

---

## OLR Bill Analysis

HJ 261

### ***RESOLUTION PROPOSING AN AMENDMENT TO THE STATE CONSTITUTION TO REVISE REQUIREMENTS RELATING TO THE OFFERING OF BAIL OR PRETRIAL RELEASE TO PERSONS ACCUSED OF A CRIME.***

#### **SUMMARY**

The Connecticut Constitution currently prohibits accused criminal defendants from being denied bail except for capital offenses in limited circumstances. (The exception is now obsolete.) This resolution, if passed, would amend the constitution to allow the court to hold arrested people in pretrial detention without bail when it finds that no pretrial release conditions (1) reasonably assure that the accused will appear in court when required, (2) protect the safety of others or the community, or (3) prevent the accused from obstructing or attempting to obstruct the criminal justice process.

The amendment also expressly authorizes the legislature to pass laws governing the procedures, terms, and conditions for granting or denying pretrial release. (The General Assembly has set procedures in existing law for courts to follow when granting bail, including authorizing the court to consider the safety of others when a person is charged with certain crimes. These statutes list criteria for the court to consider and list bail options, but they do not limit the court's ability to decide what bail is appropriate (see BACKGROUND).)

The resolution also makes technical changes to the article being amended and removes obsolete references to capital offenses and the death penalty.

As under the federal constitution, the state constitution, unchanged by the amendment, prohibits excessive bail.

The ballot designation to be used when the amendment is presented at the general election is: “Shall the Constitution of the State be amended to permit criminal defendants to be held in pretrial detention without release under circumstances where no conditions of pretrial release would (1) reasonably assure the appearance of the defendant in court when required, (2) protect the safety of any other person or the community, or (3) prevent the defendant from obstructing or attempting to obstruct the criminal justice process; and to delete obsolete language referencing capital offenses and crimes punishable by death?”

EFFECTIVE DATE: If the resolution passes by at least three-fourths of the membership of each house of the General Assembly, it will be placed on the 2024 general election ballot. If it passes by a majority of the membership of each house but less than three-fourths, it will be referred to the 2025 session of the legislature. If it passes in that session by a majority of each house, it will appear on the 2026 general election ballot. If a majority of those voting on the amendment in the general election approves it, the amendment will become part of the state constitution.

## **BACKGROUND**

### ***Release by Judicial Authority***

When an arrested person is presented to the court in bailable offenses, the statutes require the court to promptly order the person’s release on the first of the following conditions sufficient to reasonably assure the person’s 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 amount than necessary, or (4) bond with surety in no greater amount than necessary. (Court cannot require cash-only bail.)

The court may also order drug testing and treatment when it deems it necessary, reasonable, and appropriate.

***Criteria.*** In determining the conditions of release to reasonably assure the person’s appearance in court, the court may consider the following factors:

1. the nature and circumstances of the offense;
2. the person's previous convictions;
3. the person's past record of court appearances;
4. the person's family ties, employment record, financial resources, character, mental condition, and community ties; and
5. if the person was charged with 2nd degree violating conditions of release for a family violence crime, the heightened risk posed to victims if the person violates conditions of release.

***Heightened Criteria for Serious Offenses.*** Additional criteria apply to assure that another person's safety will not be endangered when the person is charged with any of the following crimes:

1. class A felony;
2. class B felony, except for 1st degree promoting prostitution and 1st degree larceny;
3. class C felony, except for 2nd degree promoting prostitution, bribing a juror, or bribe receiving by a juror;
4. class D felony for 2nd degree assault (with or without a firearm); 2nd degree assault of an elderly, blind, disabled, or pregnant person or person with intellectual disability (with or without a firearm); 3rd degree sexual assault; 1st degree unlawful restraint; 3rd degree burglary (with or without a firearm); reckless burning; 3rd degree robbery; or criminal use of a firearm or electronic defense weapon; or
5. family violence crime.

The court may consider the following criteria:

1. the nature and circumstances of the offense;
2. the person's record of previous convictions;

3. the person's past record of appearance in court after being admitted to bail;
4. the person's family ties;
5. the person's employment record;
6. the person's financial resources, character, and mental condition;
7. the person's community ties;
8. the number and seriousness of any pending charges;
9. the weight of the evidence;
10. the person's history of violence;
11. the person's previous convictions of similar offenses while released on bond;
12. the likelihood, based on the person's expressed intentions, that the person will commit another crime while released; and
13. the heightened risk posed to family violence victims by violations of conditions of release and court-issued protective orders.

The court must state on the record whether any of the above factors influenced the conditions of release that it chose to impose and any findings as to whether the person would pose a danger upon release.

***Misdemeanors.*** If the arrested person is only charged with a misdemeanor, state law prohibits the court from imposing financial conditions of release unless the following circumstances exist:

1. the person is charged with a family violence crime;
2. the person requests financial conditions; or
3. the court finds there is a likely risk that the person will (a) fail to appear in court; (b) obstruct or attempt to obstruct justice; (c) threaten, injure, or intimidate a prospective witness or juror, or

attempt to do so; or (d) engage in conduct that threatens the person's own safety or another person's safety.

When deciding whether to impose financial conditions of release, the court may consider the person's past criminal history, including (1) prior record of failure to appear in court, resulting in any conviction for failure to appear in the 1st degree, or during the previous 10 years, in the 2nd degree and (2) any other pending criminal cases against the person.

***Non-Financial Conditions.*** If the court decides to impose non-financial conditions of release, it must order the least restrictive conditions that reasonably assure the person's appearance in court and, if the person is arrested for one of the serious crimes listed above, that the safety of another person will not be endangered. Conditions may include the following:

1. supervision by a designated person or organization;
2. specific restrictions on travel, association, or residence;
3. not engaging in specific activities, including using or possessing dangerous weapons, intoxicants, or controlled substances;
4. providing sureties of the peace under supervision of a bail commissioner or a judicial branch intake, assessment, and referral specialist;
5. avoiding contact with an alleged victim and potential witnesses who may testify;
6. maintaining or seeking employment;
7. maintaining or beginning an educational program;
8. electronic monitoring; and
9. other conditions reasonably necessary to assure the person's appearance in court and that the safety of another person will not be endangered.

The court must state its reasons for imposing any nonfinancial conditions on the record (CGS § 54-64a).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 25 Nay 12 (03/27/2023)