

SPONSOR: Sen. Mantzavinos & Sen. Hansen & Sen. Townsend & Sen. Pettyjohn & Rep. Longhurst & Rep. Chukwuocha Sens. Lockman, Sturgeon, Wilson, Hocker; Reps. Schwartzkopf, Mitchell, K. Williams

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 7
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
SENATE AMENDMENT NO. 2
AND
HOUSE AMENDMENT NO. 4

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO BAIL.

WHEREAS, for the safety of the public, the General Assembly has previously enacted § 2116 of Title 11 of the Delaware Code, mandating that persons arrested for a violent felony while at liberty on bail awaiting trial on a previous violent felony shall be held without bail pending a proof positive hearing before a judicial officer; and

WHEREAS, in order to protect public safety, sufficient bail must be set for defendants committing any signal offense to keep the public safe; and

WHEREAS, while the intention of the bail reform movement is to move toward a system of preventative detention that is not cash based, until a constitutional amendment is enacted to allow for that, this bill seeks to ensure dangerous offenders are given the appropriate bail level; and

WHEREAS, the current system is working to keep low level offenders from being held unnecessarily with pretrial detention, but there is significant concern about violent offenders receiving insufficient bail.

NOW, THEREFORE:

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

Section 1. Amend Chapter 21, 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, the court shall not require oppressive bail but shall require such bail as reasonably will assure the reappearance of the defendant, compliance with the conditions set forth

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Released: 06/24/2021 05:22 PM

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 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 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 defendant charged with ~~committing a violent felony involving a firearm or with committing a violent felony while on probation or pretrial release,~~ committing:

(1) Any Title 11 class A felony.

(2) Abuse of a Pregnant Female in the First Degree, in violation of § 606 of this title.

(3) Strangulation, in violation of § 607 of this title.

(4) Assault in the Second degree, in violation of § 612 of this title.

(5) Assault in the First Degree, in violation of § 613 of this title.

(6) Manslaughter, in violation of § 632 of this title.

(7) Murder of a Child by Abuse or Neglect in the Second Degree, in violation of § 633 of this title.

(8) Rape in the Fourth degree, in violation of § 770(a)(1) or (a)(3) of this title.

(9) Rape in the third degree, in violation of § 771 of this title.

(10) Rape in the Second Degree, in violation of § 772 of this title.

(11) Continuous sexual abuse of a child, in violation of § 776 of this title.

(12) Sex offender unlawful sexual conduct against a child, in violation of § 777A of this title.

(13) Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree, in violation of § 778 of this title.

(14) Kidnapping in the First Degree, in violation of § 783A of this title.

(15) Trafficking an individual; forced labor; sexual servitude, in violation of § 787(b)(1)–(3) of this title.

(16) Sexual Servitude (Victim is a Minor), in violation of § 787(b)(3) of this title.

(17) Arson in the First Degree, in violation of § 803 of this title.

(18) Burglary First Degree, in violation of § 826 of this title.

(19) Robbery in the First Degree, in violation of § 832 of this title.

(20) Child Abuse in the First Degree, in violation of § 1103B of this title.

(21) Sexual Exploitation of a Child, in violation of § 1108 of this title.

(22) Unlawful Dealing in Child Pornography, in violation of § 1109 of this title.

(23) Sexual Solicitation of a Child, in violation of § 1112A(h) of this title.

(24) Promoting Sexual Solicitation of a Child, in violation of § 1112B(g) of this title.

(25) Escape After Conviction in violation of § 1253 of this title.

(26) Stalking, in violation of § 1312 of this title.

(27) Possession of a Deadly Weapon During Commission of a Felony, in violation of § 1447 of this title.

(28) Possession of a Firearm During Commission of a Felony, in violation of § 1447A of this title.

(29) Possession of a Firearm by Persons Prohibited, in violation of § 1448(a)(1), (a)(4), (a)(6), or (a)(7) of this title.

(30) Racketeering, in violation of § 1503 of this title.

(31) Aggravated Act of Intimidation, in violation of § 3533 of this title.

(32) Any violent felony as defined by § 4201(c) of this title, allegedly committed while defendant is pending adjudication on a previously charged violent felony.

(33) Any violent felony as defined by § 4201(c) of this title, allegedly committed against a petitioner with an active Protection from Abuse order against the defendant.

(34) Any violent felony as defined by § 4201(c) of this title, allegedly committed against a victim while the defendant is pending adjudication on a previously charged domestic violence offense as defined by § 1041(2) of Title 10, allegedly committed against the same victim.

(35) Any domestic violence offense as defined by § 1041(2) of Title 10, allegedly committed while defendant is pending adjudication on a previously charged violent felony as defined by § 4201(c) of this title, allegedly committed against the same victim.

(36) Felony noncompliance with bond, in violation of § 2109(c)(1) or 2113(c)(1) of this title and involving a violent felony offense as defined by § 4201(c) of this title.

(37) Felony domestic violence offenses as defined by § 1041(2) of Title 10 and causing physical injury as defined by § 222(23) of this title or serious physical injury as defined by § 222(26) of this title.

(38) Drug Dealing (Tier 3), in violation of § 4752 of title 16.

the presumption is that the court will set ~~a~~ conditions of release bond guaranteed by financial terms in an amount within or above the guidelines published by the Delaware Sentencing Accountability Commission (SENTAC) for that offense and secured by cash ~~only will be set.~~ only.

(d) In any case where a court sets bail pursuant to the presumption within paragraph (c) of this section, a court of competent jurisdiction may, consistent with Chapter 21 of this title and court rules, review bail to consider whether bail in a

different amount or with a different security is appropriate to reasonably ensure the reappearance of the defendant, compliance with the conditions set forth in the bond, and the safety of the community. The court may modify the defendant's bail in accordance with its findings and determinations at the hearing.

(e) The court shall document the reason(s) for setting bail at a particular amount and level, whether cash, secured, or unsecured, or for modifying bail under paragraph (d) of this section.

(f) In any case where a court sets bail for an offense listed in paragraph (c) of this section, the court shall require the defendant to relinquish any firearms in their possession.

(f) In addition to the information required in the annual report established in § 2114 (i) of this title, the Criminal Justice Council shall include information of the following in the aggregate and disaggregated by race, gender, and zip code of:

(1) Rates of defendants' eligibility under § 2107 (c) of this title.

(2) Rates of initial detention.

(3) Rates of detention throughout the pretrial period.

(4) Average length of stay from arrest to adjudication.

Section 2. This Act becomes effective 30 days after its enactment into law.

Section 3. This Act shall expire upon the enactment of the constitutional amendment regarding bail found in Senate Bill No. 11 of the 151st General Assembly.