

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 3507 and 4098

# STATE OF NEW JERSEY

DATED: NOVEMBER 14, 2016

The Assembly Judiciary Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 3507 and 4098.

This committee substitute transfers all of the functions, powers, and duties pertaining to the licensing and oversight of bail agents and agencies from the Department of Banking and Insurance (DOBI) to the Department of Law and Public Safety, subject to the provisions of the “State Agency Transfer Act,” P.L.1971, c.375 (C.52:14D-1 et seq.). The substitute also amends P.L.2014, c.31 (C.2A:162-15 et seq.), concerning pretrial detention and conditions of pretrial release, to allow pretrial detention only for certain defendants charged with crimes of the first degree and crimes involving certain risks. The bill would allow defendants charged with other offenses the option of release on monetary bail or other forms of release.

#### LICENSING AND OVERSIGHT OF BAIL AGENTS AND AGENCIES

The substitute establishes a Bail Agent Enforcement Unit within the Department of Law and Public Safety. The unit would be responsible for the licensing and oversight of bail agents and agencies. The Bail Agent Enforcement Unit would be supervised by a chief of staff appointed by the Attorney General and would employ field investigators and administrative staff. The unit would be authorized to ensure that bail agents and agencies operate in accordance with current law and would investigate whether a bail agent or agency has committed criminal acts or offenses. In carrying out its functions and duties, the unit would be authorized to inspect the premises of any bail agency and to obtain a court order or warrant to seize and impound certain records in connection with an investigation. The substitute further authorizes the unit to work in coordination with the Superintendent of State Police to facilitate the arrest of any bail agent who engages in illegal activity. The Bail Agent Enforcement Unit would be directed to work in coordination with the Commissioner of DOBI to ensure that each bail agent and agency is complying with all laws relative to the negotiation, solicitation, or sale of bail bonds in this State.

The substitute requires the Bail Agent Enforcement Unit to issue licenses to any bail agent who meets certain criteria. As a condition of

licensure, a bail agent would be required to possess and display an identification card displaying the bail agent's photograph, license number, and any other information deemed appropriate by the Attorney General. In addition to completing a training course and passing a written competency exam, applicants for a license would be required to undergo a criminal history record background check. The Bail Agent Enforcement Unit would have authority to revoke the license of a bail agent under certain conditions. Bail agents licensed prior to the substitute's effective date would be entitled to a license issued by the Bail Agent Enforcement Unit and would be deemed in compliance with the education and criminal history requirements established by the substitute.

The substitute also makes it a crime to operate as a bail agent without a license. Under current law, a bail agent is prohibited from selling, soliciting, or negotiating a bail bond unless the bail agent is licensed to do so. In addition, current law provides for civil penalties that may be imposed against a person who performs these acts without the required license. Under the provisions of this substitute, a person commits a crime of the fourth degree if he operates as a bail agent or agency without a license. This penalty would be imposed in addition to any civil penalties imposed under current law. A crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

#### PRETRIAL RELEASE AND PRETRIAL DETENTION UNDER P.L.2014, c.31

This substitute makes several major changes to P.L.2014, c.31. That enactment: (1) reformed the manner in which determinations for bail and other forms of pretrial release are made; and (2) provided the courts with authority to deny pretrial release and instead order pretrial detention for certain criminal defendants. The provisions of the 2014 enactment concerning pretrial detention were authorized by a 2014 constitutional amendment (N.J. Const. (1947), Article I, paragraph 11) that takes effect January 1, 2017.

Under P.L.2014, c.31, eligible defendants charged with certain crimes are required to be detained for up to 48 hours so that the Pretrial Services Program, established by the Administrative Director of the Courts, can prepare a risk assessment with recommendations on conditions of release and the court can issue a pretrial release decision. An "eligible defendant" under the enactment is any person for whom a complaint-warrant is issued for an initial charge involving an indictable offense or disorderly persons offense.

The risk assessment is conducted for the purpose of making recommendations to the court concerning an appropriate pretrial release determination. Under the enactment, the court has the option to order the defendant's pretrial release on: (1) personal recognizance or on the execution of an unsecured appearance bond; (2) non-monetary conditions (such as remaining in the custody of a designated person, reporting regularly to a designated agency or pretrial services program,

or placement in home supervision); (3) monetary bail other than an unsecured appearance bond; or (4) detained in jail, upon motion of a prosecutor, pending a detention hearing.

Under the enactment, pretrial detention may be ordered for defendants charged with certain specified crimes if, after a hearing, the court finds clear and convincing evidence that no amount of monetary bail, non-monetary conditions of pretrial release or combination of monetary bail and conditions would reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process.

Under the enactment, the specified crimes that trigger the pretrial detention hearing are: (1) a crime of the first or second degree enumerated under subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2) (the "No Early Release Act"); (2) a crime for which the eligible defendant would be subject to an ordinary or extended term of life imprisonment; (3) any crime, if the defendant was previously convicted of two or more offenses described in categories (1) or (2) above; (4) any sex crime enumerated under paragraph (2) of subsection b. of section 2 of P.L.1994, c.133 (C.2C:7-2) or crime involving human trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-8) or P.L.2013, c.51 (C.52:17B-237 et al.) when the victim is a minor, or the crime of endangering the welfare of a child under N.J.S.2C:24-4; (5) any crime that imposes a mandatory minimum term of imprisonment and parole ineligibility, due to the use or possession of a firearm while in the course of committing or attempting to commit the crime, as set forth in subsection c. of N.J.S.2C:43-6; (6) any crime or offense involving domestic violence as defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19); or (7) any other crime for which the prosecutor believes there is a serious risk that the eligible defendant would not appear in court, would pose a danger to another person or the community, or would obstruct or attempt to obstruct justice or threaten, injure, or intimidate a prospective witness or juror.

#### CHANGES TO PRETRIAL RELEASE AND PRETRIAL DETENTION

The substitute limits the court's authority to order pretrial detention. Under the substitute, pretrial detention could be ordered only for defendants: *(1) charged with a crime of the first degree; or (2) charged with any other crime for which the prosecutor believes there are certain serious risks involved.* The bill enumerates those risks as follows: (a) that the eligible defendant will not appear in court; (b) that the eligible defendant will pose a danger to any other person or the community; or (c) that the eligible defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure or intimidate, a prospective witness or juror. The substitute grants all other defendants the initial option of being released on monetary bail following the issuance of a complaint-warrant.

For defendants who are not granted the initial option of release by monetary option, or are offered bail but unable to post the amount, the court, based on the results of a risk assessment, would order that the defendant be: (a) released on his own recognizance or on execution of an unsecured appearance bond; (b) released on non-monetary conditions; (c) released on monetary bail, or modified monetary bail if bail was previously set, or a combination of monetary bail and non-monetary conditions; or (d) detained in jail, upon motion of the prosecutor, pending a pretrial detention hearing.

The substitute provides that the court could impose monetary bail in addition to nonmonetary conditions if, in the court's discretion, a combination of monetary bail and conditions is necessary to facilitate the immediate and safe release of the defendant.

The substitute provides that bail agents would not be liable for the forfeiture of a bail bond if the court orders non-monetary conditions and monetary bail and the eligible defendant violated only the non-monetary conditions. However, under the substitute the bail agent or agency would be relieved from liability for a forfeiture of a bail bond when eligible defendant willfully fails to appear in court when required.

#### EFFECTIVE DATE

Sections 1 through 4 of the substitute, which transfers licensing and oversight of bail agents and agency to the Department of Law and Public Safety from the Department of Banking and Insurance would take effect on the first day of the 10th month following the date of enactment. Sections 5 through 12 of the substitute concerning pretrial detention and pretrial release would take effect December 30, 2016. The Attorney General, Commissioner of Banking and Insurance, and Administrative Director of the Courts may take any anticipatory administrative action in advance of those dates as shall be necessary for the implementation of this substitute.