



# 127th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2016

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Legislative Document

No. 1639

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S.P. 666

In Senate, March 8, 2016

### **An Act To Implement the Recommendations of the Intergovernmental Pretrial Justice Reform Task Force**

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Reported by Senator BURNS of Washington for the Joint Standing Committee on Judiciary pursuant to Joint Order 2016, S.P. 650.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

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

2 **Sec. 1. 15 MRSA §1023, sub-§4, ¶D**, as amended by PL 2013, c. 519, §2, is  
3 further amended to read:

4 D. Set preconviction or post-conviction bail for a violation of condition of release  
5 pursuant to section 1092, except as provided in section 1092, subsection 4; ~~or~~

6 **Sec. 2. 15 MRSA §1023, sub-§4, ¶E**, as enacted by PL 2011, c. 341, §2, is  
7 amended to read:

8 E. Set preconviction bail using a condition of release not included in every order for  
9 pretrial release without specifying a court date within 8 weeks of the date of the bail  
10 order;

11 **Sec. 3. 15 MRSA §1023, sub-§4, ¶¶F and G** are enacted to read:

12 F. Set preconviction bail for crimes involving allegations of domestic violence  
13 without specifying a court date within 5 weeks of the date of the bail order; or

14 G. Notwithstanding section 1026, subsection 3, paragraph A, subparagraph (9-A),  
15 impose a condition of preconviction bail that a defendant submit to random search  
16 with respect to a prohibition on the possession, use or excessive use of alcohol or  
17 illegal drugs.

18 **Sec. 4. 15 MRSA §1023, sub-§5**, as amended by PL 2009, c. 23, §1, is further  
19 amended to read:

20 **5. Fees.** A bail commissioner is entitled to receive a fee not to exceed \$60 for the  
21 charges pursuant to which the defendant is presently in custody. The bail commissioner  
22 shall submit such forms as the Judicial Department directs to verify the amount of fees  
23 ~~received to be paid~~ under this subsection. ~~The sheriff of the county in which the~~  
24 ~~defendant is detained may create a fund for the distribution by the sheriff or the sheriff's~~  
25 ~~designee for the payment in whole or in part of the \$60 bail commissioner fee for those~~  
26 ~~defendants who do not have the financial ability to pay that fee~~ The Judicial Department  
27 shall pay the bail commissioner's fee.

28 **Sec. 5. 15 MRSA §1025-A**, as enacted by PL 2005, c. 541, §1, is amended to  
29 read:

30 **§1025-A. County jail employees**

31 If a court or a bail commissioner issues an order that a defendant in custody be  
32 released, pending trial, on a personal recognizance ~~or upon execution of an unsecured~~  
33 ~~appearance~~ bond, whether or not accompanied by one or more conditions under section  
34 1026, subsection 3, an employee of the county jail having custody of the defendant, if  
35 authorized to do so by the sheriff, may, without fee, prepare the personal recognizance ~~or~~  
36 bond and take the acknowledgement of the defendant.

37 **Sec. 6. 15 MRSA §1026, sub-§1**, as amended by PL 2007, c. 374, §3, is further  
38 amended to read:

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

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

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

7           C. On personal recognizance or execution of an ~~unsecured~~ appearance bond,  
8 accompanied by one or more conditions under subsection 3.

9 Every order for the pretrial release of any defendant must include a waiver of extradition  
10 by the defendant and the conditions that the defendant refrain from new criminal conduct  
11 and not violate any pending protection from abuse orders pursuant to Title 19, section  
12 769 or Title 19-A, section 4011.

13           **Sec. 7. 15 MRSA §1026, sub-§2-A,** as enacted by PL 2007, c. 374, §5, is  
14 amended to read:

15           **2-A. Release on personal recognizance or appearance bond.** The judicial officer  
16 shall order the pretrial release of the defendant on personal recognizance or upon  
17 execution of an ~~unsecured~~ appearance bond in an amount specified by the judicial officer,  
18 unless, after consideration of the factors listed in subsection 4, the judicial officer  
19 determines that:

20           A. The release would not reasonably ensure the appearance of the defendant as  
21 required;

22           B. The release would not reasonably ensure that the defendant would refrain from  
23 any new criminal conduct;

24           C. The release would not reasonably ensure the integrity of the judicial process; or

25           D. The release would not reasonably ensure the safety of others in the community.

26           **Sec. 8. 15 MRSA §1026, sub-§3, ¶A,** as amended by PL 2013, c. 227, §1, is  
27 further amended to read:

28           A. If, after consideration of the factors listed in subsection 4, the judicial officer  
29 determines that the release described in subsection 2-A will not reasonably ensure the  
30 appearance of the defendant at the time and place required, will not reasonably ensure  
31 that the defendant will refrain from any new criminal conduct, will not reasonably  
32 ensure the integrity of the judicial process or will not reasonably ensure the safety of  
33 others in the community, the judicial officer shall order the pretrial release of the  
34 defendant subject to the least restrictive further condition or combination of  
35 conditions that the judicial officer determines will reasonably ensure the appearance  
36 of the defendant at the time and place required, will reasonably ensure that the  
37 defendant will refrain from any new criminal conduct, will reasonably ensure the  
38 integrity of the judicial process and will reasonably ensure the safety of others in the  
39 community. These conditions may include that the defendant:

- 1 (1) Remain in the custody of a designated person or organization agreeing to  
2 supervise the defendant, including a public official, public agency or publicly  
3 funded organization, if the designated person or organization is able to  
4 reasonably ensure the appearance of the defendant at the time and place required,  
5 that the defendant will refrain from any new criminal conduct, the integrity of the  
6 judicial process and the safety of others in the community. When it is feasible to  
7 do so, the judicial officer shall impose the responsibility upon the defendant to  
8 produce the designated person or organization. The judicial officer may  
9 interview the designated person or organization to ensure satisfaction of both the  
10 willingness and ability required. The designated person or organization shall  
11 agree to notify immediately the judicial officer of any violation of release by the  
12 defendant. If the judicial officer imposes this condition, the State shall reimburse  
13 the designated organization for costs of supervision of the defendant;
- 14 (2) Maintain employment or, if unemployed, actively seek employment;
- 15 (3) Maintain or commence an educational program;
- 16 (4) Abide by specified restrictions on personal associations, place of abode or  
17 travel;
- 18 (5) Avoid all contact with a victim of the alleged crime, a potential witness  
19 regarding the alleged crime or with any other family or household members of  
20 the victim or the defendant or to contact those individuals only at certain times or  
21 under certain conditions;
- 22 (6) Report on a regular basis to a designated law enforcement agency or other  
23 governmental agency;
- 24 (7) Comply with a specified curfew;
- 25 (8) Refrain from possessing a firearm or other dangerous weapon;
- 26 (9) Refrain from the possession, use or excessive use of alcohol and from any  
27 use of illegal drugs. A condition under this subparagraph may be imposed only  
28 upon the presentation to the judicial officer of specific facts demonstrating the  
29 need for such condition;
- 30 (9-A) Submit to:
- 31 (a) A random search for possession or use prohibited by a condition imposed  
32 under subparagraph (8) or (9); or
- 33 (b) A search upon articulable suspicion for possession or use prohibited by a  
34 condition imposed under subparagraph (8) or (9);
- 35 (10) Undergo, as an outpatient, available medical or psychiatric treatment, or  
36 enter and remain, as a voluntary patient, in a specified institution when required  
37 for that purpose;
- 38 (10-A) Enter and remain in a long-term residential facility for the treatment of  
39 substance abuse;
- 40 (11) Execute an agreement to forfeit, in the event of noncompliance, such  
41 designated property, including money, as is reasonably necessary to ensure the

- 1 appearance of the defendant at the time and place required, to ensure that the  
2 defendant will refrain from any new criminal conduct, to ensure the integrity of  
3 the judicial process and to ensure the safety of others in the community and post  
4 with an appropriate court such evidence of ownership of the property or such  
5 percentage of the money as the judicial officer specifies;
- 6 (12) Execute a bail bond with sureties in such amount as is reasonably necessary  
7 to ensure the appearance of the defendant at the time and place required, to  
8 ensure that the defendant will refrain from any new criminal conduct, to ensure  
9 the integrity of the judicial process and to ensure the safety of others in the  
10 community;
- 11 (13) Return to custody for specified hours following release for employment,  
12 schooling or other limited purposes;
- 13 (14) Report on a regular basis to the defendant's attorney;
- 14 (15) Notify the court of any changes of address or employment;
- 15 (16) Provide to the court the name, address and telephone number of a  
16 designated person or organization that will know the defendant's whereabouts at  
17 all times;
- 18 (17) Inform any law enforcement officer of the defendant's condition of release  
19 if the defendant is subsequently arrested or summonsed for new criminal  
20 conduct;
- 21 (18) Satisfy any other condition that is reasonably necessary to ensure the  
22 appearance of the defendant at the time and place required, to ensure that the  
23 defendant will refrain from any new criminal conduct, to ensure the integrity of  
24 the judicial process and to ensure the safety of others in the community; and
- 25 (19) Participate in an electronic monitoring program, if available.

26 **Sec. 9. 15 MRSA §1051, sub-§2-A** is enacted to read:

27 **2-A. Violation of probation; standards.** This subsection governs bail with respect  
28 to a motion to revoke probation.

29 A. A judge or justice may deny or grant bail.

30 B. In determining whether to admit the defendant to bail and, if so, the kind and  
31 amount of bail, the judge or justice shall consider the nature and circumstances of the  
32 crime for which the defendant was sentenced to probation, the nature and  
33 circumstances of the alleged violation and any record of prior violations of probation  
34 as well as the factors relevant to the setting of preconviction bail listed in section  
35 1026.

36 **Sec. 10. 15 MRSA §1073, 3rd ¶**, as amended by PL 1997, c. 543, §18, is further  
37 amended to read:

38 The judge or justice may absolve the person of responsibility to pay all or part of the  
39 bond or may order the return of cash bail, except that a person may not be absolved of the  
40 responsibility to pay all or part of the bond, or receive any cash deposited as bail, if, prior

1 to terminating the agreement, the defendant has failed to appear as required or, ~~if the~~  
2 ~~precondition in section 1073-A has been satisfied~~, the defendant has failed to comply  
3 with each condition of release. Nothing in this section may be construed to relieve or  
4 release a person of the responsibility for the appearance of the defendant, notwithstanding  
5 the termination of the agreement, until the defendant is in the custody of the sheriff of the  
6 county in which the case is pending, new or substitute sureties have appeared, new cash  
7 bail has been deposited or the defendant has otherwise been admitted to bail.

8 **Sec. 11. 15 MRSA §1073-A**, as enacted by PL 1997, c. 543, §19, is repealed.

9 **Sec. 12. 17-A MRSA §1205-C, sub-§§4 and 5**, as enacted by PL 1999, c. 246,  
10 §3, are amended to read:

11 **4.** At the initial appearance, the court shall advise the probationer of the contents of  
12 the motion, the right to a hearing on the motion, the right to be represented by counsel at  
13 a hearing and the right to appointed counsel. If the probationer can not afford counsel,  
14 the court shall appoint counsel for the probationer. The court shall call upon the  
15 probationer to admit or deny the alleged violation. If the probationer refuses to admit or  
16 deny, a denial must be entered. In the case of a denial, the court shall set the motion for  
17 hearing and may commit the ~~person~~ probationer, with or without bail, pending hearing. If  
18 the probationer is committed without bail pending hearing, the date of the hearing must  
19 be set no later than 45 days from the date of the initial appearance unless otherwise  
20 ordered by the court.

21 **5.** In deciding whether to set bail under this section and in setting the kind and  
22 amount of that bail, the court must be guided by the standards of post-conviction bail in  
23 Title 15, section 1051, ~~subsections 2 and 3~~ subsection 2-A. Appeal is governed by Title  
24 15, section 1051, subsections 5 and 6. Bail set under this section is also governed by the  
25 sureties and other forms of bail provisions in Title 15, chapter 105-A, subchapter ~~IV~~ 4  
26 and the enforcement provisions in Title 15, chapter 105-A, subchapter ~~V~~ 5, articles 1 and  
27 3, including the appeal provisions in Title 15, section 1099-A, subsection 2.

28 **Sec. 13. 17-A MRSA §1302, sub-§3** is enacted to read:

29 **3.** Notwithstanding any other provision of law, the court may suspend all or a portion  
30 of a minimum fine under section 1301, subsection 6 or under section 207, subsection 3 or  
31 under Title 29-A, section 2412-A, subsection 3, and the court may impose a fine other  
32 than the mandatory fine if the court finds by a preponderance of the evidence that there  
33 are exceptional circumstances that justify imposition of a lesser financial penalty. In  
34 making a finding of exceptional circumstances, the court may consider:

35 A. Reliable evidence of financial hardship on the part of the offender and the  
36 offender's family and dependents;

37 B. Reliable evidence of special needs of the offender or the offender's family and  
38 dependents;

39 C. Reliable evidence of the offender's income and future earning capacity and the  
40 offender's assets and financial resources from whatever source;

1 D. Reliable evidence regarding any pecuniary gain derived from the commission of  
2 the offense; and

3 E. The impact of imposition of the mandatory fine on the offender's reasonable  
4 ability to pay restitution under chapter 54.

5 **Sec. 14. 17-A MRSA §1304, sub-§3, ¶A**, as amended by PL 2011, c. 568, §1, is  
6 further amended to read:

7 A. Unless the offender shows by a preponderance of the evidence that the default  
8 was not attributable to an intentional or knowing refusal to obey the court's order or  
9 to a failure on the offender's part to make a good faith effort to obtain the funds  
10 required for the payment, the court shall find that the default was unexcused and may:

11 (1) Commit the offender to the custody of the sheriff until all or a specified part  
12 of the fine is paid. The length of confinement in a county jail for unexcused  
13 default must be specified in the court's order and may not exceed 6 months. An  
14 offender committed for nonpayment of a fine is given credit toward the payment  
15 of the fine for each day of confinement that the offender is in custody at the rate  
16 specified in the court's order, which may not be less than \$25 or more than \$100  
17 of unpaid fine for each day of confinement. The offender is also given credit for  
18 each day that the offender is detained as the result of an arrest warrant issued  
19 pursuant to this section. An offender is responsible for paying any fine remaining  
20 after receiving credit for confinement and detention. A default on the remaining  
21 fine is also governed by this section; or

22 (2) If the unexcused default relates to a fine imposed for a Class D or Class E  
23 crime, as authorized by chapter 53, order the offender to perform community  
24 service work, as authorized in chapter 54-C, until all or a specified part of the  
25 fine is paid. The number of hours of community service work must be specified  
26 in the court's order and the offender must receive a credit against the unpaid fine  
27 ~~of no less than \$25 for every 8 hours of community service work completed,~~  
28 ~~which may not exceed one hundred 8-hour days at a rate equal to the current~~  
29 hourly minimum wage. An offender ordered to perform community service work  
30 pursuant to this subparagraph is given credit toward the payment of the fine for  
31 each 8-hour day of community service work performed at the rate specified in the  
32 court's order. The offender is also given credit toward the payment of the fine for  
33 each day that the offender is detained as a result of an arrest warrant issued  
34 pursuant to this section at a rate specified in the court's order that is up to \$100 of  
35 unpaid fine per day of confinement. An offender is responsible for paying any  
36 fine remaining after receiving credit for any detention and for community service  
37 work performed. A default on the remaining fine is also governed by this  
38 section.

### 39 SUMMARY

40 This bill implements the recommendations of the Intergovernmental Pretrial Justice  
41 Reform Task Force. The bill does the following.

- 1           1. It specifies that a bail commissioner may not set preconviction bail for crimes  
2 involving domestic violence without specifying a court date within 5 weeks of the date of  
3 the bail order.
- 4           2. It specifies that, notwithstanding the Maine Revised Statutes, Title 15, section  
5 1026, subsection 3, paragraph A, subparagraph (9-A), a bail commissioner may not  
6 impose as a condition of preconviction bail that a defendant submit to random search with  
7 respect to a prohibition on the possession, use or excessive use of alcohol or illegal drugs.
- 8           3. It authorizes a properly trained county jail employee to prepare and execute a  
9 personal recognizance bond when a bail commissioner orders bail.
- 10          4. It eliminates the availability of unsecured bail bonds for bail.
- 11          5. It amends standards for release on preconviction bail to include language in the  
12 conditions that specifies that a defendant refrain from the possession of alcohol and  
13 illegal drugs, in addition to the current condition that prohibits use or excessive use of  
14 alcohol or any drugs. The bill also specifies that this condition be imposed only if  
15 specific facts are provided to the judicial officer to support the imposition of the  
16 condition.
- 17          6. It adds to the standards for release on preconviction bail language that a defendant  
18 be required to submit to a random search or a search upon articulable suspicion for  
19 possession of firearms or other dangerous weapons or possession or use of alcohol or  
20 illegal drugs.
- 21          7. It amends post-conviction bail to specify standards for bail with respect to a  
22 motion to revoke probation. A judge or justice may deny or grant bail and, in  
23 determining whether to admit the defendant to bail, the judge or justice shall consider the  
24 nature of the circumstances of the crime for which the defendant was sentenced to  
25 probation and the nature of the alleged violation of and any records of prior violations of  
26 probation.
- 27          8. It repeals Title 15, section 1073-A, which provides that if a defendant violated a  
28 condition of bail then the person who posted the bail or the surety must have the bond  
29 released or all of the money returned, unless the person previously acted as surety for the  
30 same defendant and the defendant previously failed to comply with conditions.
- 31          9. It requires that in an initial proceeding on a probation violation for which a person  
32 is committed without bail pending hearing, the date of the hearing must be set no later  
33 than 45 days from the date of the initial appearance unless otherwise ordered by the court.
- 34          10. It allows the court to suspend all or part of the minimum mandatory fine for  
35 assault, certain drug crimes and operating a motor vehicle while a person's license is  
36 suspended or revoked, and it lists criteria that a court may consider in making the  
37 decision to suspend the fine.
- 38          11. It amends the amount of payment for community service that may be credited  
39 against the unpaid fine for offenders who have been sentenced to pay a fine and who have

1 defaulted from no less than \$25 for every 8 hours to a rate equal to the current hourly  
2 minimum wage.

3 12. It specifies that bail commissioners' fees must be paid for by the Judicial  
4 Department, instead of being paid for by the defendant seeking bail or by a county fund  
5 that may be created for defendants who cannot pay the fee.

6 13. It specifies that if a defendant is released on preconviction bail and the judicial  
7 officer imposes a condition that the person remain in the custody of a designated  
8 organization agreeing to supervise the defendant, the State is required to reimburse the  
9 designated organization for the costs of the supervision of the defendant.