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Legislative Document

No. 1421

H.P. 1034

House of Representatives, March 28, 2019

An Act To Amend the Maine Bail Code

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

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

ROBERT B. HUNT
Clerk

Presented by Representative TALBOT ROSS of Portland.
Cosponsored by Senator BREEN of Cumberland and
Representatives: HARNETT of Gardiner, HICKMAN of Winthrop, MAREAN of Hollis,
PIERCE of Falmouth, TIPPING of Orono, WARREN of Hallowell, Senators:
DESCHAMBAULT of York, ROSEN of Hancock.

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

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

4 G. ~~Notwithstanding section 1026, subsection 3, paragraph A, subparagraph (9-A),~~
5 ~~impose~~ Impose a condition of preconviction bail that a defendant submit to random
6 search with respect to a prohibition on the possession, use or excessive use of alcohol
7 or illegal drugs.

8 **Sec. 2. 15 MRSA §1026**, as amended by PL 2017, c. 407, Pt. A, §§51 and 52, is
9 further amended to read:

10 **§1026. Standards for release for crime bailable as of right preconviction**

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

- 14 A. On personal recognizance or upon execution of an unsecured appearance bond
15 under subsection 2-A;
- 16 B. On a condition or combination of conditions under subsection 3; or
- 17 C. On personal recognizance or execution of an unsecured appearance bond,
18 accompanied by one or more conditions under subsection 3.

19 Every order for the pretrial release of any defendant must include a waiver of extradition
20 by the defendant and the conditions that the defendant refrain from new criminal conduct
21 and not violate any pending protection from abuse orders pursuant to Title 19, section
22 769 or Title 19-A, section 4011.

23 **2-A. Presumption of release on personal recognizance or unsecured appearance**
24 **bond.** Except for a formerly capital offense under section 1027, there is a rebuttable
25 presumption that a defendant must be released on personal recognizance under this
26 subsection without a condition imposed under subsection 3. The judicial officer shall
27 order the pretrial release of the defendant on personal recognizance or upon execution of
28 an unsecured appearance bond in an amount specified by the judicial officer, unless, after
29 consideration of the factors listed in subsection 4, the judicial officer determines that:

- 30 A. The release would ~~not reasonably ensure the appearance~~ result in an imminent
31 risk of willful flight of the defendant ~~as required; or~~
- 32 ~~B. The release would not reasonably ensure that the defendant would refrain from~~
33 ~~any new criminal conduct;~~
- 34 ~~C. The release would not reasonably ensure the integrity of the judicial process; or~~
- 35 D. The release would ~~not reasonably ensure the safety of others in the community~~
36 result in a specific and serious imminent risk of harm to a reasonably identifiable
37 person.

1 **3. Release on conditions.** Release on a condition or combination of conditions
2 pursuant to subsection 1, paragraph B or C must be as provided in this subsection.

3 A. If, after consideration of the factors listed in subsection 4, the judicial officer
4 determines by a preponderance of the evidence that the release described in
5 subsection 2-A will ~~not reasonably ensure the appearance~~ result in an imminent risk
6 of willful flight of the defendant ~~at the time and place required, will not reasonably~~
7 ~~ensure that the defendant will refrain from any new criminal conduct, will not~~
8 ~~reasonably ensure the integrity of the judicial process or will not reasonably ensure~~
9 ~~the safety of others in the community~~ result in a specific and serious imminent risk of
10 harm to a reasonably identifiable person, the judicial officer shall order the pretrial
11 release of the defendant subject to the least restrictive further condition or
12 combination of conditions that the judicial officer determines ~~will reasonably ensure~~
13 ~~the appearance of the defendant at the time and place required, will reasonably ensure~~
14 ~~that the defendant will refrain from any new criminal conduct, will reasonably ensure~~
15 ~~the integrity of the judicial process and will reasonably ensure the safety of others in~~
16 ~~the community~~ will not result in an imminent risk of willful flight or will not result in
17 a specific and serious imminent risk of harm to a reasonably identifiable person.

18 These conditions may include that the defendant:

19 (1) Remain in the custody of a designated person or organization agreeing to
20 supervise the defendant, including a public official, public agency or publicly
21 funded organization, if the designated person or organization is able to
22 reasonably ensure the appearance of the defendant at the time and place required;
23 ~~that the defendant will refrain from any new criminal conduct, the integrity of the~~
24 ~~judicial process and the safety of others in the community~~ a reasonably
25 identifiable person. When it is feasible to do so, the judicial officer shall impose
26 the responsibility upon the defendant to produce the designated person or
27 organization. The judicial officer may interview the designated person or
28 organization to ensure satisfaction of both the willingness and ability required.
29 The designated person or organization shall agree to notify immediately the
30 judicial officer of any violation of release by the defendant;

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

32 (3) Maintain or commence an educational program;

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

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

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

41 (7) Comply with a specified curfew;

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

- 1 ~~(9) Refrain from the possession, use or excessive use of alcohol and from any~~
- 2 ~~use of illegal drugs. A condition under this subparagraph may be imposed only~~
- 3 ~~upon the presentation to the judicial officer of specific facts demonstrating the~~
- 4 ~~need for such condition;~~
- 5 (9-A) Submit to:
- 6 (a) A random search for possession ~~or use~~ prohibited by a condition imposed
- 7 under subparagraph (8) ~~or (9)~~; or
- 8 (b) A search upon articulable suspicion for possession ~~or use~~ prohibited by a
- 9 condition imposed under subparagraph (8) ~~or (9)~~;
- 10 (10) Undergo, as an outpatient, available medical or psychiatric treatment, or
- 11 enter and remain, as a voluntary patient, in a specified institution when required
- 12 for that purpose;
- 13 (10-A) Enter and remain in a long-term residential facility for the treatment of
- 14 substance use disorder;
- 15 (11) Execute an agreement to forfeit, in the event of willful noncompliance, such
- 16 designated property, including money, as is reasonably necessary to ensure the
- 17 appearance of the defendant at the time and place required, ~~to ensure that the~~
- 18 ~~defendant will refrain from any new criminal conduct, to ensure the integrity of~~
- 19 ~~the judicial process and to ensure the safety of others in the community and post~~
- 20 with an appropriate court such evidence of ownership of the property or such
- 21 percentage of the money as the judicial officer specifies;
- 22 (12) Execute a bail bond with sureties in such amount as is reasonably necessary
- 23 to ensure the appearance of the defendant at the time and place required, ~~to~~
- 24 ~~ensure that the defendant will refrain from any new criminal conduct, to ensure~~
- 25 ~~the integrity of the judicial process and to ensure the safety of others in the~~
- 26 community;
- 27 ~~(13) Return to custody for specified hours following release for employment,~~
- 28 ~~schooling or other limited purposes;~~
- 29 ~~(14) Report on a regular basis to the defendant's attorney;~~
- 30 (15) Notify the court of any changes of address or employment;
- 31 (16) Provide to the court the name, address and telephone number of a
- 32 designated person or organization that will know the defendant's whereabouts at
- 33 all times;
- 34 (17) Inform any law enforcement officer of the defendant's condition of release
- 35 if the defendant is subsequently arrested or summonsed for new criminal
- 36 conduct;
- 37 (18) Satisfy any other condition that is reasonably necessary to ensure that the
- 38 ~~appearance of the defendant at the time and place required, to ensure that the~~
- 39 ~~defendant will refrain from any new criminal conduct, to ensure the integrity of~~
- 40 ~~the judicial process and to ensure the safety of others in the community~~ does not

1 willfully flee and to ensure the immediate safety of a reasonably identifiable
2 person; and

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

4 B. The judicial officer ~~may not impose~~ must find by clear and convincing evidence
5 that the imposition of a financial condition that, either alone or in combination with
6 other conditions of bail, is not in excess of that reasonably necessary to ensure the
7 appearance of the defendant at the time and place required, to ensure that the
8 defendant will refrain from any new criminal conduct, to ensure the integrity of the
9 judicial process or to ensure the immediate safety of others in the community a
10 reasonably identifiable person. In making a finding under this paragraph, the judicial
11 officer shall consider:

12 (1) Whether the defendant receives or qualifies for public assistance in the form
13 of cash, housing or food;

14 (2) The amount of money the defendant has on deposit with a financial
15 institution; and

16 (3) The amount of money that the defendant's immediate family members can
17 pay without jeopardizing the family household's health care, housing or ability to
18 purchase food.

19 The judicial officer shall state the judicial officer's findings of fact under this
20 paragraph on the record or in writing.

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

31 **4. Factors to be considered in release decision.** In setting bail, the judicial officer
32 ~~shall, on the basis of an~~ consider information from a direct interview with the defendant,
33 information provided by the defendant's attorney and information provided by the
34 attorney for the State or an informed law enforcement officer if the attorney for the State
35 is not available and other reliable information that can be obtained and, on that basis,
36 shall take into account the available information concerning the following:

37 A. The nature and circumstances of the crime charged;

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

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

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

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

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

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

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

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

1 (2) The reason for imposing each condition under subparagraph (1); and

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

5 B. Advise the defendant of:

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

7 (2) The penalties for and consequences of violating a condition of release,
8 including the immediate issuance of a warrant for the defendant's arrest.

9 **6. Initial appearance in court.** Nothing contained in this chapter may be construed
10 as limiting the authority of a judge or justice to consider the issue of preconviction bail at
11 a defendant's initial appearance in court.

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

15 **Sec. 3. 15 MRSA §1092, sub-§1, ¶B,** as amended by PL 2005, c. 449, §2, is
16 further amended to read:

17 B. A Class C crime if the underlying crime was punishable by a maximum period
18 of imprisonment of one year or more and the condition of release violated is one
19 specified in section 1026, subsection 3, paragraph A, subparagraph (5), (8); or (10-A)
20 ~~or~~(13).

21 **Sec. 4. 15 MRSA §1095, sub-§2,** as amended by PL 2011, c. 640, Pt. A, §3, is
22 further amended to read:

23 **2. Arrest.** Prior to the filing of a motion to revoke a defendant's preconviction bail
24 under subsection 1, a law enforcement officer when requested by the attorney for the
25 State may arrest with a warrant, or without a warrant pursuant to Title 17-A, section 15,
26 any defendant who the law enforcement officer has probable cause to believe has failed to
27 appear as required, has violated a condition of preconviction bail or has been charged
28 with a crime allegedly committed while released on preconviction bail. A defendant
29 under arrest pursuant to this section must be brought before any judge or justice of the
30 appropriate court. The judge or justice shall determine without hearing whether the
31 existing preconviction bail order should be modified or whether the defendant should be
32 committed without bail pending the bail revocation hearing. If either the underlying
33 crime or the new criminal conduct alleged is an offense specified in section 1023,
34 subsection 4, paragraph B-1, the judge or justice shall order that the defendant be
35 committed without bail pending the bail revocation hearing, unless the judge or justice
36 makes findings on the record that there are conditions of release that will reasonably
37 ensure that the defendant will not commit new crimes while out on bail, that will
38 reasonably ensure that the defendant's appearance at the time and place required
39 defendant will not willfully flee and that will ensure ~~the integrity of the judicial process~~
40 ~~and the safety of others in the community~~ the immediate safety of a reasonably
41 identifiable person pending the bail revocation hearing. A copy of the motion for

1 revocation must be furnished to the defendant prior to the hearing on the alleged
2 violation, unless the hearing must be conducted in the absence of the defendant.

3 **Sec. 5. 15 MRSA §1097, sub-§2**, as amended by PL 2007, c. 374, §13, is further
4 amended to read:

5 **2. Imminent risk of willful flight; risk of harm.** If the judge or justice finds that
6 there are conditions of release that will ~~reasonably ensure the defendant's appearance at~~
7 ~~the time and place required and ensure the integrity of the judicial process and the safety~~
8 ~~of others in the community~~ not result in an imminent risk of willful flight of the defendant
9 or a specific and serious imminent risk of harm to a reasonably identifiable person, the
10 judge or justice shall issue an order under section 1026. If the judicial finding is
11 otherwise, the judge or justice shall issue an order denying bail.

12 SUMMARY

13 This bill amends the Maine Bail Code in the following ways. It:

14 1. Clarifies the rebuttable presumption that, except for formerly capital offenses, a
15 defendant must be released on personal recognizance with no conditions;

16 2. Increases the burden of proof for justifying not releasing a defendant on personal
17 recognizance or upon execution of an unsecured appearance bond;

18 3. Removes from the list of authorized bail conditions the condition of refraining
19 from the possession, use or excessive use of alcohol or use of illegal drugs, the condition
20 of reporting on a regular basis to the defendant's attorney and the condition of returning to
21 custody for specified hours after work release, schooling or other purposes;

22 4. Removes from bail conditions requirements that the defendant refrain from
23 criminal conduct and that the integrity of the judicial system be ensured;

24 5. Makes changes to the information that must be taken into account when
25 determining bail for the defendant;

26 6. Requires a judicial officer when determining bail to find by clear and convincing
27 evidence that imposing a financial condition on a defendant will not cause excessive
28 financial hardship on the defendant and requires that judicial officer to state on the record
29 or in writing the findings upon which the determination is made; and

30 7. Adds to the list of facts a judicial officer must consider when determining bail
31 whether the defendant is the primary person responsible for the care of another, has a
32 health care need including a mental health care need that is being met or would be better
33 met outside of custody or has employment that would be affected if the defendant is
34 placed in custody.