**An Act To Amend the Bail Code**

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

**Sec.** **1. 15 MRSA §1023, sub-§4, ¶F,** as enacted by PL 2015, c. 436, §3, is amended to read:

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

**Sec.** **2. 15 MRSA §1023, sub-§4, ¶G,** as enacted by PL 2015, c. 436, §3, is amended to read:

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

**Sec.** **3. 15 MRSA §1023, sub-§4, ¶H** is enacted to read:

H. Notwithstanding section 1026, subsection 3, paragraph A, subparagraphs (11), (12) and (18) and subsection 3, paragraph B, impose a financial condition of release on a defendant for whom the highest class of crime charged was a Class E crime, except that a financial condition may be imposed on a defendant charged with a Class E crime:

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

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

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

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

(5) That is a violation of section 1091, subsection 1.

**Sec.** **4. 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. 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. A defendant who is qualified to be released pursuant to section 1026 upon personal recognizance or upon execution of an unsecured appearance bond 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, which may include conditions of bail other than cash or security. A bail commissioner may not refuse to examine a person to determine a person's eligibility for bail, set bail, prepare the personal recognizance bond or take the acknowledgement of the defendant because the defendant lacks the present financial ability to pay a bail commissioner fee.

B. 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 subsection 4, paragraph H or section 1026, subsection 3, paragraph B-1.

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

**2-A.** **Release on personal recognizance or unsecured appearance bond.**  Except for a formerly capital offense under section 1027, there is a rebuttable presumption that a defendant must be released on personal recognizance under this section without a condition imposed under subsection 3. The judicial officer shall order the pretrial release of the defendant on personal recognizance or upon execution of an unsecured appearance bond in an amount specified by the judicial officer, unless, after consideration of the factors listed in subsection 4, the judicial officer determines that:

A. The release would ~~not reasonably ensure the appearance~~ result in an imminent risk of willful flight of the defendant ~~as required~~;

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

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

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

**Sec.** **6. 15 MRSA §1026, sub-§3, ¶A,** as amended by PL 2017, c. 407, Pt. A, §51, is further amended to read:

A. If, after consideration of the factors listed in subsection 4, the judicial officer determines by clear and convincing evidence that the release described in subsection 2‑A will ~~not reasonably ensure the appearance~~ result in an imminent risk of willful flight 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~~ not result in an imminent risk of willful flight, 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 the possession, use or excessive use of alcohol and from any use of illegal drugs. A condition under this subparagraph may be imposed only upon the presentation to the judicial officer of specific facts demonstrating the need for such condition;

(9-A) Submit to:

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

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

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

(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 use disorder;

(11) Execute an agreement to forfeit, in the event of willful noncompliance, such designated property, including money, as is reasonably necessary to ensure ~~the~~ ~~appearance of~~ that the defendant ~~at the time and place required~~ does not willfully flee the jurisdiction, 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;

(18) Satisfy any other condition that is reasonably necessary to ensure that the ~~appearance of the~~ defendant ~~at the time and place required~~ does not willfully flee the jurisdiction, 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

(19) Participate in an electronic monitoring program, if available.

**Sec.** **7. 15 MRSA §1026, sub-§3, ¶B,** as repealed and replaced by PL 2007, c. 518, §3, is amended to read:

B. ~~The~~ If the judicial officer imposes a financial condition, the judicial officer ~~may not~~ ~~impose a~~ must find by clear and convincing evidence that the imposition of the financial condition ~~that~~, either alone or in combination with other conditions of bail, is not in excess of that reasonably necessary to ensure ~~the appearance of~~ that the defendant ~~at the time and place required~~ does not willfully flee the jurisdiction, 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. In making a finding under this paragraph, the judicial officer shall consider the amount of money from a defendant’s personal resources a defendant is able to pay within 24 hours of the finding. The judicial officer shall state any findings of fact under this paragraph on the record or in writing.

**Sec.** **8. 15 MRSA §1026, sub-§3, ¶B-1** is enacted to read:

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

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

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

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

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

(5) That is a violation of section 1091, subsection 1.

**Sec.** **9. 15 MRSA §1026, sub-§3, ¶C,** as repealed and replaced by PL 2007, c. 518, §3, is amended to read:

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~~ that the court determines ~~to reasonably ensure the~~ ~~appearance of~~ will not result in an imminent risk of willful flight of the defendant ~~at~~ ~~the time and place required,~~ and will reasonably ensure 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.** **10. 15 MRSA §1026, sub-§4, ¶C,** as amended by PL 2017, c. 407, Pt. A, §52, is further amended to read:

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

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

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

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

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

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

(6) The defendant's past conduct~~, including any history of substance use disorder~~;

(7) The defendant's criminal history, if any;

(8) The defendant's record concerning appearances at court proceedings;

(9) Whether, at the time of the current offense or arrest, the defendant was on probation, parole or other release pending trial, sentencing, appeal or completion of a sentence for an offense in this jurisdiction or another;

(9-A) Any evidence that the defendant poses a danger to the safety of others in the community, including the results of a validated, evidence-based domestic violence risk assessment recommended by the Maine Commission on Domestic and Sexual Abuse, established in Title 5, section 12004‑I, subsection 74‑C, and approved by the Department of Public Safety;

(10) Any evidence that the defendant has obstructed or attempted to obstruct justice by threatening, injuring or intimidating a victim or a prospective witness, juror, attorney for the State, judge, justice or other officer of the court; ~~and~~

(11) Whether the defendant has previously violated conditions of release, probation or other court orders, including, but not limited to, violating protection from abuse orders pursuant to former Title 19, section 769 or Title 19‑A, section 4011~~.~~;

(12) Whether the defendant is the person primarily responsible for the care of another person;

(13) Whether the defendant has a specific health care need, including a mental health care need, that is being met or would be better met outside of custody; and

(14) Whether being placed or remaining in custody would prevent the defendant from maintaining employment.

**Sec.** **11. 15 MRSA §1026, sub-§5, ¶A,** as enacted by PL 1987, c. 758, §20, is amended to read:

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

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

(2) If an agreement to forfeit money under subsection 3, paragraph A, subparagraph (11) is ordered, the reason for the amount of money ordered to be forfeited under the agreement; and

**Sec.** **12. 15 MRSA §1095, sub-§2,** as amended by PL 2011, c. 640, Pt. A, §3, is further amended to read:

**2.** **Arrest.**  Prior to the filing of a motion to revoke a defendant's preconviction bail under subsection 1, a law enforcement officer when requested by the attorney for the State may arrest with a warrant, or without a warrant pursuant to Title 17‑A, section 15, any defendant who the law enforcement officer has probable cause to believe has failed to appear as required, has violated a condition of preconviction bail or has been charged with a crime allegedly committed while released on preconviction bail. A defendant under arrest pursuant to this section must be brought before any judge or justice of the appropriate court. The judge or justice shall determine without hearing whether the existing preconviction bail order should be modified or whether the defendant should be committed without bail pending the bail revocation hearing. If either the underlying crime or the new criminal conduct alleged is an offense specified in section 1023, subsection 4, paragraph B‑1, the judge or justice shall order that the defendant be committed without bail pending the bail revocation hearing, unless the judge or justice makes findings on the record that there are conditions of release that will reasonably ensure that the defendant will not commit new crimes while out on bail, that will reasonably ensure that the ~~defendant's~~ ~~appearance at the time and place required~~ defendant will not willfully flee and that will ensure the integrity of the judicial process and the safety of others in the community pending the bail revocation hearing. A copy of the motion for revocation must be furnished to the defendant prior to the hearing on the alleged violation, unless the hearing must be conducted in the absence of the defendant.

**Sec.** **13. 15 MRSA §1097, sub-§2,** as amended by PL 2007, c. 374, §13, is further amended to read:

**2.** **~~Appearance of the defendant~~** **No risk of willful flight; ensuring the integrity of** **the judicial process; ensuring the safety of others in the community.**  If the judge or justice finds that there are conditions of release that will ~~reasonably ensure the defendant's~~ ~~appearance at the time and place required~~ not result in an imminent risk of willful flight of the defendant and ensure the integrity of the judicial process and the safety of others in the community, the judge or justice shall issue an order under section 1026. If the judicial finding is otherwise, the judge or justice shall issue an order denying bail.

**SUMMARY**

This bill prohibits a bail commissioner or judicial officer from imposing a financial condition of release on a defendant whose most serious crime charged is a Class E crime. However, the prohibition on financial conditions of release does not apply when the Class E crime was any of the following:

1. A violation of the Maine Criminal Code, chapter 11, which covers sexual assault crimes;

2. A crime committed against a family or household member or a dating partner;

3. A violation of a condition of release when the underlying crime for which the defendant has been released on bail is a violation of the Maine Criminal Code, chapter 11 or a crime against a family or household member or a dating partner;

4. A violation of a condition of release that is premised on an allegation of new criminal conduct; or

5. A violation of the Maine Revised Statutes, Title 15, section 1091, subsection 1, which makes failure to appear in court when required to do so a crime.

The bill provides that a defendant who is otherwise eligible to be released on personal recognizance or upon the execution of an unsecured appearance bond, whether or not accompanied by one or more conditions of bail, must be released if the defendant cannot afford to pay the bail commissioner fee. The bill clarifies that the bail commissioner fee is not a financial condition of release for the purposes of the prohibition on financial conditions of release for certain Class E crimes and provides that except for a formerly capital offense, there is a rebuttable presumption that a defendant must be released on personal recognizance with no conditions. The bill changes the requirements for setting personal recognizance bail from a determination that the release would reasonably ensure the appearance of the defendant to a determination that the release would not result in an imminent risk of willful flight by the defendant.

The bill removes from the list of potential conditions of release for preconviction bail being required to submit to a random search for possession or use of alcohol or use of illegal drugs when use or possession is prohibited by a condition of release, unless the defendant is a participant in a specialty court docket or as agreed by the parties as a part of a deferred disposition. The bill also eliminates the condition that requires the defendant to report on a regular basis to the defendant's attorney. The bill requires a court when imposing a financial condition to find by clear and convincing evidence that the condition is not in excess of that necessary to ensure that the defendant does not willfully flee the jurisdiction and the defendant has the resources to pay within 24 hours. The court is required to state its findings on the record or in writing,

The bill revises the list of factors a judicial officer considers when setting preconviction bail to remove consideration of the defendant's family ties in the State, although it retains consideration of the defendant's ties to the State; although the judicial officer is still required to consider the defendant's past conduct, the bill eliminates the consideration of any history of substance use disorder. It also adds 3 new factors to be considered by the judicial officer:

1. Whether the defendant is the person primarily responsible for the care of another person;

2. Whether the defendant has a specific health care need, including a mental health care need, that is being met or would be better met outside of custody; and

3. Whether being placed or remaining in custody would prevent the defendant from maintaining employment.