
OLR Bill Analysis

HJ 171

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 proposes a constitutional amendment 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 on the procedures, terms, and conditions for granting or denying pretrial release. (The General Assembly has set procedures in law for courts to follow when granting bail, including requiring 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 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

By law, when an arrested person is presented to the court in bailable offenses, the court generally must 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, or (3) bond, with or without surety, in no greater amount than necessary. (Courts cannot require cash-only bail.)

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

General Criteria. In determining release conditions that 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 and past record of court appearances;
3. the person's family ties, employment record, financial resources, character, mental condition, and community ties; and
4. if the person was charged with 2nd degree violating conditions of release for a family violence crime, the heightened risk to victims if the person violates conditions of release.

Heightened Criteria for Serious Offenses. Additional criteria apply to reasonably assure the person's court appearance and that another person's safety will not be endangered when the person is charged with a class A felony; a class B or C felony, with limited exceptions; one of certain class D felonies; or a family violence crime.

The court may consider similar criteria as listed above, as well as the:

1. number and seriousness of any pending charges;
2. weight of the evidence;
3. person's history of violence;
4. person's previous convictions for similar offenses while released on bond;
5. likelihood, based on the person's expressed intentions, that the person will commit another crime while released; and
6. heightened risk to family violence victims by violations of conditions of release and court-issued protective orders.

Heightened Criteria for Serious Firearm Offenses. The law imposes different release conditions for people charged with a serious firearm offense, depending on whether he or she has prior convictions for certain crimes. In either case, in determining the conditions of release, the court may consider similar criteria as apply for other serious

offenses (see above).

For those without these convictions, the law allows prosecutors to petition the court to deem the person a serious risk to the safety of others. If the court grants the petition, the person may be released only upon depositing at least 30% of the bond amount directly with the court. And there are more stringent release conditions for people arrested for a serious firearm offense who have certain prior convictions. Defendants may only be released on bond in an amount needed to reasonably assure their appearance in court and others' safety. The law also (1) requires a prosecutor to petition for the arrested person to deposit at least 30% of the bond amount directly with the court and (2) establishes a rebuttable presumption that others' safety will be endangered unless the petition is granted.

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

1. person is charged with a family violence crime;
2. person requests financial conditions; or
3. 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, 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.

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 a serious offense, that the safety of another person will not be endangered. Conditions may include, among other things, (1) supervision by a designated person or organization; (2) specific restrictions on travel, association, or residence; (3) prohibited activities, including using or possessing dangerous weapons, alcohol, or drugs; (4) avoiding contact with an alleged victim and potential witnesses; and (5) electronic monitoring (CGS § 54-64a).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 25 Nay 12 (03/26/2024)