

# ASSEMBLY, No. 2806

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 1, 2018

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**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,  
2 amending and supplementing P.L.2014, c. 31.

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

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7 1. P.L.2014, c.31 and sections 1 and 2 of P.L. , c.  
8 (C. )(pending before the Legislature as this bill) shall be known  
9 and cited as the “Restoring Judicial Discretion in Bail Setting Act.”

10

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

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

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

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

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

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

43 The purpose of P.L. , c. (C. )(pending before the  
44 Legislature as this bill) is to simply restore judicial discretion in the  
45 setting of monetary conditions of bail, which the constitutional  
46 amendment did not intend to eliminate, thereby returning the system

**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 to what the Legislature and voters ultimately intended it would be  
2 while simultaneously reducing the financial burden on the State and  
3 local governments.

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

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

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

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

47 (cf: P.L.2014, c.31, s.1)

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49 5. This act shall take effect immediately.

STATEMENT

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

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

This bill would provide for a findings and declarations section to P.L.2014, c.31, criminal justice reform law, to emphasize that the intent and purpose of the law is not to eliminate a judge’s discretion but rather to strengthen a judge’s discretion by allowing any combination of monetary bail and non-monetary bail as necessary.

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

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

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

The bill also provides that, notwithstanding any provision of law to the contrary including but not limited to directives, court rules, State statutes or otherwise, when a prosecutor does not seek to preventatively detain a criminal defendant, a judge setting bail for a defendant may impose any combination of monetary bail and non-monetary conditions which would reasonably assure the person’s appearance in court when required, or protect the safety of any

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1 other person or the community, or prevent the person from  
2 obstructing or attempting to obstruct the criminal justice process  
3 No restrictions, presumptions, court rules, administrative orders of  
4 court, or other laws shall prevent the judges of the State of New  
5 Jersey from having discretion to set any combination of monetary  
6 bail and non-monetary bail as necessary. A defendant or prosecutor  
7 shall have the right to request a financial condition of bail to be set  
8 and receive due consideration upon that request.

9 The bill would also amend section 1 of P.L.2014, c. 31  
10 (C.2A:162-15) to clarify that both monetary and non-monetary bail  
11 may be set in conjunction with other special conditions or the  
12 standard conditions of bail may.