MCEDV.
The Maine Coalition
to End Domestic Violence

LD 1817

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Testimony of Andrea Mancuso, on behalf of the Maine Coalition to End Domestic Violence In OPPOSITION to LD 1817: "An Act to Implement the Recommendation of the Maine Commission on Public Defense Services to Eliminate the Crime of Violation of Condition of Release "

Before the Joint Standing Committee on Criminal Justice and Public Safety
Monday, May 5, 2025

Senator Beebe-Center, Representative Hasenfus, and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, I am writing on behalf of the Maine Coalition to End Domestic Violence (MCEDV)[1] in opposition to LD 1817 and to put forward an amendment for your consideration.

Most domestic violence charges handled in our criminal courts are Class D crimes. When a person is charged with a domestic violence crime, conditions of release are almost always issued that include prohibiting the defendant from having any contact with the victim, a requirement to stay away from their home, school or place of business, and a restriction on access to weapons. Issuance of these conditions is one of the primary ways our criminal legal system attempts to create safety as well as space for survivors to start healing. When a defendant then goes on to continue to have contact with that victim or to violate their peace by proximity, under current law they are charged with the Class E crime of violation of conditions of release.

We encourage you to reflect on what this really looks like from the perspective of a domestic violence victim: they have reported either an assault or a threat of harm, often something that is the latest in a long line of patterned abuse. They have gone through a law enforcement interview, sometimes even writing out and signing a sworn statement; and sometimes this will involve having photos taken of their body and/or a hospital visit. They have spoken to a victim witness advocate and likely had a subsequent interview with an assistant district attorney. They have been told that a court has ordered the person who has harmed them not to have any contact with them. They may have even started to feel some distance from the trauma, beginning a process of healing. Then the person who harmed them, who has been court ordered to stay away, contacts them anyway – sometimes from within the correctional facility they are being held at pre-trial.

[1] MCEDV represents a membership of the eight regional domestic violence resource centers across Maine as well as two culturally specific service providers. Last year, our programs provided services to more than 12,000 survivors of domestic abuse and violence and their children in our state.

To this type of violation, a violation of a clear and unambiguous court order, there should be swift and sure consequences – particularly for those individuals who perpetrate domestic violence, most of whom believe they are privileged to do so, and that the price of any consequence for their behavior will not be more than they are willing to pay. To remove the ability of the criminal legal system to respond swiftly and with a real consequence to a perpetrator's continued refusal to leave their victim alone is a violation of the basic responsibility that our criminal legal system has to the crime victims while criminal cases are pending. Make no mistake – that is what this bill proposes to do. What does that say to a victim about the State's ability to protect them and make the abuse stop? What level of trust should the victim now place in the criminal legal system – the system asking them to continue to participate in the prosecution of the person who has harmed them? What reason would they have to believe that the State will be able to keep them safe from further harm?

Maine may very well be in a minority of states that still preserves the ability to charge a new crime for a violation of condition of release, as opposed to just dealing with a violation through a bail revocation motion. ***Maine is also in a minority of states that does <u>not</u> issue a criminal court protection order in domestic violence cases, violation of which results in a new crime.***[2] Instead of implementing such a process,[3] the state has relied on the ability to charge that conduct as a Violation of Conditions of Release. Conditions of Release in DV cases act, in practice though not in name, as a criminal court issued protection order. To remove this level of protection in DV cases, without similarly implementing a criminal court protection order, is out of step with a functional criminal court response to victims in these cases. Keep in mind, the time period following separation of a victim from the person harming them is often the most dangerous. This is the timeframe that we most want our systems to be able to swiftly respond to.

MCEDV appreciates and supports the goal of the bill - namely the need to limit the ways in which violations of conditions of release have had a harmful and disproportionate impact on those defendants who are in Maine's criminal justice system primarily as a result of substance use or untreated mental health challenges. However, we must ensure that we don't compromise the safety of domestic violence victims in the moment or the willingness of these victims to continue to engage in the process.

As we have noted on a prior bill before you this session, of the many thousands of violations of conditions of release that are charged in our criminal legal system each year, ***the violations charged in response to contact with a victim represent only approximately 500 cases – that's less than 10%.*** There is quite a lot of yardage between current statute and practice and what this bill proposes. MCEDV has attached a suggested amendment that would better attend to the needs of domestic violence and sexual assault crime victims during the pendency of criminal cases; this represents what we believe is the appropriate public policy approach to bail violations.

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[2] In some states that charge victim-contact-violations as a violation of a criminal court protection order, that is a felony crime, even when the underlying domestic violence charge is a misdemeanor. See Connecticut General Statutes, Section 53a-223.

[3] Maine's criminal code has a provision that would allow Maine's courts to issue a criminal court protection order in family violence cases. See Title 15, section 321. However, Maine's judicial officers are unable to issue such an order, because the statute has not been used in more than two decades. Because it has never been implemented, the statute has not been updated since the 1980's. MCEDV's proposed amendment modernizes that statute as part of the proposal to eliminate Class E VCRs in Maine.

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Lastly, exclusive reliance on bail revocation as the only response to address safety in domestic violence cases necessarily means that policymakers would be leaning on our judicial officers to, with much greater frequency, hold hundreds more pre-trial defendants each year – defendants who, under the current structure, are mostly awaiting trial in community, even after committing a victim contact or proximity violation. That's the message that you're hearing from the bill's proponents today – that there's no reason to worry about the elimination of this crime because, when a person violates victim related conditions of release, they can be held pre-trial. If that is, in fact, not the outcome that policymakers support (and to be clear, this is not at all a practice we see our courts embracing with any real frequency at present), than we should be honest with ourselves, and with crime victims, that our systems don't really care to have an actual consequence for violations of these court orders, even when they reflect a defendant continuing their pattern of abuse, and even when they raise real questions as to the safety of crime victims.

A defendant charged with drug possession, released on conditions that include no possession of alcohol, who is then spotted by law enforcement having a drink after having walked to a local bar, presents a very different public safety challenge than a defendant who is charged with assaulting their partner, released on conditions of no contact, who is then texting the victim or repeatedly driving by their home. Our criminal justice system must be structured in a way to ensure that the response to each of these situations is appropriate and that it focuses appropriate public resources where they are most needed.

MCEDV urges you to seek a more thoughtful way to address the policy and practice challenges that the proponents of this bill have laid before you. To do otherwise continues to send the message to crime victims that the failures of our criminal legal system's current response should continue to rest heavily on their shoulders.

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§321. ~~Protective~~ Criminal Restraining Orders in Domestic Violence and Sexual Assault Crimes ~~orders in crimes between family members~~

~~**1. Definition.** For purposes of this section, "family or household members" means spouses or domestic partners or former spouses or former domestic partners, individuals presently or formerly living as spouses, natural parents of the same child, adult household members related by consanguinity or affinity or minor children of any household member when the offender is an adult household member. Holding oneself out to be a spouse is not necessary to constitute "living as spouses."~~

1~~2~~. Grounds for order. The court ~~may~~ shall issue a ~~protective~~ Criminal Restraining O~~o~~rder if:

A. ~~A person is charged with or convicted of a violation of Title 17-A, section 201, 202, 203, 204, 207, 207-A, 208, 208-A, 208-B, 208-C, 208-D, 208-E, 208-F, 209, 209-A, 210, 210-A, 210-B, 210-C, 211, 253, 301, 302, 303, 506-A or 556;~~ The defendant and the victim are family or household members, as defined in Title 19-A, section 4102(X), or dating partners, as defined in Title 19-A, section 4102(X); or

B. ~~The offender and the victim are family or household members; and~~ The defendant is charged with a sexual assault crime under Title 17-A, chapters 11 or 12, or sex trafficking under Title 17-A, sections 852 or 853; and

C. The court finds that ~~there is a likelihood that the offender may injure the health or safety of the victim in the future.~~ the issuance of an order is reasonably necessary to ensure the purposes and intent of the Maine Bail Code are met, as set out in Title 15, section 1002, and defined in Title 15, section 1003.

3. Scope of order. A ~~protective~~ Criminal Restraining O~~o~~rder ~~may~~ shall be a condition of release. It may require the offender:

A. To avoid all contact with the victim of the alleged crime or with any other family or household members of the victim or to contact those individuals only at certain times under certain conditions;

B. To stay away from the home, school, business or place of employment of the victim;

~~B. Not to visit, or to visit only at certain times or under certain conditions, a child residing with the victim; or~~

C. Refrain from possessing a firearm or other dangerous weapon;

D. Participate in an electronic monitoring program, if necessary to reasonably ensure the safety of a victim; or

E. Not to do specific acts which the court finds may harass, torment or threaten the victim.

4. Issuance of order. The clerk ~~may~~ shall issue, without fee, a copy of a protective order, amendment or revocation to the offender and~~,~~ the victim~~, and to the law enforcement agencies most likely to enforce it as determined by the court~~.

~~**5. Appeal.** A court decision may be appealed as provided by the Maine Rules of Civil Procedure.~~

5~~6~~. Penalty. Violation of a ~~protective~~ Criminal Restraining O~~o~~rder or of any similar order issued by any court of the United States or of any other state, territory, commonwealth or tribe, when the person has prior actual notice of the order, is a Class D crime. Notwithstanding any statutory provision to the contrary, an arrest for violation of a ~~protective~~ restraining order may be without warrant upon probable cause whether or not the violation is committed in the presence of the law enforcement officer. The law enforcement officer may verify, if necessary, the existence of a protective order by telephone or radio communication with a law enforcement agency with knowledge of the order.

§1023. Bail commissioners

1. Authority. A bail commissioner, appointed under this section, shall set preconviction bail for a defendant in a criminal proceeding in accordance with this chapter, provided that a bail commissioner may not set preconviction bail for a defendant:

A. Who is charged with murder;

B. If the attorney for the State requests a Harnish bail proceeding for a defendant charged with any other formerly capital offense; or

C. As otherwise provided in subsection 4.

2. Appointment. The Chief Judge of the District Court may appoint one or more residents of the State as bail commissioners. A bail commissioner serves at the pleasure of the Chief Judge of the District Court, but no term for which a bail commissioner is appointed may exceed 5 years. The Chief Judge of the District Court shall require bail commissioners to complete the necessary training requirements set out in this section. Bail commissioners have the powers of notaries public to administer oaths or affirmations in carrying out their duties.

3. Immunity from liability. A person appointed and serving as a bail commissioner is immune from any civil liability, as are employees of governmental entities under the Maine Tort Claims Act, Title 14, chapter 741 for acts performed within the scope of the bail commissioner's duties.

4. Limitations on authority. A bail commissioner may not:

A. Set preconviction bail for a defendant confined in jail or held under arrest by virtue of any order issued by a court in which bail has not been authorized;

B. Change bail set by a court;

B-1. Set preconviction bail for a defendant alleged to have committed any of the following offenses against a family or household member as defined in Title 19-A, section 4102, subsection 6:

(1) A violation of a protection from abuse order provision set forth in Title 19-A, former section 4006, subsection 5, paragraph A, B, C, D, E or F; Title 19-A, former section 4007, subsection 1, paragraph A, A-1, A-2, B, C, D, E or G; Title 19-A, section 4108, subsection 2, paragraph B, subparagraphs (1) to (6); or Title 19-A, section 4110, subsection 3, paragraph A, B, C, D, E, F, G or I;

(1-A) A violation of a criminal restraining order issued under Title 15, section 321;

(2) Any Class A, B or C crime under Title 17-A, chapter 9;

(3) Any Class A, B or C sexual assault offense under Title 17-A, chapter 11;

(4) Kidnapping under Title 17-A, section 301;

(5) Criminal restraint under Title 17-A, section 302, subsection 1, paragraph A, subparagraph (4) or Title 17-A, section 302, subsection 1, paragraph B, subparagraph (2);

(6) Domestic violence stalking that is a Class C crime under Title 17-A, section 210-C, subsection 1, paragraph B;

(7) Domestic violence criminal threatening that is a Class C crime under Title 17-A, section 209-A, subsection 1, paragraph B or domestic violence criminal threatening that is elevated to a Class C crime by the use of a dangerous weapon under Title 17-A, section 1604, subsection 5, paragraph A;

(8) Domestic violence terrorizing that is a Class C crime under Title 17-A, section 210-B, subsection 1, paragraph B or domestic violence terrorizing that is elevated to a Class C crime

by the use of a dangerous weapon under Title 17-A, section 1604, subsection 5, paragraph A; or

(9) Domestic violence reckless conduct that is a Class C crime under Title 17-A, section 211-A, subsection 1, paragraph B or domestic violence reckless conduct that is elevated to a Class C crime by the use of a dangerous weapon under Title 17-A, section 1604, subsection 5, paragraph A;

C. In a case involving domestic violence, set preconviction bail for a defendant before making a good faith effort to obtain from the arresting officer, the responsible prosecutorial office, a jail employee or other law enforcement officer:

(1) A brief history of the alleged abuser;

(2) The relationship of the parties;

(3) The name, address, phone number and date of birth of the victim;

(4) Existing conditions of protection from abuse orders, conditions of bail and conditions of probation;

(5) Information about the severity of the alleged offense; and

(6) Beginning no later than January 1, 2015, 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 conducted on the alleged abuser when the results are available;

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~~;

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;

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, cannabis or illegal drugs.

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.

6. Attorneys-at-law. No attorney-at-law who has acted as bail commissioner in any proceeding may act as attorney for or on behalf of any defendant for whom that attorney-at-law has taken bail in any such proceeding, nor may any attorney-at-law who has acted as attorney for a defendant in any offense act as bail commissioner in any proceeding arising out of the offense with which the defendant is charged.

7. Mandatory training. As a condition of appointment and continued service, a bail commissioner must successfully complete a bail training program, as prescribed and scheduled by the Chief Judge of the District Court, not later than one year following appointment. The Maine Criminal Justice Academy shall provide assistance to the Chief Judge of the District Court in establishing an appropriate training program for bail commissioners. The program shall include instruction on the provisions of this chapter, the relevant constitutional provisions on bail and any other matters pertinent to bail that the Chief Judge of the District Court considers appropriate and necessary. The Chief Judge of the District Court may establish a continuing education program for bail commissioners.

8. Bail commissioners in indigent cases. The Chief Judge of the District Court may adopt rules requiring a bail commissioner to appear and set bail regardless of whether the defendant is indigent and unable to pay the bail commissioner's fee. The Chief Judge of the District Court may also adopt rules governing the manner in which a bail commissioner is paid in the event an indigent person is released on bail and is unable to pay the bail commissioner's fee.

§1092. Violation of condition of release

1. Violation of condition of release. A defendant who has been granted preconviction or postconviction bail and who, in fact, violates a condition of release is guilty of: a

~~A. A Class E crime; or~~

~~B. A~~ Class C crime if the underlying crime was punishable by a maximum period of imprisonment of one year or more and the condition of release violated is one specified in section 1026, subsection 3, paragraph A, subparagraph (5) or (8).

2. Affirmative defense. It is an affirmative defense to prosecution under subsection 1 that the violation resulted from just cause.

3. Strict liability. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

4. Limitations on authority of bail commissioner to set bail. A court may, but a bail commissioner may not, set bail for a defendant granted preconviction or post-conviction bail who has been arrested for an alleged violation of this section. if:

~~A. The condition of release alleged to be violated relates to new criminal conduct for a crime classified as Class C or above or for a Class D or Class E crime involving domestic violence, sexual assault pursuant to Title 17-A, chapter 11 or sexual exploitation of minors pursuant to Title 17-A, chapter 12;~~

~~B. The underlying crime for which preconviction or post-conviction bail was granted is classified as Class C or above; or~~

~~C. The underlying crime for which preconviction or post-conviction bail was granted is a crime involving domestic violence, sexual assault pursuant to Title 17-A, chapter 11 or sexual exploitation of minors pursuant to Title 17-A, chapter 12.~~

~~If a bail commissioner does not have sufficient information to determine whether the violation of the condition of release meets the criteria set forth under this subsection, the bail commissioner may not set bail on the violation of the condition of release.~~

§1095. Proceedings for revocation of preconviction bail

1. In general. The attorney for the State, or the court on its own motion, may move for the revocation of a defendant's preconviction bail based upon probable cause to believe that the defendant 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. The motion must set forth the essential facts underlying the alleged violation. If the defendant has not already been arrested pursuant to subsection 2, the clerk of the court shall issue, upon the request of the attorney for the State or by direction of the court, a warrant for the defendant's arrest or, in lieu of a warrant if so directed, a summons ordering the defendant to appear for a court hearing on the alleged violation. The summons must include the signature of the attorney for the State or the court, the time and place of the alleged violation and the time, place and date the person is to appear in court. If the defendant can not be located with due diligence, a hearing on the motion for revocation must be heard in the defendant's absence.

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 the defendant's appearance at the time and place required 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.

§506-B. Violation of protective order

1. Violation of a protection from harassment order issued under Title 5, section 4654 or 4655, subsection 1, paragraphs A to C-1, is a Class D crime as provided in Title 5, section 4659, subsection 1.

2. Violation of a criminal restraining order ~~protective order in crimes between family members~~ issued under Title 15, section 321 is a Class D crime as provided in Title 15, section 321, subsection 6.

3. Violation of a protection from abuse order issued under Title 19-A, section 4108 or 4110, subsection 3, paragraphs A to G, is a Class D crime as provided in Title 19-A, section 4113, subsection 1 or a Class C crime as provided in Title 19-A, section 4113, subsection 4.