



SPONSOR: Rep. Smyk & Sen. Bonini  
Rep. Spiegelman; Sen. Ennis

HOUSE OF REPRESENTATIVES  
150th GENERAL ASSEMBLY

HOUSE BILL NO. 356

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 § 2102, Title 11 of the Delaware Code by making deletions as shown by strike through and  
2           insertions as shown by underline as follows and renumber accordingly:

3           § 2102. Definitions.

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

5           (12) "Record finding" is a memorandum, notation, opinion, order or other writing in the file of the case of the  
6           accused reflecting the decision made by the court.

7           (13) "Risk Assessment Instrument" is a pretrial process that creates or scores particular factors in order to  
8           estimate a defendant's level of risk to fail to appear in court, risk to commit a new crime, likelihood or predicted  
9           severity of future violence against the alleged victim of domestic or intimate partner violence, risk posed to the  
10          community, or any other measurement of pretrial success in order to make recommendations to bail or conditions of  
11          release based on such risk whether made on an individualized basis or based on a grid or schedule.

12          Section 2. Amend § 2104, Title 11 of the Delaware Code by making deletions as shown by strike through and  
13          insertions as shown by underline as follows and renumber accordingly:

14          § 2104. Release of defendants charged with any other crime.

15          (e) (1) The determination of whether the defendant shall be released under paragraph (a)(1), (a)(2), (a)(3), or (a)(4)  
16          of this section and the conditions (other than the mandatory conditions in paragraph (b) of this section above) of the release  
17          shall be in the discretion of the court subject to this chapter. When making a release determination, or imposing conditions  
18          set forth in § 2108 of this title, the court shall use an empirically developed risk assessment instrument, if available,  
19          designed to improve pretrial release decisions by assessing defendant's likelihood of pretrial success. In circumstances  
20          involving suspected domestic or intimate partner violence, the judicial officer shall also consider the results, if available, of  
21          an instrument designed to assess the likelihood or predicted severity of future violence against the alleged victim. Any such  
22          risk assessment tools are not binding on the court. They are factors to be considered in the totality of the circumstances in

determining the conditions of release imposed upon the defendant. The judicial officer may consider any other facts and circumstances regarding a defendant's likelihood of pretrial success and the protection of the victim, witnesses, and any other person.

(2) Any such risk assessment instruments used shall be transparent, and:

(a) All documents, data, records, and information used by the builder to build or validate the risk assessment instrument and ongoing documents, data, records, and written policies outlining the usage and validation of the risk assessment instrument shall be open to public inspection, auditing, and testing;

(b) A party to a criminal case wherein a court has considered, or an expert witness has relied upon, a risk assessment instrument shall be entitled to review all calculations and data used to calculate the defendant's own risk score;

(c) No builder or user of a risk assessment instrument may assert trade secret or other intellectual property protections in order to quash discovery of the materials described in paragraph (a) of this subsection in a criminal or civil case; and

(d) No risk assessment instrument shall be used, until testing for bias has been shown not to increase or magnify bias against a person in a protected class or classes as defined by an empirically recognized standard for testing for such bias, including but not limited to the error rate balance test.

#### SYNOPSIS

This bill requires transparency in the use of risk assessment instruments and requires empirical data that the instrument does not increase or magnify bias against any protected class.