

SPONSOR: Rep. Smyk & Sen. Bonini
Reps. Collins, D. Short, Yearick; Sens. Lawson, Pettyjohn, Wilson

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 139

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:

Section 1. Amend § 2101, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2101. Purposes of this chapter.

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

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

§ 2102. Definitions.

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

(1) "Attorney General" includes any Deputy Attorney General or any other prosecutor of the State, county or municipality.

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

~~a. A conditions of release bond.~~

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

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

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

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

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

(4) "Cash personal appearance bond" means a bond of the defendant 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 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.~~

~~(7) "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.~~

~~(8) "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.~~

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

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

~~(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.~~

(7) "Personal recognizance" means the written recognizance of the defendant that the defendant will obey the further direction of the court.

~~(12)~~ (8) "Record finding" ~~is~~ means a memorandum, notation, opinion, order or other writing in the file of the case of the accused reflecting the decision made by the court.

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

(10) "Unsecured personal appearance bond" means an undertaking by the defendant promising appearance in court where, upon failure to appear, the defendant 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.

~~(13)~~ (11) "Violent felonies" or "violent felony" ~~shall consist of~~ means all felonies designated as violent felonies in § 4201(c) of this title.

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

§ 2104. Release on bail or recognizance of 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 ~~upon execution of~~ on 1 of the following:

(1) ~~A conditions of release bond.~~ The defendant's own recognizance.

(2) ~~A conditions of release bond not guaranteed by financial terms~~ The execution of an unsecured personal appearance bond in an amount specified by the court.

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

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

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

(1) Require the defendant to return to the court at any time upon notice and submit to the orders and processes of the court.

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

(c) The court may also impose 1 or more of the conditions of release ~~set forth in~~ under § 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.~~ title.

~~(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.~~

~~(e)(1)~~ (d)(1) The determination of whether the defendant ~~shall~~ is to be released under paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section and the conditions (other than the mandatory conditions in ~~paragraph~~ subsection (b) of

this ~~section above)~~ section) of the release ~~shall be~~ is in the discretion of the court subject to this chapter. When making a release determination, or imposing conditions ~~set forth in~~ under § 2108 of this title, the court shall ~~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. Any such 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.~~ employ an objective risk assessment instrument to gauge the defendant's risk of flight and re-arrest, and the safety of the victim and the community. The risk assessment instrument must be responsive to the needs of victims of domestic violence and sexual assault.

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

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

(f)(1) Any defendant released from custody ~~pursuant to~~ under this chapter who ~~later:~~ does one of the following must immediately be remanded to the custody of the Department of Correction and be incarcerated in lieu of bail until the sentence for that felony is imposed:

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

~~(2)~~ b. Is convicted upon a verdict of guilty of any felony for which a mandatory, minimum, minimum ~~mandatory~~ 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 until the sentence for that felony is imposed.~~ required.

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

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

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

(a) The court shall release a defendant accused of a bailable crime on ~~a conditions of release bond or a conditions of release bond not guaranteed by financial terms~~ the defendant's own recognizance or upon the execution of an unsecured personal appearance bond of the defendant in an amount to be determined by the court when the court is satisfied from all the circumstances and the criteria ~~set forth in~~ under subsection (b) of this section that it is reasonably likely that the 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 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 defendant, the 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~~ prosecution, or failure to appear at court proceedings.

(c) If the court has determined that the defendant ~~shall~~ may 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 defendant upon the furnishing of surety satisfactory to the court in an amount to be determined by the court.

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

§ 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 ~~a conditions of release bond not guaranteed by financial terms,~~ an unsecured personal appearance bond of the defendant, the court ~~shall~~ may not require oppressive bail but shall require such bail as reasonably will assure the reappearance of the 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~~ under § 2105(b) of this title.

(b) ~~In any event, if~~ If a defendant is charged with an offense punishable by fine only, the amount of the bail ~~shall~~ may not exceed double the amount of the maximum fine for each charge. When a 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~~ may not exceed double the amount of the fine.

(c) Notwithstanding any provision of this title to the contrary, for a 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 ~~conditions of release bond guaranteed by financial terms secured by cash only~~ cash personal appearance bond will be set.

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

§ 2108. Conditions for release.

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

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

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

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

(4) Require the 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;~~ offense.

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

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

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

(8) Require a 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 defendant shall forthwith surrender to the ~~Court;~~ 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 ~~any form of bail for a defendant~~ either a secured release or an unsecured release of any defendant charged with any crime involving child sexual abuse or exploitation, the court shall also impose a condition that the 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~~ dismissed, or an adjudication of not guilty is returned, whichever ~~shall first occur,~~ occurs first, or if the 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 ~~any form of bail for a defendant~~ either a secured release or unsecured release of any defendant charged with a violation of § 4177 of Title 21 ~~which is alleged to be~~ that is punishable as a ~~felony pursuant to that section,~~ felony, the court shall impose a condition that the defendant not drive a vehicle, as defined by ~~that section,~~ § 4177 of Title 21, until a nolle prosequi is filed, the case is ~~dismissed~~ dismissed, or an adjudication of not guilty is returned, whichever ~~shall first occur,~~ occurs first, or if the 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.

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

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

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

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

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

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

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

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

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

(a) ~~Unless reviewed earlier, a court with jurisdiction over the defendant shall review conditions of pretrial release for a defendant who remains detained after 72 hours from the defendant's initial presentment as a result of the inability to meet conditions of pretrial release. This review shall occur within 10 days from the date of detention. Each court shall establish its procedure for timely review.~~ A defendant or the Attorney General may apply to the court for any modification of any determination by the court as to the decision of the type of release, the amount and nature of the bond or surety, or the conditions of release. An application under this subsection must be made at the time, on the conditions, and in the manner provided by the Rules of the Superior Court.

~~(b) A defendant, regardless of custody status, or the Attorney General, the Attorney General's designee, a third-party private or commercial surety, the Department of Correction, or any person or nongovernmental organization to whom a defendant has been released for supervision may apply to the court for modification of any condition of pretrial release. The courts shall establish rules governing the procedure for motions to modify conditions of pretrial release. Motions to modify conditions of pretrial release shall be filed in and decided by the court that has jurisdiction over the defendant at the time the motion is made. The defendant, the Attorney General, or the Attorney General's designee may make an oral application at any proceeding at which the parties are both present. Once a movant's application is ruled upon, the movant may initiate subsequent review of conditions of pretrial release only upon a material change in circumstance.~~

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

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

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

~~(f)~~(b) If the court modifies ~~conditions of release,~~ any bail amount the court shall review conditions and may impose any conditions ~~as are set forth in~~ under § 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, or any other person, and to maintain the integrity of the judicial process. The court shall review the modified conditions with the defendant.~~ including specific considerations for the safety of the victim and the community.

Section 9. Amend § 2111, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

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

Section 10. Amend § 2112, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

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

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

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

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

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

Notwithstanding any law to the contrary, ~~no~~ property, cash, ~~surety~~ surety, or other assets ~~shall~~ may not be forfeited except upon failure of the accused to appear as required by any court.

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

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

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

(d) The Justice of the Peace Court ~~shall have~~ has 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 defendant released ~~pursuant to~~ under 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 defendant by or on behalf of the court to the last address or residence given to the court by that defendant.

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

Section 12. Amend § 2114, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2114. Administration of this chapter.

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

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

~~(c)~~(b) The Department of Correction may investigate the release of persons charged with criminal offenses and otherwise advise and assist the courts 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 noncompliance 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 noncompliance with conditions of pretrial release and requests for modification of conditions of pretrial release.~~

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

~~(1) The Department of Correction may adopt standard conditions for the supervision of defendants ordered to pretrial supervision and may modify conditions of supervision as necessary to address technical or minor violations of conditions of pretrial release. The imposition of standard or modified conditions shall be limited to those conditions 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. These conditions shall apply when not contrary to any other specific conditions imposed by the court.~~

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

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

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

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

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

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

~~(i) The Criminal Justice Council shall submit a report to the General Assembly on an annual basis, beginning January 30, 2019, regarding the modernization of the pretrial system, including a report of data related to pretrial success rates.~~

Section 13. Amend § 2115, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2115. Forfeiture and default of bail bonds.

(a) If the defendant ~~shall fail~~ fails 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~~ under this chapter or court rule finds the defendant in default and forfeits the bond, the proceeds ~~shall~~ must 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~~ must immediately be forwarded to the State Treasurer and deposited in the General Fund.

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

Section 14. Amend § 2116, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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 defendant who is thereafter released from custody ~~upon execution of any form of conditions of release bond.~~ on that defendant's own recognizance or on the execution of a secured or unsecured personal appearance bond or a cash personal appearance 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 defendant during the period of that defendant's secured or unsecured release in connection with an original offense.

(b) In connection with ~~any form of bail for a defendant~~ either a secured release or unsecured release of any defendant charged with any violent felony, if after release the defendant is charged by arrest, warrant, ~~indictment~~ indictment, or information with the commission of a subsequent offense, that defendant ~~shall~~ must be brought before the Superior Court. If after a hearing, the Superior Court finds proof positive or presumption great that the 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 defendant was admitted in connection with the original offense.

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

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

SYNOPSIS

In 2018, the General Assembly enacted House Bill No. 204 of the 149th General Assembly, Chapter 200, Volume 81 of the Laws of Delaware, ("HB 204"), 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." HB 204 has resulted in the release of violent offenders into our communities, leading to more Delawareans being victimized. Therefore, this Act repeals HB 204, replacing HB 204's provisions with the law in effect before the enactment of HB 204 and bringing back greater safety for law abiding Delawareans and accountability for defendants.

This Act also makes technical corrections to conform existing law, and previous law being returned to the Delaware Code, to the standards of the Delaware Legislative Drafting Manual.