



SPONSOR: Sen. Marshall & Rep. Keeley & Rep. Mitchell

DELAWARE STATE SENATE
147th GENERAL ASSEMBLY

SENATE BILL NO. 36

AN ACT PROPOSING AN AMENDMENT TO ARTICLE I, §12 OF THE DELAWARE CONSTITUTION OF 1897, AS AMENDED, RELATING TO CRIMINAL PROCEDURES.

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 §12, Article I of the Delaware Constitution of 1897 by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 11. Excessive bail or fines; cruel punishments; health of prisoners.

Section 11. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted; and in the construction of jails a proper regard shall be had to the health of prisoners.

§ 12. Right to bail; access to accused.

Section 12. All prisoners shall be bailable by sufficient sureties, unless for capital offenses when the proof is positive or the presumption great, or unless for other such felony offenses and under such other circumstances as may be prescribed by law when no condition or combination of conditions other than detention will reasonably assure the safety of any person or the community; and when persons are confined without bail on accusation for ~~such any~~ offenses their friends and counsel may at proper seasons have access to them.

SYNOPSIS

This Act is the first leg of a constitutional amendment that will modernize the bail provisions within the Delaware Constitution and clarify the power of the General Assembly and the Courts to define certain felony offenses for which and circumstances under which, pre-trial release on bail may not be available.

This Act provides that the constitutional amendment to Art. I, Sec. 12 of the Delaware Constitution proposed bill will: (1) retain the express declaration of a general right to have bail set in a criminal case; (2) provide that the only crimes for which bail must be withheld is (a) capital murder where the evidentiary proof is positive and presumption of the accusation great and (b) felony offenses determined by and under procedures prescribed by law; and (3) insure that one condition precedent to bail being withheld in non-capital cases must be a finding that no bail condition or combination of bail conditions other than detention will ensure the safety of another person or the community.

This change alone does not allow that any person charged with a non-capital crime can be held without bail and no person could be subject to a detention hearing in a non-capital case until the General Assembly revised Chapter 21 of Title 11 of the Delaware Code and the General Assembly and Courts "prescribed by law" the circumstances and procedures under which detention without bail may occur.

With this change, though, Delaware may move forward toward the type of modern bail system that has been increasingly adopted by other states through amendment of their state constitutions, when needed, and the development of statutory procedures that provide, in extreme cases, pre-trial detention without bail. Under current Delaware law, the only circumstance in which one may be detained without bail is when he or she is charged with capital murder.

This Act would have no effect on bail procedures and standards in capital cases. The fact that bail can only be

withheld in capital cases, however, is inconsistent with the evidence-based and informed decision-making that the General Assembly looks to adopt through the Justice Reinvestment Act. While granting of bail upon assessment of the needs of the accused and the community is always preferable, there will be that occasion where the pretrial risk assessment that informs release decisions suggests that detention is the appropriate course. A Delaware state court judge cannot order detention in such cases but only attempt to set the bail so high that a defendant cannot make it. This is the first step toward completing the pre-trial bail continuum.

Any legislation subsequently enacted or court procedures adopted pursuant to this bill would have to require individualized, fact-governed decision-making by the Court regarding detention in order to pass muster under the United States and Delaware State Constitutions.

Author: Senator Marshall