

§1026. Standards for release for crime bailable as of right preconviction

1. In general. At the initial appearance before a judicial officer of a defendant in custody for a crime bailable as of right preconviction, the judicial officer may issue an order that, pending trial, the defendant be released:

- A. On personal recognizance or upon execution of an unsecured appearance bond under subsection 2-A; [PL 2007, c. 374, §3 (AMD).]
- B. On a condition or combination of conditions under subsection 3; or [PL 1997, c. 543, §7 (AMD).]
- C. On personal recognizance or execution of an unsecured appearance bond, accompanied by one or more conditions under subsection 3. [PL 1997, c. 543, §7 (NEW).]

Every order for the pretrial release of any defendant must include a waiver of extradition by the defendant and the conditions that the defendant refrain from new criminal conduct and not violate any pending protection from abuse orders pursuant to former Title 19, section 769 or Title 19-A, former section 4011 or Title 19-A, section 4113.

[PL 2021, c. 647, Pt. B, §9 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

2. Release on personal recognizance or unsecured appearance bond.

[PL 2007, c. 518, §2 (RP).]

2-A. Release on personal recognizance or unsecured appearance bond. 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 of the defendant as required; [PL 2007, c. 374, §5 (NEW).]
- B. The release would not reasonably ensure that the defendant would refrain from any new criminal conduct; [PL 2007, c. 374, §5 (NEW).]
- C. The release would not reasonably ensure the integrity of the judicial process; or [PL 2007, c. 374, §5 (NEW).]
- D. The release would not reasonably ensure the safety of others in the community. [PL 2007, c. 374, §5 (NEW).]

[PL 2007, c. 374, §5 (NEW).]

3. Release on conditions. Release on a condition or combination of conditions pursuant to subsection 1, paragraph B or C must be as provided in this subsection.

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 or cannabis 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);
 - (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 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;

(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. [PL 2023, c. 299, §2 (AMD).]

B. The judicial officer may not impose a financial condition that, either alone or in combination with other conditions of bail, is in excess of that 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 or to ensure the safety of others in the community. [PL 2007, c. 518, §3 (RPR).]

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 4102, subsection 6, paragraphs A to E or a dating partner as defined in Title 19-A, section 4102, subsection 4;

(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 4102, subsection 6, paragraphs A to E; or a crime against a dating partner as defined in Title 19-A, section 4102, subsection 4;

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

(5) When the defendant has failed to appear on the underlying Class E charge; or

(6) By stipulation. A financial condition imposed under this subparagraph may not exceed \$5. [PL 2023, c. 405, Pt. E, §§1, 2 (AMD).]

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 the court determines 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. [PL 2007, c. 518, §3 (RPR).]
[PL 2023, c. 299, §2 (AMD); PL 2023, c. 405, Pt. E, §§1, 2 (AMD).]

4. Factors to be considered in release decision. In setting bail, the judicial officer shall, on the basis of an interview with the defendant, information provided by the defendant's attorney and information provided by the attorney for the State or an informed law enforcement officer if the attorney for the State is not available and other reliable information that can be obtained, take into account the available information concerning the following:

- A. The nature and circumstances of the crime charged; [PL 1987, c. 758, §20 (NEW).]
- B. The nature of the evidence against the defendant; and [PL 1987, c. 758, §20 (NEW).]
- 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;
 - (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;
 - (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, former section 4011 or Title 19-A, section 4113;
 - (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. [PL 2021, c. 397, §5 (AMD); PL 2021, c. 647, Pt. B, §10 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

[PL 2021, c. 397, §5 (AMD); PL 2021, c. 647, Pt. B, §10 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

5. Contents of release order. In a release order issued under subsection 2-A or 3, the judicial officer shall:

A. Include a written statement that sets forth:

- (1) All the conditions to which the defendant 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) or (12) is ordered, the reason the judicial officer has set the amount of money ordered to be forfeited under the agreement; and [PL 2021, c. 608, Pt. C, §1 (AMD).]

B. Advise the defendant that:

- (1) The conditions of release take effect and are fully enforceable immediately as of the time the judicial officer sets the conditions, unless the release order expressly excludes a condition or conditions of release from immediate applicability; and
- (2) Failure to appear or comply with a condition or conditions of release may subject the defendant to revocation of bail and additional criminal penalties. [PL 2021, c. 608, Pt. C, §1 (AMD).]

[PL 2021, c. 608, Pt. C, §1 (AMD).]

6. Initial appearance in court. Nothing contained in this chapter may be construed as limiting the authority of a judge or justice to consider the issue of preconviction bail at a defendant's initial appearance in court.

[PL 1989, c. 147, §2 (NEW).]

7. Applicability of conditions of release. A condition of release takes effect and is fully enforceable immediately as of the time the judicial officer sets the condition, unless the release order expressly excludes a condition of release from immediate applicability, if the defendant is advised by a judicial officer, a law enforcement officer or an employee of a county or regional jail or a correctional facility having custody of the defendant:

A. Of the condition; and [PL 2021, c. 608, Pt. C, §2 (NEW).]

B. That failure to appear or comply with the condition may subject the defendant to revocation of bail and additional criminal penalties. [PL 2021, c. 608, Pt. C, §2 (NEW).]

[PL 2021, c. 608, Pt. C, §2 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §4 (AMD). PL 1989, c. 147, §2 (AMD). PL 1995, c. 356, §5 (AMD). PL 1997, c. 543, §7 (AMD). PL 1997, c. 585, §3 (AMD). PL 2001, c. 252, §§1,2 (AMD). PL 2005, c. 449, §1 (AMD). PL 2007, c. 374, §§3-10 (AMD). PL 2007, c. 377, §§4, 5 (AMD). PL 2007, c. 518, §§2, 3 (AMD). PL 2011, c. 680, §2 (AMD). PL 2013, c. 227, §1 (AMD). PL 2015, c. 436, §4 (AMD). PL 2017, c. 407, Pt. A, §§51, 52 (AMD). PL 2021, c. 397, §§2-6 (AMD). PL 2021, c. 608, Pt. C, §§1, 2 (AMD). PL 2021, c. 647, Pt. B, §§9, 10 (AMD). PL 2021, c. 647, Pt. B, §65 (AFF). PL 2023, c. 299, §2 (AMD). PL 2023, c. 405, Pt. E, §§1, 2 (AMD).

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