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## **An Act Containing the Recommendations of the Criminal Law Advisory Commission**

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

**Sec. 1. 4 MRSA §51**, as repealed and replaced by PL 1969, c. 354, is amended to read:

### **§ 51. Constitution of court; concurrence required**

When sitting as a ~~law court~~Law Court to determine questions of law arising in any civil actions and in criminal trials and proceedings or criminal action or proceeding, the Supreme Judicial Court shall ~~must~~ be composed as provided by rules ~~promulgated~~adopted by that court and shall hear and determine such questions by the concurrence of a majority of the justices sitting and qualified to act.

**Sec. 2. 15 MRSA §1026, sub-§2**, as repealed by PL 2007, c. 374, §4 and amended by c. 377, §4, is repealed.

**Sec. 3. 15 MRSA §1026, sub-§3**, as amended by PL 2007, c. 374, §§6 to 8 and c. 377, §5, is repealed and the following enacted in its place:

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

A. If, after consideration of the factors listed in subsection 4, the judicial officer determines that the release described in subsection 2-A will not reasonably ensure the appearance of the defendant at the time and place required, will not reasonably ensure that the defendant will refrain from any new criminal conduct, will not reasonably ensure the integrity of the judicial process or will not reasonably ensure the safety of others in the community, 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 at the time and place required, will reasonably ensure that the defendant will refrain from any new criminal conduct, will reasonably ensure the integrity of the judicial process and will reasonably ensure the safety of others in the community. 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 the appearance of the defendant at the time and place required, that the defendant will refrain from any new criminal conduct, the integrity of the judicial process and the safety of others in the community. When it is feasible to do so, 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;

(10-A) Enter and remain in a long-term residential facility for the treatment of substance abuse;

(11) Execute an agreement to forfeit, in the event of noncompliance, such designated property, including money, as is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community 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 at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community;

(13) Return to custody for specified hours following release for employment, schooling or other limited purposes;

(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 summonsed for new criminal conduct; and

(18) Satisfy any other condition that is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community.

B. The judicial officer may not impose a financial condition that, either alone or in combination with other conditions of bail, is in excess of that reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process or to ensure the safety of others in the community.

C. Upon motion by the attorney for the State or the defendant and after notice and upon a showing of changed circumstances or upon the discovery of new and significant information, the court may amend the bail order to relieve the defendant of any condition of release, modify the conditions imposed or impose further conditions authorized by this subsection as the court determines to reasonably ensure the appearance of the defendant at the time and place required, that the defendant will refrain from any new criminal conduct, the integrity of the judicial process and the safety of others in the community.

**Sec. 4. 17-A MRSA §15, sub-§1, ¶A**, as amended by PL 2003, c. 102, §1, 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, terrorizing or stalking, if the officer reasonably believes that the person may cause injury to others unless immediately arrested;
- (5-A) Assault, criminal threatening, terrorizing, stalking, criminal mischief, obstructing the report of a crime or injury or reckless conduct if the officer reasonably believes that the person and the victim are family or household members, as defined in Title 19-A, section 4002, subsection 4;
- (5-B) Domestic violence assault, domestic violence criminal threatening, domestic violence terrorizing, domestic violence stalking or domestic violence reckless conduct;
- (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 a probation officer or juvenile community corrections officer;
- (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, 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;

(13) Violation of a protection order, as specified in Title 5, section 4659, subsection 2; Title 15, section 321, subsection 6; former Title 19, section 769, subsection 2; former Title 19, section 770, subsection 5; Title 19-A, section 4011, subsection 3; and Title 19-A, section 4012, subsection 5; or

(14) A violation of a sex offender registration provision under Title 34-A, chapter 15; and

(15) A violation of a requirement of administrative release when requested by the attorney for the State;

(16) A violation of a condition of supervised release for sex offenders when requested by a probation officer; or

(17) A violation of a court-imposed deferment requirement of a deferred disposition when requested by the attorney for the State; and

**Sec. 5. 17-A MRSA §16, sub-§2,** as repealed and replaced by PL 2007, c. 466, Pt. B, §11 and affected by §12, is amended to read:

2. Any person who, in fact, is committing in the private person's presence and in a public place any of the Class D or Class E crimes described in section 207; 209; 211; 254; ~~255; 501, subsection 2255-A;~~ 501-A, subsection 1, paragraph B; 503; 751; 806; or 1002.

**Sec. 6. 17-A MRSA §261, sub-§2, ¶C,** as enacted by PL 2007, c. 393, §1, is amended to read:

C. Intentionally or knowingly has any direct or indirect contact in a sex offender restricted zone with another person who has not in fact attained 14 years of age.

**Sec. 7. 17-A MRSA §1205, sub-§4, ¶A,** as enacted by PL 2005, c. 661, §1 and affected by §9, is amended to read:

A. Whenever a person arrested pursuant to subsection 1 is entitled to a probable cause hearing pursuant to this subsection, unless the person waives the right to the hearing, that hearing must be afforded at the initial appearance and may be held by either the District Court or the Superior Court located as near to the place where the violation is alleged to have taken place as is reasonable under the circumstances that placed the person on probation, unless a court orders otherwise. If it is alleged that the person violated probation because of the commission of a new offense, the probable cause hearing is limited to the issue of identification if probable cause on the new offense has already been found by the District Court or by the Superior Court or the person has been indicted, has waived indictment or has been convicted.

**Sec. 8. 17-A MRSA §1304, sub-§3,** as repealed and replaced by PL 1999, c. 367, §5, is amended to read:

**3.** Either the attorney for the State or the court may initiate a motion to enforce payment of a fine. Notification for the hearing on the motion must be sent by regular mail to the offender's last known address. If the offender does not appear for the hearing after proper notification has been sent, the court may issue a bench warrant. A court need not bring a motion to enforce payment of a fine nor notify the offender by regular mail of the date of the hearing if at the time of sentence imposition the court's order to pay the fine and accompanying warnings to the offender comply with Title 14, section 3141, subsection 3 or 4 and, if the offender fails to appear as directed by the court's fine order, the court may issue a bench warrant.

A. Unless the offender shows by a preponderance of the evidence that the default was not attributable to an intentional or knowing refusal to obey the court's order or to a failure on the offender's part to make a good-faith effort to obtain the funds required for the payment, the court shall find that the default was unexcused and may commit the offender to the custody of the sheriff until all or a specified part of the fine is paid. The length of confinement in a county jail for unexcused default must be specified in the court's order and may not exceed one day for every \$5 of unpaid fine or 6 months, whichever is shorter. An offender committed for nonpayment of a fine is given credit toward the payment of the fine for each day of confinement that the offender is in custody, at the rate specified in the court's order. The offender is also given credit for each day that the offender is detained as the result of an arrest warrant issued pursuant to this section. An offender is responsible for paying any fine remaining after receiving credit for confinement and detention. A default on the remaining fine is also governed by this section.

B. If it appears that the default is excusable, the court may give the offender additional time for payment or may reduce the amount of each installment.

C. If the court commits a person to the custody of the sheriff for nonpayment of a fine, the court may authorize, at the time of its order only, participation of the person in a project under Title 30-A, section 1606 with the agreement of the sheriff of the county jail where the person is committed. The person must be given credit according to Title 30-A, section 1606, subsection 2.

D. The confinement ordered under this subsection must be nonconcurrent with any judgment of conviction involving a term of imprisonment.

**Sec. 9. 19-A MRSA §4002, sub-§4,** as amended by PL 2005, c. 265, §19, is further amended to read:

**4. Family or household members.** "Family or household members" means spouses or domestic partners or former spouses or former domestic partners, individuals presently or formerly living together as spouses, natural parents of the same child, adult household members related by consanguinity or affinity or minor children of a household member when the defendant is an adult household member and, for the purposes of this chapter and Title 17-A, sections 15, 207-A, 209-A, 210-B, 210-C, 211-A, 1201, 1202 and 1253 only, includes individuals presently or formerly living together and individuals who are or were sexual partners. Holding oneself out to be a spouse is not necessary to constitute "living

as spouses." For purposes of this subsection, "domestic partners" means 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.

## SUMMARY

This bill is proposed by the Criminal Law Advisory Commission and does the following.

The bill amends the Maine Revised Statutes, Title 4, section 51 to conform the language with Rule 12(a) of the Maine Rules of Appellate Procedure.

The bill deletes the first sentence of Title 15, section 1026, subsection 3 as amended by Public Law 2007, chapter 377, corrects a conflict created when Public Law 2007, chapter 374 amended the same section of law and adds a new introductory sentence that more accurately identifies the purpose of subsection 3.

The bill adds to subparagraph 12 of Title 15, section 1026, subsection 3, paragraph A language that was unintentionally omitted when that paragraph was amended by Public Law 2007, chapter 374, section 6.

The bill modifies Title 17-A, section 15, subsection 1, paragraph A by adding a new subparagraph 5-B to reflect the new domestic violence crimes recently added to chapter 9 of the Maine Criminal Code and by adding subparagraphs 15, 16 and 17, allowing a law enforcement officer to make a warrantless arrest of any person who the officer has probable cause to believe has committed or is committing a violation of a requirement of administrative release when requested by the attorney for the State, of a condition of supervised release for sex offenders when requested by a probation officer and of a court-imposed deferment requirement of a deferred disposition when requested by the attorney for the State.

The bill strikes the current references in Title 17-A, section 16, subsection 2 to section 255 and section 501, subsection 2, as each has been repealed. It also adds in Title 17-A, section 16, subsection 2 a reference to current section 255-A, the section that replaced former section 255.

The bill deletes the word "any" in Title 17-A, section 261, subsection 2, paragraph C, which is unnecessary and inconsistent with the parallel paragraph C of section 261, subsection 1.

The bill amends Title 17-A, section 1205, subsection 4, paragraph A by changing the current directive as to where a probable cause hearing should take place. Current law provides that the hearing must be held as near to the place where the new violation is alleged to have taken place as is reasonable. This change would create the general rule that the hearing be held in the court where the person was placed on probation, thus facilitating participation at the hearing by the prosecutorial office that prosecuted the underlying criminal case in the first instance rather than an office wholly unfamiliar with the case. A court would be free to order that the hearing be held elsewhere, on request of the State, the defendant or the court, if it is reasonable under the circumstances to hold the hearing in a court other than the court that sentenced the person, based on the availability of resources and familiarity with the defendant, the underlying case, the alleged violation and the person's conduct while under supervision.

The bill eliminates in Title 17-A, section 1304, subsection 3 the necessity of a court bringing a motion to enforce payment of a fine and providing notification to the offender if at the time of sentence

imposition the court's order to pay the fine and accompanying warnings to the offender comply with Title 14, section 3141, subsection 3 or 4. In that event, if the offender fails to appear as directed by the court's fine order, the court may issue a bench warrant.

The bill amends the definition of "family or household members" in Title 19-A, section 4002, subsection 4 by adding Title 17-A, sections 15, 207-A, 209-A, 210-B, 210-C and 211-A to the current list of Maine Criminal Code sections for which the definition includes "individuals presently or formerly living together and individuals who are or were sexual partners."