

SENATE, No. 1413

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Clarifies pretrial detention and pretrial release provisions in P.L.2014, c.31; designates P.L.2014, c.31 and this bill as the “Restoring Judicial Discretion in Bail Setting Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning pretrial detention and pretrial release, and
2 amending and supplementing P.L.2014, c.31.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. (New section) P.L.2014, c.31 (C.2A:162-15 et al.) and
8 sections 1 through 3 of P.L. , c. (C.) (pending before the
9 Legislature as this bill) shall be known and may be cited as the
10 “Restoring Judicial Discretion in Bail Setting Act.”

11

12 2. (New section) The Legislature finds and declares that:

13 Bail reform was implemented via a constitutional amendment to
14 the New Jersey Constitution, in addition to enactments by the State
15 Legislature, court rules, and various directives, all of which
16 ultimately moved forward with the general two-part goal of giving
17 prosecutors more power to detain dangerous offenders and also
18 making it less likely that persons on low-level crimes will languish
19 in jail due to inability to afford bail.

20 The intent of the constitutional amendment and bail reform was
21 not to entirely remove the discretion of judges, prosecutors, and
22 defendants to request that a monetary condition of bail be set in
23 conjunction with other special conditions or the standard conditions
24 of bail.

25 Unfortunately, judicial discretion has been unduly restricted
26 resulting in the near elimination of all monetary conditions of bail,
27 which was not the original intent of the constitutional amendment
28 or bail reform. In fact, the constitutional amendment directly states
29 that judges will indeed be considering "monetary" bail as they
30 decide the appropriate bails to impose.

31 Without the option of monetary bail, and the accountability it can
32 bring in specific cases, the financial burden on local governments
33 has become too great because judges have no other option in the
34 current system but to blanket defendants with correctional
35 technology, intense supervision by local governments, and other
36 liberty-restricting conditions because they cannot offer the option of
37 a financial condition as an alternative or in combination to reduce
38 other liberty restrictions for which local governments must pay.

39 The least restrictive form of release should depend on the facts
40 and circumstances of each case, and if a defendant is not
41 preventatively detained, all available legal conditions of release
42 should be a on a level-playing field for judges to impose as they
43 believe appropriate and just.

44 The purpose of P.L. , c. (C.) (pending before the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 Legislature as this bill) is to simply restore judicial discretion in the
2 setting of monetary conditions of bail, which the constitutional
3 amendment did not intend to eliminate, thereby returning the system
4 to what the Legislature and voters ultimately intended it would be
5 while simultaneously reducing the financial burden on the State and
6 local governments.

7
8 3. (New section) Restoring Judicial Discretion in Bail Setting.
9 Notwithstanding any provision of law to the contrary including but
10 not limited to directives, court rules, State statutes or otherwise,
11 when a prosecutor does not seek to preventatively detain a criminal
12 defendant, a judge setting bail for a defendant may impose any
13 combination of monetary bail and non-monetary conditions which
14 would reasonably assure the person's appearance in court when
15 required, or protect the safety of any other person or the
16 community, or prevent the person from obstructing or attempting to
17 obstruct the criminal justice process. No restrictions, presumptions,
18 court rules, administrative orders of court, or other laws shall
19 prevent the judges of the State of New Jersey from having
20 discretion to set any combination of monetary bail and non-
21 monetary bail as necessary. A defendant or prosecutor shall have
22 the right to request a financial condition of bail to be set and receive
23 due consideration upon that request.

24
25 4. Section 1 of P.L.2014, c.31 (C.2A:162-15) is amended to
26 read as follows:

27 1. The provisions of sections 1 through 11 of P.L.2014, c.31
28 (C.2A:162-15 et seq.) and sections 1 through 3 of P.L. _____,
29 c. _____(pending before the Legislature as this bill) shall be
30 liberally construed to effectuate the purpose of primarily relying
31 upon pretrial release by monetary or non-monetary means to
32 reasonably assure an eligible defendant's appearance in court when
33 required, the protection of the safety of any other person or the
34 community, that the eligible defendant will not obstruct or attempt
35 to obstruct the criminal justice process, and that the eligible
36 defendant will comply with all conditions of release, while
37 authorizing the court, upon motion of a prosecutor, to order pretrial
38 detention of the eligible defendant when it finds clear and
39 convincing evidence that no condition or combination of conditions
40 can reasonably assure the effectuation of these goals. Monetary bail
41 may be set for an eligible defendant only when it is determined that
42 no other conditions of release will reasonably assure the eligible
43 defendant's appearance in court when required.

44 For the purposes of sections 1 through 11 of P.L.2014, c.31
45 (C.2A:162-15 et seq.), "eligible defendant" shall mean a person for
46 whom a complaint-warrant is issued for an initial charge involving
47 an indictable offense or a disorderly persons offense unless

1 otherwise provided in sections 1 through 11 of P.L.2014, c.31
2 (C.2A:162-15 et seq.).
3 (cf: P.L.2014, c.31, s.1)
4

5 5. This act shall take effect immediately.
6
7

8 STATEMENT
9

10 This bill would supplement the pretrial detention and pretrial
11 release law, P.L.2014, c.31 (C.2A:162-15 et al.), commonly referred
12 to as criminal justice reform law or bail reform law, to provide for a
13 findings and declarations section. This bill would also designate
14 P.L.2014, c.31 (C.2A:162-15 et al.) and the supplemental sections
15 of the bill as the “Restoring Judicial Discretion in Bail Setting Act.”

16 Bail reform was implemented via a constitutional amendment to
17 the New Jersey Constitution, in addition to enactments by the State
18 Legislature, court rules, and various directives. The purpose of bail
19 reform was to give prosecutors more power to detain dangerous
20 offenders and also make it less likely that persons on low-level
21 crimes will languish in jail due to inability to afford bail.

22 This bill would provide for a findings and declarations section to
23 P.L.2014, c.31 (C.2A:162-15 et al.) to emphasize that the intent and
24 purpose of the law is not to eliminate a judge’s discretion but rather
25 to strengthen a judge’s discretion by allowing any combination of
26 monetary bail and non-monetary bail as necessary.

27 As noted in the findings and declarations, judicial discretion has
28 been unduly restricted resulting in the near elimination of all
29 monetary conditions of bail, which was not the original intent of the
30 constitutional amendment or bail reform. Without the option of
31 monetary bail, and the accountability it can bring in specific cases,
32 the financial burden on local governments has become too great
33 because judges have no other option in the current system but to
34 blanket defendants with correctional technology, intense
35 supervision by local governments, and other liberty-restricting
36 conditions because they cannot offer the option of a financial
37 condition as an alternative or in combination to reduce other liberty
38 restrictions for which local governments must pay.

39 The least restrictive form of release should depend on the facts
40 and circumstances of each case, and if a defendant is not
41 preventatively detained, all available legal conditions of release
42 should be a on a level-playing field for judges to impose as they
43 believe appropriate and just.

44 The purpose of this bill is to simply restore judicial discretion in
45 the setting of monetary conditions of bail, which the amendment did
46 not intend to eliminate, thereby returning the system to what the
47 Legislature and voters ultimately intended it would be while

1 simultaneously reducing the financial burden on the State and local
2 governments.

3 The bill also provides that, notwithstanding any provision of law
4 to the contrary, including but not limited to directives, court rules,
5 State statutes or otherwise, when a prosecutor does not seek to
6 preventatively detain a criminal defendant, a judge setting bail for a
7 defendant may impose any combination of monetary bail and non-
8 monetary conditions which would reasonably assure the person's
9 appearance in court when required, or protect the safety of any
10 other person or the community, or prevent the person from
11 obstructing or attempting to obstruct the criminal justice process
12 No restrictions, presumptions, court rules, administrative orders of
13 court, or other laws shall prevent the judges of the State of New
14 Jersey from having discretion to set any combination of monetary
15 bail and non-monetary bail as necessary. A defendant or prosecutor
16 would have the right to request a financial condition of bail to be set
17 and receive due consideration upon that request.