

## STATE OF MAINE

—  
 IN THE YEAR OF OUR LORD  
 TWO THOUSAND AND SIXTEEN

—  
 S.P. 666 - L.D. 1639

**An Act To Implement the Recommendations of the Intergovernmental  
 Pretrial Justice Reform Task Force**

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

**Sec. 1. 15 MRSA §1023, sub-§4, ¶D,** as amended by PL 2013, c. 519, §2, is further amended to read:

D. Set preconviction or post-conviction bail for a violation of condition of release pursuant to section 1092, except as provided in section 1092, subsection 4; ~~or~~

**Sec. 2. 15 MRSA §1023, sub-§4, ¶E,** as enacted by PL 2011, c. 341, §2, is amended to read:

E. Set preconviction bail using a condition of release not included in every order for pretrial release without specifying a court date within 8 weeks of the date of the bail order;

**Sec. 3. 15 MRSA §1023, sub-§4, ¶¶F and G** are enacted 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

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.

**Sec. 4. 15 MRSA §1026, sub-§3, ¶A,** as amended by PL 2013, c. 227, §1, is further amended to read:

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 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

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

**Sec. 5. 15 MRSA §1051, sub-§2-A** is enacted to read:

**2-A. Violation of probation; standards.** This subsection governs bail with respect to a motion to revoke probation.

A. A judge or justice may deny or grant bail.

B. In determining whether to admit the defendant to bail and, if so, the kind and amount of bail, the judge or justice shall consider the nature and circumstances of the crime for which the defendant was sentenced to probation, the nature and circumstances of the alleged violation and any record of prior violations of probation

as well as the factors relevant to the setting of preconviction bail listed in section 1026.

**Sec. 6. 15 MRSA §1073, 3rd ¶**, as amended by PL 1997, c. 543, §18, is further amended to read:

The judge or justice may absolve the person of responsibility to pay all or part of the bond or may order the return of cash bail, except that a person may not be absolved of the responsibility to pay all or part of the bond, or receive any cash deposited as bail, if, prior to terminating the agreement, the defendant has failed to appear as required or, ~~if the precondition in section 1073-A has been satisfied~~, the defendant has failed to comply with each condition of release. Nothing in this section may be construed to relieve or release a person of the responsibility for the appearance of the defendant, notwithstanding the termination of the agreement, until the defendant is in the custody of the sheriff of the county in which the case is pending, new or substitute sureties have appeared, new cash bail has been deposited or the defendant has otherwise been admitted to bail.

**Sec. 7. 15 MRSA §1073-A**, as enacted by PL 1997, c. 543, §19, is repealed.

**Sec. 8. 17-A MRSA §1205-C, sub-§§4 and 5**, as enacted by PL 1999, c. 246, §3, are amended to read:

**4.** At the initial appearance, the court shall advise the probationer of the contents of the motion, the right to a hearing on the motion, the right to be represented by counsel at a hearing and the right to appointed counsel. If the probationer can not afford counsel, the court shall appoint counsel for the probationer. The court shall call upon the probationer to admit or deny the alleged violation. If the probationer refuses to admit or deny, a denial must be entered. In the case of a denial, the court shall set the motion for hearing and may commit the person probationer, with or without bail, pending hearing. If the probationer is committed without bail pending hearing, the date of the hearing must be set no later than 45 days from the date of the initial appearance unless otherwise ordered by the court.

**5.** In deciding whether to set bail under this section and in setting the kind and amount of that bail, the court must be guided by the standards of post-conviction bail in Title 15, section 1051, ~~subsections 2 and 3~~ subsection 2-A. Appeal is governed by Title 15, section 1051, subsections 5 and 6. Bail set under this section is also governed by the sureties and other forms of bail provisions in Title 15, chapter 105-A, subchapter ~~IV~~ 4 and the enforcement provisions in Title 15, chapter 105-A, subchapter ~~V~~ 5, articles 1 and 3, including the appeal provisions in Title 15, section 1099-A, subsection 2.

**Sec. 9. 17-A MRSA §1302, sub-§3** is enacted to read:

**3.** Notwithstanding any other provision of law, the court may suspend all or a portion of a minimum fine under section 1301, subsection 6 or under section 207, subsection 3 or under Title 29-A, section 2412-A, subsection 3, and the court may impose a fine other than the mandatory fine if the court finds by a preponderance of the evidence that there are exceptional circumstances that justify imposition of a lesser financial penalty. In making a finding of exceptional circumstances, the court may consider:

A. Reliable evidence of financial hardship on the part of the offender and the offender's family and dependents;

B. Reliable evidence of special needs of the offender or the offender's family and dependents;

C. Reliable evidence of the offender's income and future earning capacity and the offender's assets and financial resources from whatever source;

D. Reliable evidence regarding any pecuniary gain derived from the commission of the offense; and

E. The impact of imposition of the mandatory fine on the offender's reasonable ability to pay restitution under chapter 54.

**Sec. 10. 17-A MRSA §1304, sub-§3, ¶A**, as amended by PL 2011, c. 568, §1, is further amended to read:

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:

(1) 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 6 months. 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, which may not be less than \$25 or more than \$100 of unpaid fine for each day of confinement. 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; or

(2) If the unexcused default relates to a fine imposed for a Class C, Class D or Class E crime, as authorized by chapter 53, order the offender to perform community service work, as authorized in chapter 54-C, until all or a specified part of the fine is paid. The number of hours of community service work must be specified in the court's order and the offender must receive a credit against the unpaid fine ~~of no less than \$25 for every 8 hours of community service work completed, which may not exceed one hundred 8-hour days~~ at a rate equal to the current hourly minimum wage. An offender ordered to perform community service work pursuant to this subparagraph is given credit toward the payment of the fine for each 8-hour day of community service work performed at the rate specified in the court's order. The offender is also given credit toward the payment of the fine for each day that the offender is detained as a result of an arrest warrant issued pursuant to this section at a rate specified in the court's order that is up to \$100 of unpaid fine per day of confinement. An offender is responsible for paying any fine remaining after receiving credit for any detention

and for community service work performed. A default on the remaining fine is also governed by this section.

**Sec. 11. 34-A MRSA §1210-D, sub-§2, ¶C**, as enacted by PL 2015, c. 335, §23, is amended to read:

C. Before distributing to a county that county's entire distribution under this section, the department shall require that county to submit appropriate documentation verifying that the county expended 30% of its prior distribution for the purpose of community corrections as required by this section.

**Sec. 12. 34-A MRSA §1210-D, sub-§2-A** is enacted to read:

**2-A. Pretrial release or conditional release programs.** Using community corrections funds distributed under this section, each county shall provide a program, directly or through contract with an organization, to supervise defendants subject to a pretrial release condition imposed pursuant to Title 15, section 1026, subsection 3, paragraph A, subparagraph (1) and such requirements as may be established by rule or order of the Supreme Judicial Court.