

§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; [PL 1987, c. 758, §20 (NEW).]

B. If the attorney for the State requests a Harnish bail proceeding for a defendant charged with any other formerly capital offense; or [PL 1987, c. 758, §20 (NEW).]

C. As otherwise provided in subsection 4. [PL 1987, c. 758, §20 (NEW).]
[PL 1987, c. 758, §20 (NEW).]

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.

[PL 1995, c. 356, §3 (AMD).]

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.

[PL 1989, c. 617, §3 (AMD).]

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; [PL 2001, c. 686, Pt. A, §1 (NEW).]

B. Change bail set by a court; [PL 2011, c. 341, §2 (AMD).]

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;

(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; [PL 2021, c. 647, Pt. B, §8 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]
- 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; [PL 2013, c. 424, Pt. A, §6 (RPR).]
- 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; [PL 2015, c. 436, §1 (AMD).]
- 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; [PL 2015, c. 436, §2 (AMD).]
- 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 [PL 2015, c. 436, §3 (NEW).]
- 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. [PL 2023, c. 299, §1 (AMD).]
[PL 2023, c. 299, §1 (AMD).]

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.

[PL 2021, c. 397, §1 (AMD).]

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.

[PL 1987, c. 758, §20 (NEW).]

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.

[PL 1989, c. 147, §1 (AMD).]

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.

[PL 2011, c. 214, §3 (NEW); PL 2011, c. 214, §6 (AFF).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §3 (AMD). PL 1989, c. 147, §1 (AMD). PL 1989, c. 185 (AMD). PL 1989, c. 617, §3 (AMD). PL 1993, c. 675, §B12 (AMD). PL 1995, c. 356, §3 (AMD). PL 1999, c. 15, §1 (AMD). PL 2001, c. 686, §A1 (AMD). PL 2009, c. 23, §1 (AMD). PL 2011, c. 214, §3 (AMD). PL 2011, c. 214, §6 (AFF). PL 2011, c. 341, §2 (AMD). PL 2011, c. 640, Pt. A, §§1, 2 (AMD). PL 2011, c. 680, §1 (AMD). PL 2013, c. 424, Pt. A, §6 (AMD). PL 2013, c. 519, §2 (AMD). PL 2015, c. 436, §§1-3 (AMD). PL 2019, c. 113, Pt. C, §32 (AMD). PL 2021, c. 397, §1 (AMD). PL 2021, c. 647, Pt. B, §8 (AMD). PL 2021, c. 647, Pt. B, §65 (AFF). PL 2023, c. 299, §1 (AMD).

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