

Title: New Jersey Bail Reform Act

Section 1: Release or detention of a defendant pending trial¹

- a. **In general**—This Section shall be liberally construed to effectuate the purpose of relying upon contempt of court proceedings or criminal sanctions instead of financial loss to assure the appearance of the defendant, and that the defendant will not pose a danger to any person or the community and that the defendant will comply with all conditions of bail. Monetary bail should be set only when it is determined that no other conditions of release will reasonably assure the defendant's appearance in court and that the defendant does not present a danger to any person or the community.
- b. **Release on own recognizance.** When from all the circumstances the court is of the opinion that the defendant will appear as required either before or after conviction and the defendant will not pose a danger to any person or the community and that the defendant will comply with all conditions of bond, the defendant shall be released on his or her own recognizance. A failure to appear as required by such recognizance shall constitute an offense subject to the penalty provided in Section 3 for violation of the bail bond, and any obligated sum fixed in the recognizance shall be forfeited.
- c. **Release on conditions**—
 - 1) If the judicial officer determines that the release described in subsection(b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—
 - (A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release
 - (B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—
 - i. remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;
 - i. maintain employment, or, if unemployed, actively seek employment;
 - ii. maintain or commence an educational program;
 - iii. abide by specified restrictions on personal associations, place of abode, or travel;

¹ This sections establishes a presumption of pretrial release upon the least restrictive conditions and states that money bail should only be set as a last resort.

- iv. avoid all contact with an alleged victim of the crime and with potential witnesses who may testify concerning the offense;
- v. report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;
- vi. comply with a specified curfew;
- vii. refrain from possessing a firearm, destructive device, or other dangerous weapon;
- viii. refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner;
- ix. undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;
- x. execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;
- xi. return to custody for specified hours following release for employment, schooling, or other limited purposes; and
- xii. satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community
- xiii. Be placed in a pretrial home supervision capacity with or without the use of an approved electronic monitoring device. The costs attributable to the electronic monitoring of an offender who has been determined unable to pay shall be borne by the department.
- xiv. Execute a bail bond:
 - a. With sufficient personal surety or sureties acceptable to the court; in determining the sufficiency of such surety or sureties, the court shall consider his character, his place of residence, his relationship with the defendant, and his financial and employment circumstances; or
 - b. With the ten percent (10%) deposit as provided in Section 2 of this Act; or
 - c. With the deposit of cash equal to the amount of the bond.

- 2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person
- 3) The judicial officer may at any time amend the order to impose additional or different conditions of release.

d. Detention²

- 1) If, after a hearing pursuant to the provisions of subsection (e) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

e. Detention hearing³

- 1) The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community—

(A) upon motion of the attorney for the State in a case that involves—

- i. a crime of violence as defined in N.J.S.A. 2C:43-7.2(d);
- ii. an offense for which the maximum sentence is life imprisonment or death;
- iii. any indictable offense if such person has been convicted of two or more offenses described in subparagraphs (A) or (B) of this paragraph; or
- iv. any indictable offense that is not otherwise a crime of violence that involves a minor victim or that is enumerated in N.J.S.A. 2C:43-6(c).

(B) Upon motion of the attorney for the State or upon the judicial officer's own motion, in a case that involves—

- i. a serious risk that such person will flee; or
- ii. a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

- 2) The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the Government may not exceed three days

² Conditioned upon the passage of a constitutional amendment authorizing pretrial detention

³ Conditioned upon the passage of a constitutional amendment authorizing pretrial detention

(not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, such person shall be detained, and the judicial officer, on motion of the attorney for the State or sua sponte, may order that, while in custody, a person who appears to be a drug dependent receive an assessment to determine whether such person is drug dependent.

- 3) At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing.
 - 4) The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.
- f. **Factors to be considered**—the judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—
- 1) The nature and circumstance of the offense charged, including whether the offense is a crime of violence or involves a minor victim or a firearm, explosive, or destructive device;
 - 2) the weight of the evidence against the person, except
 - (A) A pending motion to suppress will establish a presumption of inadmissibility of the evidence sought to be excluded.
 - 3) the history and characteristics of the person, including—
 - (A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
 - (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and
 - 4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.
 - 5) The release recommendation of the pretrial services agency obtained using a validated risk assessment instrument under Sections 6 and 7 of this Act.

g. Contents of release order

- 1) In a release order issued under subsection (b) or (c) of this section, 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 person's conduct; and
 - (B) advise the person of—
 - i. the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release; and
 - ii. the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest.
- 2) If the judicial officer overrides the results of the validated risk assessment instrument when setting release conditions, the release order must include a written explanation.

h. Contents of detention order—⁴

- 1) In a detention order issued under subsection (e) of this section, the judicial officer shall—
 - (A) include written findings of fact and a written statement of the reasons for the detention; and
 - (B) direct that the person be afforded reasonable opportunity for private consultation with counsel.
- 2) The judicial officer may, by subsequent order, permit the temporary release of the person, subject to appropriate restrictive conditions and/or state supervision, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

Section 2: Deposit of bail security; return of deposit when innocent or charges dropped or dismissed.⁵

- a. Any person who has been permitted to execute a bail bond shall deposit with the clerk of the court before which the action is pending a sum of money equal to ten percent (10%) of the bail.
- b. Upon depositing said sum the defendant shall be released from custody subject to all conditions of release imposed by the court.
- c. Except as provided in subsection (e) of this section, if the conditions of release have been

⁴ Conditioned upon the passage of a constitutional amendment authorizing pretrial detention

⁵ This section allows for the return of a portion of a defendant's bail bond under certain conditions

performed and the defendant has been discharged from all obligations in the action the clerk of the court shall return to the defendant, unless the court orders otherwise, ninety percent (90%) of the sum deposited and shall retain as bail costs ten percent (10%) of the amount deposited, to be deposited in the State General Fund.

- d. Except as provided in subsection (5) of this section, if a final judgment for a fine and court costs or either is entered in the prosecution of an action in which a deposit has been made in accordance with subsection (1) of this section, the balance of such deposit, after deduction of bail costs and public defender fees as provided for in subsection (3) of this section, shall be applied to the satisfaction of the judgment.
- e. If the defendant has performed all conditions of release and if the defendant is found not guilty of the offense for which bail was posted, or if all charges against him relating to the offense for which bail was posted are dropped or dismissed, then all bail money deposited by the defendant or by another person on his behalf shall be returned to him with no deductions therefrom as provided in subsection (3) or (4) of this section.

Section 3: Violation of bail bond⁶

- a. Whoever, having been admitted to bail for appearance before any court of this State, incurs a forfeiture of the bail and willfully fails to surrender himself within 30 days following the date of such forfeiture, commits, if the bail was given in connection with a charge of an indictable offense or pending appeal or certification after conviction of any offense, a crime of the next lower degree or a disorderly persons offense if the underlying offense was a crime of the 4th degree; or, if the bail was given in connection with a charge of committing a disorderly persons offense, or for appearance as a witness, commits a disorderly persons offense.

Section 4: Prohibitions

- a. It shall be unlawful for any person to engage in the business of bail bondsman as defined in subsection (b) of this section, or to otherwise for compensation or other consideration:
 - 1) Furnish bail or funds or property to serve as bail; or
 - 2) Make bonds or enter into undertakings as surety;for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine, imprisonment or death, before any of the courts of this state, or to secure the payment of fines imposed and of costs assessed by such courts upon a final disposition.
- b. Nothing contained herein shall serve to release any bail bondsman heretofore licensed by this state from the obligation of un-discharged bail bond liability existing on the date of enactment of this Act.
- c. "Bail bondsman" shall mean any person, partnership, or corporation engaged for profit in the business of furnishing bail, making bonds or entering into undertakings, as surety, for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine, imprisonment, or death, before any of the courts of this state, or securing the payment of fines imposed and of costs assessed by such courts upon final disposition thereof, and

⁶ This section outlines the penalty for bail forfeiture.

the business of a bail bondsman shall be limited to the acts, transactions, and undertakings described in this subsection and to no other.

Section 5: Issuance of warrant

- d. Issuance of warrant. Upon failure to comply with any condition of a bail bond or recognizance the court having jurisdiction at the time of such failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty on bail or his own recognizance. The contents of such a warrant shall be the same as required for an arrest warrant issued upon complaint. A defendant arrested upon such warrant shall have an opportunity to show by the preponderance of the evidence that his failure to appear was not intentional.

Section 6: Establishment of pretrial services

- a. All trial courts in this State having jurisdiction of criminal causes shall provide such pretrial release investigation and services to effectuate the purposes of _____, pending before the legislature as this bill.
- b. On the date of the enactment of this act, the Administrative Director of the Administrative Office of the Courts shall provide directly for the establishment of a pretrial services agency in each county to serve the trial court. Pretrial services established under this section shall be supervised by a chief pretrial services officer selected under subsection (c) of this section.
- c. Beginning eighteen months after the date of the enactment of this Act, pretrial services shall be established under the general authority of the Administrative Office of the Courts.
- d. The pretrial services established under subsection (b) of this section shall be supervised by a Chief Pretrial Services Officer appointed by the Administrative Director of the Administrative Office of the Courts.

Section 7: Duties of Pretrial Services Agency

- a. The duties of a pretrial services agency shall include the universal screening of all arrestees subject to appearance in court for the purpose of determining bail and/or release utilizing a risk assessment instrument and intake interview tool, making recommendations to the court as to whether defendants interviewed should be released on personal recognizance, supervising and monitoring defendants who are released with conditions, and any other duties necessary to effectuate the purposes of _____, pending before the legislature as this bill.

Statement: This bill legislates four primary bail reforms:

- Mandates a system of non-monetary release options
- Establishes a comprehensive pretrial services agency within each county to monitor and counsel those awaiting trial
- Requires arrestees to undergo a risk assessment before their initial bail hearing in order for the court to make individualized determinations of what, or if, monetary bail is appropriate

- Eliminates private financial incentives to set high bail amounts by prohibiting the operation of commercial bail bonding companies in the state