



# House of Representatives

General Assembly

**File No. 695**

January Session, 2017

Substitute House Bill No. 7044

*House of Representatives, April 24, 2017*

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING PRETRIAL JUSTICE REFORM.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 54-64a of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2017*):

4 (a) (1) Except as provided in subdivision (2) of this subsection and  
5 subsection (b) of this section, when any arrested person is presented  
6 before the Superior Court, said court shall, in bailable offenses,  
7 promptly order the release of such person upon the first of the  
8 following conditions of release found sufficient to reasonably ensure  
9 the appearance of the arrested person in court: (A) Upon [his]  
10 execution of a written promise to appear without special conditions,  
11 (B) upon [his] execution of a written promise to appear with  
12 nonfinancial conditions, (C) upon [his] execution of a bond without  
13 surety in no greater amount than necessary, (D) upon [his] execution  
14 of a bond with surety in no greater amount than necessary, but in no  
15 event shall a judge prohibit a bond from being posted by surety. In

16 addition to or in conjunction with any of the conditions enumerated in  
17 subparagraphs (A) to (D), inclusive, of this subdivision the court may,  
18 when it has reason to believe that the person is drug-dependent and  
19 where necessary, reasonable and appropriate, order the person to  
20 submit to a urinalysis drug test and to participate in a program of  
21 periodic drug testing and treatment. The results of any such drug test  
22 shall not be admissible in any criminal proceeding concerning such  
23 person.

24 (2) If the arrested person is charged with no offense other than a  
25 misdemeanor, the court shall not impose financial conditions of release  
26 on the person unless (A) the person is charged with a family violence  
27 crime, as defined in section 46b-38a, or (B) the person requests such  
28 financial conditions, or (C) the court makes a finding on the record that  
29 there is a likely risk that (i) the arrested person will fail to appear in  
30 court, as required, or (ii) the arrested person will obstruct or attempt to  
31 obstruct justice, or threaten, injure or intimidate or attempt to threaten,  
32 injure or intimidate a prospective witness or juror, or (iii) the arrested  
33 person will engage in conduct that threatens the safety of himself or  
34 herself or another person. In making a finding described in this  
35 subsection, the court may consider past criminal history, including any  
36 prior record of failing to appear as required in court that resulted in  
37 any conviction for a violation of section 53a-172 or any conviction  
38 during the previous ten years for a violation of section 53a-173 and any  
39 other pending criminal cases of the person charged with a  
40 misdemeanor.

41 [(2)] (3) The court may, in determining what conditions of release  
42 will reasonably ensure the appearance of the arrested person in court,  
43 consider the following factors: (A) The nature and circumstances of the  
44 offense, (B) such person's record of previous convictions, (C) such  
45 person's past record of appearance in court, [after being admitted to  
46 bail,] (D) such person's family ties, (E) such person's employment  
47 record, (F) such person's financial resources, character and mental  
48 condition, and (G) such person's community ties.

49       Sec. 2. Section 54-53a of the general statutes is repealed and the  
50 following is substituted in lieu thereof (*Effective July 1, 2017*):

51       (a) No person who has not made bail may be detained in a  
52 [community correctional center] correctional facility pursuant to the  
53 issuance of a bench warrant of arrest or for arraignment, sentencing or  
54 trial for an offense not punishable by death, for longer than forty-five  
55 days, unless at the expiration of the [forty-five days he] forty-five-day  
56 period the person is presented to the court having cognizance of the  
57 offense. On each such presentment, the court may reduce, modify or  
58 discharge the bail, or may for cause shown remand the person to the  
59 custody of the Commissioner of Correction. On the expiration of each  
60 successive forty-five-day period, the person may again by motion be  
61 presented to the court for such purpose.

62       (b) Notwithstanding the provisions of subsection (a) of this section,  
63 any person who has not made bail and is detained in a [community  
64 correctional center] correctional facility pursuant to the issuance of a  
65 bench warrant of arrest or for arraignment, sentencing or trial for an  
66 offense classified as a class D or E felony, [or as a misdemeanor,]  
67 except a person charged with a crime in another state and detained  
68 pursuant to chapter 964 or a person detained for violation of [his]  
69 parole pending a parole revocation hearing, shall be presented to the  
70 court having cognizance of the offense [within] not later than thirty  
71 days [of] after the date of [his] the person's detention, unless such  
72 presentment is waived by the person. On such presentment, the court  
73 may reduce, modify or discharge the bail or may for cause shown  
74 remand the person to the custody of the Commissioner of Correction.  
75 On the expiration of each successive thirty-day period, the person shall  
76 again be presented to the court for such purpose.

77       (c) (1) Notwithstanding the provisions of subsection (a) or (b) of this  
78 section, any person who has not made bail and is detained in a  
79 correctional facility for no offense other than a misdemeanor, except a  
80 person charged with a crime in another state and detained pursuant to  
81 chapter 964 or a person detained for violation of parole pending a

82 parole revocation hearing, shall be presented to the court having  
83 cognizance of the offense not later than fourteen days after the date of  
84 the person's arraignment, unless such presentment is waived by the  
85 person.

86 (2) If such person is detained for a misdemeanor that is not a family  
87 violence crime, as defined in section 46b-38a, on such presentment the  
88 court shall remove the financial conditions on the release of the person  
89 unless the court makes a finding on the record, pursuant to the  
90 provisions of subdivision (2) of subsection (a) of section 54-64a, as  
91 amended by this act.

92 (3) If such person is detained for a misdemeanor that is a family  
93 violence crime, as defined in section 46b-38a, on such presentment the  
94 court shall remove the financial conditions on the release of the person  
95 unless the court makes a finding on the record pursuant to the  
96 provisions of subdivision (2) of subsection (a) of section 54-64a, as  
97 amended by this act, that, without such conditions, there is a likely risk  
98 that (A) the person will fail to appear in court, as required, (B) the  
99 person will obstruct or attempt to obstruct justice or threaten, injure or  
100 intimidate or attempt to threaten, injure or intimidate a prospective  
101 juror or witness, or (C) the person will engage in conduct that  
102 threatens the safety of another person.

103 [(c)] (d) Notwithstanding the provisions of [subsections (a) and (b)  
104 of] this section, any person who has not made bail may be heard by the  
105 court upon a motion for modification of the bail at any time.

106 Sec. 3. (*Effective from passage*) The Under Secretary for Criminal  
107 Justice Policy and Planning of the Office of Policy and Management, in  
108 consultation with the Connecticut Sentencing Commission and the  
109 board of directors of the Bail Association of Connecticut, shall study  
110 the feasibility of establishing a program that provides assistance to  
111 indigent criminal defendants who are being detained on a pretrial  
112 basis in connection with allegations of having committed minor  
113 criminal offenses. Such study shall include, but not be limited to,  
114 exploration of possible funding sources for the establishment of such a

115 program. On or before January 1, 2018, the Under Secretary for  
116 Criminal Justice Policy and Planning of the Office of Policy and  
117 Management shall report on the results of the study, in accordance  
118 with the provisions of section 11-4a of the general statutes, to the joint  
119 standing committee of the General Assembly having cognizance of  
120 matters relating to the judiciary.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2017</i>	54-64a(a)
Sec. 2	<i>July 1, 2017</i>	54-53a
Sec. 3	<i>from passage</i>	New section

**JUD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 18 \$	FY 19 \$
Correction, Dept.	GF - Savings	See Below	See Below

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

This bill is anticipated to result in savings to the Department of Correction (DOC) as a result of changes to pretrial detention laws. The bill results in fewer offenders detained before trial and those detained are held for a shorter period of time. There are currently 388 pre-sentenced inmates that this bill potentially affects.

HB 7027, AA Concerning the State Budget for the Biennium Ending June 30, 2019, contains savings in DOC related to the closure of prison units and a prison facility totaling \$14.9 million in FY 18 and \$16.4 million in FY 19. This bill will reduce the pre-trial population and assist in efforts to close units and a facility.

This bill also requires the Office of Policy and Management to study the feasibility of establishing an assistance program for indigent criminal defendants being detained pretrial and results in no fiscal impact to the state.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future.

**OLR Bill Analysis**

**sHB 7044**

***AN ACT CONCERNING PRETRIAL JUSTICE REFORM.***

**SUMMARY**

This bill makes various changes in laws concerning pretrial detention for certain crimes. These include, among other things:

1. limiting the circumstances in which a court can impose financial conditions of release for someone charged only with a misdemeanor that is not a family violence crime;
2. generally shortening the period within which defendants who cannot make bail and who were charged only with a misdemeanor must receive a bail review hearing, from within 30 days after the person's detention to within 14 days after his or her arraignment;
3. requiring the court, at a bail review hearing for such a defendant, to remove the financial conditions on the person's release unless the court makes certain findings; and
4. barring courts from prohibiting a bond from being posted by surety for certain crimes.

The bill also requires the Office of Policy and Management's under secretary for criminal justice policy and planning, in consultation with the Connecticut Sentencing Commission and the Bail Association of Connecticut's board of directors, to study the feasibility of establishing an assistance program for indigent criminal defendants being detained before trial in connection with allegedly having committed minor crimes. The study must explore possible funding sources for the program. By January 1, 2018, the under secretary must report on the

study's results to the Judiciary Committee.

The bill also makes minor and technical changes.

EFFECTIVE DATE: July 1, 2017, except the study provisions are effective upon passage.

### **§ 1 — CONDITIONS OF RELEASE**

Under current law, when an arrested person is presented to court for a bailable offense, the court must promptly order the person's release on the first of the following conditions sufficient to reasonably ensure his or her appearance in court:

1. written promise to appear without special conditions,
2. written promise to appear with non-financial conditions,
3. bond without surety in no greater an amount than necessary, or
4. bond with surety in no greater an amount than necessary.

The bill bars a judge from prohibiting a bond from being posted by surety. This provision applies to offenses that are not certain serious crimes (see below).

In determining the conditions of release, the court can consider certain factors. Currently, one such factor is the person's prior record of appearance in court after being admitted to bail. The bill instead allows the court to consider such prior court appearances regardless of whether they occurred after the person was admitted to bail. As with the above provision, this bill excludes certain serious crimes from this change.

Specifically, these changes do not apply to individuals arrested for the following crimes:

1. a class A felony;
2. a class B felony, except for 1<sup>st</sup> degree promoting prostitution or



- 1<sup>st</sup> degree larceny;
3. a class C felony, except for 2<sup>nd</sup> degree promoting prostitution, bribery of a juror, or bribe receiving by a juror;
  4. the following class D felonies: 2<sup>nd</sup> degree assault, with or without a firearm; 2<sup>nd</sup> degree assault, with or without a firearm, of an elderly, blind, disabled, or pregnant person or a person with intellectual disability; 3<sup>rd</sup> degree sexual assault; 1<sup>st</sup> degree unlawful restraint; 3<sup>rd</sup> degree burglary, with or without a firearm; reckless burning; 3<sup>rd</sup> degree robbery; or criminal use of a firearm or electronic defense weapon; or
  5. a family violence crime.

By law, when presented with someone arrested for such a crime, the court must order release upon the first of certain conditions to reasonably ensure both the person's court appearance and that the safety of other people will not be endangered. In determining what conditions are appropriate, the court may consider additional factors beyond those allowed for other crimes (CGS § 54-64a(b)).

### ***Misdemeanor Defendants***

The bill prohibits a court from imposing financial conditions of release on a defendant charged only with a misdemeanor unless the (1) person is charged with a family violence crime, (2) person requested such conditions, or (3) court makes a finding on the record that there is a likely risk that any one of certain events will occur.

Specifically, these risks include that the person will:

1. fail to appear in court;
2. obstruct or attempt to obstruct justice, or threaten, injure, or intimidate a prospective witness or juror or attempt to do so; or
3. engage in conduct that threatens the safety of himself, herself, or someone else.

In making such a finding, the bill allows the court to consider the person's criminal history, including (1) any prior convictions for 1<sup>st</sup> degree failure to appear or (2) convictions during the preceding 10 years for 2<sup>nd</sup> degree failure to appear. The court may also consider the person's other pending criminal cases, if any.

## **§ 2 — BAIL REVIEW HEARING**

### ***Individuals Charged with Misdemeanors***

Current law generally requires a bail review hearing within 30 days after detention for a defendant who has not made bail and who is charged only with a misdemeanor. The bill shortens this period to within 14 days following the person's arraignment unless the person waives the return to court.

Under the bill, when the person is presented in court for the bail review hearing, the court must remove the financial conditions on the person's release unless the court finds on that record that there is a likely risk that the individual will:

1. fail to appear in court;
2. obstruct or attempt to obstruct justice, or threaten, injure, or intimidate a prospective witness or juror or attempt to do so; or
3. engage in conduct that threatens the safety of (a) someone else (for family violence misdemeanors) or (b) someone else, himself, or herself (for other misdemeanors).

Under the bill, these provisions do not apply to someone detained for (1) extradition due to criminal charges in another state or (2) violating parole pending a parole revocation hearing. By law, the bail review period for such defendants is 45 days.

Under existing law, unchanged by the bill, anyone who has not made bail may ask for a hearing on a motion to modify bail at any time.

### ***Individuals Charged with Class D or Class E Felonies***

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The bill specifies that defendants charged with a class D or E felony may waive their right to a bail review hearing.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 23    Nay 15    (04/04/2017)