SPONSOR: Sen. Townsend & Rep. Chukwuocha
Sens. Hansen, Sokola; Rep. Griffith

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 12
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE AND CHAPTER 72, VOLUME 83 OF THE LAWS OF DELAWARE RELATING TO PRETRIAL RELEASE AND DETENTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

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 various courts of this State ~~are empowered and encouraged to~~ shall make individualized decisions about terms and conditions of pretrial ~~release.~~ release or the need for preventive detention. Each court shall utilize a system of pretrial release aimed at imposing ~~reasonable nonmonetary~~ the least restrictive conditions of release ~~when those conditions adequately provide a~~ so as to account for each defendant's fundamental right to pretrial liberty while also ~~reasonable assurance of~~ reasonably assuring the appearance of the defendant at court proceedings, reasonably assuring the protection of the community, victims, ~~witnesses~~ witnesses, and any other person, and ~~to maintain~~ reasonably maintaining the integrity of the judicial ~~process.~~ process, such that the defendant will not obstruct or attempt to obstruct justice.

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, and redesignating accordingly:

§ 2102. Definitions.

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

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

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

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(11) "Detention-eligible defendant" means any person charged with an offense under § 2116(b) of this title for which an order of preventive detention may be entered.

Section 3. Amend § 2103, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2103. Persons charged with a capital crime.

(b) The Superior Court ~~may~~ shall admit to bail a person charged with a capital crime ~~if,~~ unless, after full inquiry, the Superior Court ~~shall determine that there is good ground to doubt the truth of the accusation, and the burden of demonstrating such doubt shall be on the accused.~~ determines that the proof is positive or the presumption great.

Section 4. 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 of defendants charged with ~~any other~~ a noncapital crime.

(c) The court may ~~also~~ impose 1 or more of the conditions of release ~~set forth in~~ under § 2108 of this title when ~~such~~ the conditions are necessary to do any of the following:

(1) ~~provide a reasonable assurance of~~ Reasonably assure the appearance of the defendant at court ~~proceedings,~~ proceedings.

(2) Reasonably assure the protection of the community, victims, witnesses, or any other ~~person,~~ person.

(3) ~~and to~~ Reasonably maintain the integrity of the judicial ~~process.~~ process, such that the defendant will not obstruct or attempt to obstruct justice.

(e)(1) ~~The~~ Subject to this chapter, the determination of whether the defendant ~~shall be~~ 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 (b) of this section above)~~ of the ~~release shall be~~ defendant's release, other than the mandatory conditions under subsection (b) of this section, are in the discretion of the ~~court subject to this chapter.~~ court.

a. When making a release determination, or imposing conditions set forth in § 2108 of this title, the court shall ~~use~~ use, if available, an empirically developed risk assessment ~~instrument, if available,~~ instrument designed to improve pretrial release decisions by assessing defendant's likelihood of pretrial success.

b. In circumstances involving suspected domestic or intimate partner violence, the ~~judicial officer~~ court shall also consider the ~~results, if available,~~ results of an instrument designed to assess the likelihood or predicted severity of future violence against the alleged ~~victim.~~ victim, if available.

c. ~~Any such~~ The risk assessment tools under paragraph (e)(1)a. and (e)(1)b. of this section are not binding on the court. ~~They~~ The risk assessment tools are factors to be considered in the totality of the circumstances in determining the conditions of release imposed upon the defendant.

d. The ~~judicial officer~~ court 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) ~~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.~~ [Repealed.]

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

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

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

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

Section 5. 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~~ under a conditions of release bond or conditions of release bond not guaranteed by financial terms.

~~(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 in an amount to be determined by the court when the court is satisfied from all the circumstances and the criteria set forth in subsection (b) of this section that it is reasonably likely that the 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 or failure to appear at court proceedings.~~

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

(a) Consistent with § 2101 of this title, the court shall impose the least restrictive conditions of release possible that reasonably assure the defendant's appearance at court proceedings; reasonably assure the protection of the community, victims, witnesses, or any other person; and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice. Subject to paragraphs (a)(1) through (a)(5) of this section and § 2116 of this title, there is a presumption in favor of release with non-monetary conditions. The court shall consider conditions of release as follows:

(1) A court shall release a defendant on a conditions of release bond, or on the execution of a conditions of release bond not guaranteed by financial terms, if the release will reasonably assure the defendant's appearance at court proceedings; reasonably assure the protection of the community, victims, witnesses, or any other person; and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

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

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

court deems reasonably necessary. In determining whether to impose financial conditions of release and the amount, if any, the court shall consider the defendant's financial resources and ability to pay.

(4) The primary purpose of the use of monetary bail is to secure a defendant's appearance in court. In determining whether the defendant is likely to appear as required, the court shall, on the basis of available information, consider all of the following:

a. The nature and circumstances of the offense with which the defendant is charged.

b. The defendant's possibility of statutory mandatory imprisonment or habitual criminal offender eligibility.

c. The defendant's family ties.

d. The defendant's employment or enrollment in educational studies.

e. The defendant's character, physical and mental condition, including engagement in medical, mental health, or substance abuse treatment, and the effect detention would have on any current treatment.

f. The defendant's length of residence in the community.

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

h. The defendant's history of amenability to community supervision.

i. The defendant's history of breach of release.

j. The defendant's record of appearances at court proceedings, flight to avoid prosecution, and failure to appear at court proceedings.

(5) A court may impose monetary bail when necessary to reasonably assure the protection of the community, victims, witnesses, or any other person and to reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice, only in exceptional circumstances set forth on the record that indicate that the defendant is not otherwise eligible for preventive detention but presents a substantial public safety risk that requires addressing by other means. In determining whether the defendant's release presents a substantial risk to the safety of the community, the court shall, to the extent the information is available, consider all of the following:

a. The nature and circumstances of the offense with which the defendant is charged.

b. Whether a weapon was used or possessed.

c. Whether the offense was committed against a victim with the intent to hinder prosecution.

d. The defendant's character, physical and mental condition, including engagement in medical, mental health, or substance abuse treatment, and the effect detention would have on any current treatment.

e. The defendant's record of convictions.

f. The defendant's possibility of statutory mandatory imprisonment or habitual criminal offender eligibility.

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

(6) If a court imposes monetary bail for any reason, the court shall set forth on the record:

a. The monetary amounts set.

b. The reason for the use of monetary bail.

c. Any consideration the court gave to the defendant's means to meet the monetary condition.

d. The reasons that no condition or combination of non-monetary conditions of release would reasonably assure the defendant's appearance at court proceedings, reasonably assure the protection of the community, victims, witnesses, or any other person, and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

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

(b) In a pretrial release order, the court shall include a written statement that does all of the following:

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

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

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

(c) An order setting conditions of release is reviewable in accordance with the rules of the court then exercising jurisdiction in the matter.

Section 6. 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 [Effective upon fulfillment of the contingency in 83 Del. Laws, c. 72, § 3].

(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~~ 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.~~ will reasonably assure the defendant's appearance at court proceedings; reasonably assure the protection of the community, victims, witnesses, or any other person; and reasonably maintain the

integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice. In ~~fixing~~ determining the ~~amount,~~ conditions of bail, the court shall ~~also~~ take into consideration the criteria set forth in § ~~2105(b)~~ § 2105(a) of this title.

(b) ~~In any event,~~ Notwithstanding subsection (a) of this section, 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 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 will be set.~~ any offense listed in § 2116(b) of this title may be subject to preventive detention without bail.

~~(d) (g) [Repealed.]~~

(d) If a court enters an order of preventive detention or the defendant is otherwise detained on bail, a court of competent jurisdiction may, consistent with this chapter and court rules, review the preventive detention order or bail to consider whether conditions of release order or bail in a different amount or with a different security is appropriate to reasonably assure 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 preventive detention order or bail in accordance with its findings and determinations at the hearing.

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

(f) and (g) [Repealed.]

Section 7. 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.

(d)(1) In connection with any form of bail for a defendant charged with an offense listed in § 2116(b) of this title, the court shall impose a condition that the defendant relinquish any firearm in the defendant's possession and that the defendant not possess or control any firearm.

(2) Unless the condition imposed under paragraph (d)(1) of this section is further required by law or is made a condition of the defendant's sentence by the sentencing judge, the court shall state that the condition imposed under paragraph (d)(1) of this section only remains in effect until one of the following:

a. A nolle prosequi is filed, the case is dismissed, or an adjudication of not guilty is returned, whichever first occurs.

b. 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.

Section 8. 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, or consent to conditions; contact with victim or 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 be~~ crime and, on conviction for the breach, is 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 guilty of a felony and punished by imprisonment not to exceed 5 years, or a fine of $5,000, or both;~~ is guilty of a class E felony.

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

Section 9. 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.

(c)(1) Following a hearing alleging pretrial noncompliance and ~~upon~~ on 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~~ on the defendant's release, or revoke the defendant's bail and reset pretrial conditions of release, including any financial conditions. ~~Upon~~ On a finding that defendant violated a condition of appearance in court, any amount of surety posted to meet a financial term of release may be forfeited.

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

(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~~ the conditions ~~is~~ to be removed are unnecessary or that the conditions to be added are necessary to reasonably ~~ensure~~ assure the defendant's appearance at court proceedings, ~~to protect~~ reasonably assure the protection of the community, victims, witnesses, or any other person, and ~~to~~ reasonably maintain the integrity of the judicial ~~process.~~ process, such that the defendant will not obstruct or attempt to obstruct justice.

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

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.~~ imposition of sentence or appeal, modify conditions of release, or issue an order detaining any defendant convicted of any offense.

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.

(a) If the defendant ~~shall fail~~ fails to appear as required by the defendant's bail or ~~shall commit any~~ commits a material breach of the conditions set forth in § 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 and the return of the defendant to the court for a redetermination of the disposition of the defendant.

(b) ~~Upon~~ On the return of the defendant before the court ~~pursuant to~~ under subsection (a) of this section or if the defendant ~~shall~~ is not ~~be~~ found, the court shall act with respect to the forfeiture of any form of guaranteed or not guaranteed

conditions of release bond ~~pursuant to~~ under the Rules of the Superior Court and shall redetermine the type and amount of ~~bail,~~ bail 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~~ on failure of the ~~accused~~ defendant 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,~~ crime ~~and upon conviction thereof shall be~~ and, on conviction for the failure or breach, is 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 guilty of a felony and punished by imprisonment not to exceed 5 years, or a fine of $5,000, or both;~~ is guilty of a class E felony.

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

(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~~ the change. ~~Failure~~ A failure by a defendant to make ~~such~~ the notification will result in the defendant being deemed 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~~ the defendant.

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.~~ Courts.

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

(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~~ must be limited to those conditions necessary to ~~provide a reasonable assurance of~~ reasonably assure the appearance of the defendant at court proceedings, reasonably assure the protection of the community, victims, ~~witnesses~~ witnesses, or any other person, and

~~to~~ reasonably maintain the integrity of the judicial ~~process.~~ process, such that the defendant will not obstruct or attempt to obstruct justice. These conditions ~~shall~~ apply when not contrary to any other specific conditions imposed by the court.

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

(1) The President Pro Tempore and Secretary of the Senate, for distribution to all Senators.

(2) The Speaker and Chief Clerk of the House of Representatives, for distribution to all Representatives.

(3) The Director and Librarian of the Division of Research of Legislative Council.

(4) The Director of the Delaware Public Archives.

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~~ is found in breach of a material condition of release imposed by any ~~court, except the House Sergeant of the Wilmington City Police,~~ court 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.

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.~~ Preventive detention.

~~(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.~~

~~(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 bail in connection with an original offense.~~

~~(b) In connection with any form of bail for a defendant charged with any violent felony, if after release the defendant is charged by arrest, warrant, indictment or information with the commission of a subsequent offense, that defendant shall 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 relating to the original offense shall 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 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 this section shall 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.~~

(a) Purpose. – The purpose of this section is to provide the court with the authority to make transparent decisions to detain certain detention-eligible defendants pending a final determination as to the guilt of the defendant.

(b)(1) Eligibility. – A detention-eligible defendant is a defendant charged with committing or attempting to commit any of the following:

a. Any Title 11 class A felony.

b. Abuse of a pregnant female in the first degree, in violation of § 606 of this title.

c. Strangulation, in violation of § 607 of this title.

d. Assault in the second degree, in violation of § 612(a)(1) or (a)(2) of this title.

e. Assault in the first degree, in violation of § 613 of this title.

f. Manslaughter, in violation of § 632 of this title.

g. Murder of a child by abuse or neglect in the second degree, in violation of § 633 of this title.

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

i. Rape in the third degree, in violation of § 771 of this title.

j. Rape in the second degree, in violation of § 772 of this title.

k. Continuous sexual abuse of a child, in violation of § 776 of this title.

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

m. 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.

n. Kidnapping in the first degree, in violation of § 783A of this title.

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

p. Arson in the first degree, in violation of § 803 of this title.

q. Burglary in the first degree, in violation of § 826 of this title.

r. Robbery in the first degree, in violation of § 832 of this title.

s. Child abuse in the second degree, in violation of § 1103B of this title.

t. Child torture, in violation of § 1103D of this title.

u. Sexual exploitation of a child, in violation of § 1108 of this title.

v. Unlawful dealing in child pornography, in violation of § 1109 of this title.

w. Sexual solicitation of a child, in violation of § 1112A(h) of this title.

x. Promoting sexual solicitation of a child, in violation of § 1112B(g) of this title.

y. Escape after conviction in violation of § 1253 of this title, when a class C or class B felony.

z. Stalking, in violation of § 1312 of this title.

aa. Possession of a deadly weapon during commission of a felony, in violation of § 1447 of this title.

bb. Possession of a firearm during commission of a felony, in violation of § 1447A of this title.

cc. Possession of a firearm by persons prohibited, in violation of § 1448(a)(1), (a)(4), (a)(6), (a)(7), or (a)(11) of this title.

dd. Racketeering, in violation of § 1503 of this title.

ee. Aggravated act of intimidation, in violation of § 3533 of this title.

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

gg. 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.

hh. 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.

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

jj. 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.

kk. Any felony offense of domestic violence, as defined by § 1041 of Title 10, causing physical injury, as defined by § 222 of this title, or serious physical injury, as defined by § 222 of this title.

ll. Drug dealing (Tier 3), in violation of § 4752(a)(1) of Title 16.

(2) An offense may only be added to the list in paragraph (b)(1) of this section by an act that complies with § 12 of Article I of the Delaware Constitution. An amendment to an offense on the list in paragraph (b)(1) of this section is amended for the purposes of paragraph (b)(1) of this section only if it complies with § 12 of Article I of the Delaware Constitution.

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

(d) Temporary preventive detention hearing. –

(1) If a detention-eligible defendant appears before a Justice of the Peace magistrate or a judicial officer of the Superior Court for initial appearance, the magistrate or judicial officer of the Superior Court may issue a temporary order to detain the defendant for a period of time not to exceed 10 days if the court finds all of the following:

a. Probable cause that the defendant committed one of the offenses listed in subsection (b) of this section.

b. Clear and convincing evidence that no condition or combination of conditions of release will do all of the following:

1. Reasonably assure the appearance of the defendant at court proceedings.

2. Reasonably assure the protection of the community, victims, witnesses, or any other person.

3. Reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

(2) Enumerated factors to consider during a temporary preventive detention hearing. - During a temporary preventive detention hearing to determine whether no condition or combination of conditions will reasonably assure the defendant's appearance at court proceedings, reasonably assure the protection of the community, victims, witnesses, or any other person, and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice, the court may consider all of the following:

a. The nature and circumstances of the offense charged.

b. The history and characteristics of the defendant, including any of the following:

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

2. The defendant's history of community supervision including amenability to pretrial conditions of release, failure to appear, failure to register as sex offender violations, custodial sentences imposed, and prior convictions for felonies, misdemeanors, and violent offenses.

3. The defendant's family ties, including responsibility as a primary caregiver to children or infirm relatives.

4. The defendant's employment or enrollment in educational studies.

5. The defendant's character, physical and mental condition, including engagement in medical, mental health, or substance abuse treatment, and the effect detention would have on any current treatment.

6. The defendant's length of residence in the community.

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

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

e. The recommendation of the Attorney General or any pretrial services agency.

f. The defendant's eligibility to be sentenced under § 4214 of this title.

(3)a. A temporary preventive detention order issued by the Justice of the Peace Court under this subsection may be extended by the Court of Common Pleas or the Superior Court on motion of the State, the defendant, or on the court's own motion when there is a showing of good cause for the extension and consent of the non-moving parties. In the absence of consent of the non-moving parties, a temporary preventive detention order may be extended only on a showing that exceptional circumstances exist and that delay is indispensable to the interests of justice.

b. A temporary preventive detention order issued by a judicial officer of the Superior Court under this subsection may be extended by the Superior Court on motion of the State, the defendant, or on the court's own motion when there is a showing of good cause for the extension and consent of the non-moving parties. In the absence of consent of the non-moving parties, a temporary preventive detention order may be extended only on a showing that exceptional circumstances exist and that delay is indispensable to the interests of justice.

(4) If a detention-eligible defendant was previously released pending adjudication and is alleged to have wilfully violated any material condition of release or is subsequently charged by arrest, warrant, indictment, or information with the commission of an offense listed in subsection (b) of this section or any violent felony, any form of release relating to the original detention-eligible offense must be temporarily revoked by the court, including the Justice of the Peace Court, Court of Common Pleas, or Superior Court, before which the defendant is then appearing, a temporary preventive detention order must be entered, and the defendant must be held for the original detention-eligible offense until such time as the Superior Court holds a preventive detention hearing under subsection (e) of this section.

(5)a. If the court makes the findings required in paragraph (d)(1) of this section, there is a presumption in favor of the court's entry of a temporary preventive detention order.

b. If the court does not make the findings required in paragraph (d)(1) of this section, the offense with which the defendant is charged is deemed bailable and the court shall determine, in a manner consistent with all applicable provisions of this chapter, the terms of a conditions of release bond to be imposed.

(e) Preventive detention hearing. -

(1)a. A temporary preventive detention order issued at an initial appearance under subsection (d) of this section expires after 10 days if not extended by an order granted under paragraph (d)(3) of this section or by an order of the Court of Common Pleas or Superior Court granting preventive detention following a preventive detention hearing with adequate due process protections under subsection (f) of this section.

b. Whether a temporary preventive detention order was issued at an initial appearance or not, on written motion of the State, the Court of Common Pleas or Superior Court may grant an order of preventive detention following a preventive detention hearing with adequate due process protections under subsection (f) of this section.

(2) At a hearing to determine whether the defendant should be subject to preventive detention, the Court of Common Pleas or Superior Court may enter an order of preventive detention if the court finds all of the following:

a. Proof positive or presumption great that the defendant committed one of the offenses listed in paragraph (b)(1) of this section.

b. Clear and convincing evidence that no condition or combination of conditions of release will do all of the following:

1. Reasonably assure the appearance of the defendant at court proceedings.

2. Reasonably assure the protection of the community, victims, witnesses, or any other person.

3. Reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

(f) Preventive detention hearing procedures. – At a hearing under subsection (e) of this section, all of the following apply:

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

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

(3) The Attorney General bears the burden of establishing commission of an offense with proof positive or presumption great.

(4) If the Court finds by proof positive or presumption great that an offense was committed and the defendant committed the offense, the Attorney General bears the burden of establishing by clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the defendant's appearance at court proceedings, reasonably assure the protection of the community, victims, witnesses, or any other person, and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

(5) The rules of evidence do not apply in the presentation and consideration of information.

(6)a. Subject to paragraph (f)(6)b. of this section, the Attorney General must disclose to the defendant at or before the preventive detention hearing all evidence within the Attorney General's possession at the time of the preventive detention hearing that is favorable to the defendant in the preventive detention determination in that it negates the defendant's eligibility for an order of preventive detention.

b. The Attorney General is deemed to not be in possession of any evidence in the possession or control of other State agents that has not yet been provided to the Attorney General.

(7) The hearing must be held within 10 days of arrest if not extended by the Court of Common Pleas or the Superior Court. An extension may be granted on motion of the State, the defendant, or on the court's own motion when there is a showing of good cause for the extension and consent of the non-moving parties. In the absence of consent of the non-moving parties, the 10-day period may be extended only on a showing that exceptional circumstances exist and that delay is indispensable to the interests of justice.

(8) The hearing must be recorded.

(9)a. If the Court of Common Pleas or Superior Court makes the findings required in paragraph (e)(2) of this section, there is a presumption in favor of the Court's entry of an order of preventive detention.

b. If the Court of Common Pleas or Superior Court does not make the findings required in paragraph (e)(2) of this section, the offense with which the defendant is charged is deemed bailable and the court shall determine, in a manner consistent with all applicable provisions of this chapter, the terms of a conditions of release bond to be imposed.

(g) Enumerated factors to consider during a preventive detention hearing -

(1) During a preventive detention hearing to determine whether no condition or combination of conditions will reasonably assure the defendant's appearance at court proceedings, reasonably assure the protection of the community, victims, witnesses, or any other person, and reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice, the Court of Common Pleas or Superior Court may consider all of the following:

a. The nature and circumstances of the offense charged.

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

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

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

2. The defendant's history of community supervision including amenability to pretrial conditions of release, failure to appear, failure to register as sex offender violations, custodial sentences imposed, and prior convictions for felonies, misdemeanors, and violent offenses.

3. The defendant's family ties, including responsibility as a primary caregiver to children or infirm relatives.

4. The defendant's employment or enrollment in educational studies.

5. The defendant's character, physical and mental condition, including engagement in medical, mental health, or substance abuse treatment, and the effect detention would have on any current treatment.

6. The defendant's length of residence in the community.

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

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

f. The recommendation of the pretrial services agency.

g. The defendant's eligibility to be sentenced under § 4214 of this title.

(2) Although the charged offense itself may be a predicate to preventive detention proceedings, the court must exercise care not to give preclusive weight to the nature of the present charged offense when evaluating all relevant factors for the preventive detention decision.

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

(1) Findings of fact that establish proof positive or presumption great that the defendant committed one of the offenses under paragraph (b)(1) of this section.

(2) Findings of fact that establish clear and convincing evidence that no condition or combination of conditions of release will do all of the following:

a. Reasonably assure the appearance of the defendant at court proceedings.

b. Reasonably assure the protection of the community, victims, witnesses, or any other person.

c. Reasonably maintain the integrity of the judicial process, such that the defendant will not obstruct or attempt to obstruct justice.

(i) Detention order review. - On motion filed by the State or the defendant, an order entered by the Court of Common Pleas or a commissioner of Superior Court granting or denying the detention of a detention-eligible defendant is immediately reviewable by a judge of the Superior Court. The party seeking relief from the order must file a motion in accordance with the rules of the Superior Court.

(j) Requirement for accelerated trial for detained defendants. – All of the following speedy trial protections apply to defendants detained under subsections (d) or (e) of this section:

(1) A defendant may not remain detained under an order issued under subsections (d) or (e) of this section for more than 60 days before the return of an indictment or docketing of a waiver of indictment. If the defendant is not indicted or has not waived indictment within 60 days of entry of a temporary preventive detention order issued under subsection (d) of this section or a preventive detention order issued under subsection (e) of this section, whichever is

later, the offense with which the defendant is charged is deemed bailable and the court shall determine, in a manner consistent with all applicable provisions of this chapter, the terms of a conditions of release bond to be imposed.

(2)a. A defendant may not remain detained under an order issued under subsection (e) of this section for more than the following periods on a charged offense after the return or unsealing of the indictment, whichever is later:

1. 365 days on a charge of murder in the first degree, in violation of § 636 of this title.

2. 270 days for a class A felony other than murder in the first degree.

3. 180 days for all other felony offenses under paragraph (b)(1) of this title other than murder in the first degree or another class A felony.

b. If a defendant's trial does not commence within the applicable period under paragraph (j)(2)a. of this section, the offense with which the defendant is charged is deemed bailable and the court shall determine, in a manner consistent with all applicable provisions of this chapter, the terms of a conditions of release bond to be imposed.

(3) Notwithstanding any other provision of this section, a defendant must be released on a conditions of release bond if, 2 years after the court's issuance of the preventive detention order issued under subsection (e) of this section, the Attorney General is not ready to proceed to voir dire, opening argument, or a hearing of any motions that had been reserved for the time of trial. The terms of any conditions of release bond to be imposed must be determined by the court in a manner consistent with all applicable provisions of this chapter.

(4) If the defendant is charged or indicted on more than one matter resulting in the defendant's preventive detention under an order entered under subsection (e) of this section, the time calculations for each matter run independently but not consecutively.

(5) Notwithstanding any other provision of this section, a preventive detention order issued under subsection (e) of this section may be extended by the Superior Court on motion of the State, the defendant, or on the court's own motion when there is a showing of good cause for the extension and consent of the non-moving parties. In the absence of consent of the non-moving parties, a preventive detention order issued under subsection (e) of this section may be extended by the Superior Court only on a showing that exceptional circumstances exist and that delay is indispensable to the interests of justice.

(k) In addition to the information required in the annual report established in § 2114(i) of this title, the Criminal Justice Council shall include the following information analyzed by the Statistical Analysis Center based on data recorded, compiled, and provided electronically to the Statistical Analysis Center by the Courts:

(1) The number of detention-eligible defendants identified by the Courts.

(2) Rates of initial detention for detention-eligible defendants identified by the Courts.

(3) Demographic information for defendants identified by the Courts as detention-eligible.

(4) Rates of rearrest and failure to appear during the pretrial period among detention-eligible defendants identified by the Courts and released with detention-eligible charges pending.

Section 15. Amend § 4334, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4334. Arrest for violation of conditions; subsequent disposition.

(b) The Commissioner, or any probation officer, when in the Commissioner's or probation officer's judgment there has been a violation of any condition of probation or suspension of sentence, may arrest such probationer without a warrant, or may deputize any other officer with power of arrest to do so by giving that officer a written statement setting forth that the probationer has, in the judgment of the Commissioner or probation officer, violated the conditions of probation or suspended sentence. The written statement delivered with the probationer by the arresting officer to the official in charge of the place of detention shall be sufficient warrant for the detention of the probationer. When an arrest is made by a probation officer, the Department shall present to the detaining authority a written statement of the circumstances of violation. ~~Provisions regarding release on bail of persons charged with crime shall be applicable to the probationers arrested under these provisions.~~

Section 16. The Justice of the Peace Court, Court of Common Pleas, and Superior Court shall adopt the rules required by this Act before the effective date of this Act.

Section 17. This Act takes effect 6 months after the enactment of a constitutional amendment permitting preventive detention, as proposed by Senate Substitute No. 1 for Senate Bill No. 11 of the 152nd General Assembly.

Section 18. Amend § 3, Chapter 72, Volume 83 of the Laws of Delaware by making deletions as shown by strike through and insertions as shown by underline as follows:

~~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.~~

Section 3. This Act expires 6 months after the enactment of a constitutional amendment permitting preventive detention, as proposed by Senate Substitute No. 1 for Senate Bill No. 11 of the 152nd General Assembly.