



SPONSOR: Rep. J. Johnson & Rep. Potter & Sen. McDowell &
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Reps. Baumbach, Bentz, Heffernan, Mitchell; Sens.
Henry, Poore

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 204

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO RELEASE OF PERSONS ACCUSED
OF CRIMES.

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

1 Section 1. Amend Chapter 21, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and redesignating accordingly:

3 § 2101. Purposes of this chapter.

4 It is the purpose of this chapter to reform the system of ~~bail governing the release of defendants pending a final~~
5 determination of guilt of such persons. ~~in the~~ The various courts of this State ~~and to empower and equip the courts to~~
6 ~~utilize a system of personal recognizance or an unsecured personal appearance bond to be used wherever feasible consistent~~
7 ~~with~~ are empowered and encouraged to make individualized decisions about terms and conditions of pretrial release. Each
8 court shall utilize a system of pretrial release imposing reasonable non-monetary conditions of release when those
9 conditions adequately provide a reasonable assurance of the appearance of the accused defendant at court proceedings, and
10 the safety protection of the community, victims, witnesses and any other person, and to maintain the integrity of the judicial
11 process. in connection with the release of persons accused of crime pending a final determination of the court as to the guilt
12 ~~of such persons.~~

13 § 2102. Definitions.

14 For purposes of this chapter the following definitions shall apply:

15 (2) "Bail" means the pretrial release of a defendant from custody upon the terms and conditions specified by an
16 order of the court with jurisdiction. Bail may be any of the following:

17 a. A conditions of release bond.

18 b. A conditions of release bond not guaranteed by financial terms.

19 c. A conditions of release bond guaranteed by financial terms.

20 d. A conditions of release bond guaranteed by financial terms secured by cash only.

21 ~~(2)(3)~~ "Bailable offense" is any offense not punishable by death.

~~(3)~~(4) "Capital crime" ~~includes~~ means any crime for which the punishment shall be death.

~~(4) "Cash personal appearance bond" is a bond of the accused promising appearance in court, secured by cash only.~~

(5) "Conditions of release bond" means a commitment by the defendant promising appearance in court and compliance with all conditions ordered by the court and mandated by statute.

(6) "Conditions of release bond not guaranteed by financial terms" means a commitment by the defendant promising appearance in court and compliance with all conditions ordered by the court and mandated by statute, whereupon failure to appear or comply with conditions, the defendant may be liable for the amount of the bond, but the bond is not guaranteed by any surety or specific pledge of property or other assets.

(7) "Conditions of release bond guaranteed by financial terms" means a commitment by the defendant promising appearance in court and compliance with all conditions ordered by the court and mandated by statute guaranteed by a surety, property, cash or other assets.

(8) "Conditions of release bond guaranteed by financial terms secured by cash" means a commitment by the defendant promising appearance in court and compliance with all conditions ordered by the court and mandated by statute guaranteed by cash only.

~~(5)~~(9) "Court" ~~includes~~ means Superior Court, Court of Common Pleas, Family Court of the State, and Justice of the Peace Court.

~~(6)~~(10) "Crime" ~~includes~~ means any offense which is punishable by a fine or imprisonment.

~~(7) "Personal recognizance" is the written recognizance of the accused that the accused will obey the further direction of the court.~~

(11) "Pretrial success" means a defendant's compliance with orders to appear in court as directed and not commit any new criminal offense between the initial arrest and adjudication of the pending criminal charges.

~~(9) "Secured personal appearance bond" is a bond of the accused promising appearance in court, guaranteed by a surety, property, cash or other assets.~~

~~(10) "Unsecured personal appearance bond" is an undertaking by the accused promising appearance in court where, upon failure to appear, the accused will be liable for the amount of the bond, but the bond is not guaranteed by any surety or specific pledge of property or other assets.~~

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

(a) Any person who is arrested and charged with any crime other than a capital crime shall be released ~~either upon~~ execution of one of the following:

(1) ~~On the person's own recognizance; or~~ A conditions of release bond.

(2) ~~Upon the execution of an unsecured personal appearance bond of the accused~~ A conditions of release bond not guaranteed by financial terms in an amount specified by the court; ~~or,~~

(3) ~~Upon the execution of a secured personal appearance bond,~~ A conditions of release bond guaranteed by financial terms, the amount of the bond and the nature of the surety to be determined by the court; ~~or,~~

(4) ~~Upon execution of a cash personal appearance bond~~ A conditions of release bond guaranteed by financial terms secured by cash only, the amount of the bond to be determined by the court.

(b) The court shall impose the following conditions of release for any ~~person~~ defendant released on bail ~~or recognizance:~~

(1) Require the ~~person~~ defendant to return to the court at any time upon notice and submit to the orders and processes of the court; ~~and,~~

(2) Prohibit the ~~person~~ defendant from committing any criminal offense.

(c) The court may also impose 1 or more of the conditions of release set forth in § 2108 of this title: when such conditions are necessary to provide a reasonable assurance of the appearance of the defendant at court proceedings, the protection of the community, victims, witnesses, or any other person, and to maintain the integrity of the judicial process.

(d) The court shall memorialize pretrial release decisions by written order specifying conditions of release and informing the defendant of the possible consequences for violating the conditions of release.

~~(d)(e)(1)~~ (1) The determination of whether the ~~accused~~ defendant shall be released under paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section ~~above~~ and the conditions (other than the mandatory conditions in paragraph (b) of this section above) of the release shall be in the discretion of the court subject to this chapter. ~~In~~ When making a release determination, or imposing conditions set forth in § 2108 of this title, the court shall ~~employ an objective risk assessment instrument to gauge the person's risk of flight and re-arrest and the safety of the victim and the community. The risk assessment instrument shall be responsive to the needs of victims of domestic violence and sexual assault. use an empirically developed risk assessment instrument, if available, designed to improve pretrial release decisions by assessing defendant's likelihood of pretrial success. In circumstances involving suspected domestic or intimate partner violence, the judicial officer shall also consider the results, if available, of an instrument designed to assess the likelihood or predicted severity of future violence against the alleged victim. The judicial officer may consider any other facts and circumstances regarding a defendant's likelihood of pretrial success.~~

(2) The Statistical Analysis Center shall provide the court with a report of rates of re-arrest and failure to appear as required by ~~persons~~defendants released by the court. ~~Use of the objective risk assessment instrument shall commence by December 31, 2013.~~

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

(f) Any person who is arrested and thereafter defendant released from custody pursuant to this chapter, and who later subsequently:

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

(2) Is convicted upon a verdict of guilty of any felony for which a mandatory, minimum, minimum mandatory or mandatory minimum period of incarceration is required,

shall immediately be remanded to the custody of the Department of Correction, and shall be incarcerated ~~in lieu of bail~~ until the sentence for ~~said that~~ that felony is imposed. The provisions of this subsection shall not apply to pleas or convictions for any felony set forth in Title 21.

§ 2105. Release ~~on personal recognizance or on unsecured personal appearance bond pursuant to a conditions of release bond or conditions of release bond not guaranteed by financial terms.~~

(a) The court shall release a ~~person~~defendant accused of a bailable crime on ~~the person's own recognizance or upon the execution of an unsecured personal appearance bond a conditions of release bond or a conditions of release bond not guaranteed by financial terms of the accused~~ in an amount to be determined by the court when the court is satisfied from all the circumstances and the criteria set forth in subsection (b) of this section that it is reasonably likely that the ~~accused~~defendant will appear as required before or after conviction of the crime charged and that there is no substantial risk to the safety of the community in permitting such unsecured release.

(b) In determining whether the ~~accused~~defendant is likely to appear as required and that there will be no substantial risk to the safety of the community the court shall, on the basis of available information, take into consideration the nature and circumstances of the crime charged, whether a firearm was used or possessed, the possibility of statutory mandatory imprisonment, whether the crime was committed against a victim with intent to hinder prosecution, the family ties of the ~~accused~~defendant, the ~~accused's~~defendant's employment, financial resources, character and mental condition, the length of residence in the community, record of convictions, habitual offender eligibility, custody status at time of

offense, history of amenability to lesser sanctions, history of breach of release, record of appearances at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

(c) If the court has determined that the ~~accused~~ defendant shall not be released in accordance with this section, it shall make a record finding of the reason or reasons for such action and shall permit the release of the ~~accused~~ defendant upon the furnishing of surety satisfactory to the court in an amount to be determined by the court.

§ 2107. Determining the amount of bail.

(a) In determining the amount of bail to be required to be posted as surety under § 2105 of this title or to be required for an ~~unsecured personal appearance bond of the accused~~ a conditions of release bond not guaranteed by financial terms, the court shall not require oppressive bail but shall require such bail as reasonably will assure the reappearance of the ~~accused~~ defendant, compliance with the conditions set forth in the bond, and the safety of the community. In fixing the amount, the court shall also take into consideration the criteria set forth in § 2105(b) of this title.

(b) In any event, if a ~~person~~ defendant is charged with an offense punishable by fine only, the amount of the bail shall not exceed double the amount of the maximum fine for each charge. When a ~~person~~ defendant has been convicted of an offense and only a fine has been imposed as the sentence of the court, the amount of bail shall not exceed double the amount of the fine.

(c) Notwithstanding any provision of this title to the contrary, for a ~~person~~ defendant charged with committing a violent felony involving a firearm or with committing a violent felony while on probation or pretrial release, the presumption is that a ~~cash personal appearance bond~~ conditions of release bond guaranteed by financial terms secured by cash only will be set.

§ 2108. Conditions for release.

(a) In addition to the mandatory conditions set forth in § 2104(b) of this title, in connection with ~~either a secured release or an unsecured release of any person~~ any form of bail for a defendant the court may also impose 1 or more of the following conditions:

(1) Place the ~~person~~ defendant in the custody of a designated person or organization agreeing to supervise the ~~person~~ defendant;

(2) Place the ~~person~~ defendant under the supervision of a presentence or probation officer;

(3) Place restrictions on the travel, associations, activities, consumption of alcoholic beverages, drugs or barbiturates, or place of abode of the ~~person~~ defendant during the period of release;

(4) Require the ~~person~~ defendant to have no contact or restricted contact with the victim, the victim's family, victim's residence, place of employment, school or location of offense;

(5) Require periodic reports from the ~~person~~defendant to an appropriate agent or officer of the court including the attorney for the ~~accused~~defendant;

(6) Require psychiatric or medical treatment of the ~~person~~defendant;

(7) Require the ~~person~~defendant to provide suitable support for the ~~person's~~defendant's family under supervision of an officer of the court or the Family Court, with the consent of the Family Court;

(8) Require a ~~person~~defendant who has been convicted to duly prosecute any post-conviction remedies or appeals; and if the case is affirmed or reversed and remanded, such ~~person~~defendant shall forthwith surrender to the Court;

(9) Impose any other condition deemed reasonably necessary to assure appearance as required and to carry out the purpose of this chapter.

(b) In connection with ~~either a secured release or an unsecured release of any person~~ any form of bail for a defendant charged with any crime involving child sexual abuse or exploitation, the court shall also impose a condition that the ~~person~~defendant have no contact with children, except upon good cause shown, and as otherwise provided by the court, and that such condition remain in full force and effect until a nolle prosequi is filed, the case is dismissed or an adjudication of not guilty is returned, whichever shall first occur, or if the ~~person~~defendant is adjudicated guilty by way of a plea of guilty or a conviction by court or jury, at the time of sentencing, unless further made a condition of probation by the sentencing judge.

(c) In connection with ~~either a secured release or unsecured release of any person~~ any form of bail for a defendant charged with a violation of § 4177 of Title 21 which is alleged to be punishable as a felony pursuant to that section, the court shall impose a condition that the ~~person~~defendant not drive a vehicle, as defined by that section, until a nolle prosequi is filed, the case is dismissed or an adjudication of not guilty is returned, whichever shall first occur, or if the ~~person~~defendant is adjudicated guilty by way of plea of guilty or a conviction by court or jury, at the time of sentencing, unless further made a condition of probation by the sentencing judge.

§ 2109. Failure to provide ~~recognizance, bond,~~ a conditions of release bond, whether guaranteed by financial terms or not, or consent to conditions; contact with victim or victim's family.

(a) If the ~~accused~~defendant does not provide the ~~personal recognizance, secured or unsecured bond~~ form of conditions of release bond required by the court, or if the ~~person~~defendant does not agree to meet the conditions for release, the ~~person~~defendant shall be held in the custody of the Department of Correction until the ~~person~~defendant cures such failure or until the court otherwise orders.

168 (b) If the ~~accused~~ defendant is committed in lieu of bail, the court may require such ~~person~~ defendant, while in
169 custody, to have no contact with the victim or the victim's family.

170 (c) If the ~~accused~~ defendant is committed in lieu of bail, and knowingly breaches any conditions imposed in
171 connection with that bail, each such failure or breach shall be a separate crime, and upon conviction thereof shall be
172 punished as follows:

173 (1) If the ~~person~~ defendant was held in connection with 1 or more charges of a felony prior to trial, or while
174 awaiting sentence or pending appeal or certiorari after conviction of 1 or more felonies or misdemeanors, the ~~person~~
175 defendant shall be guilty of a felony and punished by imprisonment ~~of~~ not to exceed 5 years, or a fine of \$5,000, or
176 both;

177 (2) If the ~~person~~ defendant was held in connection with 1 or more charges of misdemeanor prior to trial, the
178 ~~person~~ defendant shall be fined not more than \$500, or imprisoned not more than 1 year, or both.

179 § 2110. Modification of bail, security or conditions of release and sanctions for violation.

180 (a) Unless reviewed earlier, a court with jurisdiction over the defendant shall review conditions of pretrial release
181 for a defendant who remains detained after 72 hours from the defendant's initial presentment as a result of the inability to
182 meet conditions of pretrial release. This review shall occur within ten days from the date of detention. Each court shall
183 establish its procedure for timely review.

184 ~~(a)(b) Either the accused or the~~ A defendant, regardless of custody status, or the Attorney General, the Attorney
185 General's designee, a third party private or commercial surety, the Department of Correction, or any person or non-
186 governmental organization to whom a defendant has been released for supervision may apply to the court for any
187 modification of any determination by the court as to the decision of the type of release, the amount and nature of the bond
188 or surety, or the conditions of release condition of pretrial release. Such application shall be at such times, upon such
189 conditions and in such manner as the Rules of Superior Court may provide. The courts shall establish rules governing the
190 procedure for motions to modify conditions of pretrial release. Motions to modify conditions of pretrial release shall be
191 filed in and decided by the court that has jurisdiction over the defendant at the time the motion is made. The defendant, the
192 Attorney General, or the Attorney General's designee may make an oral application at any proceeding at which the parties
193 are both present. Once a movant's application is ruled upon, the movant may initiate subsequent review of conditions of
194 pretrial release only upon a material change in circumstance.

195 (c) Following a hearing alleging pretrial noncompliance and upon a finding that the defendant violated one or
196 more material conditions of pretrial release, the court with jurisdiction over the defendant, may continue the current

197 conditions, remove or impose different or additional conditions upon the defendant's release, or forfeit any surety posted to
198 meet a financial term of release.

199 (d) The court may impose different or additional conditions of pretrial release or may remove conditions of pretrial
200 release only when the facts of the individual case or the defendant's circumstances demonstrate that modification of
201 conditions is necessary to reasonably ensure the defendant's appearance at court proceedings, to protect the community,
202 victims, witnesses, or any other person, and to maintain the integrity of the judicial process.

203 (e) Upon disposition of the request to modify conditions of pretrial release, the court shall set forth on the record
204 the reasons for amendment of or continuation of the conditions imposed.

205 ~~(b)(f) Where~~ If the court modifies any bail amount conditions of release, the court shall review conditions and may
206 impose any conditions as are set forth in § 2108 of this title, including specific considerations for the safety of the victim
207 and the community when such conditions are necessary to provide a reasonable assurance of the appearance of the
208 defendant at court proceedings, the protection of the community, victims, or any other person, and to maintain the integrity
209 of the judicial process. The court shall review the modified conditions with the defendant.

210 § 2111. Procedure for ~~taking bail~~ pretrial release or implementing this chapter.

211 Except as provided herein, the procedure for ~~taking bail~~ pretrial release or implementing this chapter shall be as
212 provided by the Rules of the Superior Court.

213 § 2112. Bail after transfer to another court or after conviction.

214 Once bail has been given and a charge is pending or is thereafter filed in or transferred to a court of competent
215 jurisdiction, the latter court may continue the original bail in that court. After conviction, the court may order that the
216 original bail stand as bail pending appeal or deny, increase or reduce bail, or modify the conditions of release.

217 § 2113. Penalties for noncompliance with conditions of ~~recognizance release;~~ bond or conditions.

218 (a) If the ~~accused defendant~~ defendant shall fail to appear as required by the ~~recognizance or bond~~ defendant's bail or shall
219 commit any material breach of the conditions set forth in § 2104(b) or § 2108 of this title, the court shall issue a warrant
220 and cause the arrest of such ~~person~~ defendant and the cancellation of any ~~recognizance bail~~ and the return to the court for a
221 redetermination of the disposition of the ~~accused~~ defendant.

222 (b) Upon the return of the ~~accused~~ defendant before the court pursuant to subsection (a) of this section or if the
223 ~~accused~~ defendant shall not be found, the court shall act with respect to the forfeiture of any ~~secured or unsecured form of~~
224 guaranteed or not guaranteed conditions of release bond pursuant to the Rules of the Superior Court and shall redetermine
225 the type of ~~release, the~~ and amount of bail, ~~if any,~~ and conditions of the further release of the ~~accused~~ defendant.

Notwithstanding any law to the contrary, no property, cash, surety or other assets shall be forfeited except upon failure of the accused to appear as required by any court.

(c) If the ~~accused~~ defendant knowingly fails to appear as required or knowingly breaches any condition of release, each such failure or breach shall be a separate crime, and upon conviction thereof shall be punished as follows:

(1) If the ~~person~~ defendant was released in connection with 1 or more charges of a felony prior to trial, or while awaiting sentence or pending appeal or certiorari after conviction of 1 or more felonies or misdemeanors, the ~~person~~ defendant shall be guilty of a felony and punished by imprisonment ~~of~~ not to exceed 5 years, or a fine of \$5,000, or both;

(2) If the ~~person~~ defendant was released in connection with 1 or more charges of misdemeanor prior to trial, the ~~person~~ defendant shall be fined not more than \$500, or imprisoned not more than 1 year, or both.

(d) The Justice of the Peace Court shall have jurisdiction over violations of this section if punishable as misdemeanors and if the jurisdiction over the underlying offense remains with the Justice of the Peace Court.

(e) Any ~~person~~ defendant released pursuant to this chapter shall notify the court, before which the case is pending, of any changes of address or residence within 5 days of such change. Failure to make such notification will result in constructive receipt of any subpoena issued to the ~~person~~ defendant by or on behalf of the court to the last address or residence given to the court by that ~~person~~ defendant.

(f) Nothing in this chapter shall interfere with or prevent the exercise by any court of its power to punish for contempt.

§ 2114. Administration of this chapter.

(a) The Department of Correction shall administer ~~such the~~ provisions of this chapter ~~as that~~ are not exclusively the province of the judges of the respective courts of this State within the jurisdiction of the judiciary.

(b) The Commissioner of the Department of Correction may employ such staff as may be necessary to implement this chapter.

(b)(c) The Department of Correction may make investigations relative to investigate the release of persons charged with criminal offenses and otherwise advise and assist the courts to carry in carrying out the purposes of this chapter. The Department of Correction shall provide pretrial supervision to released defendants when ordered by the court and shall report such defendants' compliance or non-compliance with conditions of pretrial release when necessary to carry out the purposes of this chapter. The Department of Correction may request modification of conditions of pretrial release. Each court shall establish rules and procedures for timely disposition of reports of non-compliance with conditions of pretrial release and requests for modification of conditions of pretrial release.

256 ~~(e)(d)~~ The Department of Correction shall have the power necessary to carry out the purposes of this chapter,
257 including subpoena power, and as shall be provided by the Rules of the Superior Court, the following:

258 (1) The Department of Correction may adopt standard conditions for the supervision of defendants ordered to
259 pretrial supervision and may modify conditions of supervision as necessary to address technical or minor violations of
260 conditions of pretrial release. The imposition of standard or modified conditions shall be limited to those conditions
261 necessary to provide a reasonable assurance of the appearance of the defendant at court proceedings, the protection of
262 the community, victims, witnesses or any other person, and to maintain the integrity of the judicial process. These
263 conditions shall apply when not contrary to any other specific conditions imposed by the court.

264 (2) The Department of Correction may adopt standards concerning pretrial supervision through home
265 confinement. The Department of Correction is authorized to supervise defendants released pretrial on home
266 confinement without the use of any specific electronic equipment, so long as sufficient and reasonable methods for
267 ensuring compliance with the terms of house arrest are employed.

268 (3) The Department of Correction is authorized to use electronic monitoring systems and any new or emerging
269 monitoring technology that will assist in the supervision of defendants released pretrial.

270 ~~(d) The Commissioner of the Department of Correction may employ 1 supervisor, and such assisting and clerical~~
271 ~~staff as may be necessary to carry out this chapter.~~

272 (e) The court, when notified by the Department of Correction of a violation of pretrial release, may issue a
273 summons or a warrant for the arrest of a defendant for violating any condition of pretrial release.

274 (f) The Commissioner of the Department of Correction or any probation officer, acting in performance of his or
275 her duties, under exigent circumstances may arrest a supervised defendant without a warrant when in the judgment of the
276 Commissioner or probation officer the supervised defendant has violated any material condition of pretrial release. The
277 Commissioner or probation officer may deputize any other officer with power of arrest to do so by giving that officer a
278 written statement setting forth in what manner the supervised defendant has in the judgment of the Commissioner or the
279 probation officer violated a material condition of pretrial release. When an arrest is made by a probation officer or the
280 Commissioner, the officer shall present to the detaining authority a written statement of the circumstances of violation.

281 (g) Upon arrest and detention, the Commissioner or probation officer shall notify the court of jurisdiction
282 forthwith and shall submit to the court a written report showing in what manner the defendant has violated the conditions of
283 pretrial release.

(h) When the Commissioner or probation officer alleges noncompliance with material conditions of pretrial release, pursuant to subsection (f) of this section, a probation officer shall take the defendant directly before the court of jurisdiction if that court is in session or take the defendant before a magistrate. The hearing may be summary in nature.

§ 2115. Forfeiture and default of bail bonds.

(a) If the ~~accused~~ defendant shall fail to appear as required or be found in breach of a material condition of release imposed by any court, except the House Sergeant of the Wilmington City Police, while under a bond, and the court pursuant to this chapter or court rule finds the ~~accused~~ defendant in default and forfeits the bond, the proceeds shall be forwarded to the State Treasurer and deposited in the General Fund.

(b) All funds held by the State in any depository derived from forfeiture or default of bonds from any court, except the House Sergeant of the Wilmington City Police, shall immediately be forwarded to the State Treasurer and deposited in the General Fund.

(c) The proceeds of any bond forfeited for the ~~accused's~~ defendant's failure to appear in any child support proceeding shall be paid over to the payee of the child support order and applied to the child support account.

§ 2116. Revocation of bail upon subsequent arrest.

(a) For the purposes of this section:

(1) "Original offense" means any violent felony which is alleged to have been committed by a ~~person~~ defendant who is thereafter released from custody upon ~~that person's own recognizance or upon the execution of a secured or unsecured personal appearance bond or a cash personal appearance bond~~ execution of any form of conditions of release bond;

(2) "Subsequent offense" means any violent felony or any similar offense set forth under the laws of another state, the United States or any territory of the United States which is alleged to have been committed by a ~~person~~ defendant during the period of that ~~person's~~ defendant's secured or unsecured release in connection with an original offense.

(b) In connection with ~~either a secured release or unsecured release of any person~~ any form of bail for a defendant charged with any violent felony, if after ~~such~~ release the ~~accused~~ defendant is charged by arrest, warrant, indictment or information with the commission of a subsequent offense, that ~~person~~ defendant shall be brought before the Superior Court. If after a hearing, the Superior Court finds proof positive or presumption great that the ~~accused~~ defendant has committed a subsequent offense during such period of release, notwithstanding any provision of this chapter or any statute or court rule to the contrary, the Court shall revoke the bail to which the ~~person~~ defendant was admitted in connection with the original offense.

314 (c) Notwithstanding any provision of this chapter or any other statute or court rule to the contrary, whenever the
315 ~~accused defendant~~ is charged with a subsequent offense, any ~~recognizance or bond~~ form of bail relating to the original
316 offense shall be temporarily revoked by any court, including the Justice of the Peace Court, Court of Common Pleas, or
317 Superior Court, before whom the ~~person defendant~~ is then appearing, and the ~~person defendant~~ shall be held in lieu of bail
318 for the original offense until such time as the Superior Court holds a hearing to determine whether there is proof positive or
319 presumption great that the ~~accused defendant~~ committed a subsequent offense during the period of release.

320 (d) Notwithstanding any provision of this chapter or any statute or court rule to the contrary, any ~~person defendant~~
321 whose bail is revoked by the Superior Court pursuant to this section shall be subject to bail on the original offense in an
322 amount at least twice the amount of bail originally set. If the bail on the original offense was not already secured by cash,
323 the amount of bail may be posted only in the form of a ~~cash personal appearance conditions of release~~ bond guaranteed by
324 financial terms secured by cash only.

325 Section 2. This Act shall take effect January 1 of the year following its enactment.

SYNOPSIS

This Act makes a number of changes to Chapter 21, Title 11 of the Delaware Code, with the goal of modernizing the pretrial process, reducing reliance on monetary conditions, improving the efficiency and outcomes for the criminal justice system, and ensuring the safety of the community. An analysis of data for pretrial detention and bail shows that Delaware's bail system is failing in two ways: we unnecessarily detain individuals who lack funds for their release, and on the other end of the spectrum, we release defendants who fail to appear or remain law abiding during their period of pretrial release. The Courts, the Department of Correction, the Office of Defense Services, the Attorney General's Offices, members of law enforcement and the private defense bar, and the Delaware Center for Justice have worked collaboratively to propose the changes embodied in this bill, and will continue to work on further revisions.

Specifically, this Act makes the following changes to the bail/pretrial process:

- Use risk to determine conditions: Require courts to consider risk by using empirically-based tools to determine whether a defendant is likely to stay out of trouble and come to court, and use that information to make individualized "assignments" of conditions of release.

- Defines purpose of release conditions: Limit conditions of release to things that will reasonably assure the defendant will show up in court, and protect victims, witnesses, and community members.

- Create more opportunities for conditions to be added or removed: Make release conditions "living documents" that will automatically be reviewed if a defendant does not initially meet them, if a defendant does meet them and then violates those terms, or if the defendant or their custodian makes a motion to modify those conditions.

- Empower pretrial officers: Gives Department of Corrections more tools to investigate and address violations of release conditions so the courts can address violations promptly and impose sanctions if necessary.

This bill further requires the court to conduct a review of conditions of pretrial release for a defendant who remains detained after 72 hours from the defendant's initial presentment because of inability to meet any condition of release (including a financial condition). Such a review must happen within ten days of detention.