



SPONSOR: Sen. Blevins & Sen. Sorenson & Rep. M. Smith & Rep. Lavelle  
Sens. Bushweller & Sokola;  
Reps. Barbieri, Carson, Heffernan, Hudson, Keeley, Miro, B. Short, D. Short & Willis

DELAWARE STATE SENATE  
146th GENERAL ASSEMBLY

SENATE BILL NO. 226

AN ACT TO AMEND TITLE 11 RELATING TO PRE-TRIAL RELEASE ON BAIL OR RECOGNIZANCE, CRIMINAL SENTENCING, SENTENCE CALCULATION, REHABILITATION, PROBATION SUPERVISION AND DATA COLLECTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend § 2104, Title 11 of the Delaware Code by making insertions as shown by underlining as  
2 follows:

3           § 2104. Release on bail or recognizance of persons charged with any other crime.

4                   (a) Any person who is arrested and charged with any crime other than a capital crime shall be released  
5 either:

6                           (1) On the person's own recognizance or

7                           (2) Upon the execution of an unsecured personal appearance bond of the accused in an amount  
8 specified by the court or

9                           (3) Upon the execution of a secured appearance bond, the amount of the bond and the nature of  
10 the surety to be determined by the court.

11           The court may also impose 1 or more of the conditions of release set forth in § 2108 of this title. The  
12 determination of whether the accused shall be released under paragraph (a)(1), (a)(2) or (a)(3) of this section above and the  
13 conditions of the release shall be in the discretion of the court subject to this chapter. In making a release determination, or  
14 imposing conditions set forth in §2108 of this title, the court shall employ an objective risk assessment instrument to gauge  
15 the person's risk of flight and re-arrest. The risk assessment instrument shall be responsive to the needs of victims of  
16 domestic violence and sexual assault. The Statistical Analysis Center shall provide the court with a report of rates of re-  
17 arrest and failure to appear as required by persons released by the court. Use of the objective risk assessment instrument  
18 shall commence by December 31, 2013.

19 (b) If the accused has furnished surety, the court shall, at that time, review conditions and may impose  
20 any conditions as are set forth in § 2108 of this title before the accused is released, including specific consideration for the  
21 safety of the victim and the community.

22 (c) Any person who is arrested and thereafter released from custody pursuant to this chapter, and who  
23 subsequently:

24 (1) Tenders to the Superior Court a plea of guilty or nolo contendere to any felony for which a  
25 mandatory, minimum, minimum mandatory or mandatory minimum period of incarceration is required; or

26 (2) Is convicted upon a verdict of guilty of any felony for which a mandatory, minimum,  
27 minimum mandatory or mandatory minimum period of incarceration is required, shall immediately be remanded to the  
28 custody of the Department of Correction, and shall be incarcerated in lieu of bail until the sentence for said felony is  
29 imposed. The provisions of this subsection shall not apply to pleas or convictions for any felony set forth in Title 21.

30 Section 2. Amend § 4321(b)(2) of Title 11 of the Delaware Code by making insertions as shown by  
31 underlining and deletions as shown by strikethrough as follows:

32 (2) The officers, under the supervision of the Department, shall ~~prepare an evaluation and plan~~  
33 ~~of treatment aimed at the alleviation of those conditions which brought about the criminal behavior of each person in the~~  
34 ~~officer's charge, and shall attempt in each case to effect a satisfactory adjustment between the individual and the~~  
35 ~~individual's needs and the demands of society.~~ evaluate each person in their charge under Supervision Accountability  
36 Level II, III or IV, using an objective risk and needs assessment instrument and shall create a case plan for those persons  
37 assessed to be moderate- to high-risk that targets the need factors identified by the assessment. The Department shall  
38 make efforts to provide treatment and services responsive to the person's needs and characteristics. Use of the objective  
39 risk assessment instrument and associated case plans shall commence by December 31, 2013.

40 Section 3. Amend § 4321, Title 11 of the Delaware Code by creating a new subsection (g) therein and  
41 making insertions as shown by underlining as follows:

42 (g) The Department shall undertake an assessment of the availability of community resources to meet the  
43 treatment and rehabilitation needs of the supervised population every three years and endeavor to develop and support  
44 programs in accordance with identified needs. The first three-year report shall be completed by December 21, 2013.

45 Section 4. Amend § 4331(b), Title 11 of the Delaware Code by making insertions as shown by  
46 underlining and deletions as shown by strikethrough as follows:

47 (b) Whenever an investigation by the Investigative Services Office is ordered by the court, the  
48 Investigative Services Office should inquire promptly into such things as the circumstances of the offense, the motivation

of the offender, the criminal record, social history, behavior pattern and present condition of the offender. The ~~report of the~~ presentence investigation should include administration of an evaluation of the offender's criminal conduct objective risk and needs assessment instrument, and should note wherein the judicial alternatives of the court and appropriate conditions of supervision may play a role in the rehabilitation of the offender as a law-abiding citizen. All local and state agencies shall make available to the Investigative Services Office such records as the Investigative Services Office may request. The investigation should include physical and mental examination of the offender, when, in the opinion of the court, it is desirable. As soon as practicable or as ordered by the court, the presentence report shall be forwarded to the sentencing judge of the court in each case.

Section 5. Amend § 4333(i) of Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(i) ~~Notwithstanding any law, rule or regulation to the contrary, t~~ The Department shall have the authority without leave of the court to reclassify any offender serving a sentenced to ~~of~~ probation at Accountability Levels I, II or III, between said levels as deemed necessary and appropriate by the Department, provided that at least 60 days has elapsed from the date on which such sentence was originally imposed, and provided that the Department shall first evaluate the offender using an objective classification tool designed to assist in the determination of the appropriate level of probation. Offenders shall be reevaluated and reclassified periodically as the Department deems necessary and appropriate.

Section 6. Amend §4334 (d), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(d) Notwithstanding any provision of subsection (c) of this section or any other law, rule or regulation to the contrary, the Department is authorized to administratively resolve technical and minor violations of the conditions of probation or supervision at Accountability Levels I, II, III or IV when a sanction less restrictive than Level V is being sought by the Department as a result of the violation, and is further authorized to administratively resolve technical and minor violations of conditions of probation at Accountability Levels I, II, III, or IV by placing the probationer at Accountability Level IV for a period of not more than 5 days consecutively, and not more than 10 days in any 1 calendar year, or on home confinement for a period of not more than 10 days consecutively, and not more than 20 days per calendar year. The Department shall adopt written procedures providing for administrative review for all cases in which an offender is placed at Level IV or home confinement pursuant to this subsection. All administrative dispositions imposed pursuant to this subsection shall be documented in the offender's record and shall be made available to the court in the event of a subsequent violation which is considered by the court. For the purposes of this subsection, the term "technical and minor violations of the conditions of probation or supervision" shall not include arrests or convictions for new criminal offenses.

Under this section, the purpose of home confinement is to reduce the number of persons held at Level V and Level IV facilities by substituting home confinement when appropriate. The Department shall develop guidelines for probation officers to assist them in providing consistent and appropriate responses to compliance and violations of the conditions of probation or supervision. ~~For the purposes of this subsection, the limits pertaining to the use of Level IV as administrative sanction for technical and minor violations of Level I, II or III shall not apply to the use of home confinement for such purposes.~~

Section 7. Amend § 4348, Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

A person having served that person's term or terms in incarceration, less such merit and good behavior credits as have been earned, shall, upon release, be deemed as released on ~~parole~~ probation until the expiration of the maximum term or terms for which the person is sentenced. A person may waive the right to conditional release, in which case the person shall serve the remainder of the term or terms in prison. Such waiver shall be in writing. Only persons who have been committed for 1 year or more shall be deemed to be released on ~~parole~~ probation, provided, the Department by general rule may lower said period of time.

Section 8. Amend § 4352, Title 11 by making deletions as shown as strikethrough as follows:

§ 4352. Return of violator of parole ~~or conditional release~~; procedure and action on violation.

(a) At any time during release on parole ~~or conditional release~~ under parole the Board or any member thereof may issue a warrant for the arrest of a released person for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the person. The warrant shall authorize any officer authorized to serve process in this State to return the person to the actual custody of the correctional facility from which the person was released, or to any other suitable detention facility designated by the Board or Department. When, in the judgment of the Commissioner or of any probation and parole officer, there has been a violation of the conditions of release, the Commissioner or the probation and parole officer may arrest such parolee ~~or releasee~~ without a warrant, or the Commissioner or the probation and parole officer may deputize any other officer with power of arrest to do so by giving officer a written statement setting forth that the parolee ~~or releasee~~ has, in the judgment of the Commissioner or probation and parole officer, violated the conditions of parolee's release. The written statement delivered with the person by the arresting officers to the official in charge of the facility to which the person is brought for detention shall be sufficient warrant for detaining the parolee.

(b) After making an arrest the Department shall present to the detaining authorities a statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the person shall remain

109 incarcerated in the institution.

110 (c) Upon such arrest and detention, the Department shall immediately notify the Board and shall submit a  
111 report showing in what manner the person had violated the conditions of release. The Board shall cause the person to be  
112 brought promptly before it for a hearing on the violation charge, under such rules and regulations as the Board may adopt.

113 (d) If the violation is established by the hearing, the Board may continue or revoke the parole-~~or~~  
114 ~~conditional release~~, or enter such other order as it may see fit.

115 (e) A person for whose return a warrant has been issued by the Board shall, if it is found that the warrant  
116 cannot be served, be deemed to be a fugitive from justice or to have fled from justice.

117 (f) If it shall appear that the person has violated the provisions of the person's release, the Board shall  
118 determine whether the time from the issuing of the warrant to the date of the person's arrest, or any part of it, shall be  
119 counted as time under the sentence.

120 (g) Any person who commits a crime while at large on parole ~~or conditional release~~ and is convicted and  
121 sentenced therefor shall serve the unexpired portion of the term under which the person was released consecutively after  
122 any new sentence for the new offense.

123 Section 9. Amend § 4381(d), Title 11 of the Delaware Code by making insertions as shown by  
124 underlining as follows:

125 (d) "Good time" may be earned by participation in education, rehabilitation, work, or other programs as  
126 designated by the Commissioner. Good time may be awarded for satisfactory participation in approved programs at a rate  
127 of up to 5 days per calendar month. Up to 60 days of additional good time may be awarded for successful completion of an  
128 approved program designed to reduce recidivism.

129 Section 10. Amend § 4381(e), Title 11 of the Delaware Code by making insertions as shown by  
130 underlining and deletions as shown as strikethrough as follows:

131 (e) No more than a total of ~~400~~ 160 days of "good time" may be earned in any 1 year consisting of 365  
132 days actually served.

133 Section 11. Amend § 4383, Title 11 of the Delaware Code by making insertions as shown by underlining  
134 and deletions as shown as strikethrough as follows:

135 ~~§§ 4383, 4384 [Reserved].~~

136 § 4383. Earned Compliance Credit for Probation.

(a) Subject to the limitations set forth in § 4333(d) of this title, periods of probation may be reduced by earned compliance credit under the provisions of this chapter and rules and regulations adopted by the Commissioner of Corrections.

(b) Persons under supervision may earn up to 30 days of credit for 30 days of compliance with conditions of supervision, not to exceed half of their probationary period.

Earned compliance credit will be forfeited upon conviction of a new crime and may be forfeited upon revocation of probation.

(c) A period of conditional release shall be served concurrently with the probationary period.

Section 12. Amend §4384, Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§4384. [Reserved.]

Section 13. Amend §4392(a), Title 11 of the Delaware Code by making insertions as shown by underlining as follows:

(a) An offender sentenced to supervision Level I, II or III is not eligible for house arrest placement unless specifically ordered by the sentencing judge-, or as a result of administrative detention under § 4334(d) of this title.

Section 14. Amend § 6531(a), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(a) Persons committed to the institutional care of the Department shall be dealt with humanely, with effort directed to their rehabilitation. To the maximum extent possible, the Department shall evaluate each person using an objective risk and needs assessment instrument and shall create a case plan for those persons assessed to be moderate- to high-risk that targets the need factors identified by the assessment. The Department shall prioritize the provision of such evaluations according to the length of sentence and the severity of the conduct giving rise to the sentence of incarceration. The Department shall make efforts to provide treatment and services responsive to the person's needs and characteristics. Use of the objective risk assessment instrument shall commence by December 31, 2013.

Section 15. Amend § 6531, Title 11 of the Delaware Code by creating a new subsection (g) therein and making insertions as shown by underlining as follows:

(g) The Department shall undertake an assessment of its ability to meet treatment and rehabilitation needs of the confined population every three years and endeavor to provide programs in accordance with identified needs. The first report shall be completed by December 31, 2012.

Section 16. Amend § 8903, Title 11 of the Delaware Code by making insertions as shown by underlining

and renumbering the following subsections as follows:

In pursuit of its mission, the Statistical Analysis Center shall have the following powers, duties and functions:

(1) Generate statistical and analytical products concerning crime and the criminal justice system in the State;

(2) Provide statistical and analytical services from available information upon request;

(3) Provide technical assistance in the identification of sources, collection, analysis, interpretation and dissemination of criminal justice statistics to state and local governmental agencies;

(4) Identify, collect, analyze and disseminate statistics regarding the resources expended on criminal justice in the State;

(5) Promote the orderly development of criminal justice information and statistical systems within the State;

(6) Maintain a state-level capability for providing state and local governments with access to federal resources in criminal justice statistical information in cooperation with the U.S. Department of Justice,

(7) Serve as the clearinghouse and point of contact for the U.S. Department of Justice and for state agencies, local government agencies, the courts, and appropriate nongovernmental organizations;

(8) Direct or participate in the research design for the analysis of crime or criminal justice issues for the State; and

(9) Conduct research and provide analyses as required to determine the impact proposed policy changes may have on the criminal justice system-; and

(10) Submit annually to the Governor, Chief Justice, President Pro Tem of the Senate, and the Speaker of the House a report examining one-year, two-year, and three-year rates of re-arrest, reconviction, and recommitment of released offender cohorts. The first report shall be submitted by July 31, 2013.

Section 17. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

#### SYNOPSIS

This Act implements the recommendations of the Justice Reinvestment Task Force created by Executive Order No. 27. The Act promotes informed decision-making in the criminal justice system by institutionalizing the use of evidenced-based practices in decisions concerning bail, rehabilitation and probation supervision and helps ensure scarce resources are focused on higher-risk offenders.

The Task Force recommends the use of a pretrial risk assessment tool to inform release decisions. The Act provides for implementation of an objective assessment instrument that gauges defendants' risk of flight and re-arrest to help magistrates make informed about the terms or conditions of pre-trial release. The instrument would incorporate

elements to ensure the safety of victims of domestic and sexual violence. In addition, the Act requires the Statistical Analysis Center to provide magistrates with data on rates of re-arrest and failures to appear for a scheduled court date. This would create a track record for release decisions, helping to improve future decision-making.

The Task Force recommends holding offenders accountable. The Act provides that court-ordered investigations should include use of an objective risk and needs assessment tool by the Department of Correction, which would be required to create a case plan for higher risk individuals. The Act also amends when the Department of Correction can reclassify offenders sentenced to Supervision Levels I, II, or III upon administration of an objective risk and need assessment instrument. The Act clarifies that the Department of Correction may use home confinement to resolve technical and minor violations of probation or supervision. The Act clarifies that upon release from Level V incarceration, the offender shall be deemed to have served the entire period of incarceration and shall be supervised in the community if the sentence requires. To incentivize completion of evidence-based programs that reduce recidivism, offenders may reduce time served by up to 60 days per year if programs are completed successfully. Offenders under community supervision may earn credit for successful compliance with conditions of probation.

The Task Force recommends the use of evidence-based programs and assessment tools to direct resources toward programs that improve outcomes. The Act provides that the Department of Correction will use a risk assessment instrument for case planning and will use evidence-based programs to reduce offender risk. Further, the Act directs the Department of Correction to evaluate the availability of community-based programs that reduce risk of re-offense. The Statistical Analysis Center shall annually produce a recidivism report of one-year two-year and three-year rates of re-arrest, reconviction and recommitment of released offender cohorts. This Act is not intended to create a private right of action.

Author: Sen. Blevins