

NEW PROPOSED AMENDMENT TO LD 1421 AS OF JULY 20, 2020

COMMITTEE AMENDMENT “.” To LD 1421, An Act To Amend the Maine Bail Code

Amend the bill by striking out everything after the enacting clause and inserting in its place the following:

Sec. 1. 15 MRSA §1023, sub-§4, ¶¶F and G are amended to read:

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

F. Set preconviction bail for crimes involving allegations of domestic violence without specifying a court date within 5 weeks of the date of the bail order; or

G. Notwithstanding section 1026, subsection 3, paragraph A, subparagraph (9-A), impose a condition of preconviction bail that a defendant submit to random search with respect to a prohibition on the possession, use or excessive use of alcohol or illegal drugs; or

Sec. 2. 15 MRSA §1023, sub-§4, ¶H is enacted to read:

H. Notwithstanding section 1026, subsection 3, paragraph A, subparagraphs (11), (12) and (18) and subsection 3, paragraph B, impose a financial condition of release for a defendant for whom the highest Class of crime charged was a Class E crime, except that a financial condition may be imposed for a defendant charged with a Class E crime:

(1) That is a violation of Title 17-A, chapter 11;

(2) That was committed against a family or household member as defined in Title 19-A, section 4002, subsection 4 or a dating partner as defined in title 19-A, section 4002, subsection 3-A; or

(3) That is a violation of a condition of release committed while the defendant is released on bail for a charge that involves: a violation of Title 17-A, chapter 11; a crime against a family or household member, as defined in Title 19-A, section 4002, subsection 4; or a crime against a dating partner as defined in Title 19-A, section 4002, subsection 3-A, or a violation of condition of release premised on an allegation of new criminal conduct; or

(4) If the defendant has failed to appear for court on the Class E crime.

Sec. 3. 15 MRSA §1023, sub-§5 is amended to read:

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.

a. A defendant who is qualified to be released pursuant to title 15, section 1026, upon personal recognizance or upon execution of an unsecured appearance bond, but who in fact lacks the present financial ability to pay a bail commissioner fee, shall nonetheless be released upon personal recognizance or upon execution of an unsecured appearance bond, which may include conditions of bail other than cash or security. A bail commissioner shall not refuse to examine a person to determine a person's eligibility for bail, set bail, prepare the personal recognizance bond, or take the acknowledgement of the defendant, because the defendant lacks the present financial ability to pay a bail commissioner fee.

b. The sheriff of the county in which the defendant is detained may create a fund for 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 that do not have the financial ability to pay that fee.

A bail commissioner fee under this subsection is not a financial condition of release for the purposes of section 1023, subsection 4, subparagraph H or section 1026, subsection 3, subparagraph B-1.

Sec. 4. 15 MRSA §1026, sub-§3 is amended to read:

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)~~;

(a-1) A random search for possession or use prohibited by a condition imposed under subparagraph (9) if the defendant is a participant in a specialty court as defined by title 4, chapters 8, 8-A and 8-B, or any other specialty docket established by the Judicial Branch or by agreement of the parties as part of a Deferred disposition under title 17-A, section 1902; or

- (b) A search upon articulable suspicion for possession or use prohibited by a condition imposed under subparagraph (8) or (9);
- (10) Undergo, as an outpatient, available medical or psychiatric treatment, or enter and remain, as a voluntary patient, in a specified institution when required for that purpose;
- (10-A) Enter and remain in a long-term residential facility for the treatment of substance use disorder;
- (11) Execute an agreement to forfeit, in the event of noncompliance, such designated property, including money, as is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community and post with an appropriate court such evidence of ownership of the property or such percentage of the money as the judicial officer specifies;
- (12) Execute a bail bond with sureties in such amount as is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community;
- (13) Return to custody for specified hours following release for employment, schooling or other limited purposes;
- ~~(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.

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.

B-1. Notwithstanding paragraph A, subparagraphs (11), (12) and (18) and paragraph B, a judicial officer may not impose a financial condition on a defendant for whom the highest Class of crime charged is a Class E crime, except that a financial condition may be imposed for a defendant charged with a Class E crime:

(1) That is a violation of Title 17-A, chapter 11;

(2) That was committed against a family or household member as defined in Title 19-A, section 4002, subsection 4, or a dating partner as defined in Title 19-A, section 4002, subsection 3-A; or

(3) That is a violation of a condition of release committed while the defendant is released on bail for a charge that involves: a violation of Title 17-A, chapter 11; a crime against a family or household member, as defined in Title 19-A, section 4002, subsection 4; or a crime against a dating partner as defined in Title 19-A, section 4002, subsection 3-A, or a violation of condition of release premised on an allegation of new criminal conduct; or

(4) If the defendant has failed to appear for court on the Class E crime.

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.

Sec. 5. 15 MRSA §1026, sub-§4 is amended to read:

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;

B. The nature of the evidence against the defendant; and

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-;

(12) Whether the defendant is the primary person responsible for the care of another person;

(13) Whether the defendant has a specific health care need, including a mental health care need, that is being met or would be better met outside of custody; and

(14) Whether being placed or remaining in custody would prevent the defendant from maintaining employment.

SUMMARY

This amendment replaces the bill.

This amendment prohibits a bail commissioner or judicial officer from imposing cash bail for a defendant whose most serious crime charged is a Class E crime. However, the prohibition on cash bail does not apply when the Class E crime was any of the following:

1. A violation of Chapter 11, which covers sexual assault crimes, of the Criminal Code;
2. A crime committed against a family or household member or a dating partner; or
3. A violation of a condition of release when the underlying crime for which the defendant has been released on bail is a violation of Chapter 11 of the Criminal Code or a crime against a family or household member or a dating partner or that is premised on an allegation of new criminal conduct; or
4. If the defendant has failed to appear for court on a Class E crime.

This amendment states that defendant who is otherwise eligible to be released on personal recognizance or upon the execution of an unsecured appearance bond, whether or not accompanied by one or more conditions of bail, shall be released if they cannot afford to pay the bail commissioner fee. The amendment also clarifies that the bail commissioner fee is not a financial condition of release for the purposes of the prohibition on financial conditions of release for certain Class E crimes.

This amendment removes from the list of potential conditions of release for preconviction bail being required to submit to a random search for possession or use of alcohol or illegal use of drugs when use or possession is prohibited by a condition of release, unless the defendant is a participant in a specialty court docket, and being required to report on a regular basis to the defendant's attorney.

This amendment revises the list of factors a judicial officer considers when setting preconviction bail to remove consideration of the defendant's family ties in the State and the defendant's past conduct, including any history of substance abuse disorder. It also adds three new factors to be considered by the judicial officer:

1. Whether the defendant is the primary person responsible for the care of another person;
2. Whether the defendant has a specific health care need, including a mental health care need, that is being met or would be better met outside of custody; and

3. Whether being placed or remaining in custody would prevent the defendant from maintaining employment.

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