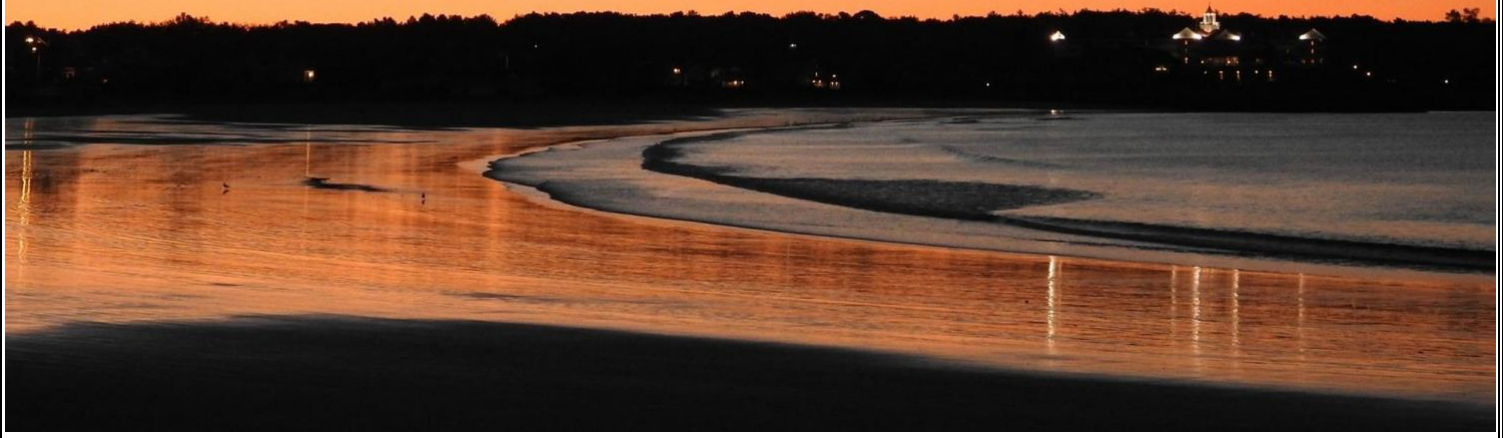




# The Report of the Intergovernmental Pretrial Justice Reform Task Force

Submitted by  
Hon. Robert E. Mullen, Chair

December 2019



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# 1. INTRODUCTION

Would the reader please answer “True” or “False” to the following statements:

1. Approximately 90% of the national jail growth in prison population since 2000 resulted from an increase in defendants being held without bail. This is also true in Maine.  
(True) (False)

2. Approximately 60% of the Maine complaints alleging a defendant has violated their conditions of release are accompanied by a complaint alleging the defendant has committed a separate crime. (True) (False)

3. Part of the support for enacting the Bail Code in 1987 was a recognition of the fact that the Constitution of the State of Maine guarantees the setting of pre-conviction bail except in extremely limited cases, and there was a concern that Maine was moving towards a pretrial detention-based system for certain offenses that would require an amendment to the Constitution. (True) (False)

4. Maine’s Department of Corrections spends more money on prisons than Maine’s Department of Education spends on schools. (True) (False)

5. Maine’s prison population has been decreasing since 2018, compared to many other states across the country whose prison populations have been increasing. (True) (False)

6. Of those defendants in Maine that do not post pre-conviction bail, 80% are charged with felonies. (True) (False)

7. A majority of violations of conditions of release charges in Maine involve “technical” violations, i.e. possession and/or use of drugs/alcohol/contact with the alleged victim, conditions prohibited by the defendant’s bail conditions. (True) (False)

8. Notwithstanding the above, between September of 2018 and September of 2019, a manual search of those cases involving only a charge of VCR in Kennebec County revealed that of the 173 cases alleging VCR, the overwhelming number (163) involved allegations of contact with the complainant and/or use/possession of alcohol/drugs. (True) (False)

9. Crime in Maine decreased 9.3% in 2018, the seventh consecutive year the crime rate has decreased in our State. (True) (False)

10. Maine’s pre-conviction jail population is skewed towards people of color and the poor, who are held because they do not have the financial means to post bail.  
(True) (False)

(Answers to the above questions are on next page)

# ANSWERS

1. **We don't know.** One of the reoccurring themes in this report is that the Task Force members were frustrated by the lack of “hard,” accurate data to either confirm or dispute certain suppositions regarding the criminal justice system in Maine. Thus, it only seems fair to start off with a question the answer to which we simply do not know, at least concerning our State of Maine. The first part of the statement is accurate, according to Baughman, *The Bail Book - A Comprehensive Look At Bail In America's Criminal Justice System* (Cambridge University Press, 2018). In Maine, we know the pretrial detention rate began increasing beginning in 2000, but we don't know the reasons why, much less whether the increase is due to defendants being held without bail. We do know that in York County, for example, one of the monthly jail lists provided to the Judicial Branch showed that 40% of their pretrial population was being held without bail, a percentage that is not consistent with other county's jail lists that provide bail amounts. Not all jails provide the bail amounts.

2. **True.** Judicial Branch statistics from 2018 show that the majority (60%) of violation of condition of release complaints (“VCRs”) are accompanied by complaints that the defendant has also committed a separate crime.

3. **True.** However, an argument can be made that Maine's Constitution doesn't “guarantee” pre-conviction bail except in certain limited situations. The two areas in Maine's Constitution that mention bail specifically are Article I, Section 9, which states that “excessive bail shall not be required” and Article I, Section 10, which states that “no person before conviction shall be bailable for any of the crimes which now are, or have been denominated capital offenses.”

4. **False.** In fiscal year 2018, 36% of the state budget went towards education (not including local contributions to education), with the entire Department of Corrections budget being 5.2% of the total state budget. This statement is true, however, for states like California, that spent 10% of the state general fund towards education and 3% towards prisons thirty years ago, only in 2010 to spend 11% towards prisons and 7.5% to higher education.<sup>1</sup> Moreover, our New England sister state Vermont has been called out for spending more on prisons than education, to the tune of \$1.37 per inmate for every \$1 spent on students in the state. In 2011, Vermont spent roughly \$92 million on education, overshadowed by the \$111.3 million spent on prisons. In Vermont, each inmate costs nearly \$50,000 annually. That state's prison population has doubled in size over the past decade and is expected to increase three times as fast as the general resident population over the next decade.<sup>2</sup>

5. **True.** Contrary to Maine's experience, 27 states in 2013, 21 states in 2014, and 18 states in 2015 experienced an increase in their prison population rates.

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<sup>1</sup> David Brodwin, “How High Prison Costs Slash Education and Hurt the Economy,” *U.S. News*, May 24, 2012.

<sup>2</sup> [www.onlinedegrees.org/10-states-that-spend-more-on-prisons-than-education/](http://www.onlinedegrees.org/10-states-that-spend-more-on-prisons-than-education/)

6. **True.** Although the Judicial Branch lacks “hard” data, after a review of the jail lists provided by the county jails, it appears that the overwhelming number of defendants being held pre-conviction are charged with at least one felony and/or have a pending VCR charge, a motion to revoke probation, and/or are being held on a motion to revoke bail.

7. **Unknown.** Currently in Maine there is no way—absent a labor-intensive manual search of case files—of discerning the reason why a defendant is charged with a VCR, whether it be for a “technical” violation or for new criminal conduct.

8. **True.**

9. **True.**

10. **We don’t know.** This introduction begins and ends with questions the answers to which are unknown at this time. There were members of the Task Force that were absolutely convinced that Maine’s pre-conviction population is skewed heavily towards people of color and the poor, two groups that were thought to be discriminated against solely because of the color of their skin and inability to post even the most modest amount of cash bail. We can argue about what the “correct” answer to this question is until the next “report” is drafted, but the present statistics available fail to give us the complete answer to this question, as well as many important others.

The primary point that **all** members of the Task Force agreed upon was that thorough, meaningful, and accurate data is critically needed in order to answer the complex questions concerning the pre- and post-conviction population in Maine, a population that refuses to go down in any significant fashion despite the fact that crime is trending downward in Maine and has done so for the past several years.<sup>3</sup> It simply cannot be overstated the importance of gathering accurate data so that these questions can be answered with supporting documentation and facts, not by anecdotes and suspicion. This effort, however, will take commitment from all three branches of government, including a financial one, or else this report will join others that sit on a shelf somewhere, good ideas not implemented because of financial concerns.

As Chair of this Task Force I again want to thank each member for their hard work and effort in putting this report together: the report could not have been created without each and every one of you! An extra special thanks **again** goes to Anne Jordan, Esq., for her exhaustive efforts, not only in being an invaluable colleague and heading up one of the subcommittees, but also by being the primary draftsman of this report. **Thank you Anne.**

Robert E. Mullen, Chair  
Maine Superior Court  
December 20, 2019

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<sup>3</sup> See footnotes 1,4,10 and 11 in the main report for further details.

## 2. EXECUTIVE SUMMARY

The Maine Pretrial Justice Reform Task Force (“Task Force”) was initially established in May of 2015 and delivered its report to the Legislature on February 12, 2016. Per the Task Force Charter, it was tasked with recommending the steps necessary to “reduce the human and financial costs of pretrial incarceration” while at the same time not compromising “individual or community safety or the integrity of the criminal justice system.”<sup>1</sup>

The Task Force worked for the rest of 2015 and developed multiple recommendations for the Legislature’s consideration. Of the twenty-nine recommendations contained in that report, ten recommendations were adopted by the Legislature.<sup>2</sup> Three other recommendations were adopted by the Judicial Branch. Sixteen recommendations were not adopted by the Legislature. Each recommendation not adopted by the Legislature had a fiscal note which was necessary for implementation. The 2015 recommendations are attached as Appendix A.

By an order dated February 6, 2019 (see Appendix B) Chief Justice Leigh Saufley, in cooperation with Governor Janet T. Mills, Senate President Troy Jackson, Speaker of the House Sara Gideon and with the support of Attorney General Aaron Frey, re-established the Intergovernmental Task Force on Pretrial Justice Reform (PTJRTF).<sup>3</sup> This was done, in part, because it was believed that pretrial detention rates remain high.<sup>4</sup> The Task Force was charged with presenting proposals for improvements to the leaders of the three branches of government in time to allow action on the proposals during the second regular session of the 129<sup>th</sup> Maine Legislature.<sup>5</sup>

The primary responsibilities of the Task Force were to review the relevant current research and data; address existing resources, procedures, and programs; and make recommendations that will:

- Reduce the human and financial costs of pretrial incarceration and restrictions;
- Achieve fairness in the application of policies and laws, including but not limited to, giving attention to racial, ethnic, gender, LGBTQ, and economic factors;
- Provide for the collection and reporting of reliable data that will be helpful in assessing

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<sup>1</sup> Between 2000 and 2014, there was a steady increase in the number of pretrial individuals held in Maine’s county jails. Data from 2014 demonstrated that in every Maine jail the majority of inmates were pretrial defendants and in eight of the fifteen jails, the percentage of persons held pretrial exceeded 70%. Robert E. Mullen, *Report of the Intergovernmental Pretrial Justice Reform Task Force, 2015*, [http://www.courts.maine.gov/reports\\_pubs/reports/pdf/PTJRTF\\_report.pdf](http://www.courts.maine.gov/reports_pubs/reports/pdf/PTJRTF_report.pdf).

<sup>2</sup> LD 1639 was passed and approved by the Governor, 4/7/2016, Public Law 2016, c. 436.

<sup>3</sup> The Charter establishing the 2019 Task Force is set out in Appendix B.

<sup>4</sup> Data provided by the Maine Department of Corrections to the Justice Reinvestment researchers in May 2019 indicated that Maine’s statewide average daily jail population decreased 16% between 2014 and 2018. See *Justice Reinvestment in Maine*, Council of State Governments, December 2019.

<sup>5</sup> The Membership of the full Task Force is set out in Appendix C, while the subcommittee membership list is set out in Appendix D.

efficacy, fairness, and positive outcomes;

- Identify needed resources, both current gaps and innovation-based needs; and
- Avoid compromising individual or community safety or the integrity of the criminal justice system.

The Task Force was charged with the following tasks:

- Review of accomplishments from the recent Task Force (2015);
- Determine whether there is data available to evaluate efficacy of those changes, and if not, how such data could be collected and analyzed;
- Review and update best practices;
- Review of the current state of knowledge and best practices in the use of pretrial assessments and programs:
- Review and assess current practices in the pretrial process from arrest decisions through bail to pretrial release and the process for collection of fines post-conviction; and
- Prepare a report and make recommendations to the Supreme Judicial Court through Chief Justice Saufley, and to Governor Mills, President Jackson, and Speaker Gideon for improvements, innovations, and augmentations of resources, statutes, procedures, and policies that are responsive to the charge of the Task Force.

The first meeting of the full Pretrial Justice Reform Task Force was held on April 3, 2019. Following that meeting, the Chair, Superior Court Justice Robert Mullen, divided the large group into three subcommittees: 1. Best Practices, 2. Risk Assessments, and 3. Process Improvement. Each group was charged with meeting and analyzing the available research and data, delineating the problems and concerns in their respective areas, and then designing proposed changes to the criminal justice system.

Subcommittee meetings were held on May 5, May 28, June 25, July 16, July 23, August 2, August 16, September 3, September 24, October 7, October 8, October 10, October 16, and October 31. Another subcommittee meeting on November 12 had to be cancelled due to inclement weather. Extensive background and research materials were distributed electronically to subcommittee members and a list of 73 “Bold Ideas” was compiled.

The full Task Force reconvened on November 12 and November 25, 2019. Prior to each meeting a spreadsheet of all the ideas was distributed. Those ideas that had unanimous or near unanimous subcommittee support (10 or more yes votes) were highlighted in green and considered by the full Task Force first.

Votes were taken on each “green” proposal. For those members who were unable to attend, a summary of each item and an electronic absentee ballot were sent to them to complete.

Members were also invited to request other “non-green” items to be considered and additional votes were taken on those items<sup>6</sup> at the November 25 meeting.

The wide-ranging recommendations of this Task Force attest to the diverse and interrelated drivers of pretrial incarceration in Maine and the need for reform at all stages of the pretrial process. Task Force members were unanimous in calling for robust system-wide data collection and analysis, encouraging the use of summons rather than arrest, full funding for a court hearing date notification program, the development of “safe place” diversion programs, regular bail and racial justice training for participants throughout the criminal justice system, and prompt notification of appointed defense counsel. Other endorsed recommendations, while not unanimous, supported robust, evidence-based, statewide pretrial services, expansion of GPS monitoring, the creation of a statewide Criminal Justice Coordinating Council, and the funding of appropriate programs to support pretrial reform, to name a few.

After initial examination of available Maine-based materials, the subcommittees quickly determined that there were significant gaps in data collection and analysis in Maine. The Task Force agreed and found that the work of the group was severely hampered by the lack of available, consistent, and reliable data—from the time of the first police encounter through to sentencing—to independently analyze the reasons for the current pretrial population. Insufficient data significantly hindered independent and evidence-based analysis of the drivers of pretrial detention, as well as an assessment of current programs and processes.

While all parties generally agreed that the pretrial population in Maine remains high, specific reasons for this could not be discerned.<sup>7</sup> Recommendations adopted by the full Task Force are discussed in section 4 of this report. Recommendations rejected or not considered are set out in Sections 5 and 6 of this report.

The Task Force agreed that our criminal justice system is based on two fundamental principles. The first is that everyone is entitled to a presumption of innocence and that a person is innocent until the government proves their guilt beyond a reasonable doubt. The second principle is that people should not be punished or otherwise deprived of their liberty without a fair process for determining guilt. As the US Supreme Court stated, “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”<sup>8</sup> Maine should have programs and policies in place that meet the Supreme Court’s standards.

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<sup>6</sup> A summary of each idea, and the vote, is set out in Appendix E.

<sup>7</sup> Unlike the 2015 Report, which contained an extensive report studying the pretrial population of five county jails, there was no staff or funding available to conduct a similar study for the 2019 Task Force. The author of the prior study was tied up in other responsibilities, including work on the development of the data collection elements for the Judicial Branch’s new case management system.

<sup>8</sup> *United States v. Salerno*, 481 U.S. 739, 755 (1987).



### 3. TASK FORCE PROCESS AND METHODOLOGY

As briefly discussed above, the Task Force was broken down into three subcommittees. Each subcommittee quickly came to realize that much of the work was not limited to a single group, but was often considered by two or three of the subcommittees. In addition to discussions concerning Maine issues and problems, current research and position papers from national organizations including the Pretrial Justice Institute, the Laura and John Arnold Foundation, the National Criminal Justice Association, the Department of Justice, the National Association of Pretrial Service Agencies, the National Center for State Courts, the National Association of Criminal Defense Attorneys, the Vera Institute, the National Conference of State Legislatures, the National District Attorney's Association, the Restorative Justice Institute, the National Association of State Courts, the Center for Court Innovation, the American Civil Liberties Union, the Pew Charitable Trust, the National Sheriffs Association, the State of New Jersey Courts, and the National Institute of Corrections were electronically distributed for review.

Maine-based materials, information and studies from the Muskie School of Public Policy, the Restorative Justice Institute of Maine, the Restorative Justice Project of the Mid-coast, the ACLU of Maine, the Maine Sheriff's Association, the Department of Corrections, Maine Pretrial Services Inc., the Maine Justice Reinvestment Initiative (JRI), and the Correctional Alternatives Advisory Committee were reviewed. Additionally, Dan Sorrells of the Maine Judicial Branch produced data from the court's computer records system (MEJIS) on warrant information, violation of conditions of release (VCR) charges, bail bonds, data concerning the number of filings (felony vs. misdemeanor), and data concerning domestic violence charges. Maine Pretrial Services provided statistics on the number of persons served by the agency, as well as the nature and availability of pretrial service programs and the success rates of persons on Maine Pretrial Service contracts across the state. Maine Pretrial also provided copies of their risk and need assessment forms, interview forms, and statistical results from their risk and needs assessment validations. Information was also provided regarding Maine's Specialty Courts and Dockets. Some draft reports from the JRI initiative were considered.

The Task Force considered and voted on recommendations submitted by the three subcommittees. The Task Force adopted thirty recommendations and rejected six recommendations. Thirty-two recommendations did not garner sufficient interest to cause a member of the Task Force to request it be taken up and thus a vote was not taken on these thirty-two proposed recommendations. Two other items were consolidated into other items. Each item and the respective vote on that item are further discussed in Sections 4 - 6 of this report.

It should be noted that the crime rate in Maine has fallen for the past seven years, for a total decline of 56.1% during that time period. The Uniform Crime Reporting Division ("UCR") at the Maine Department of Public Safety tabulates the crime numbers each year, with the numbers based on *reported* crimes from local, county, and state law enforcement agencies. The UCR statistics demonstrate that 19,773 crime index offenses were reported to law enforcement agencies during 2018 compared to 21,803 offenses during 2017, for an overall crime rate

decrease of 9.3%.<sup>9</sup> Moreover, the crimes reported in 2018 represent a crime rate of 14 offenses per 1,000 people in Maine, or half the national crime rate of 28 offenses per 1,000 population.<sup>10</sup>

Despite the good news set out above, the pretrial detention rate for defendants in Maine remains higher than desired.<sup>11</sup> This rate of pretrial detention can be reduced, but only through a concerted effort of all three branches of government to create and appropriately fund pretrial programs to monitor defendants released on unsecured bail conditions, consider decriminalizing certain misdemeanor offenses, provide for alternatives to incarceration through diversion and treatment programs, and proper funding of robust, real-time data collection. Such analysis can guide further changes that will ensure the rights of defendants, protect the public, and ensure the safety of witnesses and victims in a fiscally responsible manner.

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<sup>9</sup> Reported crime rates only include those offenses that are considered “retainable” by the FBI. Thus, most traffic matters, civil violations and crimes that the FBI does not consider serious enough to be reported, are not included. Additionally, these numbers are *reported* crimes and may include offenses that never resulted in a charge being filed. It should be noted that many crimes, such as minor thefts, domestic violence, or sexual assault are never reported to the police and are not contained within these numbers.

<sup>10</sup> Maine has, for the last fifteen years, consistently had the lowest violent crime rates in the nation and the lowest or one of the lowest incarceration rates in the nation. In 2018, Maine had the lowest violent crime rate in the nation and the second lowest incarceration rate. Only Massachusetts had a lower incarceration rate. Source, *Prisoners in the US 2017*, US Department of Justice, Bureau of Justice Statistics, 2019. Current Maine Department of Corrections data demonstrates that after a peak in numbers in mid-2018, the number of persons incarcerated in the state prison system in Maine has been decreasing. For example, in November 2018, there were 2,422 persons (2,188 men, 234 women) incarcerated in State prisons while in November 2019 there were 2,283 persons incarcerated (2,018 men, 203 women). See <https://www.maine.gov/corrections/quality-assurance/Nov%202019%20Monthly%20Adult%20Data%20Report.pdf> for monthly and yearly trend reports.

<sup>11</sup> According to the Justice Reinvestment Report dated December 2019, Maine saw a 14% increase in the average daily jail (ADP) population between 2008 and 2014 (when the statewide population hit a high of 1,805 average daily inmates), then saw a 16% decrease between 2014 and 2018.

## 4. TASK FORCE ENDORSED RECOMMENDATIONS

The following recommendations were endorsed by the full Task Force. Please note that the item numbering below corresponds to the “Bold ideas” list contained in the spreadsheet in Appendix E.<sup>12</sup> Those items with unanimous support (no one voted “no,” “maybe,” or abstained) are listed first, followed by items that were endorsed but had either “no” votes, “maybe” votes or a member abstained.

### Recommendations with Unanimous Task Force Support

**7. The State should fully support and fund robust data development and collection, including release of data to the public, the collection of data related to arrests, bail conditions, bail amounts (if applicable), and violations disaggregated by suspect classifications (at least race and gender), jail data, and pretrial length of stay. This program should be established and fully supported (legislatively, funding and staffing).**

Full Task Force Vote:

20 Yes

0 No

0 Maybe

0 Abstain

Of all items considered by the Task Force, this was the one item that generated the most support and the most discussion. The subcommittee members and the full Task Force were greatly frustrated by the dearth of available, standardized, and reliable data upon which it could make recommendations. Decision making by anecdote, stories, or rumors is not appropriate nor productive. As one document noted “Without data, it is impossible to accurately identify successful practices as well as sources of inefficiency, injustice or discrimination.”<sup>13</sup>

Of note, the current hodgepodge of computer systems, data reports, and unavailable data is exacerbated by the lack of interoperability and ability to share data between system participants. Each agency has its own computer system and programs, as well as its own format for gathering data. State, county, and local agencies are generally severely limited from gathering more robust and reliable data due to staffing shortages/limitations, lack of fiscal resources, and old equipment or systems. Most systems do not have the ability to connect to other agencies electronically or to electronically share and match information. Additionally, there is no centralized system or staff to gather data, ensure its neutrality, integrity, and reliability, and to provide efficient and timely response to public inquiries.

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<sup>12</sup> Please note: The vote counts that follow do not all total to the same amount for each item. This is because at some meetings individuals arrived late or had to leave early, had to step out and did not participate in a particular vote, and/or those who voted by absentee ballots did not express a vote. Additionally, not all individuals attended both meetings.

<sup>13</sup> ACLU of Maine, Pretrial Data Needs, October 15, 2019.

Other states that have successfully integrated their systems across agencies, and in fact across state borders, include Maryland, Delaware, and the District of Columbia. Law enforcement, corrections, the courts, probation, and mental health agencies in those jurisdictions can now easily and seamlessly share real-time data and information across systems.

**12. Maine should encourage the use of summonses, instead of arrest, for all class D and E offenses, except for a) crimes that threaten or feature threats or actual physical violence against the person, b) crimes against family or household members, c) sexual assaults, d) sexual exploitation of minors, e) kidnapping and/or criminal restraint, f) OUI, g) PFA/PH violations, h) VCRs on PA/PH violations, or i) other similar crimes that are a threat to public safety.<sup>14</sup>**

Full Task Force Vote:

15 Yes

0 No

0 Maybe

0 Abstain

Data gathered as part of the Justice Reinvestment Initiative in Maine indicates that the majority of charges brought in Maine courts are for misdemeanor offenses.<sup>15</sup> National studies indicate that persons charged with misdemeanor offenses can safely be released on a personal recognizance bail bond or to a pretrial services program in most instances. Some members felt that no persons charged with a Class D or E offense should be arrested but should simply be summonsed to appear in court.

Other members felt that there were certain crimes such as domestic violence assaults, OUI, crimes against persons, or circumstances that required an arrest in order to protect the safety of victims or the community, to ensure community peace, and/or to prevent further escalation of neighborhood problems where arrest should be allowed. Thus, the compromise language to “encourage the use of summons” in some class D or E crimes was adopted by the full Task Force.

**34. Maine should fully fund the electronic court notification program, including the hardware, software, and personnel necessary to establish and run the program. This program would provide automated text notification to all defendants of upcoming court dates.**

Full Task Force Vote:

18 Yes

0 No

0 Maybe

0 Abstain

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<sup>14</sup> The original recommendation from the subcommittee used the phrase “require the use of summons.” The full Task Force amended the recommendation to “encourage the use of summons”.

<sup>15</sup> According to the JRI analysis of 2018 charges filed in Maine, 77% were for Class D and E offenses. The top five Class D offenses were, in order, OUI, domestic violence assault, assault, drug possession, and criminal mischief. The top 5 Class E offenses were, in order, violation of conditions of release, theft, disorderly conduct, criminal trespass, and drinking in public.

In the First Regular Session of the 129<sup>th</sup> Legislature, a bill was passed requiring the Maine Judicial Branch to establish and implement an automated electronic text notification system that provides notification of upcoming court dates to all defendants. Much like the reminder notices sent by physician and dental offices, supporters felt that this program will reduce the number of failure to appear warrants issued and thereby reduce jail costs.<sup>16</sup>

However, the bill was only half funded and the Maine Judicial Branch has been unable to move forward on the project without the full funding needed. All members of the Task Force support this project and encourage full funding.

**37. Maine should establish and fully fund "safe place" diversion programs (available for both pre- and post-booking), at free standing locations with evidence-based standards and processes.**

Full Task Force Vote:

19 Yes

0 No

0 Maybe

0 Abstain

In some areas of the country, cities and states are establishing safe place diversion programs that permit law enforcement to bring defendants to these locations in lieu of arrest or bringing them to jail. At these sites, individuals are evaluated for physical and mental health treatment, substance use disorder treatment and therapy (including the use of medication assisted treatment programs), and housing and employment needs. Many members felt that offering these programs will get to the root of the cause behind many criminal offenses and provide the needed assistance and treatment that will reduce recidivism and subsequent incarceration costs.<sup>17</sup>

Members of the Task Force unanimously supported the establishment of such a program. Many felt that arresting and then incarcerating individuals with mental health or substance use disorder for crimes committed while suffering from these conditions was wrong, did nothing to address the underlying causes, and failed to properly provide programming and treatment that would stop the criminal behavior.

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<sup>16</sup> MEJIS data indicates that in 2018, there were 19,500 instances of failure to appear in Maine courts. In 75% of these, the individuals had been summonsed, as opposed to having been bailed, to appear for their court appearance. Not all instances resulted in a warrant being issued. Source, MEJIS data, June 2019.

<sup>17</sup> For a comprehensive exploration of the variety of diversion programs across the country see *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives* at [http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report\\_web.pdf](http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf)

**41. Maine should mandate and fund regular racial justice training for law enforcement, bail commissioners, judges, prosecutors, pretrial services, corrections officers, probation officers and defense attorneys.**

Full Task Force Vote:

18 Yes

0 No

0 Maybe

0 Abstain

As Maine’s population has continue to diversify, members of the Task Force support the establishment of mandated racial justice training for parties involved in the criminal justice process from pre-arrest to conclusion.<sup>18</sup> Training on racial justice issues, concerns and needs is needed and will provide participants with the necessary information to fairly treat and understand persons involved in the criminal justice system.

**42. Maine should allow persons to pay their fines at any court, not just the court of jurisdiction.**

Full Task Force Vote:

18 Yes

0 No

0 Maybe

0 Abstain

The Maine Judicial Branch’s current financial system requires a defendant who owes fines at different courts to send separate payments to each court location. In other words, one court cannot accept and process fine or fee payments for another court location. Members of the Task Force unanimously support establishment of a system that permits an individual who owes multiple fines at multiple locations to make payment at a single location that will be applied to cases at multiple locations.

It should be noted that the new Odyssey case management system that is currently being developed, once fully launched across the State, will permit single location payments for fine from multiple locations.

**70. Maine should require that incarcerated individuals receive their court appointed counsel within 48 hours of first appearance and that defense counsel receive notification of the appointment within the same time frame.<sup>19</sup>**

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<sup>18</sup> National reports indicate that people of color, and in particular Black people, experience discrimination in the criminal justice system. Experts on implicit bias suggest that bias and cultural competency training are one way to increase equitable treatment throughout the legal system. The Kirwan Institute for the Study of Race and Ethnicity at OSU: <http://kirwaninstitute.osu.edu/wp-content/uploads/2017/11/2017-SOTS-final-draft-02.pdf>)

<sup>19</sup> This item originally read “Require that incarcerated individuals receive their court appointed counsel within 48 hours of first appearance.” The full Task Force amended the language by adding defense counsel notification within that same time frame.

Task Force Vote:

17 Yes

0 No

0 Maybe

0 Abstain

During the course of the subcommittee process, it was brought to the attention of the members that in some areas of the State, the time frame for assigning court appointed counsel can take upwards of a week or more. It is generally believed that this is occurring in rural areas where the number of attorneys willing to take court appointed cases is small and where, given the small community populations, the chance for a conflict of interest greatly increases. In some courts, the clerks call an attorney on the list and wait for a response before appointing counsel. In other courts, the attorney is appointed and it is up to the defense attorney to notify the court if there is a conflict of interest that prohibits their acceptance of the appointment. The Task Force supports the imposition of a 48-hour time limit for appointment and added the additional requirement that the court send the notice of appointment out within the same time frame.<sup>20</sup>

## **Task Force Endorsed Recommendations**

**2. There should be a statewide expansion of the availability of GPS monitoring for medium- and high-risk domestic violence perpetrators in all counties. Funding for costs for indigent defendants and victims should be covered by the state.**

Full Task Force Vote:

16 Yes

2 No

0 Maybe

0 Abstain

Currently, three prosecutorial districts—Cumberland, Kennebec/Somerset, and the Mid-Coast (Lincoln, Sagadahoc and Knox)—have programs where a limited number of domestic violence offenders are released pre-trial on bail with some form of electronic monitoring. Costs for the program run between \$3-\$12 per defendant per day depending on the type of monitoring, the response and notification method, and the funding source.

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<sup>20</sup> As the US Supreme Court said in *Rothgery v. Gillespie County, Tex.*, 554 U.S. 191, 194 (2008), “the Sixth Amendment right to counsel applies at the first appearance but does not attach until a prosecution is commenced.” Quoting *McNeil v. Wisconsin*, 501 U. S. 171, 175 (1991); see also *Moran v. Burbine*, 475 U. S. 412, 430 (1986). Prosecution is considered commenced when the government has committed itself to prosecute and there is “the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment,” *United States v. Gouveia*, 467 U. S. 180, 188 (1984) (quoting *Kirby v. Illinois*, 406 U. S. 682, 689 (1972) (plurality opinion)) and when “the magistrate informs the defendant of the charge in the complaint, and of various rights in further proceedings.” *Ibid.*

One program provides for monitoring of the defendant with notification given to a centralized notification company when there is a violation, who then alerts law enforcement. This same model provides the option for a victim to carry a device, as well as allowing the GPS monitoring program to put a “mobile zone” around the victim 24/7 with a direct notification to the victim and the law enforcement agency. This has an additional cost of \$4 per day.

The Task Force believes that this program should be expanded to cover all counties in Maine. The Task Force further believes that the program should be available to all medium- and high-risk persons charged with domestic violence and eligibility for the program should not be based on an individual’s ability to pay the daily fee. Most members believed that the costs should be covered by the State for indigent defendants and victims. Some members believed that the costs for monitoring for all defendants, regardless of ability to pay, should be borne by the State. Two members were concerned about the costs of establishing this program statewide.

#### **4. The State of Maine should ensure the availability of standardized, evidence-based, robust pretrial services in all 16 counties in Maine.**

Full Task Force Vote:

18 Yes  
0 No  
2 Maybe  
1 Abstain

Currently in Maine, pretrial services are provided by different organizations. Maine Pretrial Services Inc. (MPS) provides coverage to a limited number of the total defendants charged with crimes after they screen almost all pretrial detainees who have not made bail at their first appearance before a judge.<sup>21</sup> They offer this service in eleven counties.<sup>22</sup> Sheriff’s Departments provide some form of a pretrial service program in two counties, and three counties do not have an active program. The Task Force supports statewide, robust, evidence-based pretrial service programs, as national studies have repeatedly demonstrated that quality programs reduce pretrial incarceration, provide safety to the community, and assure the appearance of the defendant at trial. These all reduce incarceration costs, reduce the number of individuals who fail to appear at trial, ensure the safety of victims and the community, and provide programming that can help reduce subsequent pretrial misconduct or recidivism rates.<sup>23</sup> The two members who voted “maybe” were concerned with costs of implementation and possible loss of locally controlled programs in their county.<sup>24</sup>

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<sup>21</sup> In some counties, MPS has the ability to screen defendants prior to their first court appearance. In others, screening occurs after their first appearance. Not all individuals qualify for MPS supervision and not all counties contract with MPS. Screenings occur during the regular work week and no screenings occur over the weekend.

<sup>22</sup> Last year, nearly 50,000 criminal charges were filed in Maine. Maine Pretrial Services supervised approximately 6,500 individuals. The Somerset Sheriff’s Department and the Aroostook County Sheriff’s Department also have active pretrial programs.

<sup>23</sup> See *Outcomes of the Smart Pretrial Initiative*, Pretrial Justice Institute, 2017

<sup>24</sup> MPS has provided a preliminary estimate that they would need a total of 34 staff members, at a cost estimate of \$2,935,000, to provide pretrial screening, interviews, risk and needs assessment, court coverage, release plans,



**8. The Maine Judicial Branch should add a fifth Unified Criminal Docket event for review of bail two weeks after initial appearance for those incarcerated individuals not granted personal recognizance or unsecured bail at the first bail hearing.**

Full Task Force Vote:

14 Yes

0 No

6 Maybe

0 Abstain

Maine's Unified Criminal Docket (UCD) is built on a four-step system: arraignment/initial appearance, a dispositional conference, a motion day, and a date set for trial. The purpose of this four-step system is to provide uniformity in the handling of cases and the setting of "dates certain" for court events.

Currently 15 M.R.S. §§ 1028 and 1028-A provide the process for a single de novo determination of bail set by a bail commissioner or judge. Once a de novo determination by a judge or justice is made, no further appeal is statutorily permitted. The law does not provide for an automatic review of bail, nor does it provide a mechanism for an individual who is unable to meet bail to have a second or third review of the bail once the de novo determination has occurred.<sup>25</sup>

Members of the Task Force felt that there should be a mechanism built into the UCD process to provide for an automatic review of bail for all individuals still incarcerated due to the inability to meet bail after two weeks. Members felt that this would give parties sufficient time to investigate the case, review bail alternatives, and propose alternative bail relief where appropriate.

Some members voted "maybe" primarily because of a) the additional costs involved in scheduling and holding these hearings, b) the need for more judges, marshals, and clerks to hold these additional hearings, and c) additional expenses for prosecutors and defense counsel. One member expressed concern that the courts would most likely need to add additional judges to cover these hearings. Concerns were raised that in more rural areas or in smaller courts, there simply would not be enough judges, or even a courtroom, to hold the hearings.

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community monitoring, referrals to services, reports back to court and parties, data compilation, submission and analysis, training, and supervision in all 16 counties. This number also includes costs for rent, salaries, fringe benefits, and travel. This estimate is based on current actual costs, extrapolated to add counties without MPS services.

<sup>25</sup> It is not uncommon for individual jurists to agree to hold a second bail review hearing either upon the showing of a change of circumstances or good cause or an agreement between the State and the defense. Sometimes if there is an agreement the change is ordered without the necessity of holding a formal hearing. This often occurs where an alternative program or release plan is developed.

**16. Maine should adopt a universal screening process so all detainees can be assessed for other criminal justice release plans, or interventions, or alternative opportunities (pretrial, drug court, mental health courts, substance use disorder treatment, domestic violence courts, batterers intervention programs, Restorative Justice programs, community service in lieu of fines, etc.).**

Full Task Force Vote:

13 Yes

0 No

5 Maybe

0 Abstain

The bedrock foundation for any successful pretrial release program is a universal screening of all individuals coming into the criminal justice system to evaluate them and structure an appropriate release program to meet their social and psychological/medical needs. By conducting these screenings early in the process, appropriate treatment and referrals can be made. The belief is that by conducting these screenings and providing appropriate individualized programming, pretrial detention time, re-arrest, and recidivism can be reduced, thus reducing incarceration and other related system costs.

Best practice standards in all types of treatment courts,<sup>26</sup> as well as in treatment programs for substance use disorder, encourage early intervention and enrollment at the time of arrest. Persons enrolled in quality evidence-based pretrial programs that are structured to meet their needs have higher court appearance and lower recidivism rates.

Some members of the Task Force voted “maybe” primarily on the grounds that such universal screening programs are expensive to run 24/7 and a concern that proper, full, and sustainable funding will not be available.<sup>27</sup>

**19. The State should create and fully fund a statewide Criminal Justice Coordinating Council (CJCC) beyond the grant funding application review that is currently being done by the volunteer Justice Assistance Council. The CJCC should include all parties in the criminal justice system and public health cohorts.**

Full Task Force Vote:

15 Yes

0 No

3 Maybe

0 Abstain

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<sup>26</sup> The Ten Best Practices for Adult Drug Treatment Courts, published by the National Association of Drug Court Professionals.

<sup>27</sup> The State of New Jersey eliminated cash bail and substituted a robust pretrial supervision and treatment program. It was funded by an assessment on all civil filings. In a 2018 Report on the program, the Court noted that the program has been very successful, that there has not been an increase in crime, and that the number of persons held pretrial was substantially reduced. However, the funding method was nearly depleted and unsustainable. <https://images.law.com/contrib/content/uploads/documents/399/24334/2018cjrannual.pdf>

In many states and/or counties, there are full time criminal justice coordinating councils (CJCC). An effective and robust CJCC is viewed as an effective means for improving public safety, creating system-based approaches to justice issues, reducing duplication of effort and conflicting practices, and improving how jurisdictions allocate limited justice system resources. Generally speaking, a CJCC is a partnership of decision makers who have a stake in the effective administration of justice. Typically, the partnership includes representatives from:

- The three branches of government (executive, judicial, and legislative);
- Multiple levels of local government, including city, county, and state agencies; and
- Allied stakeholders from various other governmental entities such as education or health and human services, community-based organizations, service providers, and citizens.<sup>28</sup>

Most CJCCs are supported by a full-time director and associated research staff. The members of the Task Force felt Maine would benefit from a permanent CJCC with full time staff assigned to it.

Three members of the Task Force voted “maybe” primarily out of concern for the costs and the need to ensure that membership of the CJCC is representative of all points of view and includes consideration of the needs of minorities and other underrepresented communities.

**21. Maine should eliminate all \$60 bail commissioner fees on personal recognizance, unsecured or in-custody cash bail bonds, and have the Court complete the bond paperwork for all in-custody arraignments.**

Full Task Force Vote:

11 Yes

1 No

7 Maybe

0 Abstain

Under the current Maine Bail Code, the person being bailed pays the \$60 bail commissioner fee. 15 M.R.S. § 1023(5). Bail commissioners are required to execute bail bonds for indigent individuals without collecting the fee. Bail commissioners are not state employees and only get paid when they actually fill out and execute bail bonds. They are not paid for answering bail calls or for setting bails.

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<sup>28</sup> <https://www.jmijustice.org/network-coordination/national-network-criminal-justice-coordinating-councils/>

In 2018, the following number of bail bonds were filed with the courts:<sup>29</sup>

Type of Bond	Number of Bonds
Personal Recognizance Bail	10,474
Unsecured Bail	6,216
Cash Bail	13,593
Surety (Real Estate) Bail	82
Concurrent Bail	1,241
<b>TOTAL</b>	<b>31,606</b>

Members of the Task Force felt that the State of Maine, not the defendant, should be responsible for paying the bail commissioners for their services. Some expressed concerns that low income defendants are held longer than others as they sought to raise the necessary funds to pay the bail commissioner's fee.

Other members voted maybe out of concern for the costs that would be incurred, whether it was for the state paying all the bail commissioner fees or for additional clerks or overtime needed to complete the bail bonds.<sup>30</sup>

**23. Maine should eliminate pre-conviction bail conditions for random search and testing for drugs or alcohol, except for persons enrolled in specialty courts or review dockets and persons on deferred dispositions.<sup>31</sup>**

Full Task Force Vote:

- 11 Yes
- 0 No
- 3 Maybe
- 0 Abstain

Maine's Bail Code permits a judge or justice to set a pre- or post-conviction bail condition of random search and seizure for possession of drugs or alcohol.<sup>32</sup> In Maine's specialty dockets

<sup>29</sup> A person granted personal recognizance bail is not required to post bail funds. They are released on their promise to appear in court. An unsecured bail is when a party promises to appear in court and agrees that should he or she fail to appear, they will owe the court the dollar amount stated. No cash is posted up front for unsecured bonds. Unless indigent, all persons released on any kind of bail bond must pay the bail commissioner's fee. Some persons posted multiple bonds in a single case.

<sup>30</sup> Source, MEJIS data, compiled by Dan Sorrells, January 31, 2019. The bail commissioners who provided information to the Task Force indicated that on average it took 30-45 minutes to complete an average uncomplicated bail bond and to explain its content to the person being bailed. This time estimate did not include the time taking the bail calls and setting the bail, travel time to the jail or other location where the person being bailed was located, or the post-bail processing of the bond paperwork.

<sup>31</sup> The original subcommittee recommendation proposed elimination of all random search and seizure for drugs and alcohol for all offenses. The full Task Force did not support that proposition but supported the language set out above. The current statute can be found at 15 M.R.S. § 1026(3)(A)(9).

<sup>32</sup> The 2015 Task Force recommended, and the Legislature adopted, a ban on *bail commissioners* setting a condition of random search and seizure for alcohol or drugs. It was believed by some that this condition was one of

(Adult Drug Court, Veterans Treatment Court, Co-Occurring Disorders Court, and Domestic Violence Review Dockets) contracts often include as a condition of participation that individuals in the program submit to random search or testing for drugs or alcohol. Similarly, many deferred disposition contracts require that a participant agree to submit to random searches and seizure of alcohol or drugs.

Many members of the Task force felt that many of the charges of Violation of Conditions of Release were for the technical violation of bail due to the possession of drugs or alcohol (as opposed to committing a new crime).<sup>33</sup> Others expressed the concern that this bail condition was impossible to abide by for those defendants suffering from a substance use disorder.

Three persons voted “maybe” on the proposal primarily on the grounds that they felt it should be up to the presiding judge or justice, in reviewing all of the factors of the case, to make this decision. Issues of public safety and victim safety were raised.

**27. Maine should reinforce existing legislation that requires counties utilize the 30% Community Corrections Alternatives (CCA) funding for release, diversion, and community-based corrections only.**<sup>34</sup>

Full Task Force Vote:

20 Yes

0 No

1 Maybe

0 Abstain

Current Maine law provides an allocation each year to the various counties to be used for community-based corrections programs.<sup>35</sup> While some counties clearly use the funding to pay

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the reasons for the high pretrial incarceration rate. However, a review of the number of VCR filings both before and after the passage of that law saw only an overall 4% decrease in the number of VCR charges brought statewide. The monthly patterns of new VCR charges (lowest in January and February, highest in July and August) remained steady both before and after the 2015 law change. Source, Dan Sorrells, MEJIS data.

<sup>33</sup> The Task Force was unable to secure reliable statewide data that either supported or rejected this belief. This is because the current MEJIS system does not track the reason for a VCR charge. It would require a hand search and review of each paper criminal VCR complaint to tabulate the various reasons for the violation. The Task Force was able to determine that 60% of all VCR charges were also accompanied by another new separate criminal charge, while 40% had no accompanying new criminal charges. Source, MEJIS data, 2018 VCR charges.

<sup>34</sup> It should be noted that on December 10, 2019, the Criminal Justice and Public Safety Committee unanimously endorsed LD 973, An Act to Stabilize County Corrections, (as amended), that, if passed by the Legislature, will alter this program.

<sup>35</sup> 34-A M.R.S. § 1210-D provides that community corrections funds must be used for the purpose of establishing and maintaining community correction programs. For purposes of the statute, community corrections means “the provision of correctional services for adults in the least restrictive manner that ensures the public safety by the county or for the county under contract with a public or private entity...and that includes, but is not limited to, preventative or diversionary correctional programs, pretrial release or conditional release programs, alternative sentencing or housing programs, electronic monitoring, residential treatment and halfway house programs, community correctional centers and temporary release programs from a facility for the detention for confinement of persons convicted of crimes.”

for pretrial services, there is no auditing or tracking of the funding by the Department of Corrections. As such, there is no way to confirm that the funds awarded are actually spent on community-based programming. The members of the Task Force all support increased tracking and auditing of this allocation to ensure the funds are being spent as required by law.

**32. Maine should prohibit judges from subsequently setting cash bail if a person shows up for court after having been summoned to appear.**

Full Task Force Vote:

9 Yes

0 No

6 Maybe

0 Abstain

Some members of the Task Force objected to the occasional situation where an individual who had been summoned to appear in court (with no conditions imposed) is then required to execute a bail bond with conditions. Some feel that it is not fair to the individual who has been merely summonsed to court to then require that person to submit to a series of restrictions on his or her freedoms.

Other members of the Task Force voted “maybe” out of concern that there may be specific circumstances where the imposition of bail conditions after having been summoned may be entirely appropriate. These members expressed concern that prohibiting this practice could place victims or members of the community in danger. They also expressed concern that circumstances may have changed, or issues escalated, requiring the imposition of bail conditions in order to protect the victim, protect the public, and preserve the public peace.

**33. Maine should decriminalize low-level driving offenses (failing to register a car, driving on an out-of-state license after living here for more than 90 days, operating a motor vehicle without proof of insurance, attaching false plates, etc.) and certain Title 12 hunting and fishing crimes.**

Full Task Force Vote:

17 Yes

0 No

1 Maybe

0 Abstain

Most members of the Task Force favored the decriminalization of low-level driving offenses and certain Title 12 hunting and fishing violations. The Maine Prosecutors Association plans on submitting legislation to accomplish this. Members felt that persons should not have a permanent criminal history based on offenses that are usually civil in nature in other states as such convictions can prevent individuals from traveling outside the United States, limit security clearances, and block them from securing employment due to the conviction.

One member voted “maybe” on the grounds that the proposal was not specific enough for the member to feel comfortable in fully supporting the proposal. There were also concerns that input was not sought from those who enforce Title 12 violations.

**47. The State should pay bail commissioner’s fees. Fees should not come from a defendant nor should bail commissioners be required to execute bail bonds for free.**

Full Task Force Vote:

- 18 Yes
- 1 No
- 1 Maybe
- 0 Abstain

Currently, bail commissioners can be required to perform work for free for indigent individuals, and are not paid for any work performed or calls taken until they execute the bail bond. 15 M.R.S. § 1023(8). Typically, a bail commissioner is paid \$60 per defendant when they execute one or more bail bonds.<sup>36</sup> All fees paid to the bail commissioner are paid for by the defendant and are not returned if the charges are later dropped or the individual is found not guilty.

Members of the Task Force believe that the services of a bail commissioner should be paid for by the State. The member who voted “maybe” expressed concern about the cost of the proposal, while the individual who voted “no” questioned why Maine taxpayers should pay for these services.

**50. The Legislature should establish and fund a statewide commission to review all criminal statutes and make recommendations for revisions, including decriminalization, repeal of unused or uncharged offenses, and/or re-writing of certain sections, to the Legislature for the first major revision of the criminal laws since 1976.**

Full Task Force Vote:

- 19 Yes
- 0 No
- 1 Maybe
- 0 Abstain

Maine’s Criminal Code and other statutes that contain criminal offenses have not been thoroughly reviewed or comprehensively analyzed since 1976. As a result, the number of offenses delineated as criminal offenses has grown extensively over the past forty plus years.<sup>37</sup> The subcommittees came to a quick realization that a comprehensive review of all of the statutes

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<sup>36</sup> If a defendant is being bailed on multiple charges with different docket numbers, the bail commissioner receives a single \$60 fee.

<sup>37</sup> A MEJIS review found that of all the different class D and E offenses that have a current sequence number in MEJIS, 48% have never been charged or used by prosecutors. Sequence numbers are assigned to each section and subsection of a crime. They are used to distinguish between all the different variants in many statutes, as well as to ensure the final resolution is properly reported to the State Bureau of Identification.

by a volunteer group in the short period of time the Task Force existed was simply not possible. Task Force members feel that the Legislature should authorize and fund a comprehensive review of these laws.

**53. The Legislature should establish a commission to review mandatory fines, fees, and surcharges and make recommendations for change.**

Full Task Force Vote:

18 Yes  
4 No  
1 Maybe  
0 Abstain

Maine's laws are replete with mandatory, and often non-waivable, fines and fees. In many cases, these fines and fees can run into the thousands of dollars for a single criminal offense. Most Task Force members feel that it is time for the Legislature to undertake a comprehensive review of every mandatory fine and/or fee.<sup>38</sup> Those who voted "no" or "maybe" expressed concerns that if certain fees are removed, vital funding for programs will be lost.<sup>39</sup>

**55. Maine should eliminate warrantless arrest for VCR offenses with exceptions for certain offenses that involve crimes against a family or household members, sexual assaults, or OUI.**

Full Task Force Vote:

5 Yes  
3 No  
3 Maybe  
0 Abstain

Some members of the Task Force believe that warrantless arrests for Violation of Conditions of Release should be prohibited. Other members felt that in order to protect the safety of victims there should be exceptions for crimes against family or household members, sexual assaults, and OUI. Still others felt that a ban on warrantless arrests would severely limit a law enforcement officer's ability to respond to volatile or rapidly escalating situations that could endanger an individual or the public's safety. Those who voted "maybe" expressed the concern that a hard and fast rule prohibiting warrantless arrests could hamper the integrity of a valid court order. Others indicated support would depend on the specific language of any statute change.

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<sup>38</sup> See Appendix E of the 2015 Task Force Report. A survey was done at that time of mandatory minimum fines in the laws in Titles 7, 12, 17, 17-A and 29-A. The list was thirty-four pages long.

<sup>39</sup> For example, a mandatory victim compensation fee is attached to all crimes, and other fees attached to fines support the Computer Crimes Unit of the Maine State Police, pay for drug and alcohol testing in OUI cases, support operations at the Maine Criminal Justice Academy, and provide funding to county jails.



**58. The Pretrial Justice Reform Task Force endorses and supports the establishment of Restorative Justice programs in all 16 counties.<sup>40</sup>**

Full Task Force Vote:

16 Yes

0 No

1 Maybe

0 Abstain

Some areas of Maine, but not all, have a robust Restorative Justice program. Restorative Justice is an ideology with Indigenous roots that is made up of processes that invite, to the extent possible, those who have a stake in a specific offense to collectively identify and address harms, needs, and obligations in order to make things as right as possible. When conducted in a manner that follows the best practices and principles of Restorative Justice, victims can be made whole again, perpetrators can fully comprehend the harm they have caused and take meaningful accountability, communities can proactively address the root causes of behavior, and the costs of prosecution and incarceration can be reduced.

Most members felt that those most directly impacted by a crime may be in the best position to determine whether Restorative Justice is an appropriate response. While not all cases are appropriate for a restorative justice alternative, some cases are appropriate for participation in a Restorative Justice program.<sup>41</sup> The member who voted “maybe” was concerned that this program may be made mandatory or that victims could be pressured into participating. The Task Force did not discuss in detail what specific types of crimes are appropriate for Restorative Justice.

**62. Maine should fully fund regular and active judicial education and training on bail, release and detention decision-making, and the most recent and evidence-based research. The Legislature should ensure appropriate funding for backup judicial coverage so that all active full-time judges may attend.**

Full Task Force Vote:

19 Yes

0 No

1 Abstain

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<sup>40</sup> See for example, the State of Vermont’s Restorative Justice Manual and Best Practices at <http://restorativejustice.org/am-site/media/best-practice-guidelines-in-working-with-victims-of-reparative-probation-offenses-a-restorative-justice-manual.pdf>

<sup>41</sup> Though restorative processes are voluntary and those most directly impacted by a crime are in the best position to determine whether a restorative response could meet their needs, crimes that involve a power imbalance, such as domestic violence or any acts of severe or repetitive violence, require a higher level of training for facilitators and structure and support to ensure that the process is balanced and safe for interested participants at every stage. Restorative Justice may not be appropriate for these kinds of crimes. Victims of crime must not be required or pressured into participation in the Restorative Justice process.

Quality, comprehensive, and evidence-based training and judicial education for all of Maine's jurists should be regularly provided to ensure that bail decisions are made in an informed, thoughtful manner. The full Task Force, with one jurist abstaining, supports regular and active judicial training. The Task Force also supports the need to provide adequate funding to provide backup judicial coverage, via the use of active retired judges, to cover dockets so that all full-time jurists can attend the training and focus all of their attention on the training.

**63. Maine should fully fund regular bail commissioner, Justice of the Peace, prosecutor and defense counsel education and training on bail, release and detention decision-making, and the most recent and evidence-based research. The curriculum should be developed by a multi-disciplinary committee that is also racially and ethnically diverse.**

Full Task Force Vote:

19 Yes

0 No

1 Maybe

0 Abstain

Task Force members believe that all participants in the criminal justice system should receive regular quality evidence-based training on bail, and release and detention decision-making. Given the recent changes in Maine's population, the training must be designed in such a manner so as to provide racially and ethnically diverse training. Funding to ensure this training occurs should be provided.

**64. Maine should decriminalize the offense of drinking in public.**

Full Task Force Vote:

6 Yes

4 No

2 Maybe

1 Abstain

Drinking in Public is a Class E offense. In 2018, 417 individuals in Maine were charged with this crime. Some Task Force members believe that the offense should be decriminalized, as often, persons arrested for the offense are individuals suffering from a substance use disorder. They feel keeping this as a crime criminalizes a health condition. Other members opposed decriminalization of the offense, as circumstances often leave police officers with no other choice then to have to arrest an individual and remove them from a volatile or dangerous situation.

**66. Maine should draft and adopt a statewide standardized intake form for the jails that contains sufficient information for a bail commissioner to make a fully informed bail decision.**

Full Task Force Vote:

19 Yes

0 No

1 Maybe

0 Abstain

During the best practices review, it was determined that each county jail has a different intake form. The information contained in the form, or sought to be gathered, varied greatly in both detail and in length. Bail commissioners rely upon the information contained in the intake form in making his or her bail decision. The lack of consistency across the state leads to the obvious conclusion that the information available to bail commissioners also varies greatly. The full Task Force supports the drafting and adoption of a single statewide form that contains sufficient and reliable information upon which a bail commissioner can make a bail decision. The member voting “maybe” needed more information as to what would be on the uniform form before agreeing to this item.

**67. Maine should establish a requirement that court appointed counsel must meet with their clients within seven days of arraignment or first appearance and file a compliance report with the Maine Commission on Indigent Legal Services (MCILS).**

Full Task Force Vote:

17 Yes  
0 No  
1 Maybe  
0 Abstain

During the course of review of a wide variety of issues involving court appointed counsel and the possible impact on pretrial incarceration rates, it was brought to the subcommittee’s attention that there have been multiple incidents where a court appointed attorney rarely, if ever, met with their incarcerated clients. Often, this situation was brought to the attention of the court by concerned jail employees. The full Task Force believes that establishing a rule that court appointed counsel must meet with their clients within seven days of appointment will ensure better and more timely representation, assist in early case review and analysis, and provide better overall representation for clients. A similar rule exists in the child protective system, requiring court appointed guardians ad litem to meet with children within seven days of appointment and then on a regular schedule thereafter.

**68. Maine should establish a requirement that court appointed counsel must meet regularly with their clients.**

Full Task Force Vote:

17 Yes  
0 No  
1 Maybe  
0 Abstain

Like Item 67, there were many concerns raised that some court appointed counsel fail to stay in regular contact with their clients and or fail to properly investigate or prepare their cases for trial. This is not to be viewed as a condemnation of court appointed counsel—the majority are dedicated, hardworking professionals. However, there were reports of defendants lingering

for months in the county jail with no contact between the client and counsel. The Task Force endorses a requirement that court appointed counsel meet regularly with their clients and encourages MCILS to gather and appropriately track data surrounding this issue with an eye towards improvement of delivery of counsel services.

**69. Maine should require that prosecutors initially screening criminal cases be experienced prosecutors with fully-funded, appropriate, and regular training so that charging, bail requests, and plea offers are appropriate for the circumstances.<sup>42</sup>**

Full Task Force Vote:

10 Yes

2 No

5 Maybe

0 Abstain

Initial screening and charging decisions are the beginning stages of all criminal charges. A prosecutor's duty to thoroughly review the matter and make informed and just charging decisions is paramount. In some prosecutor's offices, new prosecutors or interns are assigned to the screening process. While this may be an effective means by which to train new lawyers or free up the time of more experienced prosecutors to handle serious charges, it leaves defendants exposed to the possibility that a new or inexperienced prosecutor may over-charge or fail to recognize that in some instances, while there may be a technical violation of a law, charging the offense is neither necessary or just. Some members of the Task Force felt it was vital that only experienced prosecutors screen cases for charging decisions.

Other members of Task Force voted "maybe" on a few different grounds. First, many DA's offices are understaffed and they need all prosecutors—not just experienced prosecutors—to carry a heavy caseload, including the screening of cases. Others pointed out that in some offices, a system of vertical prosecution, from intake to conclusion, has been implemented.<sup>43</sup> It is believed that vertical prosecutions lead to better prepared cases, knowledgeable decision-making processes and more attention being paid to the changes and/or nuances in a case. It was noted that vertical prosecution has been cited as a best practice for certain types of prosecution—particularly domestic violence cases. Finally, it was pointed out that in at least two prosecutorial districts, the District Attorney is struggling to get *any* applications for open positions.

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<sup>42</sup> This item originally read "require that prosecutors initially screening criminal cases be experienced prosecutors with fully funded and appropriate and regular training." The full Task Force amended the language to what is set out above.

<sup>43</sup> A vertical prosecution is when a single prosecutor handles the case from intake through conclusion of the case.

**72. The State should reform the drug laws as they relate to drug amounts and personal use.**

Full Task Force Vote:

11 Yes

0 No

7 Maybe

0 Abstain

Many members of the Task Force felt that it is time for Maine to comprehensively review and revise its drug laws, especially those laws that allege possession for personal consumption. One Task Force member described the laws as “draconian.” Others disagreed with that description.

Members who voted “maybe” expressed the concern that the proposal was too vague. Others felt that the proposal failed to distinguish between less harmful drugs and the newest, often deadly combination drugs that are now being seen in Maine.

There was a general agreement that any reform of the drug laws is a huge task, not one to be taken lightly, and a comprehensive review and overhaul by the Task Force was simply not possible.

## **Idea That Had A Tie Vote By the Full Task Force**

**10. Maine should eliminate cash bail for Class D and E crimes with exceptions for crimes against family or household members, sex offenses, violations of Protection from Abuse or Protection From Harassment matters, or VCR charges for domestic violence or sexual assault crimes. This proposal assumes that the person charged would be brought to the jail or police station for bail processing.**

Full Task Force Vote:

5 Yes

5 No

6 Maybe

0 Abstain

Some members of the task force felt that Maine should fully eliminate cash bail as an option in all Class D and E Crimes. Others felt that there should be exceptions for certain types of offenses. It was noted that there would be a reduction in forfeited funds transferred to the District Attorney’s Extradition and Witness fund accounts, as current Maine law provides that if a defendant has posted cash bail and then fails to appear, the funds may be ordered forfeited and transferred to the District Attorney’s offices. If cash bail is eliminated for these types of offenses, the source of funding for the DA’s accounts would be greatly reduced.

## 5. ITEMS CONSIDERED BUT REJECTED BY THE TASK FORCE

The following items were considered, but rejected, by the full Task Force. Again, the numbers listed are as they appear in Appendix E.

**1. Maine should move to a no cash bail system, with the use of a validated, racially and economically neutral risk analysis and financial screening process. With this change, expand the ability for the court to order preventive detention after hearing for those individuals considered a danger to society or the victim or a risk of flight.**

Full Task Force Vote:

2 Yes

9 No

6 Maybe

0 Abstain

Some jurisdictions, notably California,<sup>44</sup> Washington DC, New Mexico, and New Jersey have radically altered their cash bail systems in recent years and eliminated or nearly eliminated the use of cash bail. In its place, a system using validated tools to screen for financial ability, the risk of flight, and danger to the community, and a robust system of pretrial supervision, has been implemented.

Concerns were raised about the constitutionality of such a change in Maine given the language of our Constitution that states in Article 1, Section 9 that “excessive bail shall not be required” and that without the ability to order preventative detention, the elimination of cash bail could compromise victim and/or public safety in high risk cases. Additional concerns were raised that some risk assessment tools are not racially or economically neutral and penalize individuals for homelessness or poverty.<sup>45</sup> It was noted that pretrial best practice standards dictate that the use of risk and needs assessments should only be a single tool in a multi-step process used to help inform the bail decision.<sup>46</sup>

**9. In the absence of a constitutional amendment eliminating cash bail, Maine should eliminate the statutory requirement of a change of circumstances in 15 M.R.S. § 1026(3)(C) before bail and/or bail conditions can be amended.**

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<sup>44</sup> The changes in California are currently being challenged in court and the program has not yet been implemented.

<sup>45</sup> The current risk/flight analysis tool used by Maine Pretrial Services has been validated and found to be facially race and gender neutral by an independent outside consultant. It was not reviewed for economic neutrality.

<sup>46</sup> Currently, there is national litigation challenging the use of charge or financially based decisions instead of looking at the individual case and that individual’s risk of flight and risk to victim or community safety.

Full Task Force Vote:

6 Yes

9 No

1 Maybe

0 Abstain

In reviewing various alternatives to bail, some members felt that the language of 15 M.R.S. § 1026(3)(C) was too restrictive and kept too many people in jail unnecessarily. This section provides: "Upon motion by the Attorney for the State or the defendant and after notice and upon a showing of a 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."

Other members were satisfied the language provided a fair balance, while still others noted their concern that if the language was eliminated the courts would be inundated with multiple, repetitive motions to amend bail.

#### **25. Decriminalize simple drug possession for personal use amounts.**

Full Task Force Vote:

5 Yes

8 No

2 Maybe

0 Abstain

Some Task Force members felt that one way to address pretrial jail population numbers is to prohibit the arrest of individuals for simple drug possession when the possession is for personal use amounts. They expressed the opinion that persons who suffer from a substance use disorder are being charged criminally for a health condition.

Others expressed concerns that decriminalization would lead to more crime and/or people trying and becoming addicted to drugs. Still others struggled with what the appropriate definition of "personal use" would be.

#### **36. Maine should prohibit arrest for "technical violations of bail."**

Full Task Force Vote:

3 Yes

11 No

0 Maybe

0 Abstain

Some members felt that police officers should be prohibited from arresting persons for technical violations of bail. It was their belief that passage of such a prohibition would greatly reduce the pretrial population.<sup>47</sup>

Others opposed this proposal and in particular were concerned with how to define a technical violation: Is it a curfew violation? Possession of alcohol? Text messages sent to a victim named in a no contact order? The subcommittee discussed in great detail what should and should not be labeled a technical violation, but could not reach a consensus.

**48. The State should establish a pilot for an after-hours bail hearing system with legally-trained magistrates that operates around the clock and provides for the presence of both the prosecutor and defense counsel.**

Full Task Force Vote:

3 Yes

4 No

7 Maybe

0 Abstain

This proposal would establish an after-hours magistrate system that would conduct initial bail hearings shortly after arrest. It would be staffed by legally trained and licensed magistrates and both a prosecutor and defense attorney. It was felt that having such a system on nights, weekends, and holidays would reduce the numbers of persons held pretrial.

Some members objected to the proposal because of the anticipated costs while others expressed concerns that the quick and swift turnaround time would leave insufficient time for victim advocates to draw up and implement a safety plan with victims.<sup>48</sup>

**56. Maine should eliminate the possibility of imposing bail conditions for class D and E offenses with exceptions for domestic violence, violation of PFA orders, and sex offense-related charges.**

Full Task Force Vote:

3 Yes

9 No

0 Maybe

0 Abstain

Some Task Force members felt that Maine should eliminate the availability of bail conditions for class D and E offenses, with a few targeted exceptions for those crimes involving domestic violence, sexual assaults, or violation of Protection From Abuse orders. These members

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<sup>47</sup> MEJIS data in 2018 indicates that 60% of those charged with a VCR offense were also charged with another new crime, while 40% were simply charged with one or more counts of VCR. MEJIS does not have the ability to electronically record or tabulate the reasons for the VCR, nor does it have the ability to sort the violations by type.

<sup>48</sup> Depending upon the model used, and the amount and frequency of coverage offered, Maine Judicial Branch costs for such a program would range from \$1.5 million to \$3.6 million dollars per year. There would be additional costs for prosecutors and defense counsel.



felt that eliminating the conditions of bail in most misdemeanor offenses would result in fewer people being arrested pending trial.

Others opposed the elimination of bail conditions on the grounds that protection of the public, victim safety in non-domestic violence offenses, and ensuring the integrity of the judicial system warranted keeping those conditions in place. Still others felt that judges needed to have the options to impose conditions based on the specific facts of the individual case.

## **6. ITEMS CONSIDERED BY THE SUBCOMMITTEES BUT NOT VOTED ON BY THE FULL TASK FORCE**

As briefly discussed above, it was decided that items that were not unanimously or nearly unanimously supported by the subcommittees would be retained on the list of “Bold Ideas” but would only be brought forward for a full Task Force vote if requested by a member of the Task Force. At the November 12 meeting, members were instructed to send an email requesting any “non-green” item be added to the next agenda. A follow up e-mail with this instruction was also sent. Two Task Force members requested that a total of 14 additional items be added to the agenda. The items listed below were not taken up, as no member of the Task Force requested the item be brought forward. Again, these items are numbered based on the full “Bold Ideas” chart in Appendix E.

3. Ensuring access to appropriate community interventions, including a continued recognition that certified batterer intervention programs are the most appropriate intervention in cases involving domestic violence and examining how to ensure abusers are ordered into and complete the program.
5. Statewide victim notification of pretrial release and court hearings through the implementation of a system where there is a victim services liaison in each State Police barracks and each sheriff’s office.
6. The State should provide funding for specially-trained domestic violence investigators in each sheriff’s office.
11. Examine the justice continuum at various early intercepts, such as pre-booking, arrest, bail release decisions, pretrial detention, plea bargaining, deferred dispositions, alternative sentencing, to maximize pretrial release and reduce risk to public safety.
13. Look to reduce or eliminate the list of 17-A M.R.S. § 15 warrantless arrests for class D and E offenses.
14. Use only conditions at arraignment for summonsed class D and E offenses (no cash bail to be imposed). Note: This is similar to item 10 except that it allows a judge to impose conditions at arraignment.
15. Pilot a 24/7 regional communication center process to use risk assessment and determine release at the bail commissioner level.
17. Adopt National Association of Pretrial Services (NAPSA) release standards statewide.

18. Adopt a process to propose a constitutional amendment eliminating cash bail (Maine Constitution, Article 1, Section 9) and permitting carefully circumscribed pretrial detention for public safety reasons.
20. Require Triple III (Federal) and SBI (State) criminal history checks prior to setting bail for class A, B and C crimes and for crimes against family or household members and sexual assaults.
22. Train bail commissioners to conduct risk assessments.
24. Adopt pre-arrest diversion programs with DAs using NAPSA standards to determine diversion.
26. Eliminate the court's ability to issue warrants and/or arrest individuals for failure to pay fines.
28. Screen, identify and divert drug and alcohol-related defendants to community-based treatment and MAT programs, including regulated sober housing.
29. Review Pretrial Justice Institute's (PJI) pretrial reform resolutions with agency heads—State, private, and non-profits.
30. Use SAMSHA funding from public health perspective, not a criminal justice perspective.
31. Strengthen the presumption of personal recognizance release language in the Bail Code.
35. Prohibit incarceration for failure to pay fines or fees regardless of the ability of a person to pay the fine or fee.
38. Set a 12-hour limit for holding arrested persons and require a bail hearing before the expiration of the 12-hour hold.
39. Look at programs that help identify barriers to getting to court and whether there are low-cost solutions to helping surmount the obstacles such as travel vouchers, notification, etc.
40. Amend the Bail Code so that judges or bail commissioners may not impose the conditions of no consumption of alcohol or drugs as conditions of release on pre-conviction bail if drugs or alcohol were involved in the underlying crime.
43. Assuming the use of summonses instead of arrests for most misdemeanors, and that bail commissioners are only setting bail in felony cases, all bail commissioners should be trained in risk assessments and the presumption of release.
44. Assuming risk assessments are mandated by statute, provide that bail commissioners can override the risk assessment but must give written justification.

45. Require bail commissioners and judges to screen people for ability to pay before setting bail, with written justification and reasons for decisions made on ability to pay.
46. Pilot projects that collect data for bail programs based on risk assessments, and conduct a review of the data to see what the racial implications are when using risk assessments.
49. Prohibit jail as a sentencing option for class E offenses except for VCR on DV-related crimes.
51. Bring back a robust Board of Corrections to coordinate statewide policies on jails.<sup>49</sup>
52. Consider a centralized process, using technology, for setting of bail and allowing the processing of bails including the handling of cash bails by sheriffs or their employees.
54. The Governor should exercise her pardons power and issue pardons for long overdue fines imposed before a certain date.
57. Recommend to the Legislature that they develop a system to produce racial impact statements on all proposed legislation.
59. Standardize cash bail forms for jail use in all bail cases.
60. Standardize jail forms statewide to ensure release of bail funds to the defendant unless third party form was filed and signed.
65. Establish an online certificate program in the Community College system for certification of bail commissioners. Provide funding to pay for all bail commissioners to become certified.
71. Require leadership in all three branches of government to commit to implementation of these recommendations including legislation, funding for technology, and sufficient staff to carry out the recommendations.

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<sup>49</sup> While not formally voted on, Sheriff Joyce, on behalf of the Maine Sheriff's Association, told the Task Force at the November 25 meeting that the Sheriff's Association opposed this proposal. No formal vote was called for.

## 7. CONCLUSION

Despite the efforts of the 2015 Task Force, and the changes in statute and procedure that resulted, the limited available evidence continues to suggest that the rate of pretrial detention in Maine remains high. This rate of pretrial detention can be reduced, but only through a comprehensive and concerted effort, at all levels of government, including the three branches of State government as well as the elements of county and municipal governments with roles in the detention process and system.

No single reform can reduce the rate of pretrial incarceration in Maine, but the rate can be reduced through genuine commitment and a concerted coordinated effort to appropriately structure and fund reform. If Maine as a state is to achieve this goal, it must create pretrial programs to assess all arrested defendants and monitor those who are released on unsecured bail conditions; consider measures to reduce the arrest rate, including decriminalizing certain misdemeanor offenses; and provide safe alternatives to pretrial incarceration through diversion and treatment programs that are appropriate to the individual and circumstances involved.

All of these means toward the end of reducing pretrial incarceration in Maine require and are premised on increased sufficient, on-going, and proper funds in the short and long term to drive the development and implementation of robust, real-time data collection across all sectors of the criminal justice system. These data collection systems must be uniform, as well as integrated and connected, between and within all agencies at all levels of government, so that all parties and agencies can promptly, seamlessly, and immediately communicate and share data. Such analysis is essential to establish reliable guideposts for further changes that will respect the rights of defendants, protect the public, and ensure the safety of witnesses and victims in a socially and fiscally responsible manner.

Pretrial justice reform should be a high priority in the Legislature in order to safeguard the rights of defendants, ensure the safety of the public, achieve racial justice, protect witnesses and victims, and preserve the integrity of the criminal justice process.

## **8. APPENDICES**

# APPENDIX A

## Summary of 2015 PTJRTF Recommendations, Votes, and Legislative Response

The following is a compilation of the recommendations of the 2015 Pretrial Justice Reform Task Force, as contained in that report, as well as a summary of the vote of the full Task Force<sup>1</sup> and the legislative outcome, if any, with the statutory cite to the provision. All references are to LD 1639, amendments to that bill and/or Chapter 436, of the 127<sup>th</sup> Legislature, First Regular session.

**1. 15 M.R.S. § 1025-A should be amended to allow a properly authorized and trained county jail employee to prepare and execute a PR or unsecured bail bond when a bail commissioner orders such a bail.**

Vote of Full PTJRTF: 25 yes, 0 opposed.

Legislative Outcome: Contained in original bill, stricken by committee amendment. Not adopted. 15 M.R.S. § 1025-A permits properly trained and approved jail employees to execute court-set personal recognizance and unsecured bonds.

**2. 15 M.R.S. § 1026(3), Standards for Release on Pre-conviction Bail, should be amended to include specific language addressing: 1) Refraining from the possession of alcohol, or illegal drugs; 2) a showing of a demonstrated need for the imposition of the condition; and 3) a specific reference to the type of search.**

Vote of Full PTJRTF: 23 yes, 2 opposed.

Legislative Outcome: Contained in original bill. Adopted in Chapter 436, see 15 M.R.S. § 1026(9) and (9-A).

**3. 15 M.R.S. § 1051, Post-Conviction Bail, should be amended to set out the standards for bail with respect to a motion to revoke probation.**

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<sup>1</sup> Not all vote tallies totals add up to the same number. This is because for some items, individual members of the committee had either stepped out of the meeting or had left the meeting due to other commitments. For those members who were unable to attend the meeting where the votes were taken, an absentee ballot was sent to each, thereby giving them an opportunity to vote. Those who returned their ballots had their votes included in the final tally.

Vote of Full PTJRTF: 24 yes, 0 opposed.

Legislative Outcome: Contained in original bill. Adopted in Chapter 436, see 15 M.R.S. § 1051(2-A).

**4. 17-A M.R.S. § 1205-C, Initial Appearance on Probation Violation, should be amended to include language that specifically gives the court authority to set bail in a probation violation matter as well as the standard of proof required for that action.**

Vote of Full PTJRTF: 24 yes, 0 opposed.

Legislative Outcome: Contained in original bill. Adopted in Chapter 436, see 15 M.R.S. § 1051(2-A) and 17-A M.R.S. §§ 1205-C(4-5).

**5. The State should eliminate the availability of unsecured bonds for bail.**

Vote of Full PTJRTF: 23 yes, 1 opposed.

Legislative Outcome: Contained in original bill, stricken by committee amendment. Not adopted.

**6. 15 M.R.S. § 1073-A(1), Precondition to Forfeiture of Cash or Other Property of a Surety if a Defendant Violates a Condition of Release: Notice, should be repealed.**

Vote of Full PTJRTF: 16 yes, 6 opposed, 1 abstain.

Legislative Outcome: Contained in original bill. Adopted in Chapter 436. All language in 15 M.R.S. § 1073-A repealed.

**7. 15 M.R.S. § 1023(4), Limitation on Authority of Bail Commissioners to Set Bail, should be amended to add a restriction that bail commissioners should not be allowed to set the condition of random search and seizure for drugs or alcohol.**

Vote of Full PTJRTF: 22 yes, 2 opposed.

Legislative Outcome: Contained in original bill. Adopted in Chapter 436, see 15 M.R.S. § 1023(4)(G).

**8. Title 17-A M.R.S. § 1205-C(4), Initial Appearance on Probation Violation, should be amended by adding language that if a person is committed without bail pending a probation revocation hearing, that hearing date should be set no later**



**than 45 days from the date of the initial appearance unless otherwise ordered by the court.**

Vote of Full PTJRTF: 17 yes, 4 opposed, 2 abstained

Legislative Outcome: Contained in original bill. Adopted in Chapter 436, see 17-A M.R.S. § 1205-C(4).

**9. Title 15 M.R.S. § 1023(4)(E) should be amended to require that in all cases where a defendant has been arrested on a domestic violence charge, and there is a condition of no contact with the alleged victim, the arraignment should take place no later than 5 weeks from the date of the bail order.**

Vote of Full PTJRTF: 22 yes, 0 opposed.

Legislative Outcome: Contained in original bill. Adopted in Chapter 436, see 25 M.R.S. § 1023(4)(F).

**10. Title 17-A M.R.S. § 1302, Criteria for Imposing Fines, should be amended to allow a court to waive minimum mandatory fines in certain limited circumstances (certain drug offenses and simple assault).**

Vote of Full PTJRTF: 22 yes, 0 opposed.

Legislative Outcome: Contained in original bill. Adopted in Chapter 436, see 17-A M.R.S. § 1302(3).

**11. The Judicial Branch should raise the minimum dollar threshold for issuing a warrant for Failure to Appear for an Unpaid Fine hearing from the current level of \$25 to \$100.**

Vote of Full PTJRTF: 22 yes, 0 opposed.

Legislative Outcome: Not contained in bill. The Maine Judicial Branch established an internal working committee, that revised all collection procedures and implemented the recommendation.

**12. The criminal justice system should implement/expand public service work programs to pay off fines consistent with 17-A M.R.S. § 1304(3) for class C, D, and E crimes. It should apply only towards those who have demonstrated the most**

**difficulty with paying a fine. The dollar amount credited should be set at the State minimum wage figure.**

Vote of Full PTJRTF: 21 yes, 0 opposed.

Legislative Outcome: Contained in original bill but for class D and E crimes only. Committee amendment added class C offense. Adopted in Chapter 436, See 17-A M.R.S. § 1304(3)(A).

**13. The Judicial Branch should formulate a detailed fine collection procedure throughout the state that is standard and uniformly applied.**

Vote of Full PTJRTF: 20 yes, 1 opposed.

Legislative Outcome: Not contained in bill. The Maine Judicial Branch established an internal working committee that revised all collection procedures and implemented the recommendation.

**14. The Judicial Branch should create a mechanism, and provide training on that mechanism, to discourage the imposition of “going rate” fines. Instead fines should be imposed with the requirements of 17-A M.R.S. § 1302(1) in mind.**

Vote of Full PTJRTF: 7 yes, 10 opposed, 2 abstained.

Legislative Outcome: Not contained in the bill.

**15. There should be established a statewide fund from which bail commissioner fees are paid.**

Vote of Full PTJRTF: 20 yes, 3 opposed, 2 abstained.

Legislative Outcome: Contained in original bill. Stricken by committee amendment. Not adopted.

**16. The current Bail Bond form (CR-001) and Condition of Release form (CR-002) should be revised to separate out alcoholic beverages, illegal drugs or dangerous weapons so that only those elements that are warranted for a particular case are ordered as a bail condition.**

Vote of Full PTJRTF: 23 yes, 0 opposed, 2 abstained.

Legislative Outcome: Not contained in original bill but the recommendation was adopted by the Judicial Branch, see forms CR-001 and CR-002. These revisions are currently contained in the 7/17 version of these forms.

**17. Adequate state funding should be provided to insure consistently available statewide pretrial supervision in the community.**

Vote of Full PTJRTF: 16 yes, 5 opposed, 3 abstained.

Legislative Outcome: Not contained in original bill, added by amendment and contained in Chapter 436. See 34-A M.R.S. § 1210(d)(2-A) and 34-A M.R.S. § 1210(2)(c).

**18. Regular state funding should be provided each year so that mandatory in-person bail commissioner training can occur. Estimated cost is \$5,000-\$6,000 per year.**

Vote of Full PTJRTF: 25 yes, 0 opposed.

Legislative Outcome: Not contained in original bill, not adopted. No training in 2017. The Bail Manual was completely re-written in 2018. Hard copies were provided to every bail commissioner at trainings in the fall of 2018. The Manual was posted on the Maine Judicial Branch website in the fall of 2018.

**19. Law enforcement officers need more training on the Violation of Conditions of Release (VCR) law and the role of officer discretion in deciding whether to arrest or summons for a VCR violation.**

Vote of Full PTJRTF: 23 yes, 1 opposed, 1 abstain.

Legislative Outcome: Not contained in original bill, not adopted.

**20. State funding should be provided for, and standardized training materials developed and delivered to, prosecutors, judges, lawyers of the day and defense counsel on conditions of bail and the use of bail conditions in compliance with 15 M.R.S. § 1002.**

Vote of Full PTJRTF: 10 yes, 8 opposed, 7 abstained.

Legislative Outcome: Not contained in original bill, not adopted.

**21. There should be established and implemented a one-day statewide educational forum on community-based diversion programs.**

Vote of Full PTJRTF: 17 yes, 2 opposed.

Legislative Outcome: Not contained in original bill, not adopted.

**22. State funding should be provided to allow for the independent study of and validation of the pretrial risk assessment tool currently being used by Maine Pretrial Services. If validated, this Maine based pretrial risk assessment tool should be adopted for statewide use.**

Vote of Full PTJRTF: 14 yes, 8 opposed, 4 abstained.

Legislative Outcome: Not contained in original bill, not adopted. Since that date, the MPS Risk Assessment has been validated.

**23. The Chief Justice should appoint a select committee to study, in depth, the bail systems of other jurisdictions that have completely, or almost completely, eliminated cash bail and instead instituted a system that utilizes risk assessment and pretrial supervision instead.**

Vote of Full PTJRTF: 24 yes, 0 opposed.

Legislative Outcome: Not contained in original bill, not adopted. The current Task Force was charged with this assignment.

**24. The Judicial Branch should further study the possibility of implementing a pilot project that uses pretrial risk assessments results in setting bail.**

Vote of Full PTJRTF: 22 yes, 1 opposed, 2 abstained.

Legislative Outcome: Not contained in original bill, not adopted. Recently the Kennebec County District Attorney's Office has started using the MPS risk assessment in bail matters.

**25. The Chief Justice should establish an ongoing, statewide task force whose primary purpose is to explore, recommend and assess diversion processes and programs and establish a Justice Diversion system for the State of Maine.**

Vote of Full PTJRTF: 5 yes, 9 opposed, 1 abstained.

Legislative Outcome: Not contained in original bill, not adopted. The current Task Force was charged with investigating this possibility.

**26. The Judicial Branch should conduct a statewide survey of existing Maine Criminal Justice Diversion Programs.**

Vote of Full PTJRTF: 19 yes, 1 opposed, 1 abstained.

Legislative Outcome: Not contained in original bill, not adopted. The current Task Force was charged with gathering this information.

**27. The State of Maine Department of Corrections should be provided sufficient funding for staffing to supervise those probationers charged with violations of probation.**

Vote of Full PTJRTF: 8 yes, 12 opposed, 4 abstained.

Legislative Outcome: Not contained in original bill, not adopted.

**28. The Chief Justice should establish an ongoing, statewide task force whose primary purpose is to explore, recommend and assess specific and named diversion processes and to establish a Justice Diversion system for the State of Maine.**

Vote of Full PTJRTF: 17 yes, 2 opposed.

Legislative Outcome: Not contained in original bill, not adopted

**29. The Legislative Branch should carefully study and review the nearly 1,100 different statutes that have mandatory minimum fines.**

Vote of Full PTJRTF: 17 yes, 2 opposed.

Legislative Outcome: Not contained in original bill, not adopted.

# **APPENDIX B**

## **Pretrial Justice Reform Task Force Charter**

### **PRETRIAL JUSTICE REFORM TASK FORCE**

**Type:** Limited Term Task Force  
**Established:** May 1, 2015, Report delivered February 12, 2016  
**Re-established:** February 6, 2019  
**Chair:** Justice Robert E. Mullen  
**Report Date:** November 30, 2019  
**Reports to:** Chief Justice  
**Completion Date:** July 30, 2020

#### **I. Background:**

This Task Force is re-established by Chief Justice Saufley to begin the next steps of reviewing and improving the system of pretrial justice in Maine. The Chief Justice will invite the new Governor, President of the Senate, and Speaker of the House to designate members of the Task Force in order to continue the cross-branch work begun by the original Task Force

The Task Force is expected to meet regularly during 2019 and to present recommendations for improvements to the leaders of the three branches in time to allow action on the urgent proposals during the Second Regular Session of the 129th Maine Legislature.

#### **II. Goals:**

The primary responsibilities of the Task Force are to review the relevant current research and data; address existing resources, procedures, and programs; and make recommendations that will

- Reduce the human and financial costs of pretrial incarceration and restrictions;
- Achieve fairness in the application of policies and laws, including but not limited to, giving attention to racial, ethnic, gender, LGBTQ, and economic factors;
- Provide for the collection and reporting of reliable data that will be helpful in assessing efficacy, fairness, and positive outcomes;
- Identify needed resources, both current gaps and innovation-based needs; and
- Avoid compromising individual or community safety or the integrity of the criminal justice system.

### III. Responsibilities:

- A. Review of Accomplishments from the recent Task Force
  - Catalogue changes accomplished in last legislative session;
  - Determine whether there is data available to evaluate efficacy of those changes, and if not, how such data could be collected and analyzed;
  - Evaluate improvements.
  
- B. Review and Update Best Practices

The Task Force will undertake an updated review of the current state of knowledge regarding evidence-based best practices and innovations in pretrial justice reform regarding

- Reduction and prevention of violence, and the development of programs that provide for improved protection for victims;
- Diversion of nonviolent offenders into community-based programs;
- Creation of supervised, meaningful community service programs to augment personal accountability in sentencing and enhance pretrial success;
- Development of better individualized conditions of pretrial release, accompanied by improved resources, oversight, and enforcement; and
- Identification of resources necessary to support case management, community-based programs, addiction recovery programs, and mental health support within communities.

- C. Assessments

The Task Force will undertake a review of the current state of knowledge regarding assessments in pretrial justice reform, including, but not limited to, the following:

- Identification of resources that have shown a proven ability to improve appearance rates, reduce unnecessary detention, and improve community safety;
- The thoughtful development and implementation of reliable risk assessment tools and objective assessments for suitability-for-release determinations that are assessed for potential inherent biases and any other aspects affecting fairness and reliability;
- The assessment of family support systems and the methods by which the system addresses the needs of children and families of alleged offenders; and
- The identification of the most effective work being undertaken by

government and stakeholders to address addiction recovery.

#### D. Process Improvement

The Task Force will assure that attention is given to the following aspects of the pretrial process:

- Proven strategies for protecting the victims—adults, children, and the elderly—of domestic and sexual violence;
- The factors that go into the decision to arrest rather than summons, and release rather than hold, and the need, if any, for statutory augmentation;
- The potential for updating, or the complete replacement of, the bail commissioner system, including, but not limited to
  - Enhanced education, training, and experience requirements;
  - Compensation for bail commissioners that allows for the elimination of fees paid by defendants to bail commissioners; and
  - Assuring that bail commissioners are able to have all relevant information, including in-person assessments of arrestees;
- The process related to alleged violations of conditions of pretrial release and motions to revoke bail;
- The breadth, reliability, and quality of information available to a bail commissioner or a judge at the point of pretrial release decisions;
- The assessment of mental health capacity, risks, and resources needed at each point in the pretrial process;
- The resources available for pretrial diversion programs; and
- The post-conviction process for addressing the payment of fines and restitution.

#### E. Foundational Components

The Task Force will assure that any proposals address

- Risk of violence;
- Safety of crime victims and the community;
- Risk of flight;
- Potential human trafficking victims;
- The potential for inequitable minority impact;
- Availability of meaningful, supervised community service;
- Acceptance of personal responsibility, including the responsibilities of
  - Maintaining sobriety;
  - Complying with court orders;
  - Focusing on continued education, employment, participation in job searches, or meaningful community service; and
  - Meeting family responsibilities, including payment of child support.



#### **IV. Recommendations:**

The Task Force will prepare a report and make recommendations to the SJC through Chief Justice Saufley, and to Governor Mills, President Jackson, and Speaker Gideon for improvements, innovations, and augmentations of resources, statutes, procedures, and policies that are responsive to the charge of the Task Force.

#### **V. Resources:**

The Task Force will be assisted by members of the Administrative Office of the Courts, law school interns, and others as made available. The Task Force may seek input, suggestions, and recommendations from individuals and groups outside of the Task Force. The Task Force may invite consultants to its meeting as needed. There is no specific general fund allocation for the Task Force.

#### **VI. Membership:**

The membership list is attached and may be modified at any time at the discretion of the Chief Justice.

#### **VII. Subcommittees and Voting:**

At the discretion of the Chair, the Task Force may designate subcommittees to address specific issues and report back to the Task Force. Subcommittees may invite additional input.

The Task Force will work through consensus. All members of the Task Force, including ex officio members, are voting members. Where consensus is not possible, a vote of the majority of the membership will be sufficient to include a recommendation in the report. A minority report may be included in the final report.

#### **VIII. Reporting:**

The Task Force will report to the leaders of the three branches of government on or before November 30, 2019. The Report will contain specific recommendations for innovations and improvements, including pilot projects, as well as drafts of any proposed legislation or rule changes. At a minimum, the Task Force will present proposals for improvements in the following three areas:

1. **Bail:** Replacement or improvement of Bail Commissioner system, use of cash bail, use of validated risk assessment tools, conditions and suitability for release, and violence and sexual assault

- prevention;
2. **Community Based Programs:** Pretrial diversion alternatives, case management and treatment availability, supervised community services programs, and integrated programs, including potential funding sources for such programs; and
  3. **Resources Supporting Innovations and Diversion:** Improvement in community service alternatives, review of sentencing alternatives to fines, assessment of proven resources, recommendations for augmenting or improving current community-based services.

**IX. Meetings:**

Meetings will be at the call of the Chair of the Task Force, at times and places designated by the Chair. Meetings will be open to the public. Although members may appear by video or phone, personal attendance is encouraged.

**X. Task Force Duration:**

Unless extended by further order of the Chief Justice, the Task Force will complete its work no later than the conclusion of the Second Regular Session of the 129th Maine Legislature and will cease to exist on July 30, 2020.

Dated: February 6, 2019

Approved by:

\_\_\_\_\_/s/\_\_\_\_\_  
Chief Justice Leigh I. Saufley  
Maine Supreme Judicial Court

**JUDICIAL BRANCH  
PRETRIAL JUSTICE REFORM TASK FORCE  
MEMBERSHIP ROSTER**

Justice Robert E. Mullen, Chair  
Chief Justice of the Superior Court or designee  
Chief Judge of the District Court or designee  
Commissioner of the Department of Public Safety or designee  
Commissioner of the Department of Corrections or designee  
Senator as appointed by the President of the Senate  
Representative as appointed by the Speaker of the House  
Tribal Representative  
Attorney General Aaron Frey, or designee  
President of the Maine District Attorney's Association or designee  
Edward Tolan, Executive Dir., Maine Chiefs of Police Association, or designee  
Sheriff Kevin Joyce or designee  
County Jail Administrator as appointed by the Maine Sheriffs Association  
Andrea Mancuso, Esq., Public Policy Dir., Me. Coalition to End Domestic Violence  
Elizabeth Saxl, Executive Director, Maine Coalition Against Sexual Assault  
Alison Beyea, Executive Director, ACLU of Maine  
Rachel Talbot Ross, Maine NAACP  
Lois Reckitt, Domestic Violence Consultant  
Elizabeth A. Simoni, Executive Director, Maine Pretrial Services  
Kelly Dell'Aquila, Director of Services, My Sister's Keeper  
Tina Nadeau, MACDL  
John D. Pelletier, Executive Director, MCILS, or designee, ex officio  
Anne Jordan, Esq., Judicial Branch Manager of Criminal Process & Specialty Dockets  
Patty Kimball, Executive Director, Restorative Justice Institute  
Associate Justice Joseph M. Jabar, SJC Liaison

# **APPENDIX C**

## **Pre-Trial Justice Task Force Membership List**

Justice William Anderson – Maine Judicial Branch  
Rep. Donna Bailey – Maine House of Representatives  
Alison Beyea, Esq. – American Civil Liberties Union of Maine  
Bruce Boyd – Bail Commissioner  
Senator Michael Carpenter – Maine State Senate  
Commander Craig Closley – Representing the County Jail Administrators  
Rhonda DeContie, Clerk of Courts – Penobscot Nation Tribal Court  
Attorney General Aaron Frey  
Lisa Hallee – Representative of the Community - Family Assistance  
Jonathan Huntington, Esq. – Maine Judicial Branch  
Justice Joseph Jabar – Maine Judicial Branch  
Anne H. Jordan, Esq.– Maine Judicial Branch  
Sheriff Kevin Joyce – Maine Sheriff’s Association  
Commissioner Randy Liberty – Maine Dept. of Corrections  
Kendra Lychwala, Esq./Laura Yustak, Esq. – Representing the Attorney General  
Maeghan Maloney, Esq. – Maine Prosecutor’s Association  
Andrea Mancuso, Esq. – Representing Maine Coalition to End Domestic Violence  
Sarah Matarri Esq. – Restorative Justice Institute of the Mid-Coast  
Justice Robert Mullen, Chair – Maine Judicial Branch  
Tina Nadeau, Esq. – Maine Association of Criminal Defense Lawyers  
Rena Newall – Passamaquoddy Tribal Representative  
John Pelletier, Esq. – Maine Commission on Indigent Legal Services  
Lois Reckitt – Domestic Violence Consultant  
Commissioner Michael Sauschuck – Maine DPS  
Elizabeth Simoni, JD – Maine Pretrial Services  
Judge Valerie Stanfill – Maine Judicial Branch  
Francine Stark – Maine Commission End Domestic Violence  
Rachel Talbot Ross – National Association for the Advancement of Colored People - Maine  
Chief Ed Tolan (Retired) – Maine Chiefs of Police Association  
Elizabeth Ward Saxl – Maine Coalition Against Sexual Assault

# APPENDIX D

## Pre-Trial Justice Reform Task Force Subcommittee Assignments 2019

<b>Process Improvement</b>	<b>Review and Update Best Practices</b>	<b>Assessments</b>
Chair: Justice William Anderson	Chair: Anne Jordan, Esq.	Chair: Elizabeth Simoni, JD
Attorney General's Office	Tina Nadeau, MACDL	Sarah Matari, RJ Mid-Coast
Kevin Joyce, MSA	Elizabeth Simoni, MPTS	Rhonda DeContie, Penobscot Nation
Sen. Mike Carpenter	DA Maeghan Maloney	Rep. Donna Bailey
Elizabeth Ward Saxl, MECASA	Jonathan Huntington, Esq., MJB	Francine Stark, MCEdV
DA Maeghan Maloney	Alison Beyea, Esq., ACLU ME	Tina Nadeau, Esq., MACDL
Andrea Mancuso, MCEdV	Rachel Talbot Ross	Elizabeth Simoni, JD, MPTS
Tina Nadeau, MACDL	Randall Liberty or Designee	DA Maeghan Maloney
Rena Newall, Passamaquoddy Tribal Representative	John Pelletier	Jonathan Huntington, Esq., MJB
Elizabeth Simoni, MPTS	Lois Reckitt, DV Advocate	Bruce Boyd, Bail Commissioner
Judge Valerie Stanfill	Commissioner Michael Sauschuck	Craig Clossey, Aroostook Cty. Jail Administrator
Bruce Boyd, Bail Commissioner	Andrea Mancuso, Esq.	Alison Beyea Esq., ACLU ME
Alison Beyea Esq., ACLU, ME	Lisa Hallee, Family Assistance	Rachel Talbot Ross
Lisa Hallee, Family Assistance	Emma LeBlanc, ACLU ME	Anne Jordan, Esq.
Craig Clossey, Aroostook Cty. Jail Administrator	Commissioner Randy Liberty	Commissioner Randy Liberty

# APPENDIX E

Pre-Trial Justice Reform Task Force

## Bold Ideas from the PTJRTF Subcommittees 2019

Submitted to the Full Committee November 12, 2019 and November 25, 2019<sup>1</sup>

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
1	<p>Maine should move to a no cash bail system, with the use of a validated, racially and economically neutral risk analysis and financial screening. With this change, expand the ability for the court to order preventive detention after hearing for those individuals considered a danger to society or the victim or a risk of flight.</p> <p><b>Notes:</b> Some jurisdictions (Washington DC, NJ, Cal) have implemented systems that totally or partially eliminated the use of cash bail and substituted risk analysis and supervision programs with a provision that a prosecutor could petition to hold a person pending trial due to “dangerousness”.</p>	<p>If this system is adopted, there will be a need to hire screeners for risk analysis and financial screening. Additional court costs for judges/marshals/clerks/prosecutors and defense counsel for hearings. Costs will depend upon whether the system will operate just Monday-Friday or 24/7. Costs for employees of pre-trial services organization to supervise individuals.</p>	<p>MCILS Maine District Attorney’s Association Maine Judicial Branch Pre-Trial Services Organizations Victim Service Providers Maine Sheriffs Association</p>	<p>5-Yes 4-No 3-Maybe</p>	<p>0-Yes 9-No 5-Maybe 0-Abstain</p>	<p>2-Yes 0-No 1-Maybe 0-Abstain</p>

<sup>1</sup> Items labeled “Passed” were considered by the various sub-committees but the full Task Force elected not to bring the idea to a vote at the November meetings. Thus, no vote was taken on the item. “Passed” should not be interpreted to mean adopted.

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
2	<p>There should be a statewide expansion of the availability of GPS monitoring for medium and high-risk domestic violence perpetrators in all counties. Funding for costs should be covered for indigent defendants and victims by the state.</p> <p><b>Notes:</b> Currently three prosecutorial districts use GPS monitoring for certain high-risk offenders. Costs for GPS monitoring vary between the counties and are paid for either by the Defendant or from a limited pool of donated or state funds if the Defendant is indigent.</p>	<p>Currently, GPS monitoring costs vary from \$3-12 per day per defendant. Total costs would depend upon the number of participants deemed high risk and the length of time they are on the monitoring program.</p>	<p>District Attorney's Offices Pretrial service providers/screeners Law enforcement High Risk Response teams</p>	<p>8-Yes 3-No 2-Maybe</p>	<p>14-Yes 1-No 0-Maybe 0-Abstain</p>	<p>2-Yes 1-No 0-Maybe 0-Abstain</p>
3	<p>Ensuring access to appropriate community interventions, including a continued recognition that certified batterer intervention programs are the most appropriate intervention in cases involving domestic violence and examining how to ensure abusers are ordered into and complete the program.</p>	<p>Costs for participants in community intervention programs. Cost would depend upon the program and whether the State would pick up the costs of participation .</p>	<p>Maine Judicial Branch Batterers Intervention or other community intervention programs Probation and Parole Defense Counsel Prosecutors</p>	<p>5-Yes 2-No 6-Maybe</p>	<p>Passed</p>	
4	<p>Ensure the availability of standardized, evidenced based robust pretrial services in all 16 counties.</p>	<p>Costs are roughly estimated at \$_____per year based on a Monday-Friday day time coverage schedule.</p>	<p>District Attorney's Offices Pre-Trial Services Providers Sheriff's Departments Bail Commissioners</p>	<p>11-Yes 0-No 2-Maybe</p>	<p>11-Yes 0-No 1- Abstain 2-Maybe</p>	<p>7-Yes 0-No 0-Maybe 0-Abstain</p>
5	<p>Statewide victim notification of pre-trial release and court hearings through the implementation of a system where there is a victim services liaison in each state police barracks and each sheriff's office.</p>	<p>This would require 16 additional positions at the Sheriff's Departments and 6 at the Maine State Police (assuming a liaison is not assigned to the Maine Turnpike Troop)</p>	<p>Maine Sheriff's Association Maine State Police Maine Judicial Branch</p>	<p>6-Yes 2-No 5-Maybe</p>	<p>Passed</p>	

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
6	The State should provide funding for specially trained domestic violence investigators in each sheriff's office.	This would require 16 additional positions at the Sheriff's Departments	Maine Sheriff's Association	7-Yes 3-No 3-Maybe	Passed	
7	Robust data development and collection including release of data to the public, collection of data related to arrests, bail conditions, bail amounts (if applicable), and violations disaggregated by suspect classifications (at least race and gender), jail data and length of stay must be established and fully supported (legislatively, funding and staffing).	This would require a substantial (multi-million dollar) investment in a unified, coordinated and connected data system at the jails, law enforcement agencies, Courts, DA's offices and the Department of Corrections. It would also require additional staff at each location to ensure appropriate data collection and analysis. Bail Commissioners would need to be provided computers.	Maine Sheriffs Association Maine Department of Public Safety Maine Chiefs of Police MDOC Maine Judicial Branch District Attorney's Offices	13-Yes 0-No 0-Maybe	17-Yes 0-No 0-Maybe 0-Abstain	3-Yes 0-No 0-Maybe 0-Abstain
8	If cash bail is not eliminated, add a fourth UCD Event for review of bail two weeks after initial appearance for those incarcerated individuals not granted PR or unsecured bail at the first hearing. <b>Note:</b> Currently 15 MRS§ 1028 and 1028-A provide the process for De Novo determination of bail. Once a De Novo determination by a judge or justice is made, no further appeal is permitted. This may require either a statute change or a change in the Criminal Rules.	There will be a need for additional Judges/marshals/clerks at the Courts Additional costs for defense counsel-MCILS Additional prosecutors	Maine Judicial Branch MCILS District Attorney's Offices Maine Sheriff's Association Law Enforcement Agencies(possibly if testimonial hearings based on case facts are required) Defense Counsel Pre-Trial Justice Providers Victim Services Representatives	11-Yes 1-No 1-Maybe	12-Yes 0-No 5-Maybe 0-Abstain	2-Yes 0-No 1-Maybe 0-Abstain



#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
9	<p>Assuming we don't pass a constitutional amendment eliminating cash bail, eliminate the statutory requirement of a change of circumstances in 15 MRS § 1026(3)(C).</p> <p><b>Note:</b> The Statute currently provides “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.”</p>	None noted	<p>Maine Judicial Branch Prosecutors Defense Counsel/MACDL Maine Criminal Justice Academy (training costs) Maine Sheriff’s Association</p>	<p>7-Yes 4-No 2-Maybe</p>	<p>4-Yes 9-No 0-Abstain 1-Maybe</p>	<p>2-Yes 0-No 0-Maybe 0-Abstain</p>
10	<p>Eliminate cash bail for Class D and E offenses with carve out for crimes against family or household members, sex offenses and PFA/PH matters or VCRs for DV/SA crimes (this assumes person will be brought to the jail or police station for bail processing).</p> <p><b>Note:</b> See 15 MRS§ 1074 for set off provisions.</p>	<p>No new costs are anticipated. It would result in a loss of funds that are either forfeited to the DA’s extradition accounts if a defendant fails to appear and/or loss of funds applied to restitution, fines and fees upon the completion of the case.</p>	<p>Maine Judicial Branch Maine Law Enforcement Agencies Maine Criminal Justice Academy (training)</p>	<p>7-Yes 2-No 4-Maybe</p>	<p>3-Yes 5-No 6-Maybe 0-Abstain</p>	<p>2-Yes -No 0-Maybe 0-Abstain</p>

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
11	Examine justice continuum at various early intercepts, such as pre-booking, arrest, bail release decisions, pretrial detention, plea bargaining, deferred dispositions, alternative sentencing, to maximize pretrial release and reduce risk to public safety.	Costs would depend upon whether outside consultants are hired	Law Enforcement Agencies Sheriff's Departments Pre-Trial Services Programs Prosecutors Defense Counsel Alternative Sentencing Programs Restorative Justice Programs	7-Yes 1-No 3-Maybe 2-Left Blank	Passed	
12	Encourage <sup>2</sup> the use of summonses, instead of arrest, for all class D and E except crimes that threaten or features threats of physical violence or offenses against the person, or family or household members, sexual assaults, sexual exploitation of minors, kidnapping and criminal restraint, OUI, PFA/PH violations and VCRs on those crimes or other similar crimes that are a threat to public safety.	Training costs	Prosecutors Law Enforcement Agencies Maine Judicial Branch Maine Criminal Justice Academy Maine Chiefs of Police Maine Sheriff's Association Maine Legislature	8-Yes 2-No 3-Maybe	13-Yes 0-No 0-Maybe 0-Abstain	2-Yes 0-No 0-Maybe 0-Abstain
13	Look to reduce or eliminate the list of 17-A Section 15 warrantless arrests for D and E offenses. <b>Note:</b> This would require a statute change.	Training Costs	Maine Legislature Prosecutors Law Enforcement Agencies Maine Criminal Justice Academy (training) Maine Legislature	9-Yes 2-No 2-Maybe	Passed	

<sup>2</sup> The original proposal used the phrase "Requires the use". The Full Task Force modified the proposal to encourage the use and the vote is based on encourage. The original proposal did not include OUI.

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
14	Use only conditions at arraignment for summonsed D's and E's (no money bail to be imposed). <b>Note:</b> This is similar to item # 10 except that it allows a judge to impose conditions at arraignment.	Training costs	Prosecutors Defense Counsel Maine Criminal Justice Academy Maine Judicial Branch	9-Yes 1-No 3-Maybe	Passed	
15	Pilot 24/7 regional communication center process to use risk assessment and determine release at BC Level.	Costs could include additional technology costs, costs for training	Regional Communication Centers Bail Commissioners Law Enforcement	4-Yes 4-No 5-Maybe	Passed	
16	Adopt a universal screening process so all detainees can be assessed for other criminal justice release plans/interventions/opportunities (pretrial, drug court, mental health/ SUD treatment, DV Courts/BIPS, Restorative Justice, Community service in lieu of fines etc.).	Costs will depend upon the breadth and detail of the universal screening process. At a minimum there will be additional staffing costs for personnel to do the screening.	Law Enforcement Agencies Prosecutors Restorative Justice Programs SUD/Mental Health Providers Pre-Trial Service providers Victim Service Providers MCILS MACDL	10-Yes 0-No 3-Maybe	10-Yes 0-No 5-Maybe 0-Abstain	3-Yes 0-No 0-Maybe 0-Abstain
17	Adopt NAPSA release standards (National Association of Pretrial Services ) statewide. <b>Note:</b> This may require a new statute or rule.	Costs would be to the pretrial service providers for training and implementation	Pretrial service providers	6-Yes 1-No 6-Maybe	Passed	
18	Adopt a process to propose a constitutional amendment eliminating cash bail (Maine Constitution, Article 1, Section 9) and permitting carefully circumscribed pretrial detention for public safety reasons. <b>Note:</b> This will require a bill in the Legislature and a statewide vote.	Costs for submitting a constitutional amendment to the voters for consideration.	Maine Legislature Maine Secretary of State Criminal Justice Partners if adopted	5-Yes 3-No 5-Maybe	Passed	

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
19	Create and fully fund a statewide Criminal Justice Coordinating Council beyond that work (grant funding) that is currently being done by the Justice Assistance Council including all aspects of the CJ and public health cohorts.	Staffing for a Full time professional to run the program estimated fully burdened cost of approximately \$100,000 (salary, benefits, technology)	Criminal Justice Partners Pretrial Services Community Advocacy Groups	10-Yes 0-No 3-Maybe	12-Yes 0-No 3-Maybe 0-Abstain	3-Yes 0-No 0-Maybe 0-Abstain
20	Require Triple III (federal) and SBI (state) criminal checks prior to setting bail for Class A, B and C crimes and for crimes against family or house hold members and sexual assaults.	Minimal	Law Enforcement Agencies Regional Communication Centers Maine Judicial Branch Jails	9-Yes 1-No 3-Maybe	Passed	
21	Eliminate all \$60 BC fees on PR or unsecured bails on in-custody bails-have the Court complete the bond paperwork for all in custody arraignments. <b>Note:</b> Currently the person being bailed pays the \$60 bail commissioner fee. Bail Commissioners are required to execute for free bail bonds for indigent individuals.	Potential for overtime costs for Clerks to process all these bail bonds	Maine Judicial Branch Maine Sheriffs Association	10-Yes 1-No 2-Maybe	8-Yes 1-No 6-Maybe 0-Abstain	3-Yes 0-No 1-Maybe 0-Abstain
22	Train Bail Commissioners to conduct risk assessments. <b>Note:</b> Bail Commissioners are considered Judicial Officers for the purposes of the Bail Code, 15 MR § 1003(8)	Costs for training	Maine Judicial Branch Sheriff Departments Law Enforcement Agencies	3-Yes 6-No 2-Maybe	Passed	

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
23	Eliminate pre-conviction bail conditions for random search and testing for drugs or alcohol <sup>3</sup> except for persons enrolled in Specialty Docket/Courts and persons on deferred dispositions. <b>Note:</b> This would require a statute change	Costs for training	Maine Judicial Branch Prosecutors Defense Counsel/MCILS or MACDL Maine Criminal Justice Academy	6-Yes 1-No 5-Maybe 1-Left blank	9-Yes 0-No 3-Maybe 0-Abstain	2-Yes 0-No 0-Maybe 0-Abstain
24	Adopt pre-arrest diversion programs with DAs using NAPSA Standards to determine diversion.	Cost would depend upon the type of program and services provided.	District Attorney's Offices Pre-Trial Service Providers	9-Yes 0-No 4-Maybe	Passed	
25	Decriminalize simple drug possession for personal use amounts. <b>Note:</b> In 2018, 1169 persons were charged with misdemeanor drug possession.	Potential decrease in fine revenue, potential decrease in funds collected when bail is forfeited and turned over to the DA extradition account, restitution and for fines and fees.	Prosecutors Defense counsel	7-Yes 5-No 1-Maybe	3-Yes 8-No 2-Maybe 0-Abstain	2-Yes 0-No 0-Maybe 0-Abstain
26	Eliminate the Court's ability to issue warrants and or arrest individuals for Failure to Pay Fines. <b>Note:</b> This will require a statute change.	Potential decrease in fines collected and turned over to the General fund.	Maine Judicial Branch	6-Yes 3-No 4-Maybe	Passed	
27	Reinforce existing legislation for counties to utilize the 30% Community Corrections Alternatives (CCA) funding for release, diversion, and community-based corrections only.	No new additional direct costs but Sheriff's Departments may need to seek alternative funds to replace those CCA funds that are not currently used for direct CCA purposes	Sheriffs Maine State Legislature Maine Dept. of Corrections	12-Yes 1-No 0-Maybe	16-Yes 0-No 1-Maybe 0-Abstain	4-Yes 0-No 0-Maybe 0-Abstain

<sup>3</sup> The original proposal included the elimination of random search and seizure for drugs or alcohol. The full task force modified this proposal to provide an exception for persons enrolled in specialty Dockets/ Courts such as Drug Courts or Domestic Violence Dockets and persons on deferred dispositions

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
28	Screen, identify and divert drug and alcohol related defendants to community-based treatment and MAT programs, including regulated sober housing. <b>Note:</b> currently The State does not license sober housing locations. Fire Codes can be enforced.	Substantial costs for screening of all defendants for SUD issues. See Item # 16. If drug testing is proposed as part of the screening, costs for personnel, supplies and possibly defense counsel . Costs for establishing and enforcing state regulations of sober housing facilities.	Pre-trial Services Providers Community Health Programs Sober Housing programs Maine DHHS or State Housing Authority State Fire Marshal's Office	9-Yes 1-No 3-Maybe	Passed	
29	Review Pre-Trial Justice Institute's (PJI) pretrial reform resolutions with agency heads-state, private and non-profits.	Minimal for meeting time	PJI Institute Pre-Trial Service Providers NPO Heads State Agency Heads	7-Yes 0-No 6-Maybe	Passed	
30	Use SAMSHA funding from public health perspective, not a criminal justice perspective.	Depends upon how SAMSHA approaches this	SAMSHA	7-Yes 1-No 4-Maybe 1-Left blank	Passed	
31	Strengthen presumption of PR release language. <b>Note:</b> This may require statute changes throughout the Bail Code, 15 MRS § 1001-1105	Minor training costs for judges and bail commissioners	Maine Judicial Branch	9-Yes 3-No 1-Maybe	Passed	
32	Prohibit judges from setting cash bail if a person shows up for court after having been summoned. <b>Note:</b> This may require statute changes throughout the Bail Code, 15 MRS § 1001-1105	Possible loss of funds to the DA's extradition account if a Defendant defaults and or possible loss of fine, restitution, court appointed counsel fees and other court fees from funds set aside under the Bail Code	Maine Judicial Branch Prosecutors	7-Yes 4-No 2-Maybe	7-Yes 0-No 6-Maybe 0-Abstained	2-Yes 0-No 0-Maybe 0-Abstain

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
33	Decriminalize low level driving offenses (failing to register car, driving on old license after living here for more than 90 days, operating w/o proof of insurance, attaching false plates) and certain Title 12 hunting and fishing crimes.  <b>Note:</b> This will require multiple statute changes	Potential decrease in fine revenue, potential decrease in funds collected when bail is forfeited and turned over to the DA extradition account, restitution and for fines and fees. Costs to state agencies for computer re-programming (Maine Judicial Branch, DMV, IF and W, DPS)	Prosecutors Maine Sec. of State's Office Maine Dept. Of inland Fisheries and Wildlife	11-Yes 0-No 2-Maybe	13-Yes 0-No 1-Maybe 0-Abstain	4-Yes 0-No 0-Maybe 0-Abstain
34	Fully fund court notification program- hardware, software and personnel proposal to establish and run the program. This program would provide automated text notification to all defendants of upcoming court dates. <b>Note:</b> In the last legislative session, partial funds were appropriated for this program.	Full cost of implementation (App. \$100,000)including software, hardware, clerk training and project manager.	Maine Judicial Branch	11-Yes 0-No 2-Maybe	15-Yes 0-No 0-Maybe 0-Abstain	3-Yes 0-No 0-Maybe 0-Abstain
35	Prohibit incarceration for failure to pay fines or fees regardless of the ability of a person to pay the fine or fee. <b>Note:</b> This will require statute changes.	Decreased costs for jails. Minor costs for the Judicial Branch to review and remove existing warrants for FTPF and notification to DPS to have them removed from the switch.	Maine Judicial Branch Maine Sheriff's Association.	6-Yes 4-No 3-No	Passed	
36	Prohibit arrest for "technical violations of bail"- <b>Note:</b> This will require a statute change to specify which bail violations are "technical".	Training for all Maine law enforcement	Maine Sheriffs Association Maine Chiefs of Police Maine Criminal Justice Academy	8-Yes 3-No 2-Maybe	1-Yes 11-No 0-Maybe 0-Abstain	2-Yes 0-No 0-Maybe 0-Abstain
37	Establish and fully fund "safe place" diversion programs, pre and post booking, and locations with evidence- based standards and processes.	Depends upon the number of programs, locations, staffing, services and screening process established.	SAMSHA Law enforcement Community Mental Health /SUD Services Maine Sheriff's Association Pre-Trial Services Agencies Dept. of Public Safety DHHS	12-Yes 0-No 1-Maybe	16-Yes 0-No 0-Maybe 0-Abstain	3-Yes 0-No 0-Maybe 0-Abstain

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
38	Set a 12-hour limit for holding arrested persons and require a bail hearing before the expiration of the 12-hour hold. <b>Note:</b> This will require a statute change	Costs to the Maine Judicial Branch to set up the bail hearing process, judges/marshals/clerks, costs for additional technology Costs for additional prosecutors and defense counsel	Maine Judicial Branch MCILS Maine Prosecutors/AGs office	3-Yes 4-No 6-Maybe	Passed	
39	Look at programs that help identify barriers to getting to court and whether there are low-cost solutions to helping surmount the obstacles such as travel vouchers, notification, etc. <b>Note:</b> Barriers include housing and transportation, notification, lack of child care	Depends about the determination of what the barriers are and the proposed solutions.	Local social service agencies Transportation alternatives Child care providers	8-Yes 1-No 4--Maybe	Passed	
40	Amend the Bail Code so that judges or bail commissioners may not impose the conditions of no consumption of alcohol or drugs as conditions of release on pre-conviction bail if drugs or alcohol were involved in the underlying crime. <b>Note:</b> This will require a statute change.	No direct costs. Possible potential decrease in fine revenue, potential decrease in funds collected when bail is forfeited and turned over to the DA extradition account, restitution and for fines and fees.	Law Enforcement Maine Judicial Branch	5-Yes 4-No 4-Maybe	Passed	
41	Mandate and fund regular racial justice training for: law enforcement, bail commissioners, judges, prosecutors, pre-trial services, corrections officers, probation officers and defense attorneys.	Training costs for all individuals listed in the proposal. Total costs would depend upon manner of delivery, time and location. Indirect costs to court, law enforcement agencies for back fill of shifts/court coverage during training.	Maine Judicial Branch Maine Chiefs of Police Maine Sheriffs Association Maine Prosecutors Association Maine Dept. of Corrections Maine Pre-Trial Services MCILS/MACDL Maine Criminal Justice Academy	12-Yes 1-No 0-No	15-Yes 0-No 0-Maybe 0-Abstain	3-Yes 0-No 0-Maybe 0-Abstain



#	Idea	Anticipated Cost	Partners in Charge If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
42	<p>Allow persons to pay their fines at any court not just the court of jurisdiction.</p> <p><b>Note:</b> This is built into the new Odyssey court computer system, and is currently operational for traffic violations. It will be rolled out for all court fines and fees as the system is introduced across the state.</p>	No additional costs not already budgeted for in the Odyssey Project.	Maine Judicial Branch Public	13-Yes 0-No 0-No	15-Yes 0-No 0-Maybe	3-Yes 0-No 0-Maybe 0-Abstain
43	Assuming that we are no longer arresting for most misdemeanors, and bail commissioners are only setting bail in felony cases, all BCs should be trained in risk assessments and the presumption of release.	Training and travel costs for bail commissioners Fees and costs for properly trained presenters	Maine Judicial Branch Pre-Trial Services	4-Yes 4-No 5-Maybe	Passed	
44	Assuming risk assessments are mandated by statute, provide that Bail commissioners can override the risk assessment but must give written justification.	Training costs Costs for filing of written justifications-technology Costs for building data system to collect and analyze the information in the written documents.	Maine Judicial Branch	4-Yes 4-No 4-Maybe 1-Left Blank	Passed	
45	<p>Require Bail commissioners and judges to screen people for ability to pay before setting bail, with written justification and reasons for decisions made on ability to pay.</p> <p><b>Note:</b> Currently MCILS providers financial screeners in most counties.</p>	Training costs Costs for filing of written justifications-technology Costs for building data system to collect and analyze the information in the written documents.	Maine Judicial Branch	8-Yes 1-No 3-Maybe	Passed	

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
46	Pilot projects that collect data for bail programs based on risk assessments, and review of data to see what the racial implications are when using risk assessments.	Costs to build programs and then collect and analyze data. Costs for outside independent analysis of data.	Maine Judicial Branch Possibly Pretrial Services	9-Yes 2-No 2-Maybe	Passed	
47	The State should pay the BC fees, it should not come from a defendant nor should bail commissioners be required to execute bail bonds for free. <b>Note:</b> Currently, bail commissioners can be required to perform work for free for indigent individuals, See 15 MRSS 1023(8) and are not paid for any work performed or calls taken until they execute the bail bond. This will require a statute change.	Costs for paying bail commissioners to do their job. The total cost will depend, in large part, on what kind of bail system results from this process as well as the pay/fee scale established.	Maine Judicial Branch Legislature	12-Yes 0-No 1-Maybe	15-Yes 1-No 1-Maybe 0-Abstain	3-Yes 0-No 0-Maybe 0-Abstain
48	The State should establish a pilot after-hours first bail hearing system with legally trained magistrates that operates around the clock and provides for the presence of both the ADA and Defense counsel.	Cost would depend upon how many Magistrates would be needed and whether it would operate just nights and weekends (16 hours per 24-hour period) or just parts thereof or around the clock. The use of remote technology could reduce personnel costs at the court but could increase personnel, travel and technology costs for Jails and law enforcement agencies if they were required to bring every defendant through this system.	Maine Judicial Branch Maine Sheriff's Association Maine Chiefs of Police MCILS Maine Prosecutors Association Victim Service Providers Pre-Trial Services	7-Yes 2-No 4-Maybe	1 Yes 4-No 7-Maybe 0-Abstain	2-Yes 0-No 0-Maybe 0-Abstain

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
49	Prohibit jail as a sentencing option for Class E offenses except for VCR on a DV related crimes. <b>Note:</b> In FY 2019, there were a total of 22,954 Class E case filings in Maine. This proposal would require statute changes.	Potential reduced costs for jails. Training Costs for judges, prosecutors, defense counsel. Computer reprogramming costs	Maine Judicial Branch Maine Sheriffs Association Maine Chiefs of Police Maine Criminal Justice Academy Prosecutors Defense Counsel	7-Yes 4-No 2-Maybe	Passed	
50	The Legislature should establish and fund a Statewide Commission to review all criminal charges and make recommendations for revisions, including decriminalization, repeal of unused or uncharged offenses, and/or re-writing of certain sections to the Legislature for the first major Criminal law re-write since 1976.	Costs for competent and knowledgeable staff to conduct the analysis across all Maine Titles to identify the statutes that should be changed/eliminated/rewritten. If adopted, costs for training of judges, prosecutors, defense counsel, law enforcement, sheriff's department employees Costs for computer re-programming across all agencies. Costs for form revisions across all agencies.	Maine Judicial Branch Independent legal consultant Statewide Commission members Maine Legislature Victim Services Representatives	11--Yes 0-No 2-Maybe	16-Yes 0-No 1-Maybe 0-Abstain	3-Yes 0-No 0-Maybe 0-Abstain
51	Bring back a robust Board of Corrections to coordinate statewide policies on jails. <sup>4</sup>	Costs to staff and reestablish the Board	Maine Department of Corrections Maine Sheriffs Association Maine County Commissioners	8-Yes 0-No 5-Maybe	Passed	
52	Consider centralized process, using technology, for setting of bail and allowing the processing of bails including the handling of cash bails by sheriffs or their employees.	Costs for technology purchases and installation Increased jail personnel costs to handle the bails Increased costs to Sheriff's to establish an accounting and reporting system	Maine Sheriff's Association Maine Judicial Branch	4-Yes 2-No 7-Maybe	Passed	

<sup>4</sup> While there was no formal vote, at the November 25<sup>th</sup> meeting, it was discussed. Sheriff Joyce, on behalf of the Maine Sheriff's Association, told the Task Force that his association opposed this idea.

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
53	The Legislature should establish a commission to review mandatory fines and fees/surcharges and make recommendations for change. <b>Note:</b> This may require a new statute.	Costs for Staffing	Maine Judicial Branch Maine Prosecutors Maine State Legislature Defense Counsel Community Partners	10-Yes 3-No 0-Maybe	16-Yes 3-No 1-Maybe	2-Yes 1-No 0-Maybe 0-Abstain
54	The Governor should exercise her pardons power and issue pardons for long overdue fines imposed before a certain date.	Loss of potential fine revenue Costs for conducting pardons hearings including staffing, newspaper notices etc., Costs for data entry by clerks of all orders	Governor's Office Department of Corrections- Pardons Board staff Maine Judicial Branch	9-Yes 3-No 1-Maybe	Passed	
55	Eliminate warrantless arrest for VCR offenses with carve outs for certain offenses: crimes against a family or household members, Sexual Assaults, OUI. Fix language to match standard carve out language <b>Note:</b> This will require a statute change.	Possible additional costs for Justice Of the Peace fees if there is an increase in requests for arrest warrants after hours Training costs for law enforcement, justices of the peace	Maine Judicial Branch Maine Criminal Justice Academy Maine Chiefs of Police Maine Sheriffs Association	8-Yes 3-No 2-Maybe	3-Yes 3-No 3-Maybe 0-Abstain	2-Yes 0-No 0-Maybe 0-Abstain
56	Eliminate the possibility of imposing bail conditions for D and E offenses with carve outs for DV/PFA/Sex offense related offenses. <b>Note:</b> This will require a statute change	No direct costs identified	Maine Judicial Branch	8-Yes 0-No 5-Maybe	1-Yes 9- No 0 Maybe 0Abstain	2-Yes 0-No 0-Maybe 0-Abstain
57	Recommend to the Legislature that they develop a system to produce racial impact statements on all proposed legislation. <b>Note:</b> This may require a statute.	Costs to the Legislature Potential costs for all state agencies to research and produce the racial impact statements	Maine State Legislature	8-Yes 0-No 5-Maybe	Passed	

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
58	The PTJRTF endorses and supports the establishment of Restorative Justice Programs in all 16 counties. <sup>5</sup>	Costs would depend upon the nature of the partnerships, the programs proposed, the use of trained mediators and facilitators and their costs, the breadth and depth of the aftercare/follow up	Public Health Agencies Restorative Justice Agencies Alternative Resolution Agencies	10-Yes 2-No 1-Maybe	14-Yes 0-No 0-Maybe 0-Abstain	2-Yes 0-No 1-Maybe 0-Abstain
59	Standardize cash bail forms for jail use in all bail cases. <b>Note:</b> The Maine Judicial Branch already has a standard Notice to Third Party Bail Providers that is posted in every courthouse, and has been given to all jails and bail commissioners for posting and distribution.	None anticipated	Maine Judicial Branch Maine Sheriffs Maine Chiefs of Police	7-Yes 0-No 5-Maybe 1-Left Blank	Passed	
60	Standardize jail forms statewide to ensure release of bail funds to Defendant unless third party form filed and signed. <b>Note-</b> This may require a statute change as 15 MRS § 1074 mandates certain set offs for both first party and third-party bail at the conclusion of the case. The Maine Judicial Branch already has a standard Notice to Third Party Bail Providers that is posted in every courthouse, and has been given to all jails and bail commissioners for posting and distribution.	Minor costs for production Costs for Training	Maine Judicial Branch Maine Sheriff's Association	8-Yes 1-No 4-Maybe	Passed	

<sup>5</sup> This item formerly read “Partner with public health and alternative dispute resolution agencies, including Restorative Justice Programs, to develop continuum for treatment/conflict resolution that involves after-care/follow-up and the use of credible messengers (persons who have experienced similar challenges in life) to assist in the delivery/treatment/facilitate ADR/RJ processes.” The full Task Force changed the language to that contained above.

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
61	Fully fund across all systems detailed data gathering systems that can inform decisions. <b>Note</b> : See item # 7 above.	Significant technological costs in the millions of dollars.	Maine Judicial Branch Maine Sheriffs Association Maine Chiefs of Police Maine DOC Maine DPS Maine DHHS Pre-Trial Service Providers	11-Yes 0-No 0-Maybe	This vote was included in item # 7	
62	Fully fund regular and active judicial education and training on bail, release and detention decision making and the most recent and evidence-based research. Ensure appropriate funding for back up coverage so that judges may attend.	Training Costs Back fill costs for active retired judges to cover court dockets Possible closing of courts during Administrative week to allow for this training	Maine Judicial Branch Evidence Based Researcher presenters	13-Yes 0-No 0-Maybe	16-Yes 0-No 0-Maybe 1-Abstain	3-Yes 0-No 0-Maybe 0-Abstain
63	Fully fund regular bail commissioner, Justice of the Peace, prosecutor and defense counsel education and training on bail, release and detention decision making and the most recent and evidence-based research curriculum developed by a multi-disciplinary committee that is also racially and ethnically diverse.	Training costs-location, materials , expert presenters Curriculum development costs	Maine Judicial Branch Defense Counsel/MACDL/MCILS Maine Prosecutors Association	12-Yes 0-No 1-Maybe	16-Yes 0-No 1-Maybe 0-Abstain	3-Yes 0-No 0-Maybe 0-Abstain
64	Decriminalize the offense of drinking in public. Note: This will require a statute change.	Potential loss of fine revenue Decrease in jail costs Minor computer re-programming costs Training costs	Maine Judicial Branch Maine Sheriffs Association Maine Chiefs of Police Maine Criminal Justice Academy	8-Yes 0-No 5-Maybe	4-Yes 4-No 2-Maybe 1-Abstain	2-Yes 0-No 0-Maybe 0-Abstain
65	Establish an on-line certificate program in the Community College system for certification of bail commissioners. Provide funding to pay for all bail commissioners to become certified.	Tuition and fees for bail commissioners Curriculum development costs Instructional costs	Maine Community College System Maine Judicial Branch	6-Yes 1-No 6-Maybe	Passed	

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
66	Draft and adopt a statewide standardized intake form for the jails that contain sufficient information for a bail commissioner to make a fully informed bail decision.	Minor drafting and computer programming costs Training for law enforcement	Maine Judicial Branch Maine Sheriffs Association Maine Chiefs of Police Maine Criminal Justice Academy	10-Yes 1-No 2-Maybe	16-Yes 0-No 1-Maybe 0-Abstain	3-Yes 0-No 0-Maybe 0-Abstain
67	Establish a requirement that court appointed counsel must meet with their clients within seven days of arraignment or first appearance and file a compliance report with the MCILS. <b>Note:</b> Possible Rule Change for MCILS	Increased court appointed counsel costs Possible minor increased court costs for clerks for docketing the reports	Maine Judicial Branch MCILS	12-Yes 1-No 0-Maybe	14-Yes 0-No 0-Maybe 0-Abstain	3-Yes 0-No 1-Maybe 0-Abstain
68	Establish a requirement that court appointed counsel must meet regularly with their clients. <b>Note:</b> Possible Rule Change for MCILS	Increased court appointed counsel costs	Maine Judicial Branch MCILS	12-Yes 0-No 1-Maybe	14-Yes 0-No 0-Maybe 0-Abstain	3-Yes 0-No 1-Maybe 0-Abstain
69	Require that prosecutors initially screening criminal cases be experienced prosecutors with fully funded and appropriate and regular training so that charging, bail and plea offers are appropriate for the circumstances. <sup>6</sup>	Potential need for additional prosecutors to cover court dockets of more experienced prosecutors Training costs	Maine Prosecutors Association	10-Yes 0-No 3-Maybe	7-Yes 2-No 4-Maybe 0-Abstain	3-Yes 0-No 1-Maybe 0-Abstain

<sup>6</sup> This item originally read “ Require that prosecutors initially screening criminal cases be experienced prosecutors with fully funded and appropriate and regular training’. The full Task Force amended the language to what is set out.

#	Idea	Anticipated Cost	Partners in Change If Adopted	Subcommittee Vote	Full Committee Vote at Public Hearing	Absentee Votes
70	Require that incarcerated individuals receive their court appointed counsel within 48 hours of first appearance and that defense counsel receive notification of the appointment within the same time frame. <b>Note:</b> Possible Rule Change	Potential increased clerk's office staffing costs to meet this requirement	Maine Judicial Branch	13-Yes 0-No 0-No	14-Yes 0-No 0-Maybe 0-Abstain	3-Yes 0-No 0-Maybe 0-Abstain
71	Require leadership in all three branches of government to commit to implementation of these recommendations including legislation, funding for technology and sufficient staff to carry out the recommendations.	Staffing costs	Executive Branch Leadership Legislative Branch Leadership Judicial Branch Leadership	9-Yes 1-No 2-No 1-Left Blank	Passed	
72	The State should reform the drug laws as they relate to drug amounts and personal use. <b>Note:</b> This will require statute changes . Perhaps LD 1492	Potential costs for research and then computer reprogramming costs upon adoption Training costs for judges, law enforcement, bail commissioners, prosecutors and defense counsel	Legislature Maine Judicial Branch Executive Branch Maine Prosecutors MCILS MACDL MCOPA MSA Criminal Justice Academy	10-Yes 0-No 2-Maybe 1-Left Blank	8-Yes 0-No 6-Maybe 0-Abstain	3-Yes 0-No 1-Maybe -Abstain
73	Add a fourth UCD Event for review of bail two weeks after initial appearance for those individuals not granted PR or unsecured bail at the first hearing.	Potential costs for additional hearings including Judges/clerks/Marshals Prosecutors Defense Counsel	Maine Judicial Branch Maine Prosecutors Association MCILS MACDL	11-Yes 1-No 1-Maybe	Note- This item was considered in Item # 8	

Votes in the Absentee Votes column include the absentee ballots of members of MECASA (Elizabeth Ward Saxl), MACDL (Tina Nadeau), Jonathan Huntington, Rep. Donna Bailey and Lisa Hallee. It should be noted that MECASA, Jonathan Huntington, and Lisa Hallee were able to attend one of the two meetings so their absentee votes only include those votes taken on the day they were unable to attend.

Some vote totals vary from others. This is because during the course of the full task force meeting, some members had to step out or had to leave early. For absentee ballots, some members chose not to vote on certain items.

<sup>7</sup> This item originally read "Require that incarcerated individuals receive their court appointed counsel within 48 hours of first appearance." The full Task Force amended the language to what is set out above.



# **APPENDIX F**

## **List of Resources Consulted or Reviewed**

### **Organization Websites**

Laura and John Arnold Foundation  
American Civil Liberties Union Maine  
Brennan Center for Justice  
Center for Court Innovation  
Center for Health and Justice Policy  
Harvard Law School - Criminal Justice Policy Program  
Justice Management Institute  
Kirwan Institute for the Study of Race and Ethnicity at Ohio State University  
Maine Department of Corrections  
Maine Department of Public Safety  
Maine Judicial Branch  
Michigan Law Review  
National Association of Criminal Defense Attorneys  
National Association of Drug Court Professionals  
National Association of Pretrial Service Agencies  
National Center for State Courts  
National Conference of State Legislatures  
National Association of State Courts  
National Criminal Justice Association  
National District Attorneys Association  
National Institute of Corrections  
National Network of Criminal Justice Coordinating Councils  
National Sheriffs Association  
New Hampshire Governor's Commission on Alcohol and other Drugs  
Pew Charitable Trust  
Pretrial Justice Institute  
Restorative Justice Institute  
State of California - Legislature  
State of New Jersey Judicial Branch  
State of New Mexico Judicial Branch  
US Department of Justice, Bureau of Justice Statistics  
Vera Institute

## **Publications**

*2018 Year End Data Report*, Maine Department of Corrections, 2019.

*Adult Drug Court Best Practice Standards*, Volume I and II, National Association of Drug Court Professionals, 2013 and 2018.

*A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*, National Institute of Corrections, 2017.

*A National Survey of Criminal Justice Diversion Programs and Initiatives*, Center for Health and Justice, 2013.

*A Racial Equity Transformation: PJI's Rationale*, Pretrial Justice Institute, 2019.

*A Toolkit for Legislative Reform: Improving Criminal Justice Responses to Mental Illness in Rural States*, Pierce, Crime and Justice institute, 2017.

*Bail, Equity and Reform: A Workshop to Forge Common Ground*, Southern New Hampshire University, 2018.

*Bail Reform and Intimate Partner Violence in Maine*, Walton, Maine Law Review, Volume 71, Number 1, 2018.

*Bail Reform: Practical Guide Based on Research and Experience*, The National Task Force on Fines, Fees, and Bail Practices. National Center for State Courts, 2019.

*Breaking Barriers Enhancing Responses in Veterans Treatment Courts and Domestic Violence Courts*, Center for Court Innovation, 2016.

*Beyond the Algorithm Pretrial Reform, Risk Assessment and Racial Fairness*, Picard, Watkins, Rempel and Kerodal, Center for Court Innovation, 2016.

*Criminal Justice Reform Report to the Governor and the Legislature*, Grant, New Jersey Judiciary, 2019.

*Draft Reports of the Justice Reinvestment Initiative Data Analysis in Maine*, Council of State Governments, 2019.

*The End of Debtors' Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations*, 2015-2016 Policy Paper, Conference of State Court Administrators, 2016.

*Expanding Our Response - The NH Governor's Commission on Alcohol and Other Drugs Action Plan*, Office of the Governor, 2019.

*Fair Justice for Persons with Mental Illness Improving the Court's Response*, Water, National Center for State Courts, 2018.

*Federal Caselaw - Pretrial Bail Practices, Pretrial Release and Detention Decision: Detention Due to Indigency*, The Justice Management Institute, 2019.

*"Give Us Free": Addressing Racial Disparities in Bail Determinations*, Jones, Journal of Legislation and Public Policy, 16:919-961.

*How Many Americans Are Unnecessarily Incarcerated?* Austin and Eisen, Brennan Center for Justice, 2016.

*Justice Reinvestment in Maine*, Justice Center, Council of State Governments, 2019.

*MDOC Adult Data Report-November 2019*, Maine Department of Corrections, 2019.

*Moving Beyond Money: A Primer on Bail Reform*, Criminal Justice Policy Program, Harvard Law School, 2016.

*Myths and Facts Using Risk and Needs Assessments to Enhance Outcomes and Reduce Disparities in the Criminal Justice System*, Dr. Cara Thompson, The National Institute of Corrections in partnership with the Community Corrections Collaboration Network, 2017.

*Outcomes From the Smart Pretrial Initiative*, Pretrial Justice Institute, 2017.

*Principles on Fines, Fees, and Bail Practices*, National Task Force on Fines, Fees and Bail Practices, 2017.

*Prisoners in 2017*, Bronson and Carson, US Department of Justice, Bureau of Justice Statistics, 2019.

*The Punishment Bureaucracy: How to Think About Criminal Justice Reform*, Yale Law Review, Volume 128, 2019.

*Resource Guide: Reforming the Assessment and Enforcement of Fines and Fees*, Office of Justice Programs Diagnostic Center, US Department of Justice, 2016.

*Return To Custody Summary*, Maine Department of Corrections, 2015

*Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-Entry They Create*, Martin, Smith and Still, Executive Session, Harvard Kennedy School, 2017.

*Standards on Pretrial Release: Fourth Addition*, National Association of Pretrial Services, 2019.

*State of Florida, Chapter 2018-127* (new Florida law on data collection, reporting, and analysis), 2018.

*Trends From County Jail Pretrial Detention Population Reports*, Maine Judicial Branch, D. Sorrells, 2018 and 2019.

*Trends in State Courts, 2017, Fines, Fees and Bail Practices: Challenges and Opportunities*, D. Smith, editor, National Center for State Courts, 2018.

*Using Behavioral Science to Improve Criminal Justice Outcomes, Preventing Failures to Appear in Court*, Cooke, Diop, Fishbane, Hayes, Ouss, Shah, University of Pennsylvania and University of Chicago Crime Lab, 2018.

# APPENDIX G

## Proposed Statutory Language Changes

The following statutes may need to be amended depending upon the action(s) of the Legislature in response to each item. The chart below sets out the proposed item and preliminary proposed statute changes.

Item Number	Current Statute Citation	Statute Change
7 - Data Collection	None	This will require a fiscal note built into the State budget bill. The content and location of the proposed law will depend upon whether the Legislature wishes to have this apply to all partners in the criminal justice process at all levels of government or just to state partners.
34 - Court automated notification system	Possibly Title 17-A	This will require a fiscal note built into the State budget bill.
37 - Safe Diversion Program	None	This will require a fiscal note built into the State budget bill. Depending upon how the programs are structured, it may require additions to Title 17-A (Criminal Code), Title 34-B (Corrections), or Title 22 (Health and Human Services). It may also require drafting of rules or regulations for licensing purposes.
41 - Racial justice training	None	This will require a fiscal note built into the State budget bill
70 - Counsel appointed within 48 hours	None	This will require an internal MJB policy change as well as a rule change in MCILS.
2 - Statewide expansion of GPS monitoring systems	17-A M.R.S. § 1204(2-A)(N)	This will require a fiscal note built into the State budget bill. Section 1204(2-A)(N) would have to be amended by striking the phrase, "if available" at the end of that section.
4 - Statewide standardized Pretrial Services in all 16 counties	34-A M.R.S. § 1210-D 15 M.R.S. § 1026	This will require a fiscal note built into the State budget bill. It may also require amending 15 M.R.S. § 1026(3)(A)(1) and 34-A M.R.S. § 1210-D
8 - Fifth UCD event if defendant does not make bail	15 M.R.S. §§ 1028 and 1028-A	This will require a fiscal note built into the State budget bill for the Judicial Branch, the Attorney General's Office (ADA costs) and the Maine Commission on Indigent Legal Services.

<b>Item Number</b>	<b>Current Statute Citation</b>	<b>Statute Change</b>
16 - Universal screening of all defendants	None	This will require a fiscal note built into the State budget bill. A statute or Criminal Rule may need to be drafted setting forth the process as well as any possible restrictions on use of information gathered during the screening in a criminal trial.
19 - Establish permanent CJCC	None	This will require a fiscal note built into the State budget bill
21 - Eliminate Bail Fees	15 M.R.S. § 1023(5)	This will require a fiscal note built into the State budget bill. It will require the repeal or amendment of 15 M.R.S. § 1023(5).
23 - Eliminate random search and seizure for drugs and alcohol bail conditions	15 M.R.S. § 1026(3)(A)(9)	15 M.R.S. § 1026(3)(A)(9) would need to be repealed or amended.
27 - Community Corrections Funds	34-A M.R.S. § 1210-D	There is currently a proposed bill, LD 973, before the Legislature that may need to address this.
32 - Prohibit judges from setting bail or conditions if person is first summonsed	15 M.R.S. § 1026	15 M.R.S. § 1026 will need to be amended if this is adopted.
33 - Decriminalize low level driving and Title 12 violations	Dozens and dozens depending upon the DAs' proposal.	Title 29-A and Title 12
47 - State pays bail commissioner fees	15 M.R.S. §1023(5)	This will require a fiscal note built into the State budget bill. 15 M.R.S. §1023(5) will need to be amended.
50 - Commission to review criminal statutes	None	This will require a fiscal note built into the State budget bill. A statute will need to be drafted. Its location will depend upon where Maine government the Legislature chooses to locate the Commission.
53 - Commission to review all mandatory fines and fees	None	This will require a fiscal note built into the State budget bill. A statute will need to be drafted. Its location will depend upon where Maine government the Legislature chooses to locate the Commission.

<b>Item Number</b>	<b>Current Statute Citation</b>	<b>Statute Change</b>
55 - Eliminate warrantless arrests for VCR violations	17-A M.R.S. § 15	This will require a fiscal note in the State budget bill (reduction in monies collected from forfeited bails).
58 - Establish Restorative Justice in all counties	None in the adult criminal code	This will require a fiscal note in the State budget bill. It may also require an addition to Chapters 47 and 54 of the Maine Criminal Code to specify that restorative justice is a sentencing alternative.
62 - Fund Judicial training on bail issues	None	This will require a fiscal note in the State budget bill.
63 - Fund CJ partner bail training	None	This will require a fiscal note in the State budget bill.
64 - Decriminalize Drinking in Public	17 M.R.S. § 2003-A	If this item is adopted, 17 M.R.S. §§ 2003-A(2-4) will need to be amended.
66 - Uniform jail bail forms	None	No statute or fiscal note. All the Sheriffs would have to agree to the changes.
67 - Appointed counsel must meet with clients within 7 days	Maine Revised Statutes, Title 34, Chapter 37 and related rules adopted by the Commission.	This may require a fiscal note in the state budget bill to support the increased costs for court appointed counsel and staff for the monitoring and reporting of compliance.
68 - Regular meetings between defendant and court appointed counsel	Maine Revised Statutes, Title 34, Chapter 37 and related rules adopted by the Commission.	This may require a fiscal note in the state budget bill to support the increased costs for court appointed counsel and staff for the monitoring and reporting of compliance.
69 - Experienced ADA screen cases	None	This may require a fiscal note in the state budget bill to support the increased costs for additional prosecutors.
72 - Reform drug laws	Multiple sections of 17-A chapters 45, 47, 49, 51, 53	This may require a fiscal note in the state budget bill. Depending upon the decisions of the Legislature multiple sections of Title 17-A, Chapters 45 (Drugs), 47 (General Sentencing Provisions), 49 (Probation), 51 (Imprisonment), and 53 (Fines) will need to be amended or repealed.

## **APPENDIX H**

### **List of Additional Individuals Who Assisted the Task Force**

Dan Sorrells – Maine Judicial Branch  
Emma Bond – ACLU of Maine  
Darcy Wilcox – Maine Pretrial Services  
Emma Findlen LeBlanc – ACLU of Maine  
Michael Kebede – ACLU of Maine  
Claire Bell – Maine Judicial Branch  
Jennifer Farrington – Maine Judicial Branch  
Bruce Boyd – Bail Commissioner  
Jodi Thomas – Bail Commissioner  
Alan Robitaille – Bail Commissioner  
Ray Vire – Bail Commissioner  
Joseph Hanslip – Bail Commissioner  
Andrea Mancuso, Esq. – Maine Coalition to End Domestic Violence  
Meagan Sway – ACLU of Maine