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Public Law
123rd Legislature
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Chapter 374
S.P. 169 - L.D. 514

An Act To Protect Community Safety by Amending Maine's Bail Code

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

Sec. 1. 15 MRSA §1003, sub-§1, as amended by PL 1997, c. 543, §§3 and 4, is further amended to read:

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 any~~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 ~~that the defendant shall refrain from any new criminal conduct~~to ensure the safety of others in the community. For crimes bailable only as a matter of discretion preconviction, bail also means the obtaining of the release of the defendant upon an undertaking that the defendant shall conform to each condition that is designed to ensure the safety of others in the community.

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 refrain from any new criminal conduct and that the defendant shall conform to each condition imposed~~ in accordance with section 1051 that is designed to ~~otherwise 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.

Sec. 2. 15 MRSA §1003, sub-§4-A is enacted to read:

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.

Sec. 3. 15 MRSA §1026, sub-§1, ¶A, as amended by PL 1997, c. 543, §7, is further amended to read:

A. On personal recognizance or upon execution of an unsecured appearance bond under subsection 22-A;

Sec. 4. 15 MRSA §1026, sub-§2, as amended by PL 2001, c. 252, §1, is repealed.

Sec. 5. 15 MRSA §1026, sub-§2-A is enacted to read:

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;
- B. The release would not reasonably ensure that the defendant would refrain from any new criminal conduct;
- C. The release would not reasonably ensure the integrity of the judicial process; or
- D. The release would not reasonably ensure the safety of others in the community.

Sec. 6. 15 MRSA §1026, sub-§3, ¶A, as amended by PL 2005, c. 449, §1, is further amended to read:

A. If, after consideration of the factors listed in subsection 4, the judicial officer determines that the release described in subsection ~~22-A~~ will not reasonably ensure the appearance of the defendant ~~as at the time and place required or,~~ will not otherwise 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 ~~as at the time and place required and,~~ will otherwise 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 ~~both~~ the appearance of the defendant ~~as at the time and place required and,~~ 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 use or excessive use of alcohol and from any use of drugs;
- (10) Undergo, as an outpatient, available medical or psychiatric treatment, or enter and remain, as a voluntary patient, in a specified institution when required for that purpose;
- (10-A) Enter and remain in a long-term residential facility for the treatment of substance abuse;
- (11) Execute an agreement to forfeit, ~~upon failing to appear as required~~ 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 ~~and~~, 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 ~~and~~, 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 ~~summoned~~summonsed for new criminal conduct; and

(18) Satisfy any other condition that is reasonably necessary to ensure the appearance of the defendant as at the time and place required and, to otherwise reasonably 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.

Sec. 7. 15 MRSA §1026, sub-§3, ¶B, as amended by PL 1997, c. 543, §7, is further amended to read:

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 as at the time and place required or, to otherwise 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.

Sec. 8. 15 MRSA §1026, sub-§3, ¶C, as enacted by PL 1987, c. 758, §20, is amended to read:

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 ~~will to~~ reasonably ensure the appearance of the defendant as at the time and place required and will otherwise reasonably ensure, that the defendant will refrain from any new criminal conduct, the integrity of the judicial process and the safety of others in the community.

Sec. 9. 15 MRSA §1026, sub-§4, ¶C, as amended by PL 1997, c. 543, §7, is further amended to read:

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 relating to drug or alcohol abuse;
- (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;
- (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.

Sec. 10. 15 MRSA §1026, sub-§5, as amended by PL 1997, c. 543, §7, is further amended to read:

5. Contents of release order. In a release order issued under subsection 22-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
- 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.

Sec. 11. 15 MRSA §1027, sub-§3, as amended by PL 1997, c. 543, §§8 and 9, is further amended to read:

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 as at the time and place required or will otherwise pose a substantial risk to the integrity of the judicial process;
- B. There is a substantial risk that the capital defendant will pose a danger to another or to the community; or
- C. There is a substantial risk that the capital defendant will commit new criminal conduct.

In exercising its discretion, the court shall consider the factors listed in section 1026 ~~and any prior history of dangerousness~~. 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.

Sec. 12. 15 MRSA §1051, sub-§2, as amended by PL 1997, c. 543, §13, is further amended to read:

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;
- B. There is no substantial risk that the defendant will pose a danger to another or to the community; and
- C. There is no substantial risk that the defendant will commit new criminal conduct.

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, ~~any history of dangerousness~~ 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.

Sec. 13. 15 MRSA §1097, sub-§2, as repealed and replaced by PL 1997, c. 543, §23, is amended to read:

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 when at the time and place required and ~~will otherwise 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.

Effective September 20, 2007