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JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1266, L.D. 1703, “An Act To Amend the Bail Code”

Amend the bill by striking out everything after the enacting clause and inserting the following:

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

5. Fees. A bail commissioner is entitled to receive a fee not to exceed \$60 for the charges pursuant to which the defendant is presently in custody, unless the defendant lacks the present financial ability to pay the fee. A defendant presently in custody who is qualified to be released upon personal recognizance or upon execution of an unsecured appearance bond, whether or not accompanied by one or more conditions of bail that have been set by a judicial officer, but who in fact lacks the present financial ability to pay a bail commissioner fee, must nonetheless be released upon personal recognizance or upon execution of an unsecured appearance bond. A bail commissioner may not refuse to examine a person to determine the person's eligibility for bail, set bail, prepare the personal recognizance or bond or take acknowledgement of the person in custody because the person in custody lacks the present financial ability to pay a bail commissioner fee. The bail commissioner shall submit such forms as the Judicial Department directs to verify the amount of fees received under this subsection. The sheriff of the county in which the defendant is detained may create a fund for the distribution by the sheriff or the sheriff's designee for the payment in whole or in part of the \$60 bail commissioner fee for those defendants who do not have the financial ability to pay that fee.

A bail commissioner fee under this subsection is not a financial condition of release for the purposes of section 1026, subsection 3, paragraph B-1.

Sec. 2. 15 MRSA §1026, sub-§3, ¶A, as amended by PL 2017, c. 407, Pt. A, §51, is further amended by amending subparagraph (9-A) to read:

(9-A) Submit to:

COMMITTEE AMENDMENT

1 (a) A random search for possession or use prohibited by a condition imposed
2 under subparagraph (8) ~~or (9)~~; or

3 (a-1) A random search for possession or use prohibited by a condition imposed
4 under subparagraph (9) if the defendant is a participant in a specialty court
5 docket under Title 4, chapter 8, 8-A or 8-B, or any other specialty docket
6 established by the Judicial Department, or by agreement of the parties as part
7 of a deferred disposition under Title 17-A, section 1902; or

8 (b) A search upon articulable suspicion for possession or use prohibited by a
9 condition imposed under subparagraph (8) or (9);

10 **Sec. 3. 15 MRSA §1026, sub-§3, ¶A**, as amended by PL 2017, c. 407, Pt. A, §51,
11 is further amended by repealing subparagraph (14).

12 **Sec. 4. 15 MRSA §1026, sub-§3, ¶B-1** is enacted to read:

13 B-1. Notwithstanding paragraph A, subparagraphs (11), (12) and (18) and paragraph
14 B, a judicial officer may not impose a financial condition on a defendant for whom the
15 highest class of crime charged is a Class E crime, except that a financial condition may
16 be imposed on a defendant charged with a Class E crime:

17 (1) That is a violation of Title 17-A, chapter 11;

18 (2) That was committed against a family or household member as defined in Title
19 19-A, section 4002, subsection 4 or a dating partner as defined in Title 19-A,
20 section 4002, subsection 3-A;

21 (3) That is a violation of a condition of release committed while the defendant is
22 released on bail for a charge that involves: a violation of Title 17-A, chapter 11; a
23 crime against a family or household member as defined in Title 19-A, section 4002,
24 subsection 4; or a crime against a dating partner as defined in Title 19-A, section
25 4002, subsection 3-A;

26 (4) That is a violation of a condition of release premised on an allegation of new
27 criminal conduct;

28 (5) When the defendant has failed to appear on the underlying Class E charge; or

29 (6) By stipulation. A financial condition imposed under this subparagraph may
30 not exceed \$5.

31 **Sec. 5. 15 MRSA §1026, sub-§4, ¶C**, as amended by PL 2017, c. 407, Pt. A, §52,
32 is further amended to read:

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

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

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

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

37 (4) The defendant's financial resources, including the ability of the defendant to
38 afford a financial condition imposed by the judicial officer;

39 (5) The defendant's length of residence in the community and the defendant's
40 community ties;

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

25 **Sec. 6. 15 MRSA §1026, sub-§5, ¶A,** as enacted by PL 1987, c. 758, §20, is
26 amended to read:

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

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

32 (2) If an agreement to forfeit money under subsection 3, paragraph A,
33 subparagraph (11) or (12) is ordered, the reason the judicial officer has set the
34 amount of money ordered to be forfeited under the agreement; and'

35 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
36 number to read consecutively.

37 SUMMARY

38 This amendment is the majority report of the committee.

39 The amendment provides that a defendant who is otherwise eligible to be released on
40 personal recognizance or upon the execution of an unsecured appearance bond, whether or

1 not accompanied by one or more conditions of bail, must be released if the defendant cannot
2 afford to pay the bail commissioner fee. The amendment clarifies that the bail
3 commissioner fee is not a financial condition of release for the purposes of the prohibition
4 on financial conditions of release for certain Class E crimes.

5 The amendment removes from the list of potential conditions of release for
6 preconviction bail the requirement to submit to a random search for possession or use of
7 alcohol or use of illegal drugs when use or possession is prohibited by a condition of
8 release, unless the defendant is a participant in a specialty court docket or as agreed to by
9 the parties as a part of a deferred disposition. The amendment also eliminates the condition
10 that requires the defendant to report on a regular basis to the defendant's attorney.

11 The amendment prohibits a judicial officer from imposing a financial condition of
12 release on a defendant whose most serious crime charged is a Class E crime. However, the
13 prohibition on financial conditions of release does not apply when the Class E crime was
14 any of the following:

- 15 1. A violation of the Maine Criminal Code, chapter 11, which covers sexual assault
16 crimes;
- 17 2. A crime committed against a family or household member or a dating partner;
- 18 3. A violation of a condition of release when the underlying crime for which the
19 defendant has been released on bail is a violation of the Maine Criminal Code, chapter 11
20 or a crime against a family or household member or a dating partner;
- 21 4. A violation of a condition of release that is premised on an allegation of new criminal
22 conduct;
- 23 5. When a defendant fails to appear in court on a Class E crime; or
- 24 6. When agreed to by the defendant and the State. The parties may not agree to a bail
25 amount under this provision that is more than \$5.

26 The amendment revises the list of factors a judicial officer considers when setting
27 preconviction bail; although the judicial officer is still required to consider the defendant's
28 past conduct, the amendment eliminates the consideration of any history of substance use
29 disorder. It also adds 3 new factors to be considered by the judicial officer:

- 30 1. Whether the defendant is the person primarily responsible for the care of another
31 person;
- 32 2. Whether the defendant has a specific health care need, including a mental health
33 care need, that is being met or would be better met outside of custody; and
- 34 3. Whether being placed or remaining in custody would prevent the defendant from
35 maintaining employment.

36 Finally, the amendment requires a judicial officer to state the reason for the amount of
37 any financial condition the judicial officer imposes.