

REVISED MAY 26, 2021 1:00 p.m.

15 MRS 1026. Standards for release for crime bailable as of right preconviction

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

A. On personal recognizance or upon execution of an unsecured appearance bond under subsection 2-A; [PL 2007, c. 374, §3 (AMD).]

B. On a condition or combination of conditions under subsection 3; or [PL 1997, c. 543, §7 (AMD).]

C. On personal recognizance or execution of an unsecured appearance bond, accompanied by one or more conditions under subsection 3. [PL 1997, c. 543, §7 (NEW).]

Every order for the pretrial release of any defendant must [be the least restrictive further condition or combination of conditions and](#) include a waiver of extradition by the defendant and the conditions that the defendant refrain from new criminal conduct and not violate any pending protection from abuse orders pursuant to [Title 19, section 769](#) or [Title 19-A, section 4011](#).

[PL 2007, c. 374, §3 (AMD).]

2. Release on personal recognizance or unsecured appearance bond.

[PL 2007, c. 518, §2 (RP).]

2-A. Release on personal recognizance or unsecured appearance bond. The judicial officer shall order the pretrial release of the defendant on personal recognizance or upon execution of an unsecured appearance bond in an amount specified by the judicial officer, unless, after consideration of the factors listed in subsection 4, the judicial officer determines that:

A. The release would not reasonably ensure the appearance of the defendant as required; [PL 2007, c. 374, §5 (NEW).]

B. The release would not reasonably ensure that the defendant would refrain from any new criminal conduct; [PL 2007, c. 374, §5 (NEW).]

C. The release would not reasonably ensure the integrity of the judicial process; or [PL 2007, c. 374, §5 (NEW).]

REVISED MAY 26, 2021 1:00 p.m.

D. The release would not reasonably ensure the safety of others in the community.

[PL 2007, c. 374, §5 (NEW).]

[PL 2007, c. 374, §5 (NEW).]

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

A. If, after consideration of the factors listed in subsection 4, the judicial officer determines that the release described in subsection 2-A will not reasonably ensure the appearance of the defendant at the time and place required, will not reasonably ensure that the defendant will refrain from any new criminal conduct, will not reasonably ensure the integrity of the judicial process or will not reasonably ensure the safety of others in the community, the judicial officer shall order the pretrial release of the defendant subject to the least restrictive further condition or combination of conditions that the judicial officer determines will reasonably ensure the appearance of the defendant at the time and place required, will reasonably ensure that the defendant will refrain from any new criminal conduct, will reasonably ensure the integrity of the judicial process and will reasonably ensure the safety of others in the community. These conditions may include that the defendant:

(1) Remain in the custody of a designated person or organization agreeing to supervise the defendant, including a public official, public agency or publicly funded organization, if the designated person or organization is able to reasonably ensure the appearance of the defendant at the time and place required, that the defendant will refrain from any new criminal conduct, the integrity of the judicial process and the safety of others in the community. When it is feasible to do so, the judicial officer shall impose the responsibility upon the defendant to produce the designated person or organization. The judicial officer may interview the designated person or organization to ensure satisfaction of both the willingness and ability required. The designated person or organization shall agree to notify immediately the judicial officer of any violation of release by the defendant;

~~(2) Maintain employment or, if unemployed, actively seek employment;~~

~~(3) Maintain or commence an educational program;~~

REVISED MAY 26, 2021 1:00 p.m.

(4) Abide by specified restrictions on personal associations, place of abode, or travel;

(5) Avoid all contact with a victim of the alleged crime, a potential witness regarding the alleged crime or with any other family or household members of the victim or the defendant or to contact those individuals only at certain times or under certain conditions;

~~(6) Report on a regular basis to a designated law enforcement agency or other governmental agency;~~

(7) Comply with a specified curfew;

(8) Refrain from possessing a firearm or other dangerous weapon;

(9) Refrain from ~~the possession, use or~~ excessive use of alcohol and from any use of illegal drugs. A condition under this subparagraph may be imposed only upon the presentation to the judicial officer of specific facts demonstrating the need for such condition;

(9-A) Submit to:

(a) A random search for possession ~~or use~~ prohibited by a condition imposed under subparagraph (8) ~~or (9)~~; or

(b) A search upon articulable suspicion for possession ~~or use~~ prohibited by a condition imposed under subparagraph (8) or ~~excessive use or use imposed under subparagraph~~ (9);

(10) Undergo, as an outpatient, available medical or psychiatric treatment, or enter and remain, as a voluntary patient, in a specified institution when required for that purpose, if requested by the Defendant;

(10-A) Enter and remain in a long-term residential facility for the treatment of substance use disorder, if requested by the Defendant;

REVISED MAY 26, 2021 1:00 p.m.

(11) Execute an agreement to forfeit, in the event of noncompliance, such designated property, including money, as is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community and post with an appropriate court such evidence of ownership of the property or such percentage of the money as the judicial officer specifies;

(12) Execute a bail bond with sureties in such amount as is reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community;

~~(13) Return to custody for specified hours following release for employment, schooling, or other limited purposes;~~

~~(14) Report on a regular basis to the defendant's attorney;~~

(15) Notify the court of any changes of address

~~-or employment;~~

~~(16) Provide to the court the name, address and telephone number of a designated person or organization that will know the defendant's whereabouts at all times;~~

~~(17) Inform any law enforcement officer of the defendant's condition of release if the defendant is subsequently arrested or summonsed for new criminal conduct;~~

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

REVISED MAY 26, 2021 1:00 p.m.

defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process and to ensure the safety of others in the community; and

(19) Participate in an electronic monitoring program, if available. [PL 2017, c. 407, Pt. A, §51 (AMD).]

B. The judicial officer may not impose a financial condition that, either alone or in combination with other conditions of bail, is in excess of that reasonably necessary to ensure the appearance of the defendant at the time and place required, to ensure that the defendant will refrain from any new criminal conduct, to ensure the integrity of the judicial process or to ensure the safety of others in the community. [PL 2007, c. 518, §3 (RPR).]

C. Upon motion by the attorney for the State or the defendant and after notice and upon a showing of changed circumstances or upon the discovery of new and significant information, the court may amend the bail order to relieve the defendant of any condition of release, modify the conditions imposed or impose further conditions authorized by this subsection as the court determines to reasonably ensure the appearance of the defendant at the time and place required, that the defendant will refrain from any new criminal conduct, the integrity of the judicial process and the safety of others in the community. [PL 2007, c. 518, §3 (RPR).]

[PL 2017, c. 407, Pt. A, §51 (AMD).]

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

A. The nature and circumstances of the crime charged; [PL 1987, c. 758, §20 (NEW).]

B. The nature of the evidence against the defendant; and [PL 1987, c. 758, §20 (NEW).]

C. The history and characteristics of the defendant, including, but not limited to:

(1) The defendant's character and physical and mental condition;

(2) The defendant's family ties in the State;

REVISED MAY 26, 2021 1:00 p.m.

- (3) The defendant's employment history in the State;
- (4) The defendant's financial resources;
- (5) The defendant's length of residence in the community and the defendant's community ties;
- (6) The defendant's past conduct, including any history of substance use disorder;
- (7) The defendant's criminal history, if any;
- (8) The defendant's record concerning appearances at court proceedings;
- (9) Whether, at the time of the current offense or arrest, the defendant was on probation, parole or other release pending trial, sentencing, appeal or completion of a sentence for an offense in this jurisdiction or another;
- (9-A) Any evidence that the defendant poses a danger to the safety of others in the community, including the results of a validated, evidence-based domestic violence risk assessment recommended by the Maine Commission on Domestic and Sexual Abuse, established in [Title 5, section 12004-I, subsection 74-C](#), and approved by the Department of Public Safety;
- (10) Any evidence that the defendant has obstructed or attempted to obstruct justice by threatening, injuring or intimidating a victim or a prospective witness, juror, attorney for the State, judge, justice or other officer of the court; and
- (11) Whether the defendant has previously violated conditions of release, probation or other court orders, including, but not limited to, violating protection from abuse orders pursuant to [Title 19, section 769](#) or [Title 19-A, section 4011](#).
[PL 2017, c. 407, Pt. A, §52 (AMD).]

[PL 2017, c. 407, Pt. A, §52 (AMD).]

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

- A. Include a written statement that sets forth all the conditions to which the release is subject in a manner sufficiently clear and specific to serve as a guide for the defendant's conduct; and [PL 1987, c. 758, §20 (NEW).]

REVISED MAY 26, 2021 1:00 p.m.

B. Advise the defendant of:

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

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

[PL 2007, c. 374, §10 (AMD).]

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

[PL 1989, c. 147, §2 (NEW).]

7. Applicability of conditions of release. A condition of release takes effect and is fully enforceable as of the time the judicial officer sets the condition, unless the bail order expressly excludes it from immediate applicability.

[PL 1995, c. 356, §5 (NEW).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §4 (AMD). PL 1989, c. 147, §2 (AMD). PL 1995, c. 356, §5 (AMD). PL 1997, c. 543, §7 (AMD). PL 1997, c. 585, §3 (AMD). PL 2001, c. 252, §§1,2 (AMD). PL 2005, c. 449, §1 (AMD). PL 2007, c. 374, §§3-10 (AMD). PL 2007, c. 377, §§4, 5 (AMD). PL 2007, c. 518, §§2, 3 (AMD). PL 2011, c. 680, §2 (AMD). PL 2013, c. 227, §1 (AMD). PL 2015, c. 436, §4 (AMD). PL 2017, c. 407, Pt. A, §§51, 52 (AMD).

<https://legislature.maine.gov/legis/statutes/17-A/title17-Asec1807.html>

§1807. Conditions of probation

1. Purpose of conditions. If the court imposes a sentencing alternative under [section 1502](#) that includes a period of probation, it shall attach conditions of probation, as authorized by this section, as it considers to be reasonable and appropriate to assist the person to lead a law-abiding life, including, without exception, a condition of probation that the person refrain from criminal conduct.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

2. Specific conditions of probation authorized. As a condition of probation, the court in its sentence may require the person to:

REVISED MAY 26, 2021 1:00 p.m.

~~A. Support the person's dependents and to meet the person's family responsibilities;~~
Comply with spousal support and or child support court orders. [PL 2019, c. 113, Pt. A, §2 (NEW).]

B. Make restitution pursuant to chapter 69 to each victim of the person's crime, or to the county where the offense is prosecuted if the identity of the victim cannot be ascertained or if the victim voluntarily refuses the restitution. If the court orders as a condition of probation that the person forfeit and pay a specific amount of restitution, that order, as a matter of law, also constitutes the imposition of restitution pursuant to chapter 69 as a sentencing alternative and an additional order regarding restitution is unnecessary; [PL 2019, c. 113, Pt. A, §2 (NEW).]

C. Pursue and maintain approved employment or an approved occupation; [PL 2019, c. 113, Pt. A, §2 (NEW).]

D. Undergo, as an outpatient, available medical or psychiatric treatment, or to enter and remain, as a voluntary patient, in a specified institution when required for that purpose. Failure to comply with this condition is not considered only as a violation of probation and may not, in itself, authorize involuntary treatment or hospitalization. ~~The court may not order and the State may not pay for the person to attend a batterers' intervention program unless the program is certified under Title 19-A, section 4014;~~ [PL 2019, c. 113, Pt. A, §2 (NEW).]

D-1. Complete a domestic violence intervention program. The court may not order and the State may not pay for the person to attend a domestic violence intervention program unless the program is certified under Title 19-A, section 4014;

E. Pursue an educational program prescribed secular course of study or vocational training; [PL 2019, c. 113, Pt. A, §2 (NEW).]

F. Refrain from frequenting specified places or ~~consorting~~ or contact with specified persons; [PL 2019, c. 113, Pt. A, §2 (NEW).]

G. Refrain from possessing any firearm or other dangerous weapon; [PL 2019, c. 113, Pt. A, §2 (NEW).]

H. Remain within the State of Maine ~~jurisdiction of the court,~~ unless permission to leave temporarily is granted in writing by the person's probation officer, and to notify the probation officer of any change in the person's address or employment; [PL 2019, c. 113, Pt. A, §2 (NEW).]

REVISED MAY 26, 2021 1:00 p.m.

I. Refrain from ~~drug use and use of~~ excessive use of alcohol or illegal drugs; [PL 2019, c. 113, Pt. A, §2 (NEW).]

5-26-21 REVISION – no changes to current law for ¶J:

J. Report as directed to the court or the person's probation officer, to answer all reasonable inquiries by the probation officer and to permit the probation officer to visit at reasonable times, with 24 hour notice, at the person's home or elsewhere; [PL 2019, c. 113, Pt. A, §2 (NEW).]

~~K. Pay any monetary penalty imposed by the court as part of the sentence; [PL 2019, c. 113, Pt. A, §2 (NEW).]~~

L. Perform specified work for the benefit of the State, a county, a municipality, a school administrative district, other public entity or a charitable institution; [PL 2019, c. 113, Pt. A, §2 (NEW).]

M. Participate in an electronic monitoring program, if available; or [PL 2019, c. 113, Pt. A, §2 (NEW).]

N. Satisfy any conditions reasonably related to the rehabilitation of the person or the public safety or security. [PL 2019, c. 113, Pt. A, §2 (NEW).]
[PL 2019, c. 113, Pt. A, §2 (NEW).]

3. Opportunity to address court regarding probation conditions; written statement required. The person must be given an opportunity to address the court on the conditions that are proposed to be attached and, after sentence, must be given a written statement setting forth the particular conditions on which the person is released on probation.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

4. Findings or explanation required in certain cases when completion of batterers' intervention program is not ordered as a condition of probation. If an individual is convicted of a crime under [chapter 9](#) or 13 or [section 758](#) that the State pleads and proves was committed by the individual against a spouse, domestic partner or sexual partner; a former spouse, domestic partner or sexual partner; a victim with whom the individual is living or lived as a spouse; or a victim who is or was a dating partner of the individual and the court does not order as a condition of probation that the individual complete a batterers' intervention program certified pursuant to [Title 19-A, section 4014](#), the court shall make findings on the record of the court's reasons for not ordering the individual to complete a batterers' intervention program. If a plea agreement submitted to the court in accordance

REVISED MAY 26, 2021 1:00 p.m.

with Rule 11A(b) of the Maine Rules of Unified Criminal Procedure does not contain a provision ordering the individual to complete a batterers' intervention program, the attorney for the State shall indicate, in a writing submitted to the court, the basis for the plea agreement's not including completion of a batterers' intervention program as a condition of probation. For purposes of this subsection, "dating partner" means a victim currently or formerly involved in dating the individual, whether or not the individual and the victim are or were sexual partners. For purposes of this subsection, "domestic partner" means one of 2 unmarried adults who are domiciled together under a long-term arrangement that evidences a commitment to remain responsible indefinitely for each other's welfare.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

5. Condition of probation that includes psychiatric treatment or mental health counseling; notice by court to Department of Health and Human Services. Before imposing any condition of psychiatric outpatient or inpatient treatment or mental health counseling, the court may request that a report be submitted by an agent of the Department of Health and Human Services who has been designated pursuant to [Title 34-B, section 1220](#) for the purpose of assessing the appropriateness of psychiatric treatment or mental health counseling for the individual and the availability of this treatment or counseling. Whether or not a report is requested, the court shall notify the designated agent of the Department of Health and Human Services when any conditions of probation are imposed that include psychiatric outpatient or inpatient treatment or mental health counseling. This notification must include the name and last known address of the individual placed on probation, the name and address of the attorney of record for that individual and the conditions of probation.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

~~6. Supervision fee; determination of amount by court; failure to pay. The court shall attach as a condition of probation that the person pay, through the Department of Corrections, a supervision fee of between \$10 and \$50 per month, as determined by the court, for the term of probation. If the court does not set a supervision fee, the supervision fee is \$10 per month. Notwithstanding the attachment of supervision fee conditions on more than one sentence, a person on probation on concurrent sentences is required to pay only one supervision fee. In determining whether to set an amount higher than \$10 per month, the court shall take into account the financial resources of the person and the nature of the burden its payment imposes. A person may not be sentenced to imprisonment without probation solely for the reason the person is not able to pay the fee. When a person on probation fails to pay the supervision fee, the court may revoke probation as specified in section 1812, unless the person shows that failure to pay was not attributable to a willful~~

REVISED MAY 26, 2021 1:00 p.m.

~~refusal to pay or to a failure on that person's part to make a good faith effort to obtain the funds required for the payment. The court, if it determines that revocation of probation is not warranted, shall issue a judgment for the total amount of the fee and shall issue an order attaching a specified portion of money received by or owed to the person on probation until the total amount of the fee has been paid. If the person makes this showing, the court may allow additional time for payment within the remaining period of probation or reduce the size of the fee to no less than \$10 per month, but may not revoke the requirement to pay the fee unless the remaining period of probation is 30 days or less.~~

~~{PL 2019, c. 113, Pt. A, §2 (NEW).}~~

5-26-21 1:00 p.m. REVISION – §1807, sub-§7 should be repealed:

~~7. Electronic monitoring *and substance testing* fees only when the underlying offense is a crime against a family or household member, as defined by Title 19 A, Section 4002; determination of amount by court; failure to pay; use of fees. Upon the request of the Department of Corrections, the court shall attach as a condition of probation that the person pay, through the department, an electronic monitoring fee, *a substance testing fee or both* as determined by the court, for the term of probation. In determining the amount of the fees, the court shall take into account the financial resources of the person and the nature of the burden the payment imposes. A person may not be sentenced to imprisonment without probation solely for the reason the person is not able to pay the fees. When a person on probation fails to pay the fees, the court may revoke probation as specified in section 1812, unless the person shows that failure to pay was not attributable to a willful refusal to pay or to a failure on that person's part to make a good faith effort to obtain the funds required for the payment. The court, if it determines that revocation of probation is not warranted, shall issue a judgment for the total amount of the fees and shall issue an order attaching a specified portion of money received by or owed to the person on probation until the total amount of the fees has been paid. If the person makes this showing, the court may allow additional time for payment within the remaining period of probation or reduce the size of the fees, but may not revoke the requirement to pay the fees unless the remaining period of probation is 30 days or less. Fees received from a person on probation must be deposited into the department's adult community corrections account, unless the department has required the person to pay fees directly to a provider of electronic monitoring, substance testing or other services. Funds from the adult community corrections account do not lapse and must be used to defray costs associated with the purchase and operation of electronic monitoring and substance testing programs.~~

REVISED MAY 26, 2021 1:00 p.m.

[PL 2019, c. 113, Pt. A, §2 (NEW).]

8.

~~Condition of probation that includes staying within jurisdiction of court; application fee; use of fees.—Whenever the court requires as a condition of probation that the person remain within the jurisdiction of the court, unless permission to leave temporarily is granted in writing by the person's probation officer, the Department of Corrections may impose on a person applying for such permission an application fee of \$25. The department may impose on a person an additional fee of \$25 per month if permission is sought and granted to leave the jurisdiction of the court on a periodic basis. Permission to leave may not be denied or withdrawn solely because the person is not able to pay the application fee or the additional fee. When a person fails to pay a fee imposed under this subsection, the department may refuse to process the application or may withdraw permission to leave if the failure to pay is attributable to the person's willful refusal to pay or to a failure on the person's part to make a good faith effort to obtain the funds required for the payment. Fees received from a person pursuant to this subsection must be deposited into the department's adult community corrections account, which does not lapse, and must be used to defray costs associated with processing the applications, including, but not limited to, the cost of materials, equipment, training for probation officers and administration, and for the department's share of the costs of extraditing persons on probation who are fugitives from justice.~~

[PL 2019, c. 113, Pt. A, §2 (NEW).]