

New Jersey Bail Reform: Will It Work?

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Will New Jersey's new bail reform system effectively protect both the rights of defendants and the needs of the community?

In 2016, New Jersey voters passed a referendum that established a package of bail reforms to allow non-violent, low-risk defendants to stay out of jail while awaiting trial. In theory, the law, which went into effect on January 1, 2017, was designed to eliminate bail for a large group of individuals charged with minor offenses who posed no threat to the community. Before the law took effect, many people without the resources to post bail spent weeks, months and even years in jail before their matter reached trial. In fact, most individuals housed in New Jersey's jails were not serving sentences after conviction, but were simply awaiting trial. Conversely, suspects with sufficient financial means could post bail themselves or employ the services of a bail bondsman and have themselves released from jail almost immediately after an arrest. As proposed, the bail reform was intended to "level the playing field" so that people awaiting trial could remain free, regardless of their economic status.

The new bail system is based upon the idea that individuals charged with most crimes are presumed eligible for release. Law enforcement now makes an initial decision whether to charge the defendant on a summons or a warrant. When a warrant is issued, the defendant must be taken to a county jail. Probation services then prepares a recommendation to the court. The recommendation includes the level of monitoring that the court should impose until the defendant's first appearance.

The process is based upon an automated pre-trial risk assessment started by the police after fingerprints are obtained. A preliminary public safety assessment (PSA) is then created and information is made available to law enforcement so that a determination can be made to release or detain the accused until the matter is heard by a court. The PSA is influenced by many factors and involves an evaluation of criteria such as a "failure to appear" (FTA), a new criminal activity scale (NCA) and a new violent criminal activity (NVCA) indicator.

The risk assessment review process requires that a complaint warrant be sought for alleged violent or sexual offenses; if domestic violence, prior bail jumping or witness tampering have occurred; or if the individual charged is on probation for other serious crimes. After the court analyzes the information, a decision is made regarding pretrial release. The accused is entitled to legal representation at the time of the initial hearing. Individuals charged on a warrant are transported to the county jail and must be brought before a court within 48 hours. At that time, a decision regarding pretrial release must be made without “undue delay.”

At the defendant’s first appearance, the state may request special release conditions, to which the accused has the right to object. The state may also ask for pretrial detention. If the defendant is to be released on his/her own recognizance, the state may ask for specific conditions, including restraints against committing new offenses, restraints against contact with victims or witnesses, restraining orders, substance abuse intervention and monitoring, and/or the imposition of electronic monitoring, house arrest, or similar conditions.

The prosecutor may also seek detention for defendants charged with an indictable or no indictable offense involving domestic violence. The law has a general presumption against preventive detention except in homicide cases or in cases where the defendant is facing extended imprisonment. The law calls for a pre-trial release, which may be overcome only when the state establishes that no combination of conditions would reasonably assure the eligible defendant’s appearance in court when required.

Pretrial detention is ordered where the prosecution can establish the need for detention based upon the nature and circumstances of the offense, the strength of the state’s case, the history and criminal justice characteristics of the accused, the nature and seriousness of any danger to other persons or the community at large, or the risk of obstruction or attempt to obstruct the criminal justice process.

The new bail reform system is controversial. Many law enforcement agencies, including local police departments and county prosecutors’ offices, have complained about the system based upon the logistics and the increased costs. The system has also been criticized by bail bondsmen whose business has essentially been destroyed with the removal of the monetary bail system. Those who

support the reform, however, point to fewer lower-level defendants having to remain in county jails just because they could not post monetary bail.

There also have been legal challenges to bail reform filed by various groups. Additionally, criminal defense attorneys, and primarily the Office of the Public Defender, have accused prosecutors of withholding vital evidence useful to the defense in the detention hearing process. As a result, a state appeals court ruled in favor of the Office of the Public Defender, stating that prosecutors must release relevant police reports and other documents when they are seeking detention. That matter has been referred to the New Jersey Supreme Court for final consideration.

The system also provides for speedy trial deadlines so that suspects who are detained cannot be kept for more than 90 days before the case is sent to a grand jury. The speedy trial provision also provides that an accused cannot be detained for more than 180 days between indictment and trial. Those “limitations,” however, are subject to extensions and exclusion for “reasonable delays.” The law also provides that defendants generally cannot be held for more than 2 years between their initial detention and time of trial. Again, there are exceptions to that rule.

While it is too early to determine what effect the bail reform will have either on individual defendants or the community’s right to feel safe, all parties agree that there are significant problems to be addressed. This significant change in the law makes it critical for anyone charged with a crime to retain the services of an experienced defense attorney with extensive knowledge of criminal law and who is aware of the new bail reform act.