



SPONSOR: Rep. Keeley & Sen. Henry
Reps. Bolden, Mitchell, Paradee, B. Short; Sen. Marshall

HOUSE OF REPRESENTATIVES

147th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1 FOR
HOUSE BILL NO. 39
AS AMENDED BY
HOUSE AMENDMENT NO. 2

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

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

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

§ 2101. Purposes of this chapter

It is the purpose of this chapter to reform the system of bail in the various courts of this State 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 accused 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.

§ 2102. Definitions

For purposes of this chapter the following definitions shall apply:

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

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

(3) "Capital crime" includes any crime for which the punishment shall be death.

(4) "Cash personal appearance bond" is a bond of the accused promising appearance in court, secured by cash only.

(~~5~~4) "Court" includes Superior Court, Court of Common Pleas, Family Court of the State, and justice of the peace.

(65) “Crime” includes any offense which is punishable by a fine or imprisonment.

(76) “Personal recognizance” is the written recognizance of the accused that the accused will obey the further direction of the court.

(87) “Record finding” is a memorandum, notation, opinion, order or other writing in the file of the case of the accused reflecting the decision made by the court.

(98) “Secured personal appearance bond” is a bond of the accused promising appearance in court, guaranteed by a surety, property, cash or other assets.

(109) “Unsecured personal appearance bond” is an undertaking by the accused promising appearance in court where, upon failure to appear, the accused 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.

(114) “Violent Felonies” or “violent felony” shall consist of all felonies designated as violent felonies in § 4201(c) of Title 11.

§ 2103. Persons charged with a capital crime

(a) A capital crime shall not be bailable, and a person so charged shall be held in custody without bail until the charge be withdrawn, reduced or dismissed or until the court shall otherwise order after a trial which results in less than a conviction of a capital crime or except as provided in subsection (b) of this section.

(b) The Superior Court may admit to bail a person charged with a capital crime if, 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.

§ 2103A. Detention of youth charged with Superior Court offenses

When a child has reached that child’s 16th birthday and is found to be nonamenable to the rehabilitative processes of the Family Court or is charged with an offense in Superior Court and thereafter makes application for transfer of said charges to Family Court pursuant to § 1011 of Title 10 and is denied or fails to make application pursuant to § 1011 of Title 10 within the required time and is therefore held over for trial in Superior Court, the youth shall be remanded to the Department of Correction if held in default of bail. When a child (youth) has been lawfully administratively remanded or transferred to the Department of Correction (“DOC”), DOC shall be exclusively responsible for all aspects of the child’s (youth’s) care, custody and control, including services associated with those responsibilities upon such remand and transfer. The Department of Services for Children, Youth and Their Families (“DSCYF”) shall have no authority or jurisdiction of such child (youth).

§ 2104. Release on bail or recognizance of persons charged with any other crime

(a) Any person who is arrested and charged with any crime other than a capital crime shall be released either:

(1) On the person's own recognizance or

(2) Upon the execution of an unsecured personal appearance bond of the accused in an amount specified by the court or

(3) Upon the execution of a secured personal appearance bond, the amount of the bond and the nature of the surety to be determined by the court.

(4) Upon 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 person released on bail or recognizance:

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

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

(c) The court may also impose 1 or more of the conditions of release set forth in § 2108 of this title.

(d) The determination of whether the accused shall be released under paragraph (a)(1), (a)(2), ~~or (a)(3)~~ or (a)(4) of this section above and the conditions (other than the mandatory conditions in paragraph (b) of this section above) of the release shall be in the discretion of the court subject to this chapter. In making a release determination, or imposing conditions set forth in § 2108 of this title, the court shall employ an objective risk assessment instrument to gauge the person's risk of flight and re-arrest and the safety of the victim and the community. The risk assessment instrument shall be responsive to the needs of victims of domestic violence and sexual assault. The Statistical Analysis Center shall provide the court with a report of rates of re-arrest and failure to appear as required by persons released by the court. Use of the objective risk assessment instrument shall commence by December 31, 2013.

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

~~(f)~~ Any person who is arrested and thereafter released from custody pursuant to this chapter, and who subsequently:

(1) Tenders 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

(2) 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, shall immediately be remanded to the custody of the Department of Correction, and shall be incarcerated in lieu of bail until the sentence for said felony is imposed. The provisions of this subsection shall not apply to pleas or convictions for any felony set forth in Title 21.

§ 2105. Release on personal recognizance or on unsecured personal appearance bond

(a) The court shall release a person accused of a bailable crime on the person's own recognizance or upon the execution of an unsecured personal appearance bond of the accused 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 accused 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 accused 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 accused, the accused'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 accused 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 accused upon the furnishing of surety satisfactory to the court in an amount to be determined by the court.

~~§ 2106. Posting of operator's license as security for court appearance~~

~~(a) In addition to § 2104 of this title, whenever any person lawfully possessed of an operator's license theretofore issued to that person by the Division of Motor Vehicles of the Department of Transportation of the State, or under the laws of any other state or territory or the District of Columbia, shall be arrested and charged with any violation of the traffic or criminal laws of this State, or of any political subdivision thereof, a court may take and hold, as security for the appearance of the defendant for trial or for sentencing, the operator's license so issued to the defendant.~~

~~(b) Any person whose operator's license has been deposited with a court, pursuant to subsection (a) above, shall be~~

issued a receipt by the court taking said license upon a form substantially as set forth below, and thereafter said person shall be permitted to operate a motor vehicle upon the highways of this State until and including the date scheduled for trial or sentencing, unless the person's license or privilege to operate a motor vehicle is otherwise revoked, suspended or cancelled.

FORM OF RECEIPT

The operator's license of, license number ... is held by the Court, State of Delaware, as security for the appearance of said person for trial or for sentencing in connection with Case No..... Please accept this receipt as a substitute for that license as provided by Title 11, § 2106(a), Delaware Code, as amended. Appearance is scheduled for This receipt is not valid after said date. Failure to appear will result in license suspension. An attempt to secure, or the securing of, a duplicate operator's license during the period in which this court holds an operator's license shall be considered as a contempt of court under 11 Del. C., § 1271(3).

(c) The clerk of the court in which a person's operator's license was taken as security for reappearance, pursuant to subsection (a) of this section, shall immediately forward to the Division of Motor Vehicles of the State the license if the person fails to reappear by the date indicated in the receipt as prescribed by subsection (b) of this section. The Director of the Division of Motor Vehicles shall, upon receipt of a license so forwarded by the clerk, suspend the operator's license and/or driving privileges of the defendant until notified by the court that said defendant has appeared at court for trial or sentencing. If the person be from another state or territory or from the District of Columbia, the Director of the Division of Motor Vehicles shall further advise the motor vehicle administrator of the state, territory or the District of Columbia of this State's suspension and request that said person's license to drive be suspended until the defendant has appeared at court for trial or sentencing.

(d) The clerk of the court in which a person's license was taken as security, pursuant to subsection (a) of this section, shall immediately return to said person the operator's license upon reappearance on the date as ordered by the court, and as reflected in the form as prescribed by subsection (b) above.

(e) In determining whether or not a defendant shall post an operator's license as security for appearance for trial or for sentencing, the court shall consider the criteria set forth in § 2105(b) of this title.

§ 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 an unsecured personal appearance bond of the accused, the court shall not require oppressive bail but shall require such bail as reasonably will assure the reappearance of the accused, 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 § 2105(b) of this title.

(b) In any event, if a person 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 person 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 person 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 cash personal appearance bond will be set.

§ 2108. Conditions for release

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

~~(1) Require the person to return to the court at any time upon notice and submit to the orders and processes of the court;~~

~~(12)~~ Place the person in the custody of a designated person or organization agreeing to supervise the person;

~~(23)~~ Place the person under the supervision of a presentence or probation officer;

~~(34)~~ Place restrictions on the travel, associations, activities, consumption of alcoholic beverages, drugs or barbiturates, or place of abode of the person during the period of release;

~~(45)~~ Require the person 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;

~~(56)~~ Require periodic reports from the person to an appropriate agent or officer of the court including the attorney for the accused;

~~(67)~~ Require psychiatric or medical treatment of the person;

~~(78)~~ Require the person to provide suitable support for the person's family under supervision of an officer of the court or the Family Court, with the consent of the Family Court;

~~(89)~~ Require a person who has been convicted to duly prosecute any post-conviction remedies or appeals; and if the case is affirmed or reversed and remanded, such person shall forthwith surrender to the court;

~~(910)~~ 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 either a secured release or an unsecured release of any person charged with any crime

involving child sexual abuse or exploitation, the court shall also impose a condition that the person 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 or an adjudication of not guilty is returned, whichever shall first occur, or if the person 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 either a secured release or unsecured release of any person charged with a violation of § 4177 of Title 21 which is alleged to be punishable as a felony pursuant to that section, the court shall impose a condition that the person not drive a vehicle, as defined by that section, until a nolle prosequi is filed, the case is dismissed or an adjudication of not guilty is returned, whichever shall first occur, or if the person 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.

§ 2109. Failure to provide recognizance, bond, or consent to conditions; contact with victim or victim's family

(a) If the accused does not provide the personal recognizance, secured or unsecured bond or if the person does not agree to meet the conditions for release, the person shall be held in the custody of the State Board of Correction until the person cures such failure or until the court otherwise orders.

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

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

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

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

§ 2110. Modification of bail, security or conditions

(a) Either the accused 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. Such application shall be at such times, upon such conditions and in such manner as the Rules of Superior Court may provide.

(b) Where the court modifies any bail amount, the court shall review conditions and may impose any conditions as are set forth in § 2108 of this title, including specific considerations for the safety of the victim and the community.

§ 2111. Procedure for taking bail or implementing this chapter

Except as provided herein, ~~t~~The procedure for taking bail or implementing this chapter shall be as provided by the Rules of the Superior Court.

§ 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.

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

(a) If the accused shall fail to appear as required by the recognizance or bond or shall commit any 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 person and the cancellation of any recognizance and the return to the court for a redetermination of the disposition of the accused.

(b) Upon the return of the accused before the court pursuant to subsection (a) of this section or if the accused shall not be found, the court shall act with respect to the forfeiture of any secured or unsecured bond pursuant to the Rules of the Superior Court and shall redetermine the type of release, the amount of bail, if any, and conditions of the further release of the accused. Notwithstanding any law to the contrary, no property, cash, surety or other assets shall be forfeited except upon failure of the accused to appear as required by any Court.

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

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

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

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

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

§ 2114. Administration of this chapter

(a) The Department State Board of Correction shall administer such provisions of this chapter as are not exclusively the province of the judges of the respective courts of this State.

(b) The Department State Board of Correction may make investigations relative to the release of persons charged with criminal offenses and advise and assist the courts to carry out the purposes of this chapter.

(c) The Department State Board of Correction shall have the power necessary to carry out the purposes of this chapter, including subpoena power, and as shall be provided by the Rules of the Superior Court.

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

§ 2115. Forfeiture and default of ~~cash~~ bail bonds

(a) If the accused shall fail to appear as required by any court, except the House Sergeant of the Wilmington City Police, while under a ~~cash~~ bond, and the court pursuant to this chapter or court rule finds the accused in default and forfeits the ~~cash~~ bond, the proceeds shall 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 ~~cash~~ bonds from any court, except the House Sergeant of the Wilmington City Police, shall immediately be forwarded to the State Treasurer and deposited in the General Fund.

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

§ 2116. Revocation of bail ~~and forfeiture of surety~~ upon subsequent arrest

(a) For the purposes of this section:

(1) "Original offense" means any violent felony ~~as defined in §4201(e) of this title~~ which is alleged to have been committed by a person who is thereafter released from custody upon that person's own recognizance or upon the execution of a secured or unsecured personal appearance bond or a cash personal appearance bond;

(2) "Subsequent offense" means any violent felony ~~as defined in §4201(e) of this title~~ 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 person during the period of that person's secured or unsecured release in connection with an original offense.

(b) In connection with either a secured release or unsecured release of any person charged with any violent felony ~~as defined in §4201(c) of this title~~, if after such release the accused is charged by arrest, warrant, indictment or information with the commission of a subsequent offense, that person shall be brought before the Superior Court. If after a hearing, the Superior Court finds proof positive or presumption great ~~probable cause to believe~~ that the accused 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:

(1) ~~Shall~~ revoke the bail to which the person was admitted in connection with the original offense, ~~and shall forfeit any cash bond or other form of cash surety relating thereto to the State; and~~

(2) ~~May, upon motion of the State, forfeit any real property or other surety not otherwise described in paragraph (1) of this subsection to the State.~~

(c) ~~For the purposes of this section, probable cause to believe that the accused has committed a subsequent offense shall be established if:~~

(1) ~~The accused is charged with a crime which, as alleged, constitutes any violent felony as defined in § 4201(c) of this title or any similar offense set forth under the laws of another state, the United States or any territory of the United States;~~

(2) ~~The subsequent offense, as alleged, occurred during a period of secured or unsecured release following an arrest alleging any violent felony as defined in § 4201(c) of this title; and~~

(3) ~~The subsequent offense is alleged in an indictment or information, or the accused is bound over for trial on the subsequent offense by the appropriate court following a preliminary hearing or the waiver of such hearing by the accused, or an arrest warrant is issued which charges the accused with the commission of the crime.~~

(cd) Notwithstanding any provision of this chapter or any other statute or court rule to the contrary, whenever the accused is charged with a subsequent offense, any recognizance or bond relating to the original offense shall be temporarily revoked, and the person 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 ~~probable cause to believe~~ that the accused committed a subsequent offense during the period of release.

(de) Notwithstanding any provision of this chapter or any statute or court rule to the contrary, any person 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 cash, the amount of bail may be posted only in the form of a cash personal appearance bond. ~~pursuant to this section shall thereafter be held in custody without bail on the original offense until either such charges or the subsequent offense are withdrawn or dismissed, or until the defendant is found to be not guilty of the original offense or subsequent offense, or in the event of a conviction for the original offense, until the accused is sentenced.~~

Section 2. This Act shall take effect immediately upon its enactment.