CHAPTER 105-A

MAINE BAIL CODE

SUBCHAPTER 1

GENERAL PROVISIONS

§1001. Title

This chapter shall be known and may be cited as the "Maine Bail Code." [PL 1987, c. 758, §20 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW).

§1002. Legislative findings; statement of purpose

The Legislature finds that the statutory provisions relative to bail for a defendant in a criminal case are scattered throughout numerous provisions of Maine's statutory law and that many such statutory provisions have not been updated to reflect the modern development of the law. The Legislature finds that the Supreme Judicial Court sitting as the Law Court has recently decided cases interpreting the various constitutional provisions dealing with bail for a defendant in a criminal proceeding and has provided guidance as to the proper interpretation of those constitutional provisions. The Legislature finds that it is in the interest of the State and of individual criminal defendants that the law relative to bail be incorporated into a modern, integrated and consistent code that will provide a comprehensive statement of the law of bail. It is the purpose and intent of this chapter to consolidate and clarify the various provisions of Maine law dealing with the subject of bail for a defendant in a criminal case. [PL 1987, c. 758, §20 (NEW).]

It is the purpose and intent of this chapter that bail be set for a defendant in order to reasonably ensure the appearance of the defendant as required, to otherwise reasonably ensure the integrity of the judicial process and, when applicable, to reasonably ensure the safety of others in the community. It is also the purpose and intent of this chapter that the judicial officer consider, relative to crimes bailable as of right preconviction, the least restrictive release alternative that will reasonably ensure the attendance of the defendant as required, or otherwise reasonably ensure the integrity of the judicial process. Finally, it is also the intent and purpose of this chapter that a defendant, while at liberty on bail, refrain from committing new crimes. [PL 1997, c. 543, §1 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §1 (AMD). PL 1997, c. 543, §§1,2 (AMD). PL 1997, c. 585, §1 (AMD).

§1003. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1987, c. 758, §20 (NEW).]

1. Bail. "Bail" is defined as follows.

A. In the preconviction context, "bail" means the obtaining of the release of the defendant upon an undertaking that the defendant shall appear at the time and place required and that the defendant shall conform to each condition imposed in accordance with section 1026 that is designed to ensure

that the defendant shall refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community. [PL 2007, c. 374, §1 (AMD).]

B. In the post-conviction context, "bail" means the obtaining of the release of the defendant upon an undertaking that the defendant shall appear and surrender into custody at the time and place required and that the defendant shall conform to each condition imposed in accordance with section 1051 that is designed to ensure that the defendant refrains from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community. [PL 2007, c. 374, §1 (AMD).]

[PL 2007, c. 374, §1 (AMD).]

2. Court. "Court" means any Justice of the Supreme Judicial Court or Superior Court or any active retired justice and any District Court Judge or active retired judge when assigned under Title 4, section 157-C.

[PL 1999, c. 547, Pt. B, §38 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

3. Crime bailable as of right preconviction. "Crime bailable as of right preconviction" means a crime for which, under the Constitution of Maine, Article I, Section 10, a defendant has an absolute right to have bail set at the preconviction stage of any criminal proceeding.

[PL 1987, c. 758, §20 (NEW).]

3-A. Crime involving domestic violence. "Crime involving domestic violence" means:

A. As defined in Title 17-A, a crime of domestic violence assault, domestic violence criminal threatening, domestic violence terrorizing, domestic violence stalking or domestic violence reckless conduct; and [PL 2011, c. 341, §1 (NEW).]

B. A violation of a protective order under Title 19-A, section 4011, the alleged victim of which is a family or household member as defined in Title 19-A, section 4002, subsection 4. [PL 2011, c. 341, §1 (NEW).]

[PL 2011, c. 341, §1 (NEW).]

4. Crime bailable only as a matter of discretion preconviction. "Crime bailable only as a matter of discretion preconviction" means a formerly capital offense for which, pursuant to a Harnish bail proceeding, a capital defendant's conditional constitutional right to have bail set at the preconviction stage of a criminal proceeding has been extinguished.

[PL 1987, c. 758, §20 (NEW).]

4-A. Ensure the safety of others in the community. "Ensure the safety of others in the community," when used in the context of the granting or denial of bail, means protecting community members, other than those already protected under subsection 5, from the potential danger posed by the defendant to a specific person or to persons in the community generally.

[PL 2007, c. 374, §2 (NEW).]

5. Ensure the integrity of the judicial process. To "ensure the integrity of the judicial process," when used in the context of the granting or denial of bail, means safeguarding the role of the courts in adjudicating the guilt or innocence of defendants by ensuring the presence of the defendant in court and otherwise preventing the defendant from obstructing or attempting to obstruct justice by threatening, injuring or intimidating a victim, prospective witness, juror, attorney for the State, judge, justice or other officer of the court.

A. [PL 1997, c. 585, §2 (RP).]

B. [PL 1997, c. 585, §2 (RP).]

[PL 1997, c. 585, §2 (RPR).]

5-A. Failure to appear. "Failure to appear" includes a failure to appear at the time or place required by a release order and the failure to surrender into custody at the time and place required by a release order or by the Maine Rules of Unified Criminal Procedure, Rule 32(a) and Rule 38(d).
[PL 2015, c. 431, §9 (AMD).]

6. Formerly capital offenses. "Formerly capital offenses" means crimes which have been denominated capital offenses since the adoption of the Constitution of Maine.
[PL 1987, c. 758, §20 (NEW).]

7. Harnish bail proceeding. "Harnish bail proceeding" means a preconviction bail proceeding in which the State is offered the opportunity to obtain a judicial finding of probable cause that the defendant has committed a formerly capital offense, and the defendant, at the same proceeding, is afforded the opportunity to know and rebut the case against the defendant.
[PL 1987, c. 758, §20 (NEW).]

8. Judicial officer. "Judicial officer" includes the court, as defined in subsection 2, and a bail commissioner.
[PL 1987, c. 758, §20 (NEW).]

8-A. New criminal conduct. "New criminal conduct" refers to criminal activity by a defendant occurring after bail has been set.
[PL 1997, c. 543, §6 (NEW).]

9. Post-conviction. "Post-conviction" means any point in a criminal proceeding after a verdict or finding of guilty or after the acceptance of a plea of guilty or nolo contendere.
[PL 1995, c. 356, §2 (AMD).]

10. Preconviction. "Preconviction" means any point in a criminal proceeding before a verdict in the context of a jury trial or finding of guilty in the context of a jury-waived trial or before the acceptance of a plea of guilty or nolo contendere.
[PL 1995, c. 356, §2 (AMD).]

11. Unified Criminal Docket. "Unified Criminal Docket" means the unified criminal docket established by the Supreme Judicial Court.
[PL 2015, c. 431, §10 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §2 (AMD). PL 1995, c. 356, §§1,2 (AMD). PL 1997, c. 543, §§3-6 (AMD). PL 1997, c. 585, §2 (AMD). PL 1999, c. 547, §B38 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2003, c. 15, §1 (AMD). PL 2007, c. 374, §§1, 2 (AMD). PL 2011, c. 341, §1 (AMD). PL 2015, c. 431, §§9, 10 (AMD).

§1004. Applicability and exclusions

This chapter applies to the setting of bail for a defendant in a criminal proceeding, including the setting of bail for an alleged contemnor in a plenary contempt proceeding involving a punitive sanction under the Maine Rules of Civil Procedure, Rule 66. It does not apply to the setting of bail in extradition proceedings under sections 201 to 229, post-conviction review proceedings under sections 2121 to 2132, probation revocation proceedings under Title 17-A, sections 1809 to 1814, supervised release revocation proceedings under Title 17-A, section 1883 or administrative release revocation proceedings under Title 17-A, sections 1851 to 1857, except to the extent and under the conditions stated in those sections. This chapter applies to the setting of bail for an alleged contemnor in a summary contempt proceeding involving a punitive sanction under the Maine Rules of Civil Procedure, Rule 66 and to the setting of bail relative to a material witness only as specified in sections 1103 and 1104, respectively. This chapter does not apply to a person arrested for a juvenile crime as defined in section 3103 or a

person under 18 years of age who is arrested for a crime defined under Title 12 or Title 29-A that is not a juvenile crime as defined in section 3103. [PL 2019, c. 113, Pt. C, §31 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1997, c. 317, §A1 (AMD). PL 1999, c. 788, §1 (AMD). PL 2003, c. 711, §A3 (AMD). PL 2005, c. 507, §4 (AMD). PL 2007, c. 552, §1 (AMD). PL 2011, c. 336, §1 (AMD). PL 2015, c. 431, §11 (AMD). PL 2019, c. 113, Pt. C, §31 (AMD).

SUBCHAPTER 2

PRECONVICTION BAIL

§1021. Superior Court and Supreme Judicial Court Justices

Any Justice of the Supreme Judicial Court or Superior Court or any active retired justice shall set preconviction bail for a defendant in a criminal proceeding in accordance with this chapter. [PL 1987, c. 758, §20 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW).

§1022. District Court Judges

Any District Court Judge or active retired judge shall set preconviction bail for a defendant in a criminal proceeding in accordance with this chapter. When the crime upon examination is found to be one not within the jurisdiction of the District Court, the judge shall set preconviction bail for the defendant to appear before the Superior Court in accordance with this chapter. [PL 1987, c. 758, §20 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW).

§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 4002, subsection 4:

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

(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 2019, c. 113, Pt. C, §32 (AMD).]

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 or illegal drugs. [PL 2015, c. 436, §3 (NEW).]

[PL 2019, c. 113, Pt. C, §32 (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. 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.

[PL 2009, c. 23, §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).

§1024. Clerks of court

Clerks of the District Court and clerks of the Superior Court, during the hours when the clerk's office is open for business and subject to the control of the District Court Judge or Superior Court Justice, may, without fee, take the personal recognizance of any defendant for appearance on a charge of a Class D or Class E crime. Nothing in this section may be construed to prohibit the appointment of any clerk of the District Court or the Superior Court as a bail commissioner, except that no fee may be charged by the clerk while the clerk's office is open for business. [PL 1987, c. 758, §20 (NEW).]

In any case when the District Judge or the Superior Court Justice has set bail for a defendant in a criminal case, the clerk of the District Court or of the Superior Court may, subject to the approval of the District Court Judge or Superior Court Justice, accept the bail, prepare the bond and take the acknowledgement of the defendant and sureties, if any, on the bond. [PL 1987, c. 758, §20 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW).

§1025. Law enforcement officers

A law enforcement officer making a warrantless arrest under Title 17-A, section 15 may, without fee, take the personal recognizance of any defendant for appearance on a charge of a Class D or Class E crime. If authorized, a law enforcement officer may, without fee, take the personal recognizance with deposit in accordance with Title 12, section 10353, subsection 2, paragraph C; and Title 12, section 9707. The law enforcement officer's authority under this section continues as long as the arrestee remains in the officer's custody. [PL 2003, c. 414, Pt. B, §28 (AMD); PL 2003, c. 614, §9 (AFF).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1989, c. 704, §3 (AMD). PL 1991, c. 521 (AMD). PL 1991, c. 548, §A5 (AMD). PL 1991, c. 824, §A23 (RPR). PL 1995, c. 356, §4 (AMD). PL 1997, c. 678, §20 (AMD). PL 2001, c. 604, §20 (AMD). PL 2003, c. 414, §B28 (AMD). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF).

§1025-A. County jail employees

If a court issues an order that a defendant in custody be released, pending trial, on personal recognizance or upon execution of an unsecured appearance bond, whether or not accompanied by one or more conditions under section 1026, subsection 3, an employee of the county jail having custody of the defendant, if authorized to do so by the sheriff, may, without fee, prepare the personal recognizance or bond and take the acknowledgement of the defendant. [PL 2005, c. 541, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 541, §1 (NEW).

§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 Title 19, section 769 or Title 19-A, section 4011. [PL 2007, c. 374, §3 (AMD).]

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 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 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;

(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. [PL 2017, c. 407, Pt. A, §51 (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).]

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 2017, c. 407, Pt. A, §51 (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;

(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 Title 19, section 769 or Title 19-A, section 4011. [PL 2017, c. 407, Pt. A, §52 (AMD).]

[PL 2017, c. 407, Pt. A, §52 (AMD).]

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 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 [PL 1987, c. 758, §20 (NEW).]

B. Advise the defendant of:

(1) The penalties if the defendant fails to appear as required; and

(2) The penalties for and consequences of violating a condition of release, including the immediate issuance of a warrant for the defendant's arrest. [PL 1997, c. 543, §7 (AMD).]

[PL 2007, c. 374, §10 (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 as of the time the judicial officer sets the condition, unless the bail order expressly excludes it from immediate applicability.

[PL 1995, c. 356, §5 (NEW).]

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).

§1027. Standards for release for formerly capital offenses

1. In general. At the initial appearance before a judicial officer of a defendant in custody preconviction for a formerly capital offense, the judicial officer shall issue an order under section 1026, unless the attorney for the State moves for a Harnish bail proceeding. If the attorney for the State requests a Harnish bail proceeding before bail has been set, the judicial officer shall order the defendant held pending a hearing under subsection 2. The attorney for the State may move for a Harnish bail proceeding at any time preconviction. If the attorney for the State moves for a Harnish bail proceeding after bail has been set, the court may hold the defendant pending a hearing under subsection 2 or may continue the defendant's bail.

[PL 1987, c. 758, §20 (NEW).]

2. Harnish bail proceeding. A Harnish bail proceeding must be held within 5 court days of the State's request unless the court, for good cause shown and at the request of either the defendant or the attorney for the State, grants a continuance. Evidence presented at a Harnish bail proceeding may include testimony, affidavits and other reliable hearsay evidence as permitted by the court. If, after the hearing, the court finds probable cause to believe that the defendant has committed a formerly capital offense, it shall issue an order under subsection 3. If, after the hearing, the court does not find probable cause to believe that the defendant's alleged criminal conduct was formerly a capital offense, it shall issue an order under section 1026 and may amend its bail order as provided under section 1026, subsection 3, paragraph C.

[PL 1995, c. 356, §6 (AMD).]

3. When conditional right has been extinguished at Harnish bail proceeding. The court's finding that probable cause exists to believe that the defendant committed a formerly capital offense

extinguishes the defendant's right to have bail set. The court shall make a determination as to whether or not the setting of bail is appropriate as a matter of discretion. The court may set bail unless the State establishes by clear and convincing evidence that:

A. There is a substantial risk that the capital defendant will not appear at the time and place required or will otherwise pose a substantial risk to the integrity of the judicial process; [PL 2007, c. 374, §11 (AMD).]

B. There is a substantial risk that the capital defendant will pose a danger to another or to the community; or [PL 1997, c. 543, §8 (AMD).]

C. There is a substantial risk that the capital defendant will commit new criminal conduct. [PL 1997, c. 543, §9 (NEW).]

In exercising its discretion, the court shall consider the factors listed in section 1026. If the court has issued a bail order on the basis of its discretionary authority to set bail in a case involving a formerly capital offense, the court having jurisdiction of the case may modify or deny bail at any time upon motion by the attorney for the State or the defendant or upon its own initiative and upon a showing of changed circumstances or the discovery of new and significant information.
[PL 2007, c. 374, §11 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1995, c. 356, §6 (AMD). PL 1997, c. 543, §§8,9 (AMD). PL 2007, c. 374, §11 (AMD).

§1028. De novo determination of bail under section 1026

1. By defendant in custody. Any defendant who is in custody as a result of a decision of a bail commissioner acting under section 1026 may file a petition with the Unified Criminal Docket for a de novo determination of bail. The bail commissioner making the decision shall advise the defendant of the right to obtain a de novo determination.

A. If the defendant chooses to have a de novo determination of bail, the defendant must be furnished with a petition and, upon execution of the petition and without the issuance of any writ or other process, the sheriff of the county in which the decision was made shall provide for the transportation of the defendant together with the petition and all papers relevant to the petition or copies of the petition or papers to the court.

If no justice or judge will be available within 48 hours, excluding Saturdays, Sundays and holidays, arrangements must be made for a de novo determination of bail in the nearest county in which a justice or judge is then sitting. The defendant's custodian shall provide transportation to the court as required by this chapter without the issuance of any writ or other process.

If there is no justice or judge available, the defendant must be retained in custody until the petition can be considered. [PL 2015, c. 431, §12 (AMD).]

B. The petition and such other papers as may accompany it must be delivered to the clerk of the Unified Criminal Docket to which the defendant is transported and upon receipt the clerk shall notify the attorney for the State. The court shall review the petition de novo and set bail in any manner authorized by section 1026. [PL 2015, c. 431, §12 (AMD).]

C. Upon receipt of a pro se petition or upon oral or written request of the attorney for the defendant, the clerk shall set a time for hearing and provide oral or written notice to the attorney for the State. The hearing must be scheduled for a time not less than 24 hours nor more than 48 hours after the clerk notifies the attorney for the State. [PL 1997, c. 543, §11 (NEW).]
[PL 2015, c. 431, §12 (AMD).]

2. By defendant not in custody. Any defendant who is not in custody but who is aggrieved by a decision of a bail commissioner acting under section 1026 as to the amount or conditions of bail set may file a petition with the Unified Criminal Docket for a de novo determination of bail. A justice or judge shall review the petition de novo and set bail in any manner authorized by section 1026. The petition must be considered as scheduled by the clerk.
[PL 2015, c. 431, §12 (AMD).]

3. No further relief. The de novo determination by a justice or judge under this section is final and no further relief is available.
[PL 2015, c. 431, §12 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1997, c. 543, §§10,11 (AMD). PL 1997, c. 585, §4 (AMD). PL 1999, c. 731, §ZZZ10 (AMD). PL 1999, c. 731, §ZZZ42 (AFF). PL 2003, c. 66, §1 (AMD). PL 2015, c. 431, §12 (AMD).

§1028-A. De novo determination of bail set by a justice or judge acting under section 1026

1. By defendant. Any defendant charged with a crime bailable as of right who is aggrieved by a decision of the court made at arraignment or initial appearance as to the amount or conditions of bail set may file a petition with the Unified Criminal Docket for a de novo determination of bail by another justice or judge in accordance with the procedures set forth in Rule 46(d) of the Maine Rules of Unified Criminal Procedure. The court making the initial decision shall advise the defendant of the right to obtain a de novo determination of bail.
[PL 2015, c. 431, §13 (NEW).]

2. No further relief. The de novo determination by a justice or judge under this section is final and no further relief is available.
[PL 2015, c. 431, §13 (NEW).]

SECTION HISTORY

PL 2015, c. 431, §13 (NEW).

§1029. Review of bail under section 1027

1. Petition for review. Any defendant in custody following a Harnish bail proceeding under section 1027 may petition a single Justice of the Supreme Judicial Court for review under this section and the additional procedures set forth in the Maine Rules of Unified Criminal Procedure, Rule 46(e)(1).

A. [PL 2015, c. 431, §14 (RP).]

B. [PL 2015, c. 431, §14 (RP).]
[PL 2015, c. 431, §14 (RPR).]

2. Standard of review. With respect to the finding of probable cause to believe that the defendant committed a formerly capital offense, the finding of the lower court shall be upheld, unless it is clearly erroneous provided there is an adequate record for purposes of review. With respect to all other issues or with respect to the issue of probable cause when the record is inadequate for review, the review shall be de novo. The parties shall cooperate to expeditiously assemble a record for review.
[PL 1989, c. 147, §3 (AMD).]

3. Evidence. The evidence consists of the information of record submitted in the Harnish bail proceeding under section 1027 and any additional information the parties may choose to present.
[RR 2009, c. 2, §31 (COR).]

4. No further relief. The review under this section is final and no further relief is available.
[PL 1999, c. 731, Pt. ZZZ, §11 (NEW); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1989, c. 147, §3 (AMD). PL 1999, c. 731, §ZZZ11 (AMD). PL 1999, c. 731, §ZZZ42 (AFF). RR 2009, c. 2, §31 (COR). PL 2015, c. 431, §14 (AMD).

§1030. State's attorney present at certain proceedings; opportunity to present relevant information

Before making a determination as to whether or not to set bail for a defendant charged with murder or a Class A, Class B or Class C crime and before any bail order is reviewed under section 1028 or 1029, the judicial officer shall afford the attorney for the State or a law enforcement officer familiar with the charges the opportunity to present any information relevant to bail considerations. This opportunity is in addition to the availability of a Harnish bail proceeding as otherwise provided in this chapter. [PL 1995, c. 356, §7 (AMD).]

An attorney for the State or a law enforcement officer familiar with the charges must be present in District Court at all proceedings governed by the Maine Rules of Unified Criminal Procedure, Rule 5, at which bail is being set. [PL 2015, c. 431, §15 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §5 (AMD). PL 1995, c. 356, §7 (AMD). PL 2015, c. 431, §15 (AMD).

§1031. Bail if no indictment

Any defendant charged with a formerly capital offense who has been denied bail in accordance with section 1027 shall have bail set under section 1026 if the defendant is not indicted in the county where the crime is alleged to have been committed at the 2nd regularly scheduled session of the grand jury next after the date of the denial of bail. [PL 1987, c. 758, §20 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW).

SUBCHAPTER 3

POST-CONVICTION BAIL

§1051. Post-conviction bail

1. Application to presiding judge or justice. After post-conviction, except as provided in this section, a defendant may apply to the judge or justice who presided at the trial for bail pending imposition or execution of sentence or entry of judgment or appeal. If the trial judge or justice is not available, the defendant may apply for bail under this section to another judge or justice of the court in which the defendant was convicted. Post-conviction bail is not available to a defendant convicted of:

A. Murder; [PL 1987, c. 758, §20 (NEW).]

B. Any other formerly capital offense for which preconviction bail was denied under section 1027; or [PL 1995, c. 356, §8 (AMD).]

C. Any crime when the defendant's preconviction bail was revoked and denied under sections 1096 and 1097. [PL 1995, c. 356, §8 (AMD).]

The judge or justice shall hold a hearing on the record on the bail application and shall state in writing or on the record the reasons for denying or granting bail. If bail is granted, the judge or justice shall also state, in writing or on the record, the reasons for the kind and amount of bail set, for any condition of release imposed and for the omission of any condition of release sought by the State.

The judge or justice may enter an order for bail pending appeal before a notice of appeal is filed, but conditioned upon its timely filing.

Every order for post-conviction release of a defendant must include a waiver of extradition by the defendant as well as a condition of bail that the defendant refrain from new criminal conduct and not violate any pending protection from abuse order pursuant to Title 19, section 769, or Title 19-A, section 4011.
[PL 1997, c. 543, §12 (AMD).]

2. Standards. Except as provided in subsection 4, a defendant may not be admitted to bail under this section unless the judge or justice has probable cause to believe that:

A. There is no substantial risk that the defendant will fail to appear as required and will not otherwise pose a substantial risk to the integrity of the judicial process; [PL 1997, c. 543, §13 (AMD).]

B. There is no substantial risk that the defendant will pose a danger to another or to the community; and [PL 1997, c. 543, §13 (AMD).]

C. There is no substantial risk that the defendant will commit new criminal conduct. [PL 1997, c. 543, §13 (NEW).]

In determining whether to admit a defendant to bail, the judge or justice shall consider the factors relevant to preconviction bail listed in section 1026, as well as the facts proved at trial, the length of the term of imprisonment imposed and any previous unexcused failure to appear as required before any court or the defendant's prior failure to obey an order or judgment of any court, including, but not limited to, violating a protection from abuse order pursuant to Title 19, section 769 or Title 19-A, section 4011.

If the judge or justice decides to set post-conviction bail for a defendant, the judge or justice shall apply the same factors in setting the kind and amount of that bail.
[PL 2007, c. 374, §12 (AMD).]

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. [PL 2015, c. 436, §5 (NEW).]

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. [PL 2015, c. 436, §5 (NEW).]
[PL 2015, c. 436, §5 (NEW).]

3. Conditions of release. Except as provided in subsection 4, the judge or justice may impose, in lieu of or in addition to an appearance or bail bond, any condition considered reasonably necessary to minimize the risk that the defendant may fail to appear as required, may compromise the integrity of the judicial process, may commit new criminal conduct, may fail to comply with conditions of release or may constitute a danger to another person or the community.
[PL 1997, c. 543, §14 (AMD).]

4. Standards applicable to bail arising out of State's appeal under section 2115-A, subsection 2. If the State initiates an appeal under section 2115-A, subsection 2, the judge or justice shall apply subchapter II to a defendant's application for bail pending that appeal.
[PL 1987, c. 758, §20 (NEW).]

5. Appeal by defendant. A defendant may appeal to a single Justice of the Supreme Judicial Court a denial of bail, the kind or amount of bail set or the conditions of release imposed by which the

defendant is aggrieved. The single justice may not conduct a hearing de novo respecting bail, but shall review the lower court's order. The defendant has the burden of showing that there is no rational basis in the record for the lower court's denial of bail, the kind or amount of bail set or the conditions of release imposed of which the defendant complains. The determination by the single justice is final and no further relief is available.

[PL 1999, c. 731, Pt. ZZZ, §12 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

6. Appeal by State. The State may appeal to a single Justice of the Supreme Judicial Court the granting of bail, the kind or amount of bail set or the lower court's failure to impose a condition of release. The single justice may not conduct a hearing de novo respecting bail, but shall review the lower court's order. The State has the burden of showing that there is no rational basis in the record for the lower court's granting of bail, the kind or amount of bail set or the omission of the conditions of which the State complains. The determination by the single justice is final and no further relief is available.

[PL 1999, c. 731, Pt. ZZZ, §12 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

7. Revocation of bail.

[PL 1991, c. 393, §1 (RP).]

7-A. Revocation of post-conviction bail.

[PL 1995, c. 356, §10 (RP).]

8. Failure to appear; penalty.

[PL 1995, c. 356, §11 (RP).]

9. Violation of condition of release; penalty.

[PL 1995, c. 356, §12 (RP).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §§6,7 (AMD). PL 1991, c. 393, §§1,2 (AMD). PL 1995, c. 356, §§8-12 (AMD). PL 1997, c. 543, §§12-14 (AMD). PL 1999, c. 731, §ZZZ12 (AMD). PL 1999, c. 731, §ZZZ42 (AFF). PL 2007, c. 374, §12 (AMD). PL 2015, c. 436, §5 (AMD).

SUBCHAPTER 4

SURETIES AND OTHER FORMS OF BAIL

§1071. Sureties to make statement of property

1. Statement by surety. Any person who offers to act as surety in the Superior Court for any defendant in a criminal prosecution, whether or not the defendant is an appellant from the finding of a Judge of the District Court, is to be admitted to bail to await the action of the grand jury, or is arrested in vacation on a warrant issued on an indictment pending in the Superior Court, may be required to file with the judicial officer a written statement signed and sworn to by the surety describing all real estate owned by the surety within the State with sufficient accuracy to identify it.

A. The statement must provide in detail all encumbrances and the value of the land. The value of the land must be based on the judgment of the surety. [PL 1997, c. 543, §15 (AMD).]

B. The certificate must remain on file with the original papers in the case and a certified copy must be transmitted by the judicial officer taking the bail to the clerk of court before which the defendant is to appear. [PL 1997, c. 543, §15 (AMD).]

C. Upon motion to the court and notice to the defendant, the defendant shall produce and the State has the right to examine all evidence of ownership, valuation and all encumbrances on the land. [PL 1997, c. 543, §15 (AMD).]

[PL 1997, c. 543, §15 (AMD).]

2. Bail lien required. Any person who offers real estate as surety for the appearance before a court of a defendant charged with murder or a Class A, Class B or Class C crime must file a bail lien with the register of deeds in the county where the real estate lies.

A. If the defendant is to be bailed prior to appearance in a court for the first time, the person offering the real estate shall file with that court a copy of the lien attested by the register of deeds, stating the date of recording and the book and page number at which the lien is recorded, on the next business day after which the real estate is offered.

(1) If a defendant is released from custody, prior to the defendant's first appearance in court, upon a person offering real estate as surety and that person fails to file with the court a duly attested copy of the lien required by this paragraph within the prescribed time limit, the defendant may be taken into custody without the issuance of further process and shall be held as though the surety had not offered real estate as surety. [PL 1987, c. 758, §20 (NEW).]

B. If the defendant is bailed after having appeared in court for the first time, the defendant shall not be released from custody until the person offering real estate has filed with the court, with which the bail is posted, a copy of the lien attested by the register of deeds, stating the date of recording and the book and page number at which the lien is recorded. [PL 1987, c. 758, §20 (NEW).]

C. The person filing the lien is responsible for the fee to be paid to the register of deeds for receiving, recording and indexing the bail lien and for discharge of the bail lien as provided in Title 33, chapter ll, subchapter IV. [PL 1987, c. 758, §20 (NEW).]

D. A bail lien is not required if bail is posted through a nonprofit bail assistance project. [PL 1987, c. 758, §20 (NEW).]

[PL 1987, c. 758, §20 (NEW).]

3. Limitation on real estate. As used in this chapter, real estate is limited to real property located in the State.

[PL 1987, c. 758, §20 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §8 (AMD). PL 1989, c. 147, §4 (AMD). PL 1997, c. 543, §15 (AMD).

§1072. Responsibility of sureties

1. Preconviction. Each surety for a defendant admitted to preconviction bail is responsible for the appearance of the defendant at all times as well as the defendant's compliance with each condition of release, including that the defendant refrain from new criminal conduct, until a verdict or finding or plea of guilty or until the acceptance of a plea of guilty or nolo contendere, unless the surety has sooner terminated the agreement to act as surety and has been relieved of the responsibility in accordance with section 1073.

A preconviction surety is not responsible for the appearance of a defendant after conviction nor for the defendant's compliance with the conditions of release, unless the surety has agreed to act as postconviction surety.

[PL 1997, c. 543, §16 (AMD).]

2. Post-conviction. Each surety for a defendant admitted to bail after conviction is responsible for the defendant's appearance at all times until the defendant enters into execution of any sentence of

imprisonment as well as the defendant's compliance with each condition of release, including that the defendant refrain from new criminal conduct, unless the surety has sooner terminated the agreement to act as surety and has been relieved of the responsibility in accordance with section 1073.
[PL 1997, c. 543, §16 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1989, c. 147, §5 (AMD). PL 1995, c. 356, §13 (AMD). PL 1997, c. 543, §16 (AMD).

§1072-A. Advising the surety

Prior to undertaking the responsibility as a surety for a defendant the surety must be: [PL 1997, c. 543, §17 (NEW).]

1. Written release order. Provided with a copy of the written release order pertaining to the defendant;
[PL 1997, c. 543, §17 (NEW).]

2. Appearance and conditions of release. Orally advised of the appearance requirement and of each of the conditions of release pertaining to the defendant for which the surety is responsible and the consequences to the surety if the defendant fails to appear as required or violates any condition of release; and
[PL 1997, c. 543, §17 (NEW).]

3. Responsibilities and consequences. Provided with a written statement advising the surety as to the general responsibilities of a surety under section 1072 and the consequences to the surety if the defendant fails to appear as required or fails to abide by each condition.
[PL 1997, c. 543, §17 (NEW).]

The Supreme Judicial Court shall by rule specify who is responsible for providing to the prospective surety the required oral and written advice as well as the copy of the written release order pertaining to the defendant. [PL 1997, c. 543, §17 (NEW).]

SECTION HISTORY

PL 1997, c. 543, §17 (NEW).

§1073. Termination of surety or cash bail agreement

A person who has agreed either to act as surety or to deposit cash bail for a defendant who has been admitted to preconviction bail may terminate the agreement by appearing before the clerk of the court having jurisdiction over the offense with which the defendant is charged and executing a statement under oath terminating the agreement. The statement must include a certification by the person that the person has notified the defendant or the defendant's attorney of the person's intention to terminate the agreement. A person may not terminate a cash bail agreement unless the person has been designated as the owner of all of the cash as required by section 1074. [PL 1995, c. 356, §14 (AMD).]

Upon execution of the statement terminating the agreement, the clerk shall bring the matter to the attention of a judge or justice of the court who, unless new and sufficient sureties have appeared or new and sufficient cash has been deposited, shall order the defendant committed for failure to furnish bail and shall issue a warrant for the defendant's arrest. [PL 1995, c. 356, §14 (AMD).]

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 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. [PL 2015, c. 436, §6 (AMD).]

A person who has agreed either to act as surety or to deposit cash bail for a defendant who has been admitted to post-conviction bail may terminate the agreement by following the procedure set forth in this section. [PL 1995, c. 356, §14 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1995, c. 356, §14 (AMD). PL 1997, c. 543, §18 (AMD). PL 2015, c. 436, §6 (AMD).

§1073-A. Precondition to forfeiture of cash or other property of surety if a defendant violates a condition of release; notice

(REPEALED)

SECTION HISTORY

PL 1997, c. 543, §19 (NEW). PL 2015, c. 436, §7 (RP).

§1074. Property of defendant and 3rd parties as bail

1. Cash. Whenever cash is deposited as bail to secure the appearance of and conformance to conditions of release by a defendant in a criminal proceeding, either preconviction or post-conviction, the cash is deemed to be the property of the defendant unless, at the time the cash is deposited, the defendant or the person offering the cash as bail designates under oath another person to whom the cash belongs. If a person other than the defendant has been designated as the owner of the cash, it must be returned to that person unless otherwise forfeited or subject to setoff under subsection 3-A. If the defendant is deemed to be the owner of the cash, it must be returned to the defendant unless otherwise forfeited or subject to setoff as provided in this section.
[PL 2013, c. 211, §1 (AMD).]

1-A. Miscellaneous costs. The Chief Justice of the Supreme Judicial Court is authorized to use General Fund appropriations to cover miscellaneous costs associated with the operation of the account of deposited cash bail.
[PL 2003, c. 673, Pt. P, §1 (NEW).]

2. Real estate. When a defendant in a criminal proceeding is the owner of real estate and offers that real estate as security for appearance before any court, the defendant must file a bail lien and otherwise comply with the requirements of section 1071 as if the defendant were a surety. A discharge of the bail lien is governed by section 1071, unless the bail has been forfeited or is subject to setoff in accordance with this section.
[PL 1987, c. 758, §20 (NEW).]

3. Setoff of defendant's property. When a defendant has deposited cash or other property owned by the defendant as bail or has offered real estate owned by the defendant and subject to a bail lien as bail and the cash, other property or real estate has not been forfeited, the court, before ordering the cash or other property returned to the defendant or discharging the real estate bail lien, shall determine whether the cash, other property or real estate or any portion of the cash, other property or real estate is subject to setoff as authorized by this section. The court may order all or a portion of the bail owned by a defendant that has not been forfeited to be first paid and applied to one or more of the following:

A. Any fine, forfeiture, penalty or fee imposed upon a defendant as part of the sentence for conviction of any offense arising out of the criminal proceeding for which the bail has been posted and the sentence for conviction of any offense in an unrelated civil or criminal proceeding; [PL 2003, c. 87, §1 (AMD).]

B. Any amount of restitution the defendant has been ordered to pay as part of the sentence imposed in the proceeding for which bail has been posted and in any unrelated proceeding; [PL 2003, c. 87, §1 (AMD).]

C. Any amount of attorney's fees or other expense authorized by the court at the request of the defendant or attorney and actually paid by the State on behalf of the defendant on the ground that the defendant has been found to be indigent in the proceeding for which bail has been posted and in any unrelated proceeding; and [PL 2003, c. 87, §1 (AMD).]

D. Any surcharge imposed by Title 4, section 1057. [PL 1987, c. 758, §20 (NEW).]

The court shall apply any bail collected pursuant to this subsection first to restitution then to attorney's fees and then to fines and surcharges.
[PL 2017, c. 284, Pt. UUUU, §15 (AMD).]

3-A. Setoff of 3rd party's property. When a person other than the defendant has deposited cash or other property owned by the person as bail on behalf of the defendant or has offered real estate owned by the person and subject to a bail lien as bail on behalf of the defendant and the cash, other property or real estate has not been forfeited, the court, before ordering the cash or other property returned to the person or discharging the real estate bail lien, shall determine whether the cash, other property or real estate or any portion of the cash, other property or real estate is subject to setoff as authorized by this section. The court may order all or a portion of the bail owned by the person that has not been forfeited to be first paid and applied to one or more of the following:

A. Any fine, forfeiture, penalty or fee owed by the person arising out of any civil or criminal proceeding; [PL 2013, c. 211, §1 (NEW).]

B. Any amount of restitution the person has been ordered to pay as part of any court proceeding; [PL 2013, c. 211, §1 (NEW).]

C. Any amount of attorney's fees or other expense authorized by the court at the request of the person or the person's attorney and actually paid by the State on behalf of the person on the ground that the person has been found to be indigent in any proceeding; and [PL 2013, c. 211, §1 (NEW).]

D. Any surcharge imposed by Title 4, section 1057. [PL 2013, c. 211, §1 (NEW).]

The court shall apply any bail collected pursuant to this subsection first to restitution.
[PL 2013, c. 211, §1 (NEW).]

4. Enforcement orders. If the court determines that bail owned by a defendant or 3rd party should be ordered set off as authorized by this section, the court may issue any appropriate orders considered necessary to enforce the setoff. The orders may include, but are not limited to:

A. A direction to the clerk of courts to pay cash bail directly to a specified person, organization or government; [PL 1987, c. 758, §20 (NEW).]

B. An order directed to a public official or the defendant requiring that other property or real estate be sold and the proceeds paid to a specified person, organization or government; and [PL 1987, c. 758, §20 (NEW).]

C. An order requiring the defendant to convey clear and marketable title or other evidence of ownership of interest in real estate or other property to a specified person, organization or government. [PL 1987, c. 758, §20 (NEW).]

[PL 2013, c. 211, §1 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1997, c. 543, §20 (AMD). PL 2003, c. 87, §1 (AMD). PL 2003, c. 673, §P1 (AMD). PL 2013, c. 211, §1 (AMD). PL 2017, c. 284, Pt. UUUU, §15 (AMD).

§1075. Attorney not to act as surety or deposit cash bail for client

An attorney, while representing a defendant, may not act as surety for or deposit cash bail for the client. [PL 2003, c. 15, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 15, §2 (NEW).

SUBCHAPTER 5

ENFORCEMENT

ARTICLE 1

GENERAL PROVISIONS

§1091. Failure to appear; penalty

1. Failure to appear. A defendant who has been admitted to either preconviction or postconviction bail and who, in fact, fails to appear as required is guilty of:

A. A Class E crime if the underlying crime was punishable by a maximum period of imprisonment of less than one year; or [PL 2003, c. 452, Pt. H, §2 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

B. A Class C crime if the underlying crime was punishable by a maximum period of imprisonment of one year or more. [PL 2003, c. 452, Pt. H, §2 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

[PL 2003, c. 452, Pt. H, §2 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

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

[PL 2003, c. 452, Pt. H, §2 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

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

[PL 2003, c. 452, Pt. H, §2 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1995, c. 356, §16 (AMD). PL 2003, c. 452, §H2 (RPR). PL 2003, c. 452, §X2 (AFF).

§1091-A. Failure to report

1. Failure to report after stay of execution. A defendant who has been sentenced but granted a stay of execution to report until a specified date or event and who, in fact, fails to report as ordered is guilty of:

A. A Class E crime if the underlying crime was punishable by a maximum period of imprisonment of less than one year; or [PL 1995, c. 456, §1 (NEW).]

B. A Class C crime if the underlying crime was punishable by a maximum period of imprisonment of one year or more. [PL 1995, c. 456, §1 (NEW).]

[PL 2013, c. 266, §1 (AMD).]

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

[PL 2013, c. 266, §1 (NEW).]

3. Strict liability. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.
[PL 2013, c. 266, §1 (NEW).]

SECTION HISTORY

PL 1995, c. 456, §1 (NEW). PL 2013, c. 266, §1 (AMD).

§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 Class E crime; or [PL 2003, c. 452, Pt. H, §3 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

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), (8), (10-A) or (13). [PL 2005, c. 449, §2 (AMD).]
[PL 2005, c. 449, §2 (AMD).]

2. Affirmative defense. It is an affirmative defense to prosecution under subsection 1 that the violation resulted from just cause.
[PL 2003, c. 452, Pt. H, §3 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

3. Strict liability. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.
[PL 2003, c. 452, Pt. H, §3 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

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; [PL 2011, c. 341, §3 (NEW).]

B. The underlying crime for which preconviction or post-conviction bail was granted is classified as Class C or above; or [PL 2013, c. 519, §3 (AMD).]

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. [PL 2013, c. 519, §3 (AMD).]

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.
[PL 2013, c. 519, §3 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §9 (AMD). PL 1995, c. 356, §17 (AMD). PL 2003, c. 452, §H3 (RPR). PL 2003, c. 452, §X2 (AFF). PL 2005, c. 449, §2 (AMD). PL 2011, c. 341, §3 (AMD). PL 2013, c. 519, §3 (AMD).

§1093. Revocation of preconviction bail

(REPEALED)

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §10 (AMD). PL 1989, c. 147, §6 (AMD). PL 1991, c. 393, §3 (AMD). PL 1995, c. 356, §18 (RP).

§1094. Forfeiture of bail; enforcement

When a defendant who has been admitted to either preconviction or post-conviction bail in a criminal case fails to appear as required or has violated the conditions of release, the court shall declare a forfeiture of the bail. The obligation of the defendant and any sureties may be enforced in such manner as the Supreme Judicial Court shall by rule provide and in accordance with section 224-A and Title 17-A, section 2015, subsection 4. The rules adopted by the Supreme Judicial Court must provide for notice to the defendant and any sureties of the consequences of failure to comply with the conditions of bail. [PL 2019, c. 113, Pt. C, §33 (AMD).]

If the obligation of the defendant or any surety has been reduced to judgment pursuant to the Maine Rules of Unified Criminal Procedure, Rule 46, the following provisions apply to the enforcement of the obligation. [PL 2015, c. 431, §16 (AMD).]

1. Execution. The court shall issue an execution of the judgment once the judgment has become final by the expiration of the time for appeal, by dismissal of an appeal or on certificate of decision from the Supreme Judicial Court, unless the court that rendered judgment on the bail obligation has pursuant to rule ordered execution at an earlier time. The execution of the judgment is returnable within one year after issuance.
[PL 1991, c. 393, §4 (NEW).]

2. Lien on real estate, personal property and motor vehicles. An execution issued under this section creates the lien described in Title 14, section 4651-A, if properly filed according to that section. A filing or recording fee may not be charged for any execution issued under this section.
[PL 1991, c. 393, §4 (NEW).]

2-A. Violation of unsecured preconviction bail. If the court determines that an offender has violated unsecured preconviction bail and that the violation is not excused, the court shall enter an order of forfeiture of bail, which may not exceed the amount of the unsecured bail previously set. The attorney for the State may take action to collect the amount forfeited using measures authorized for the collection of unpaid restitution under Title 17-A, section 2006, including, but not limited to, entering into agreements with the offender for payment over a set period of time not to exceed one year. In order to satisfy an order of forfeiture entered under this subsection, pursuant to Title 36, section 185-A, the State Tax Assessor may withhold tax refunds owed to an offender.
[PL 2019, c. 659, Pt. D, §1 (AMD).]

3. Relation back of liens. The effective date of any execution lien created on any property pursuant to this section and Title 14, section 4651-A relates back to the date when a bail lien, as described in section 1071, was first filed or recorded in the proper place for the perfection or attachment of the lien. The relation back applies only to that portion of the bail obligation that the bail lien secured when it was recorded or filed. The remainder of the execution lien and the full amount of any execution lien created when no bail lien was ever recorded or filed, is effective and perfected from the date of the recording or filing of the execution. Any lien created pursuant to this section and Title 14, section 4651-A continues as long as the judgment issued on the bail obligation or any part of the bail obligation, plus costs and interest, has not been paid, discharged or released.
[PL 1991, c. 393, §4 (NEW).]

4. Enforcement. The lien provided by this section may be enforced by a turnover or sale order pursuant to Title 14, section 3131.
[PL 1991, c. 393, §4 (NEW).]

5. Application. This section applies to all bail obligations in effect on or after October 1, 1991 and all bail liens recorded as of or after October 1, 1991.

[PL 1991, c. 393, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1991, c. 393, §4 (RPR). PL 1997, c. 543, §21 (AMD). PL 2007, c. 31, §2 (AMD). PL 2015, c. 431, §16 (AMD). PL 2017, c. 221, §1 (AMD). PL 2019, c. 113, Pt. C, §§33, 34 (AMD). PL 2019, c. 659, Pt. D, §1 (AMD).

§1094-A. Improper contact after bail has been revoked and denied

A person is guilty of improper contact after bail has been revoked and denied if, while being detained as a result of the person's preconviction or post-conviction bail having been revoked and denied, the person intentionally or knowingly makes direct or indirect contact with a person when that contact was prohibited under a former condition of release. Violation of this section is a Class D crime. [PL 2011, c. 604, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 604, §1 (NEW).

§1094-B. Improper contact with a family or household member prior to the setting of preconviction bail

1. Improper contact. A person is guilty of improper contact with a family or household member prior to the setting of preconviction bail if:

A. The person is being detained as a result of the person's arrest for an offense specified in section 1023, subsection 4, paragraph B-1; [PL 2013, c. 478, §2 (NEW).]

B. Preconviction bail has not been set by a justice or judge; [PL 2013, c. 478, §2 (NEW).]

C. The person is notified, in writing or otherwise, by the county jail staff or a law enforcement officer not to make direct or indirect contact with the specifically identified alleged victim of the offense for which the person is being detained; [PL 2017, c. 66, §1 (AMD).]

D. The alleged victim is a family or household member of the person; and [PL 2013, c. 478, §2 (NEW).]

E. After the notification specified in paragraph C, the person intentionally or knowingly makes direct or indirect contact with the specifically identified alleged victim. [PL 2013, c. 478, §2 (NEW).]

As used in this subsection, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4.
[PL 2017, c. 66, §1 (AMD).]

2. Penalty. Violation of this section is a Class D crime.
[PL 2013, c. 478, §2 (NEW).]

SECTION HISTORY

PL 2013, c. 478, §2 (NEW). PL 2017, c. 66, §1 (AMD).

§1094-C. Improper contact with alleged murder victim's family or household member

1. Improper contact. A person is guilty of improper contact with an alleged murder victim's family or household member if:

A. The person is being detained as a result of the person's arrest for the intentional or knowing murder of the alleged victim; [PL 2017, c. 432, Pt. A, §2 (NEW).]

B. A Harnish bail proceeding:

(1) Has not yet taken place;

(2) Has been waived in open court by the person; or

(3) Has taken place and the person's conditional right to bail has been extinguished and bail has been denied by the court; [PL 2017, c. 432, Pt. A, §2 (NEW).]

C. The person:

(1) In the circumstance specified in paragraph B, subparagraph (1) is notified, in writing or otherwise, by the detaining county jail, correctional facility or mental health institute staff not to make direct or indirect contact with any specifically identified family or household member of the alleged victim of the crime for which the person is being detained; or

(2) In the circumstance specified in paragraph B, subparagraph (2) or (3) is notified on the record or in writing by the court not to make direct or indirect contact with any specifically identified family or household member of the alleged victim of the crime for which the person is being detained; and [PL 2017, c. 432, Pt. A, §2 (NEW).]

D. After the notification specified in paragraph C, the person intentionally or knowingly makes direct or indirect contact with the specifically identified family or household member of the alleged victim of the crime for which the person is being detained. [PL 2017, c. 432, Pt. A, §2 (NEW).]

As used in this subsection, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4.
[PL 2017, c. 432, Pt. A, §2 (NEW).]

2. Penalty. Violation of this section is a Class C crime.
[PL 2017, c. 432, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2017, c. 432, Pt. A, §2 (NEW).

ARTICLE 2

REVOCATION OF PRECONVICTION BAIL

§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.
[PL 1995, c. 356, §19 (NEW).]

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.
[PL 2011, c. 640, Pt. A, §3 (AMD).]

SECTION HISTORY

PL 1995, c. 356, §19 (NEW). PL 1997, c. 543, §22 (AMD). PL 2011, c. 341, §4 (AMD). PL 2011, c. 640, Pt. A, §3 (AMD).

§1096. Grounds for revocation of preconviction bail

A preconviction bail order of a bail commissioner may be revoked by any judge or justice, and a preconviction bail order of a judge or justice may be revoked by any judge or justice of the same court, upon a determination made after notice and opportunity for hearing that: [PL 2005, c. 449, §3 (AMD).]

1. Probable cause. Probable cause exists to believe that the defendant has committed a new crime following the setting of preconviction bail; or
[PL 1995, c. 356, §19 (NEW).]

2. Clear and convincing evidence. Clear and convincing evidence exists that the defendant has failed to appear as required or has violated any other condition of the preconviction bail.
[PL 1995, c. 356, §19 (NEW).]

SECTION HISTORY

PL 1995, c. 356, §19 (NEW). PL 2005, c. 449, §3 (AMD).

§1097. Disposition after revocation of preconviction bail

1. New criminal conduct. If the judge or justice finds that there are conditions of release that will reasonably ensure that the defendant will not continue to commit new crimes while out on bail, 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.
[PL 1997, c. 543, §23 (RPR).]

2. Appearance of the defendant; 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 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.
[PL 2007, c. 374, §13 (AMD).]

2-A. Crimes involving domestic violence. If the underlying crime is an offense specified in section 1023, subsection 4, paragraph B-1 and the new conduct found by the court pursuant to section 1096 involves new allegations of domestic violence or contact with a victim or witness in the underlying case, the judge or justice shall issue an order denying bail, unless the judge or justice makes the findings

on the record required by both subsections 1 and 2. The judge or justice shall issue an order denying bail if there has been a previous revocation of preconviction bail pursuant to section 1096.
[PL 2011, c. 640, Pt. A, §4 (NEW).]

3. Appeal. A defendant in custody as a result of an order issued under this section may appeal to a single Justice of the Supreme Judicial Court. The appeal must be in accordance with the procedures set forth in the Maine Rules of Unified Criminal Procedure, Rule 46(e)(2). The review is limited to a review of the record to determine whether the order was rationally supported by the evidence. The determination by the single justice is final and no further relief is available.
[PL 2015, c. 431, §17 (AMD).]

4. Limitations on bail. When a court has, after revocation on a complaint, ordered the defendant held without bail, the defendant is not entitled to have bail set when the same or more serious charges are brought by indictment or, if waived, by information or complaint, for the same underlying conduct. If different and lesser charges are later brought by the State for the same underlying conduct, the new lesser charges may constitute a change of circumstances pursuant to section 1026, subsection 3, paragraph C.
[PL 2015, c. 431, §18 (AMD).]

SECTION HISTORY

PL 1995, c. 356, §19 (NEW). PL 1997, c. 543, §23 (AMD). PL 1999, c. 731, §ZZZ13 (AMD). PL 1999, c. 731, §ZZZ42 (AFF). PL 2007, c. 374, §13 (AMD). PL 2011, c. 640, Pt. A, §4 (AMD). PL 2015, c. 431, §§17, 18 (AMD).

ARTICLE 3

REVOCATION OF POST-CONVICTION BAIL

§1098. Proceedings for revocation of post-conviction 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 post-conviction bail based upon probable cause to believe that the defendant has failed to appear as required, has violated a condition of post-conviction bail or has been charged with a crime allegedly committed while released on post-conviction 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 the 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.
[PL 1995, c. 356, §19 (NEW).]

2. Arrest. Prior to the filing of a motion to revoke a defendant's post-conviction 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, violated a condition of post-conviction bail or been charged with a crime allegedly committed while released on post-conviction bail. A defendant under arrest pursuant to this section must be brought before a judge or justice of the appropriate court. The judge or justice shall determine without hearing whether the existing post-conviction bail order should be modified or the defendant should be committed without bail 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.
[PL 2011, c. 341, §5 (AMD).]

SECTION HISTORY

PL 1995, c. 356, §19 (NEW). PL 2011, c. 341, §5 (AMD).

§1099. Grounds for revocation of post-conviction bail

An order of post-conviction bail entered by a judge or justice may be revoked by the judge or justice or, if that judge or justice is not available, by another judge or justice of the same court, upon determination made after notice and opportunity for hearing that: [PL 1995, c. 356, §19 (NEW).]

1. Crime charged. The defendant has in fact been charged with a crime allegedly committed after post-conviction bail was set;
[PL 1995, c. 356, §19 (NEW).]

2. Failure to appear. The defendant has failed to appear as required or has violated a condition of post-conviction bail as demonstrated by a preponderance of the evidence; or
[PL 1995, c. 356, §19 (NEW).]

3. Appeal for purposes of delay. The defendant's appeal has been taken for the purpose of delay as demonstrated by a preponderance of the evidence.
[PL 1995, c. 356, §19 (NEW).]

SECTION HISTORY

PL 1995, c. 356, §19 (NEW).

§1099-A. Disposition after revocation of post-conviction bail

1. Held without bail. The judge or justice shall order the defendant held without bail unless the judge or justice finds that under the facts of the case it would be unreasonable to do so, in which event the judge or justice shall issue an order under section 1051.
[PL 1995, c. 356, §19 (NEW).]

2. Appeal. A defendant in custody as a result of an order issued under this section may appeal to a single Justice of the Supreme Judicial Court who shall review the revocation pursuant to the procedures set forth in section 1051, subsection 5. The determination by the single justice is final and no further relief is available.
[PL 1999, c. 731, Pt. ZZZ, §14 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

SECTION HISTORY

PL 1995, c. 356, §19 (NEW). PL 1999, c. 731, §ZZZ14 (AMD). PL 1999, c. 731, §ZZZ42 (AFF).

SUBCHAPTER 6

MISCELLANEOUS

§1101. Forms and rules

The Supreme Judicial Court shall develop forms and adopt such rules as may be necessary to implement this chapter. [PL 1987, c. 758, §20 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW).

§1102. Detention of juveniles charged as adults

(REPEALED)

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1995, c. 65, §A44 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 2001, c. 667, §A31 (AMD). PL 2003, c. 180, §1 (RP).

§1103. Summary contempt proceeding involving a punitive sanction

The setting of bail for an alleged contemnor in a summary contempt proceeding involving a punitive sanction under the Maine Rules of Civil Procedure, Rule 66, including any appeal under section 2115-B, is a matter wholly within the discretion of the court. Subchapters 4 and 5 apply. [PL 2007, c. 552, §2 (AMD).]

SECTION HISTORY

PL 1997, c. 317, §A2 (NEW). PL 2007, c. 552, §2 (AMD).

§1104. Material witness; arrest and bail

If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure the presence of that person by subpoena, the court may order the arrest of that person and may require that person to give bail for that person's appearance as a witness, utilizing the same standards for release as for a defendant preconviction bailable as of right under subchapter II. Subchapters IV and V also apply. [PL 1997, c. 317, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 1997, c. 317, §A2 (NEW).

§1105. Substance use disorder treatment program

As a condition of post-conviction release, the court may impose the condition of participation in a substance use disorder treatment program for a period not to exceed 24 months pursuant to Title 4, chapter 8. Upon request of the Department of Corrections, the court may require the defendant to pay a substance use testing fee as a requirement of participation in the substance use disorder treatment program. If at any time the court finds probable cause that a defendant released with a condition of participation in a substance use disorder treatment program has intentionally or knowingly violated any requirement of the defendant's participation in the substance use disorder treatment program, the court may suspend the order of bail for a period of up to 7 days for any such violation. The defendant must be given an opportunity to personally address the court prior to the suspension of an order of bail under this section. A period of suspension of bail is a period of detention under Title 17-A, section 2305. This section does not restrict the ability of the court to take actions other than suspension of the order of bail for the violation of a condition of participation in a substance use disorder treatment program or the ability of the court to entertain a motion to revoke bail under section 1098 and enter any dispositional order allowed under section 1099-A. If the court orders participation in a substance use disorder treatment program under this section, upon sentencing the court shall consider whether there has been compliance with the program. [PL 2019, c. 113, Pt. C, §35 (AMD).]

SECTION HISTORY

PL 2001, c. 318, §1 (NEW). PL 2003, c. 205, §2 (AMD). PL 2017, c. 407, Pt. A, §53 (AMD). PL 2019, c. 113, Pt. C, §35 (AMD).

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