



# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 1268

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H.P. 880

House of Representatives, March 30, 2017

**An Act To Enhance Pretrial Justice through Risk-based Decision  
Making with Enhanced Diversion, Release and Treatment Options  
for Eligible Defendants**

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

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

ROBERT B. HUNT  
Clerk

Presented by Representative MALABY of Hancock.  
Cosponsored by Senator BRAKEY of Androscoggin and  
Representatives: CHACE of Durham, MADIGAN of Waterville, PERRY of Calais,  
SANDERSON of Chelsea.

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

2 **Sec. 1. 15 MRSA §1002**, as amended by PL 1997, c. 585, §1, is further amended  
3 by adding at the end 2 new paragraphs to read:

4 It is the intent of the Legislature that this chapter be liberally construed to effectuate  
5 the purpose of primarily relying upon pretrial release by nonmonetary means, such means  
6 identified by the use of risk assessments, to reasonably ensure the appearance of the  
7 defendant as required, to otherwise reasonably ensure the integrity of the judicial process  
8 and, when applicable, to reasonably ensure the safety of others in the community.

9 It is the intent of the Legislature that the pretrial release process be instrumental in  
10 identifying and diverting into treatment defendants with substance abuse or mental health  
11 issues.

12 **Sec. 2. 15 MRSA §1003, sub-§8-B** is enacted to read:

13 **8-B. Needs screening.** "Needs screening" means a preliminary systematic procedure  
14 to evaluate the likelihood that a defendant has a substance abuse or a mental health  
15 condition.

16 **Sec. 3. 15 MRSA §1003, sub-§10-A** is enacted to read:

17 **10-A. Risk assessment.** "Risk assessment" means a pretrial actuarial assessment  
18 that is designed to be predictive of a defendant's failure to appear in court and risk of  
19 violating pretrial conditions of release with a new alleged offense.

20 **Sec. 4. 15 MRSA §1026, sub-§3, ¶A**, as amended by PL 2015, c. 436, §4, is  
21 further amended to read:

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

34 (1) Remain in the custody of a designated person or organization agreeing to  
35 supervise the defendant, including a public official, public agency or publicly  
36 funded organization, if the designated person or organization is able to  
37 reasonably ensure the appearance of the defendant at the time and place required,  
38 that the defendant will refrain from any new criminal conduct, the integrity of the  
39 judicial process and the safety of others in the community. ~~When it is feasible to~~

- 1 do so, the judicial officer shall impose the responsibility upon the defendant to  
2 produce the designated person or organization. The judicial officer may  
3 interview the designated person or organization to ensure satisfaction of both the  
4 willingness and ability required. The designated person or organization shall  
5 agree to notify immediately the judicial officer of any violation of release by the  
6 defendant;
- 7 ~~(2) Maintain employment or, if unemployed, actively seek employment;~~  
8 ~~(3) Maintain or commence an educational program;~~  
9 (4) Abide by specified restrictions on personal associations, place of abode or  
10 travel;  
11 (5) Avoid all contact with a victim of the alleged crime, a potential witness  
12 regarding the alleged crime or with any other family or household members of  
13 the victim or the defendant or to contact those individuals only at certain times or  
14 under certain conditions;  
15 (6) Report on a regular basis to a designated law enforcement agency or other  
16 governmental agency;  
17 (7) Comply with a specified curfew related to a risk identified after a risk  
18 assessment performed under subsection 8;  
19 (8) Refrain from possessing a firearm or other dangerous weapon;  
20 (9) Refrain from the possession, use or excessive use of alcohol and from any  
21 use of psychoactive substances or illegal drugs. A condition under this  
22 subparagraph may be imposed only upon the presentation to the judicial officer  
23 of specific facts demonstrating the need for such condition;  
24 (9-A) Submit to:  
25 (a) A random search for possession or use prohibited by a condition imposed  
26 under subparagraph (8) or (9); or  
27 (b) A search upon articulable suspicion for possession or use prohibited by a  
28 condition imposed under subparagraph (8) or (9);  
29 (9-B) When indicated by a needs screening, undergo a clinical assessment by  
30 which a licensed counselor identifies and evaluates the defendant's strengths,  
31 weaknesses, problems and needs for the development of a treatment plan for a  
32 substance abuse issue, a mental health issue or both and comply with the  
33 recommended treatment plan;  
34 (10) Undergo, as an outpatient, available medical or psychiatric or substance  
35 abuse treatment, or enter and remain, as a voluntary patient, in a specified  
36 institution when required for that purpose;  
37 (10-A) Enter and remain in a long-term residential facility for the treatment of  
38 substance abuse;  
39 ~~(11) Execute an agreement to forfeit, in the event of noncompliance, such~~  
40 ~~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~~ If no other options are feasible, return to custody for specified hours  
12 following release for employment, 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 and if a  
26 defendant has been determined to be high-risk based on an assessment under  
27 subsection 8.

28 **Sec. 5. 15 MRSA §1026, sub-§3, ¶B**, as repealed and replaced by PL 2007, c.  
29 518, §3, is repealed.

30 **Sec. 6. 15 MRSA §1026, sub-§4, ¶B**, as enacted by PL 1987, c. 758, §20, is  
31 amended to read:

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

33 **Sec. 7. 15 MRSA §1026, sub-§4, ¶C**, as amended by PL 2011, c. 680, §2, is  
34 further amended to read:

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

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

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

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

- 1 (4) The defendant's financial resources;
- 2 (5) The defendant's length of residence in the community and the defendant's
- 3 community ties;
- 4 (6) The defendant's past conduct, including any history relating to drug or
- 5 alcohol abuse;
- 6 (7) The defendant's criminal history, if any;
- 7 (8) The defendant's record concerning appearances at court proceedings;
- 8 (9) Whether, at the time of the current offense or arrest, the defendant was on
- 9 probation, parole or other release pending trial, sentencing, appeal or completion
- 10 of a sentence for an offense in this jurisdiction or another;
- 11 (9-A) Any evidence that the defendant poses a danger to the safety of others in
- 12 the community, including the results of a validated, evidence-based domestic
- 13 violence risk assessment recommended by the Maine Commission on Domestic
- 14 and Sexual Abuse, established in Title 5, section 12004-I, subsection 74-C, and
- 15 approved by the Department of Public Safety;
- 16 (10) Any evidence that the defendant has obstructed or attempted to obstruct
- 17 justice by threatening, injuring or intimidating a victim or a prospective witness,
- 18 juror, attorney for the State, judge, justice or other officer of the court; and
- 19 (11) Whether the defendant has previously violated conditions of release,
- 20 probation or other court orders, including, but not limited to, violating protection
- 21 from abuse orders pursuant to Title 19, section 769 or Title 19-A, section 4011-;

22 **Sec. 8. 15 MRSA §1026, sub-§4, ¶¶D and E** are enacted to read:

23 D. The results of:

- 24 (1) A validated risk assessment instrument as described in subsection 8; and
- 25 (2) A validated, evidence-based domestic violence risk assessment
- 26 recommended by the Maine Commission on Domestic and Sexual Abuse,
- 27 established in Title 5, section 12004-I, subsection 74-C, and approved by the
- 28 Department of Public Safety; and

29 E. The results of a needs screening described in subsection 9.

30 **Sec. 9. 15 MRSA §1026, sub-§§8 to 10** are enacted to read:

31 **8. Risk assessment.** A pretrial risk assessment must be conducted using a validated

32 risk assessment instrument approved by the Department of Public Safety that meets the

33 requirements of this subsection.

34 A. The approved validated risk assessment instrument must be objective,

35 standardized and developed based on analysis of empirical data and risk factors

36 relevant to the risk of failure to appear in court when required and risk to the safety of

37 others in the community.

