested pursuant to subsection 2, the clerk of the court shall issue, upon the request of the attorney for the State or by direction of the court, a warrant for the defendant's arrest or, in lieu of a warrant if so directed, a summons ordering the defendant to appear for a court hearing on the alleged violation. The summons must include the signature of the attorney for the State or the court, the time and place of the alleged violation and the time, place and date the person is to appear in court. If the defendant can not be located with due diligence, a hearing on the motion for revocation must be heard in the defendant's absence.

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. If the defendant is charged with new criminal conduct, a bail commissioner is authorized only to set bail for the new crimes in accordance with this chapter. A defendant under arrest pursuant to subsection 1 or this subsection must be brought before any judge or justice of the appropriate court. The judge or justice shall determine without hearing whether the existing preconviction bail order should be modified or whether the defendant should be committed without bail pending the bail revocation

hearing. A copy of the motion for revocation must be furnished to the defendant prior to the hearing on the alleged violation, unless the hearing must be conducted in the absence of the defendant.

§1096. Grounds for revocation of preconviction bail

An order of preconviction bail entered by a judge or justice may be revoked by the 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:

1. Probable cause. Probable cause exists to believe that the defendant has committed a new crime following the setting of preconviction bail; or

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

§1097. Disposition after revocation of preconviction bail

1. Setting of new bail. If, after considering the factors in subsection 2, 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.

2. Denial of bail. In deciding whether to hold the defendant without bail, the judge or justice shall consider whether there are conditions of release that reasonably ensure the defendant's appearance when required and otherwise reasonably ensure the integrity of the judicial process. In this weighing process, the commission of a new crime, in the event that it is not found to otherwise increase the risk posed by the defendant to the integrity of the judicial process, must be treated by the judge or justice as increasing the risk that the defendant will fail to appear when required. The judge or justice shall also consider whether there is an unreasonable risk that the defendant may fail to comply with any condition of release.

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

4. No new bail consideration when bail has been revoked and denied in District Court. When a District Court judge has, after revocation, ordered the defendant held without bail, the defendant is not entitled to have bail set when charges are brought by indictment for the same underlying conduct. If the defendant has not previously appealed the District Court bail revocation, the Superior Court may, upon request of the defendant, entertain the appeal at the defendant's arraignment.

ARTICLE 3

REVOCATION OF POST-CONVICTION BAIL

§1098. Proceedings for revocation of post-conviction bail

1. In general. The attorney for the State, or the court on its own motion, may move for the revocation of a defendant's post-conviction bail based upon probable cause to believe that the defendant has failed to appear as required, has violated a condition of post-conviction bail or has been charged with a crime allegedly committed while released on post-conviction bail. The motion must set forth the essential facts underlying the alleged violation. If the defendant has not already been arrested pursuant to subsection 2, the clerk of the court shall issue, upon the request of the attorney for the State or by the direction of the court, a warrant for the defendant's arrest or, in lieu of a warrant if so directed, a summons ordering the defendant to appear for a court hearing on the alleged violation. The summons must include the signature of the attorney for the State or the court, the time and place of the alleged violation and the time, place and date the person is to appear in court. If the defendant can not be located with due diligence, a hearing on the motion for revocation must be heard in the defendant's absence.

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, violated a condition of post-conviction bail or been charged with a crime allegedly committed while released on post-conviction bail. If the defendant is charged with new criminal conduct, a bail commissioner is authorized only to set bail for the new crimes in accordance with this chapter. A defendant under arrest pursuant to this subsection must be brought before a judge or justice of the appropriate court. The judge or justice shall determine without hearing whether the existing post-conviction bail order should be modified or the defendant should be committed without bail pending the bail revocation hearing. A copy of the motion for revocation must be furnished to the defendant prior to

the hearing on the alleged violation, unless the hearing must be conducted in the absence of the defendant.

§1099. Grounds for revocation of post-conviction bail

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

1. Crime charged. The defendant has in fact been charged with a crime allegedly committed after post-conviction bail was set;

2. Failure to appear. The defendant has failed to appear as required or has violated a condition of post-conviction bail as demonstrated by a preponderance of the evidence; or

3. Appeal for purposes of delay. The defendant's appeal has been taken for the purpose of delay as demonstrated by a preponderance of the evidence.

§1099-A. Disposition after revocation of post-conviction bail

1. Held without bail. The judge or justice shall order the defendant held without bail unless the judge or justice finds that under the facts of the case it would be unreasonable to do so, in which event the judge or justice shall issue an order under section 1051.

2. Appeal. A defendant in custody as a result of an order issued under this section may appeal to a single Justice of the Supreme Judicial Court who shall review the revocation pursuant to the procedures set forth in section 1051, subsection 5.

Sec. 20. 17-A MRSA §15, sub-§1, ¶A, as amended by PL 1993, c. 475, §3, is further amended to read:

A. Any person who the officer 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, criminal threatening or terrorizing, if the officer reasonably believes that the person may cause injury to others unless immediately arrested;
- (5-A) Assault 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 probation when requested by an official of the Division of Probation and Parole;

(10) Violation of a condition of release in violation of Title 15, section 1026, subsection 3; Title 15, section 1027, subsection 3; Title 15, section 1051, ~~subsections 2 and 9~~ subsection 2; and Title 15, section 1092;

(11) Theft involving a detention under Title 17, section 3521;

(12) Harassment, as set forth in section 506-A; or

(13) Violation of a protection order, as specified in Title 5, section 4659, subsection 2; Title 15, section 321, subsection 6; Title 19, section 769, subsection 2; and Title 19, section 770, subsection 5; and

See title page for effective date.

CHAPTER 357

S.P. 472 - L.D. 1268

An Act Relating to Procedures before the Public Utilities Commission

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

Sec. 1. 35-A MRSA §1101, sub-§4 is enacted to read:

4. Exempt transactions. Transactions involving utility property that do not materially affect the ability of a utility to perform its duties to the public do not require commission authorization under this section. The commission may certify transactions as not requiring authorization, either by rule or order.

Sec. 2. 35-A MRSA §1304, sub-§6 is enacted to read:

6. Commission authorized to waive public hearing. Unless one or more parties request a public hearing, the commission may waive the requirement for a public hearing under any provision of this Title.

Sec. 3. 35-A MRSA §3133, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

1. Commission approval required for purchases and conversions. ~~No~~ An electric utility may not purchase any generating capacity, transmission capacity or energy or carry out a fuel conversion as defined in section 3131, unless the commission has issued a certificate of public convenience and necessity approving the purchase or conversion or has waived the approval requirements pursuant to subsection 11.

Sec. 4. 35-A MRSA §3133, sub-§10-A, as enacted by PL 1993, c. 91, §5, is amended to read:

10-A. Renewal of contracts for purchase or conversion originally subject to commission approval. ~~This~~ The requirements of this section apply to any amendment, extension or renewal of any contract between the utility and other parties governing the terms of their participation in a purchase or conversion subject to this section, if the original contract was subject to approval by the commission. ~~The commission may waive the approval requirements of this section with respect to a particular amendment, extension or renewal or a group of amendments, extensions or renewals upon request by the utility. The commission may also waive the 2-month notice required in subsection 2. If the commission does not respond to a request for waiver within 30 days, the request is deemed to have been granted. The commission shall prescribe by rule the content of a request for waiver and procedures for the expeditious processing of the request in certain circumstances.~~

Sec. 5. 35-A MRSA §3133, sub-§11 is enacted to read:

11. Waiver of approval requirements. The commission may waive the notice and approval requirements of this section on its own motion or upon request of any party except that the commission may not waive the approval requirements if the purchase or fuel conversion involves generating capacity that exceeds either 5% of the installed capacity of the utility or 30 megawatts of capacity. The commission shall rule on a request for a waiver within 60 days. Prior to considering a waiver, the commission shall ensure that notice by mail has been sent, and an opportunity to be heard permitted, to persons who