



SPONSOR: Sen. Townsend & Sen. Henry & Rep. J. Johnson &  
Rep. Potter  
Sen. McDowell; Reprs. Baumbach, Keeley

DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE BILL NO. 222

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 § 2101, Title 11 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows:

3 § 2101. Purposes of this chapter. [Effective Jan. 1, 2019]

4 It is the purpose of this chapter to reform the system governing the release of defendants pending a final  
5 determination of guilt of such persons. The various courts of this State are empowered and encouraged to make  
6 individualized decisions about terms and conditions of pretrial release. Each court shall utilize a system of pretrial release  
7 imposing reasonable nonmonetary conditions of release when those conditions adequately provide a reasonable assurance  
8 of the appearance of the defendant at court proceedings, the protection of the community, victims, witnesses and any other  
9 person, and to maintain the integrity of the judicial ~~process.~~ process, such that the defendant will not obstruct or attempt to  
10 obstruct justice.

11 Section 2. Amend § 2102, Title 11 of the Delaware Code by making deletions as shown by strike through and  
12 insertions as shown by underline as follows:

13 § 2102. Definitions. [Effective Jan. 1, 2019]

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

15 (9) "Court" means any of the following, as the context requires: the Superior Court, Court of Common Pleas,  
16 Family Court, and Justice of the Peace Court. Court, and an alderman's court.

17 Section 3. Amend § 2104, Title 11 of the Delaware Code by making deletions as shown by strike through and  
18 insertions as shown by underline as follows:

19 § 2104. Release of defendants charged with any other crime. [Effective Jan. 1, 2019]

20 (c) The court may also impose 1 or more of the conditions of release ~~set forth in~~ under § 2108 of this title when  
21 such conditions are necessary to provide a reasonable assurance of the appearance of the defendant at court proceedings, the

22 protection of the community, victims, witnesses, or any other person, and to maintain the integrity of the judicial process.  
23 process, such that the defendant will not obstruct or attempt to obstruct justice.

24 (f)(1) Any defendant released from custody pursuant to under this chapter ~~who later~~ to whom any of the following  
25 later applies must immediately be remanded to the custody of the Department of Correction, and must be incarcerated until  
26 the sentence for that felony is imposed:

27 (1) a. ~~Tenders~~ Has tendered to the Superior Court a plea of guilty or nolo contendere to any felony for  
28 which a ~~mandatory, minimum, minimum mandatory or mandatory minimum~~ period of incarceration is ~~required; or~~  
29 required.

30 (2) b. Is convicted upon a verdict of guilty of any felony for which a ~~mandatory, minimum, minimum~~  
31 ~~mandatory or mandatory minimum~~ period of incarceration is ~~required; required.~~

32 ~~shall immediately be remanded to the custody of the Department of Correction, and shall be incarcerated~~  
33 ~~until the sentence for that felony is imposed.~~

34 (2) The provisions of this subsection ~~shall do~~ not apply to pleas or convictions for any felony set forth in Title  
35 21.

36 Section 4. Amend § 2105, Title 11 of the Delaware Code by making deletions as shown by strike through and  
37 insertions as shown by underline as follows:

38 § 2105. Release ~~pursuant to~~ under a conditions of release bond or conditions of release bond not guaranteed by  
39 financial terms. [Effective Jan. 1, 2019]

40 (a) ~~The court shall release a defendant accused of a bailable crime on a conditions of release bond or a conditions~~  
41 ~~of release bond not guaranteed by financial terms in an amount to be determined by the court when the court is satisfied~~  
42 ~~from all the circumstances and the criteria set forth in subsection (b) of this section that it is reasonably likely that the~~  
43 ~~defendant will appear as required before or after conviction of the crime charged and that there is no substantial risk to the~~  
44 ~~safety of the community in permitting such unsecured release. Consistent with § 2101 of this title, the court shall impose~~  
45 the least restrictive conditions of release possible that reasonably assure the defendant's appearance in court when required;  
46 the protection of the community, victims, witnesses, or any other persons; and maintain the integrity of the judicial process  
47 such that the defendant will not obstruct or attempt to obstruct justice. There is a presumption in favor of release with non-  
48 monetary conditions. The court shall consider conditions of release as follows:

49 (1) A court shall release a defendant on a conditions of release bond, or upon the execution of a conditions of  
50 release bond not guaranteed by financial terms, if such release will reasonably assure the defendant's appearance in

51 court when required; reasonably assure the protection of the community, victims, witnesses, or any other persons; and  
52 maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

53 (2) If the court finds that greater restrictions are required to reasonably assure the defendant's appearance in  
54 court when required; reasonably assure the protection of the community, victims, witnesses, or any other persons; and  
55 maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice, the  
56 court shall order the pretrial release of the defendant, but subject to appropriate additional non-monetary conditions of  
57 release listed under § 2108 of this title.

58 (3) If the court finds that non-monetary restrictions are not sufficient to reasonably assure the defendant's  
59 appearance in court when required, the court may order the pretrial release of the defendant but include a conditions of  
60 release bond guaranteed by financial terms or a conditions of release bond guaranteed by financial terms secured by  
61 cash. When monetary conditions of release are imposed, the court shall set the lowest amount necessary.

62 (4) The primary purpose of the use of monetary bail is to secure defendants' appearance in court.

63 a. A court may impose monetary bail to reasonably assure the protection of the community, victims,  
64 witnesses, or any other persons or to maintain the integrity of the judicial process, such that the defendant will not  
65 obstruct or attempt to obstruct justice, only in exceptional circumstances set forth on the record that indicate that  
66 the defendant is not otherwise eligible for preventive detention but presents a substantial public safety risk that  
67 requires addressing by other means.

68 b. If a court imposes monetary bail for any reason, the court shall set forth on the record the reason for the  
69 use of bail, and the reasons that no condition or combination of non-monetary conditions of release would  
70 reasonably assure the protection of the community, victims, witnesses, or any other persons or to maintain the  
71 integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

72 c. A defendant who cannot post monetary bail is eligible for review of the defendant's conditions of  
73 release under § 2110(a) of this title.

74 d.1. If monetary bail is set, the Courts shall record the monetary amounts and reasons.

75 2. The Statistical Analysis Center shall analyze the data recorded under paragraph (a)(4)d.1 of this  
76 section and annually report rates and reasons for the use of monetary bail; rate of detention throughout the  
77 pretrial period; average length of stay; and race, gender, and zip code of defendants for whom monetary bail  
78 was set. The Statistical Analysis Center shall notify the President Pro Tempore of the Senate, Speaker of the  
79 House of Representatives, and Governor when the report is complete and shall make the report available on its  
80 website.

81 (b)(1) In determining whether the defendant is likely to appear as ~~required and that there will be no substantial risk~~  
82 ~~to the safety of the community required~~, the court shall, on the basis of available information, ~~take into consideration~~  
83 consider all of the following:

84 a. ~~the~~ The nature and circumstances of the alleged crime charged, whether a firearm was used or  
85 possessed, with which the defendant is charged.

86 b. ~~the~~ The possibility of statutory mandatory imprisonment, whether the crime was committed against a  
87 victim with intent to hinder prosecution, imprisonment for the defendant.

88 c. ~~the~~ The defendant's family ties of the defendant, ties.

89 d. ~~the~~ The defendant's employment, financial resources, employment.

90 e. The defendant's character and mental condition, condition.

91 f. The defendant's the length of residence in the community, record of convictions, community.

92 g. The defendant's habitual offender eligibility, eligibility.

93 h. The defendant's custody status at time of offense, offense.

94 i. The defendant's history of amenability to lesser sanctions, sanctions.

95 j. The defendant's history of breach of release, release.

96 k. The defendant's record of appearances at court proceedings or of proceedings, flight to avoid  
97 prosecution or prosecution, and failure to appear at court proceedings.

98 (2) In determining whether to impose financial conditions of release and the amount, if any, the court shall  
99 consider the defendant's financial resources and ability to pay.

100 (3) In determining whether the defendant's release presents a substantial risk to the safety of the community,  
101 the court shall, to the extent the information is available, consider all of the following:

102 a. The nature of the circumstances of the alleged crime with which the defendant is charged.

103 b. Whether a firearm was used or possessed.

104 c. Whether the alleged crime was committed against a victim with the intent to hinder prosecution.

105 d. The defendant's character and mental condition.

106 e. The defendant's record of convictions.

107 f. The defendant's habitual offender eligibility.

108 g. The defendant's custody status at the time of the offense.

109 (c) ~~If the court has determined that the defendant shall not be released in accordance with this section, it shall~~  
110 ~~make a record finding of the reason or reasons for such action and shall permit the release of the defendant upon the~~

111 ~~furnishing of surety satisfactory to the court in an amount to be determined by the court. In a pretrial release order, the court~~  
112 ~~shall include a written statement that does all of the following:~~

113 (1) Sets forth all of the conditions to which the release is subject in a manner sufficiently clear and  
114 specific to serve as a guide for the defendant's conduct.

115 (2) Advises the defendant of the potential consequences of violating a condition of release, including the  
116 possible issuance of a warrant for the defendant's arrest and any applicable criminal penalties.

117 (3) Advises the defendant that the defendant would be eligible for temporary detention pending a pretrial  
118 hearing in the event that the defendant is arrested while pending trial on the current offense.

119 (d) An order setting conditions of release is reviewable in accordance with the court's rules.

120 Section 5. Amend § 2107, Title 11 of the Delaware Code by making deletions as shown by strike through and  
121 insertions as shown by underline as follows:

122 § 2107. Determining the amount of bail. [Effective Jan. 1, 2019]

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

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

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

135 Section 6. Amend § 2108, Title 11 of the Delaware Code by making deletions as shown by strike through and  
136 insertions as shown by underline as follows:

137 § 2108. Conditions for release. [Effective Jan. 1, 2019]

138 (c) In connection with any form of bail for a defendant charged with a violation of § 4177 of Title 21 which is  
139 alleged to be punishable as a felony ~~pursuant to~~ under that section, the court shall impose a condition that the defendant not  
140 drive a vehicle, as defined by that section, until one of the following occurs, whichever occurs first:

- 141           (1) ~~a~~ A nolle prosequi is ~~filed,~~ filed.
- 142           (2) ~~the~~ The case is ~~dismissed~~ dismissed.
- 143           (3) ~~or an~~ An adjudication of not guilty is ~~returned,~~ whichever shall first occur, returned.
- 144           (4) ~~or if~~ The defendant's sentencing, if the defendant is adjudicated guilty by way of a plea of guilty or a  
145 conviction by court or ~~jury,~~ at the time of sentencing, jury, unless further made a condition of probation by the  
146 sentencing judge.

147           Section 7. Amend § 2109, Title 11 of the Delaware Code by making deletions as shown by strike through and  
148 insertions as shown by underline as follows:

149           § 2109. Failure to provide a conditions of release bond, whether guaranteed by financial terms or not, or consent to  
150 conditions; contact with victim or victim's family. [Effective Jan. 1, 2019]

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

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

157           Section 8. Amend § 2110, Title 11 of the Delaware Code by making deletions as shown by strike through and  
158 insertions as shown by underline as follows:

159           § 2110. Modification of bail, security or conditions of release and sanctions for violation. [Effective Jan. 1, 2019]

160           (c)(1) Following a hearing alleging pretrial noncompliance and upon a finding that the defendant violated 1 or  
161 more material conditions of pretrial release, the court with jurisdiction over the defendant, may continue the current  
162 conditions, remove or impose different or additional conditions upon the defendant's release, or revoke the defendant's bail  
163 and reset pretrial conditions of release, including any financial conditions. Upon a finding that defendant violated a  
164 condition of appearance in court, any amount of surety posted to meet a financial term of release may be forfeited.

165           (2) A defendant who is eligible for preventive detention but was previously released pending adjudication and  
166 who willfully violates material conditions of release may be subject to modification of release conditions or revocation  
167 of release or an order of detention following a hearing under § 2116 of this title.

168           (d) The court may impose different or additional conditions of pretrial release or may remove conditions of pretrial  
169 release only when the facts of the individual case or the defendant's circumstances demonstrate that modification of  
170 conditions is necessary to reasonably ensure the defendant's appearance at court proceedings, to protect the community,

171 victims, witnesses, or any other person, and to maintain the integrity of the judicial ~~process~~: process, such that the defendant  
172 will not obstruct or attempt to obstruct justice.

173 (f) If the court modifies conditions of release, the court may impose any conditions ~~as are set forth in~~ under § 2108  
174 of this title, when such conditions are necessary to provide a reasonable assurance of the appearance of the defendant at  
175 court proceedings, the protection of the community, victims, witnesses, or any other person, and to maintain the integrity of  
176 the judicial ~~process~~: process, such that the defendant will not obstruct or attempt to obstruct justice. The court shall review  
177 the modified conditions with the defendant.

178 Section 9. Amend § 2112, Title 11 of the Delaware Code by making deletions as shown by strike through and  
179 insertions as shown by underline as follows:

180 § 2112. Bail after transfer to another court or after conviction. [Effective Jan. 1, 2019]

181 Once bail has been given and a charge is pending or is thereafter filed in or transferred to a court of competent  
182 jurisdiction, the latter court may continue the original bail in that court. After conviction, the court may order that the  
183 original bail stand as bail pending ~~appeal or deny, increase or reduce bail, or modify the conditions of release~~ appeal,  
184 modify conditions of release, or issue an order preventively detaining a defendant convicted of a detention-eligible offense.

185 Section 10. Amend § 2113, Title 11 of the Delaware Code by making deletions as shown by strike through and  
186 insertions as shown by underline as follows:

187 § 2113. Penalties for noncompliance with conditions of release; bond. [Effective Jan. 1, 2019]

188 (b) Upon the return of the defendant before the court ~~pursuant to~~ under subsection (a) of this section or if the  
189 defendant ~~shall not be~~ is not found, the court shall act with respect to the forfeiture of any form of guaranteed or not  
190 guaranteed conditions of release bond ~~pursuant to~~ under the Rules of the Superior Court and shall redetermine the type and  
191 amount of ~~bail~~, bail and conditions of the further release of the defendant. Notwithstanding any law to the contrary, ~~no~~  
192 property, cash, ~~surety~~ surety, or other assets ~~shall~~ may not be forfeited except upon failure of the accused to appear as  
193 required by any court.

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

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

199 (e) Any defendant released ~~pursuant to~~ under this chapter shall notify the court, before which the case is pending,  
200 of any changes of address or residence within 5 days of such change. ~~Failure~~ A failure by a defendant to make such

201 notification will result in the defendant being deemed in constructive receipt of any subpoena issued to the defendant by or  
202 on behalf of the court to the last address or residence given to the court by that defendant.

203 Section 11. Amend § 2114, Title 11 of the Delaware Code by making deletions as shown by strike through and  
204 insertions as shown by underline as follows:

205 § 2114. Administration of this chapter. [Effective Jan. 1, 2019]

206 (a) The Department of Correction shall administer the provisions of this chapter that are not exclusively within the  
207 jurisdiction of the ~~judiciary.~~ Courts.

208 (d) The Department of Correction shall have the power necessary to carry out the purposes of this chapter,  
209 including the following:

210 (1) The Department of Correction may adopt standard conditions for the supervision of defendants ordered to  
211 pretrial supervision and may modify conditions of supervision as necessary to address technical or minor violations of  
212 conditions of pretrial release. The imposition of standard or modified conditions ~~shall~~ must be limited to those  
213 conditions necessary to provide a reasonable assurance of the appearance of the defendant at court proceedings, the  
214 protection of the community, victims, ~~witnesses~~ witnesses, or any other person, and to maintain the integrity of the  
215 judicial ~~process.~~ process, such that the defendant will not obstruct or attempt to obstruct justice. These conditions ~~shall~~  
216 apply when not contrary to any other specific conditions imposed by the court.

217 Section 12. Amend § 2115, Title 11 of the Delaware Code by making deletions as shown by strike through and  
218 insertions as shown by underline as follows:

219 § 2115. Forfeiture and default of bail bonds. [Effective Jan. 1, 2019]

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

224 Section 13. Amend § 2116, Title 11 of the Delaware Code by making deletions as shown by strike through and  
225 insertions as shown by underline as follows:

226 § 2116. ~~Revocation of bail upon subsequent arrest~~ Preventive detention. [Effective Jan. 1, 2019]

227 (a) ~~For the purposes of this section:~~

228 (1) ~~"Original offense" means any violent felony which is alleged to have been committed by a defendant who~~  
229 ~~is thereafter released from custody upon execution of any form of conditions of release bond.~~

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

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

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

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

249 (a) Purpose. – The purpose of this subsection is to provide the court with the authority to make transparent  
250 decisions to detain certain eligible defendants pending a final determination as to the guilt of the defendant.  
251 Notwithstanding the provisions of this section, all defendants are presumptively eligible for pretrial release. This  
252 presumption may be overcome and preventive detention imposed when the State proves and the court finds both of the  
253 following:

254 (1) By proof positive or presumption great that the defendant committed the offense charged.

255 (2) By clear and convincing evidence that no condition or combination of conditions of release can reasonably  
256 assure the appearance of the defendant at court proceedings; the protection of the community, victims, witnesses, or  
257 any other person; and maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt  
258 to obstruct justice.

259           (b) Initial appearance right to counsel. – A defendant who is eligible for preventive detention under this section  
260 must be afforded representation by the Office of Defense Services or private counsel at the initial appearance described by  
261 § 1909 of this title. A defendant who is unable to afford counsel must have counsel appointed without undue delay and, in  
262 any event, within 24 hours of arrest.

263           (c)(1) Eligibility. – A detention-eligible defendant is a defendant alleged to have committed one of the following:

264                 a. A class A felony.

265                 b. One of the following class B felonies:

266                     1. Abuse of a Pregnant Female in the First Degree under § 606 of this title.

267                     2. Assault in the First Degree under § 613 of this title.

268                     3. Manslaughter under § 632 of this title.

269                     4. Murder of a Child by Abuse or Neglect in the Second Degree under § 633 of this title.

270                     5. Rape in the Third Degree under § 771(a)(2) of this title.

271                     6. Rape in the Second Degree under § 772 of this title.

272                     7. Sex Offender Unlawful Sexual Conduct Against a Child under § 777A(e)(2) or (e)(4) of this title.

273                     8. Sexual Abuse of a Child by a Person in a Position of Trust, Authority, or Supervision in the First  
274 Degree under § 778(2) of this title.

275                     9. Kidnapping in the First Degree under § 783A of this title.

276                     10. Trafficking an Individual (Victim is a Minor) under § 787(b)(1) of this title.

277                     11. Forced Labor (Victim is a Minor) under § 787(b)(2) of this title.

278                     12. Sexual Servitude (Victim is a Minor) under § 787(b)(3) of this title.

279                     13. Burglary in the First Degree under § 826(a)(2) of this title, if the victim who suffers physical  
280 injury is 62 years of age or older.

281                     14. Home Invasion under § 826A of this title.

282                     15. Robbery in the First Degree under § 832 of this title.

283                     16. Carjacking in the First Degree under § 836(a)(4) through (a)(6) of this title.

284                     17. Child Abuse in the First Degree under § 1103B of this title.

285                     18. Sexual Exploitation of a Child under § 1108 of this title.

286                     19. Unlawful Dealing in Child Pornography under § 1109 of this title, if the defendant is eligible for  
287 sentencing under § 1110 of this title.

288                     20. Sexual Solicitation of a Child under § 1112A(h) of this title.

- 289                    21. Promoting Sexual Solicitation of a Child under § 1112B(g) of this title.
- 290                    22. Escape After Conviction (Infliction of Injury Upon Another Person) under § 1253 of this title.
- 291                    23. Assault in a Detention Facility (Causing Serious Injury) under § 1254(b) of this title.
- 292                    24. Hate Crimes – if the underlying offense alleges a Class C felony under § 1304(b)(3) of this title.
- 293                    25. Hate Crimes - if the underlying offense alleges a Class B felony § 1304(b)(4) of this title.
- 294                    26. Possession of a Deadly Weapon During Commission of a Felony under § 1447 of this title.
- 295                    27. Possession of a Firearm During Commission of a Felony under § 1447A of this title.
- 296                    28. Racketeering under § 1503 of this title.
- 297                    29. Aggravated Act of Intimidation under § 3533 of this title.
- 298                    c. Possession of a Firearm by Persons Prohibited under one of the following circumstances:
- 299                           1. Where the defendant either has a prior conviction for a violent felony or has been previously
- 300                    convicted of a crime of violence causing physical injury to another under § 1448(a)(1) of this title.
- 301                           2. Under § 1448(a)(3) of this title.
- 302                           3. Under § 1448(a)(4) of this title.
- 303                           4. Under § 1448(a)(6) of this title.
- 304                           5. Under § 1448(a)(7) of this title.
- 305                           6. Any prohibited person subject to the mandatory minimum sentencing provisions of § 1448(e)(1)a.,
- 306                    b., or c. or § 1448(e)(2)a., b., or c. of this title.
- 307                           d. Any violent felony, as defined by § 4201(c) of this title, allegedly committed while defendant is
- 308                    pending adjudication on a previously charged violent felony.
- 309                           e. Any violent felony, as defined by § 4201(c) of this title, allegedly committed while defendant is on
- 310                    probation for a violent felony.
- 311                           f. Any violent felony, as defined by § 4201(c) of this title, allegedly committed against the petitioner, as
- 312                    defined by § 1041(3)a. of Title 10, with an active protection from abuse order against the defendant.
- 313                           g. Any violent felony, as defined by § 4201(c) of this title, allegedly committed while the defendant is
- 314                    pending adjudication on a previously charged offense of domestic violence, as defined by § 1448(a)(7) of this title,
- 315                    allegedly committed against the same victim.
- 316                           h. Any felony act of domestic violence, as defined by § 1041 of Title 10, allegedly committed while
- 317                    defendant is pending adjudication on a previously charged violent felony, as defined by § 4201(c) of this title,
- 318                    allegedly committed against the same victim.

319                    i. Any felony for which the Attorney General has sought to subject the defendant to sentencing under §  
320                    4214 of this title.

321                    (2) Notwithstanding § 307(b) of Title 1, the list under paragraph (c)(1) of this section is not subject to  
322                    incorporation by reference. Instead, consistent with Article I, § 12 of the Delaware Constitution, any felony offense  
323                    circumstances for which a defendant is detention-eligible under paragraph (c)(1) of this section must be amended by an  
324                    act separate from an act that creates or amends the felony offense circumstances, receive the concurrence of two-thirds  
325                    of all the members elected to each House of the General Assembly, and be listed under this paragraph (c)(2) of this  
326                    section by the act that created or amended it.

327                    (d) Temporary detention. - If a detention-eligible defendant appears before a Justice of the Peace magistrate, the  
328                    magistrate may issue a temporary order to detain the defendant for a period of time not to exceed 10 days if it finds all of  
329                    the following:

330                    (1) By proof positive or presumption great that the defendant committed one of the offenses or circumstances  
331                    listed in subsection (c) of this section.

332                    (2) By clear and convincing evidence that the defendant poses a substantial risk of harm to any witness,  
333                    victim, or the community, or a substantial risk for failing to appear at scheduled court events.

334                    (3) By clear and convincing evidence that no release conditions will reasonably assure the defendant's  
335                    appearance in court or the safety of any witness, victim, or the community.

336                    (e) Detention hearing. -

337                    (1) A temporary detention order issued at an initial appearance under subsection (d) of this section expires  
338                    after 10 days if not extended following a detention hearing held by a judge of the Court of Common Pleas or a  
339                    commissioner of the Superior Court with adequate due process protections under subsection (g) of this section.

340                    (2) At a hearing under paragraph (e)(1) of this section, the court may extend the order of detention if it finds  
341                    all of the following:

342                    a. By proof positive or presumption great that the defendant committed one of the offenses or  
343                    circumstances listed in subsection (c) of this section.

344                    b. By clear and convincing evidence that the defendant poses a substantial risk of harm to any witness,  
345                    victim, or the community, or a substantial risk for failing to appear at scheduled court events.

346                    c. By clear and convincing evidence that no release conditions will reasonably assure the defendant's  
347                    appearance in court or the safety of that witness, victim, or the community.

348                    (f) Presumptions during detention hearing. -

349           (1) If the court finds by proof positive or presumption great that a defendant charged with a Class A felony  
350 committed the offense charged, there is a rebuttable presumption that no condition or combination of conditions will  
351 reasonably assure the defendant's appearance in court or the safety of a witness, a victim, or the community.

352           (2) If the court finds by proof positive or presumption great that a defendant charged with a Class B violent  
353 felony or a felony for which the Attorney General has sought to subject the defendant to sentencing under § 4214 of  
354 this title has committed the offense charged, there is no presumption whether conditions of pretrial release will or will  
355 not reasonably assure the defendant's appearance in court or the safety of a witness, a victim, or the community.

356           (3) If paragraph (f)(1) and (f)(2) of this section do not apply, there is a presumption that conditions of pretrial  
357 release will reasonably assure the defendant's appearance in court and the safety of a witness, a victim, or the  
358 community.

359           (g) Detention hearing procedures. – At a hearing under subsection (e) of this section, all of the following apply:

360           (1) The defendant has the right to be present and represented by counsel, and, if indigent, to have counsel  
361 appointed.

362           (2) The defendant must be afforded the right to testify, present evidence and call witnesses on the defendant's  
363 behalf, and confront and cross-examine witnesses who appear at the hearing. The defendant's testimony at a detention  
364 hearing, if any, is not admissible at a subsequent hearing or trial other than for impeachment or prosecution for perjury.

365           (3) The Attorney General bears the burden of establishing proof positive or presumption great in instances  
366 where the accused has not yet been indicted.

367           (4) If the Court finds by proof positive or presumption great that an offense was committed and the accused  
368 committed it, the Attorney General bears the burden of establishing by clear and convincing evidence that no condition  
369 or combination of conditions of release will reasonably assure the defendant's appearance in court or the safety of a  
370 witness, a victim, or the community.

371           (5) The rules of evidence do not apply in the presentation and consideration of information. But, the Attorney  
372 General must release to the defendant all exculpatory evidence reasonably within the Attorney General's control.

373           (6) The hearing must be held within 10 days of arrest.

374           (7) The hearing must be recorded.

375           (h) Enumerated factors to consider during detention hearings. -

376           (1) During a detention hearing to determine whether no condition or combination of conditions will  
377 reasonably assure the defendant's appearance in court when required and the safety of a witness, a victim, or the  
378 community, the Court may consider all of the following:

379                   a. The nature and circumstances of the offense charged.

380                   b. The weight of the evidence against the defendant and likelihood of conviction. In assessing the  
381 likelihood of conviction, the court may consider the admissibility of any evidence sought to be excluded.

382                   c. The history and characteristics of the defendant, including:

383                         1. Whether, at the time of the current arrest, the defendant was on probation, parole, or other release  
384 pending trial, sentencing, appeal, or completion of sentence for an offense under federal law or the law of this  
385 State or any other state.

386                         2. The defendant's history of community supervision, failure to register as sex offender violations,  
387 failure to appear, custodial sentences imposed, and prior convictions for felonies, misdemeanors, and violent  
388 offenses.

389                   d. The nature and seriousness of the danger to any other person or the community that would be posed by  
390 the defendant's release.

391                   e. The nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice  
392 process that would be posed by the defendant's release.

393                   f. The recommendation of the pretrial services agency.

394                   g. The Attorney General's decision to seek sentencing under § 4214 of this title.

395                   (2) Although the charge itself may be a predicate to pretrial detention proceedings, the court must exercise  
396 care not to give inordinate weight to the nature of the present charge when evaluating factors for the pretrial release  
397 decision.

398                   (i) Contents of pretrial detention order. - In a pretrial detention order issued following a hearing under subsection  
399 (e) of this section, the Court shall make all of the following findings:

400                         (1) Findings of fact that establish proof positive or presumption great that the defendant committed an offense  
401 or circumstance triggering detention eligibility.

402                         (2) Findings of fact that establish by clear and convincing evidence that the defendant poses a substantial risk  
403 of serious physical harm to a witness, a victim, a person, or the community or a substantial risk for failing to appear at  
404 scheduled court events.

405                         (3) Findings of fact that establish by clear and convincing evidence that no release conditions will reasonably  
406 assure defendant's appearance in court or the safety of a witness, a victim, a person, or the community.

407                   (j) Detention order review. - Upon motion filed by the State or the defendant, an order entered by a judge of the  
408 Court of Common Pleas or a commissioner of Superior Court granting or denying the detention of a detention-eligible

409 defendant is immediately reviewable by a judge of the Superior Court. The party seeking relief from the order must file a  
410 motion in accordance with the rules of the Superior Court.

411 (k) Requirement for accelerated trial for detained defendants. – All of the following speedy trial protections  
412 apply to defendants detained under § 2116(d) or (e) of this title or due to the inability to meet any condition of release  
413 imposed by the court:

414 (1) A defendant may not remain detained for more than 45 days before the return of an indictment.

415 a. If the defendant is not indicted within the time required by paragraph (k)(1) of this section, the  
416 defendant must be released unless, on motion of the Attorney General, the court finds all of the following:

417 1. That a substantial and unjustifiable risk to the safety of any other person or the community  
418 would result from the defendant's release from custody.

419 2. That no appropriate conditions for the defendant's release could reasonably address the risk  
420 found under paragraph (k)(1)a.1. of this section.

421 3. That the failure to indict the defendant within the time required by paragraph (k)(1) of this  
422 section was not due to unreasonable delay by the Attorney General.

423 b. If the court grants the Attorney General's motion under paragraph (k)(1)a. of this section, the  
424 court may allocate an additional period of time, not to exceed 30 days, in which the return of an indictment  
425 must occur.

426 c. Notwithstanding the court's previous findings ordering the defendant's pretrial detention, if the  
427 court denies the Attorney General's motion under paragraph (k)(1)a. of this section, the court shall order the  
428 release of the defendant.

429 (2) If the defendant is charged or indicted on another matter resulting in the defendant's pretrial  
430 detention, the time calculations for each matter run independently.

431 (3) A defendant may not remain detained for more than 90 days on a charge following the return or  
432 unsealing of the indictment, whichever is later.

433 a. If a defendant's trial does not commence within the time required by paragraph (k)(3) of this  
434 section, the defendant must be released unless, on motion of the Attorney General, the court finds all of the  
435 following:

436 1. That a substantial and unjustifiable risk to the safety of any other person or the community  
437 would result from the defendant's release from custody.

438                   2. That no appropriate conditions for the defendant's release could reasonably address the risk  
439                   found under paragraph (k)(3)a.1. of this section.

440                   3. That the failure to commence trial within the time required by paragraph (k)(3) of this section  
441                   was not due to unreasonable delay by the Attorney General.

442                   b. If the court grants the Attorney General's motion under paragraph (k)(3)a. of this section, the  
443                   court may allocate an additional period of time in which the defendant's trial must commence.

444                   c. Notwithstanding the court's previous findings for ordering the defendant's pretrial detention, if  
445                   the court denies the Attorney General's motion under paragraph (k)(3)a. of this section, the court shall order  
446                   the release of the defendant.

447                   d. Notwithstanding any other provision of this section, a defendant must be released after a release  
448                   hearing if, 2 years after the court's issuance of the pretrial detention order for the defendant, the Attorney  
449                   General is not ready to proceed to voir dire, opening argument, or a hearing of any motions that had been  
450                   reserved for the time of trial.

451                   (l) The Statistical Analysis Center shall do all of the following:

452                   (1) Analyze data recorded by the Courts as to the detention eligibility of each defendant and whether a  
453                   detention-eligible defendant is detained or released at the initial hearing or any other subsequent hearings before  
454                   adjudication.

455                   (2) Annually report all of the following in the aggregate and disaggregated by race, gender, and zip code:

456                   a. Rates of defendants' eligibility under 2116(c) of this title.

457                   b. Rates of initial detention.

458                   c. Rates of detention throughout the pretrial period.

459                   d. Average length of stay from arrest to adjudication.

460                   (3) Notify the President Pro Tempore of the Senate, Speaker of the House of Representatives, and  
461                   Governor when the report required by paragraph (l)(2) of this section is complete and make the report available  
462                   on its website.

463                   Section 14. The Justice of the Peace Court, Court of Common Pleas, and Superior Court must adopt the rules  
464                   required by this Act by December 31, 2018.

465                   Section 15. This Act takes effect upon final passage of the second leg of the proposed constitutional amendment  
466                   permitting preventive detention, Senate Bill No. 221 of the 149<sup>th</sup> General Assembly.

## SYNOPSIS

This Act amends Delaware's laws regarding release of persons accused of crimes (Chapter 21 of Title 11 of the Delaware Code) as required in conjunction with the adoption of Senate Bill No. 221, which proposes a constitutional amendment to permit preventive detention of certain persons accused of crimes.

This Act both protects defendants' due process rights and public safety by expanding the list of circumstances for which defendants may be detained pretrial without the opportunity for release and providing adequate due process protections for detention-eligible defendants.

This Act protects public safety by permitting courts to detain defendants who are charged with an enumerated offense, or to whom certain enumerated circumstances apply, and who present unmitigated risks of non-appearance in court or danger to public safety.

This Act also protects defendants' rights by doing the following:

(1) Requiring the Attorney General to establish by proof positive or presumption great that the defendant committed the detention-eligible offense and by clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the defendant's appearance in court or the safety of a witness, a victim, or the community.

(2) Ensuring detention-eligible defendants are represented by counsel at the initial detention and subsequent hearings.

(3) Requiring courts to hold a full detention hearing within 10 days of the defendant's arrest where defendants have the right to testify, to present evidence, and to cross-examine witnesses against them.

(4) Requiring expedited review of the detention order by Superior Court.

(5) Providing speedy trial protections for any defendant who is detained prior to adjudication.

This Act also does the following:

(1) Improves procedural fairness by permitting courts to make transparent decisions about who to detain and who to release pretrial.

(2) Strengthens the strong presumption of pretrial release upon least restrictive conditions for those defendants who can safely be released in the community.

(3) Requires data collection and annual reporting of pretrial outcomes that will be available for public dissemination.

Finally, this Act makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Townsend