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An Act To Authorize Certain County Jail Employees To Perform Certain Ministerial and Notary Functions for Inmates

Emergency preamble. Whereas, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, authorizing certain county jail employees to perform ministerial functions related to preparing personal recognizance or an unsecured appearance bond and providing notary services has been the practice of several jails and has been of benefit to both the jails and their inmates; and

Whereas, the provision of these ministerial functions and notary services has unintentionally been in violation of the Maine Revised Statutes, Title 30-A, section 353; and

Whereas, enacting a permissible process for these ministerial functions and notary services will continue to benefit the jails and the inmates; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 15 MRSA §1025-A is enacted to read:

§ 1025-A. County jail employees

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

Sec. 2. 30-A MRSA §353, as amended by PL 1989, c. 104, Pt. A, §8 and Pt. C, §§8 and 10, is further amended to read:

§ 353. Officer not to act as attorney or draw papers; employee of jailer not to act as judge or attorney

No officer may not appear before any court as attorney or adviser of any party in an action or draw any writ, complaint, declaration, citation, process or plea for any other person; all such acts are void. No person employed by the keeper of a jail in any capacity may not exercise any power or duty of a judicial officer or notary public or act as attorney for any person confined in the jail; all such acts are void. Beginning April 15, 2006, if commissioned as a notary public and authorized to do so by the sheriff, an employee of a jail, other than a part-time or full-time corrections officer or a deputy sheriff, may, without fee, exercise any power or duty of a notary public for any person confined in the jail.

Sec. 3. Retroactivity. That section of this Act that amends the Maine Revised Statutes, Title 30-A, section 353 applies retroactively to February 28, 1989.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.