

2 A:162-12

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

(Bail--criminal cases)

NJSA: 2A:162-12

LAWS OF: 1994 **CHAPTER:** 144

BILL NO: S418

SPONSOR(S): Bubba and others

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Judiciary
SENATE: Law & Public Safety

AMENDED DURING PASSAGE: Yes Amendments denoted by
Third reprint enacted superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** August 29, 1994 Re-enacted 11-14-94
SENATE: June 20, 1994 Re-enacted 10-27-94

DATE OF APPROVAL: November 16, 1994

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: Yes

VETO MESSAGE: Yes

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clippings--attached:

"New state law restricts bail for serious crimes," 11-17-94, Asbury Park Press.

"Whitman signs limits...", 11-17-94, Star Ledger.

"10% bail limits set," 11-17-94, Trenton Times.

KBG:pp

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Senator BUBBA, Assemblyman Zecker,
Assemblywoman J. Smith and Assemblyman Solomon

- 1 AN ACT concerning bail for persons charged with certain
 2 criminal offenses and supplementing Title 2A of the New
 3 Jersey Statutes.
 4
- 5 BE IT ENACTED *by the Senate and General Assembly of the*
 6 *State of New Jersey:*
- 7 1. a. As used in this section:
 8 "Crime with bail restrictions" means a crime ³of the first or
 9 second degree charged³ under any of the following ³[.] sections:³
- 10 (1) Murder.....2C:11-3.
 - 11 (2) Manslaughter.....2C:11-4.
 - 12 ³[(3)] Death by Auto.....2C:11-5.
 - 13 ²[(4)] Assault.....2C:12-1.]²
 - 14 ²[(5)] ³[(4)² Recklessly Endangering
 - 15 Another Person.....2C:12-2.
 - 16 ²[(6)] (5)² Terroristic Threats.....2C:12-3.]³
 - 17 ²[(7)] ³[(6)²] (3)³ Kidnapping.....2C:13-1.
 - 18 ²[(8)] ³[(7)²] Criminal Restraint.....2C:13-2.
 - 19 ²[(9)] (8)² Criminal Coercion.....2C:13-5.]³
 - 20 ²[(10)] ³[(9)²] (4)³ Sexual Assault.....2C:14-2.
 - 21 ²[(11)] ³[(10)²] Criminal Sexual Contact.....2C:14-2.]³
 - 22 ²[(12)] ³[(11)²] (5)³ Robbery.....2C:15-1.
 - 23 ²[(13)] ³[(12)²] (6)³ Carjacking.....P.L.1993,
 - 24 c.221, s.1
 - 25 (C.2C:15-2)
 - 26 ²[(14)] ³[(13)²] (7)³ Arson and
 - 27 Related Offenses.....2C:17-1.
 - 28 ²[(15)] ³[(14)²] (8)³ Causing or Risking Widespread
 - 29 Injury or Damage....
 - 30 2C:17-2.
 - 31 ²[(16)] ³[(15)²] (9)³ Burglary.....2C:18-2.
 - 32 ²[(17)] ³[(16)²] (10)³ Theft by Extortion....2C:20-5.
 - 33 ²[(18)] ³[(17)²] (11)³ Endangering the Welfare of
 - 34 Children.....2C:24-4.
 - 35 ²[(19)] ³[(18)²] Endangering the Welfare of an
 - 36 Incompetent Person.....2C:24-7.]³
 - 37 ²[(20)] Threats and Other Improper Influence in
 - 38 Official and Political Matters.....2C:29-1.
 - 39 (21) Obstructing Administration of Law or Other
 - 40 Governmental Function.....2C:29-1.]²

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLP committee amendments adopted February 24, 1994.

² Senate floor amendments adopted June 13, 1994.

³ Senate amendments adopted in accordance with Governor's recommendations October 20, 1994.

- 1 2[(22)] 3[(19)²] (12)³ Resisting Arrest; Eluding
- 2 Officer.....2C:29-2.
- 3 2[(23)] 3[(20)²] Hindering Apprehension or
- 4 Prosecution.....2C:29-3.]³
- 5 2[(24)] 3[(21)²] (13)³ Escape.....2C:29-5.
- 6 2[(25)] 3[(22)²] Implements of Escape;
- 7 Other Contraband.....2C:29-6.
- 8 2[(26)] (23)² Bail Jumping; Default in Required
- 9 Appearance.....2C:29-7.]³
- 10 2[(27)] 3[(24)²] (14)³ Corrupting or Influencing a
- 11 Jury.....2C:29-8.
- 12 2[(28)] 3[(25)²] Riot; Failure to Disperse....2C:33-1.]³
- 13 2[(29)] Placing Signs or Displays that Imply
- 14 Threats of Violence.....P.L.1981,
- 15 c.282, s.1
- 16 (C.2C:33-11).
- 17 (30) Desecrating Religious or Sectarian
- 18 Premises.....P.L.1981,
- 19 c.282, s.2
- 20 (C.2C:33-11).]²
- 21 2[(31)] 3[(26)²] (15)³ Possession of Weapons for
- 22 Unlawful Purposes.....2C:39-4.
- 23 2[(32)] 3[(27)²] (16)³ Weapons Training for Illegal
- 24 Activities.....P.L.1983,
- 25 c.229, s.1
- 26 (C.2C:39-14).
- 27

28 "Crime with bail restrictions" also includes any ³first or second

29 degree³ drug-related crimes under chapter 35 ³[or chapter 36]³ of

30 Title 2C of the New Jersey Statutes ³[;] and any first or second

31 degree³ racketeering ³crimes³ under chapter 41 of Title 2C of the

32 New Jersey Statutes ³[and any violation of a protective order issued

33 pursuant to the provisions of P.L.1985, c.250 (C.2C:28-5.1 et seq.)]³.

34 b. ³[A] Subject to the provisions of subsection c. of this

35 subsection, a³ person charged with a crime with bail restrictions

36 may post the required amount of bail ³only³ in the form of:

- 37 (1) Full cash;
- 38 (2) A surety bond executed by a corporation authorized under
- 39 chapter 31 of Title 17 of the Revised Statutes; or
- 40 (3) A bail bond secured by real property situated in this State
- 41 with an unencumbered equity equal to the amount of bail
- 42 undertaken plus ¹[\$5,000.00] \$20,000¹.

43 c. ³[A court may designate the amount of bail without

44 designating the form in which the bail may be posted. When the

45 court does not designate the form, bail may be posted in any

46 combination of the forms authorized in subsection b. of this section]

47 A defendant may post bail in any combination of forms authorized

48 in subsection b. of this section provided the court does not direct

49 otherwise³.

50 d. When bail is posted in the form of a bail bond secured by real

51 property, the owner of the real property, whether the person is

52 admitted to bail or a surety, shall also file an affidavit containing:

- 53 (1) A legal description of the real property;
- 54 (2) A description of each encumbrance on the real property;

1 (3) The market value of the unencumbered equity owned by the
2 affiant ¹as determined in a full appraisal conducted by an appraiser
3 licensed by the State of New Jersey¹; and

4 (4) A statement that the affiant is the sole owner of the
5 unencumbered equity.

6 e. Nothing herein is intended to preclude a court from releasing
7 a person on the person's own recognizance when the court
8 determines that such person is deserving.

9 ³[2. When a person charged with a criminal offense posts bail,
10 \$10 of the total amount required to be posted as bail shall be paid in
11 cash as a nonrefundable bail fee. The bail fee shall be forwarded to
12 the State Treasury to be deposited in a separate account for use by
13 the Violent Crimes Compensation Board in satisfying claims filed
14 under provisions of the "Criminal Injuries Compensation Act of
15 1971," P.L.1971, c.317 (C.52:4B-1 et seq.). The bail fee shall not be
16 taken from new or additional bail posted pending an appeal of a
17 conviction if a bail fee has already been taken from bail posted
18 prior to that conviction. ¹The bail fee shall not apply to any bail
19 posted prior to the effective date of this act.¹³

20 ³[3.] 2.³ This act shall take effect ³[immediately] 90 days after
21 enactment³.

22
23
24
25
26 _____
27 Prescribes the form of bail which may be posted in certain criminal
cases; establishes a bail fee in all criminal cases when bail is posted.

1 satisfying claims filed under provisions of the "Criminal Injuries
2 Compensation Act of 1971," P.L.1971, c.317 (C.52:4B-1 et seq.).
3 The bail fee shall not be taken from new or additional bail posted
4 pending an appeal of a conviction if a bail fee has already been
5 taken from bail posted prior to that conviction.

6 3. This act shall take effect immediately.
7
8

9 STATEMENT
10

11 Under the provisions of this bill, certain crimes would be
12 designated as crimes with bail restrictions. Those crimes would
13 include offenses such as murder, kidnapping, burglary, arson,
14 drug-related crimes, racketeering and robbery. The bill provides
15 that persons charged with a crime with bail restrictions would
16 only be permitted to post bail in one of these forms: full cash, a
17 surety bond executed by a licensed corporation, or a bail bond
18 secured by real property.

19 When a bail bond secured by real property is posted, the
20 property must have an unencumbered equity equal to the amount
21 of bail undertaken plus \$5,000. At the time bail is posted, the
22 owner of the real property must file an affidavit containing a
23 description of the property and of each lien on that property, the
24 market value of the unencumbered equity and a statement that
25 the affiant is the sole owner of that equity.

26 This bill would eliminate the current practice established by
27 court rule whereby a deposit in court of cash in the amount of
28 10% of the bail fixed may be accepted in lieu of full cash or a
29 surety or bail bond. Nothing in the bill, however, is intended to
30 preclude a court from releasing a person on the person's own
31 recognizance when the court determines that such person is
32 deserving.

33 In all cases where a defendant is required to post bail, the bill
34 also would require that \$10 of the bail posted be forwarded to the
35 State Treasury for use by the Violent Crimes Compensation
36 Board in compensating victims of violent crimes.
37
38
39

40
41 Prescribes the form of bail which may be posted in certain
42 criminal cases; establishes a bail fee in all criminal cases when
43 bail is posted.

ASSEMBLY JUDICIARY, LAW AND
PUBLIC SAFETY COMMITTEE

STATEMENT TO

[SECOND REPRINT]

SENATE, No. 418

STATE OF NEW JERSEY

DATED: JUNE 27, 1994

The Assembly Judiciary, Law and Public Safety Committee reports favorably Senate Bill No. 418 (2R).

This bill would designate certain crimes as crimes with bail restrictions. Those crimes would include offenses such as murder, kidnapping, burglary, arson, drug-related crimes, racketeering and robbery. Under the provisions of the bill, persons charged with a crime with bail restrictions would only be permitted to post bail in one of these forms: full cash; a surety bond executed by a licensed corporation, or a bail bond secured by real property.

When a bail bond secured by real property is posted, the property must have an unencumbered equity equal to the amount of bail undertaken plus \$20,000.00. At the time bail is posted, the owner of the real property must file an affidavit containing a description of the property and of each lien on that property, the market value of the unencumbered equity, as determined by a full appraisal by an appraiser licensed in this State, and a statement that the affiant is the sole owner of that equity.

Enactment of this bill would mean the elimination of the present practice established by court rule, whereby a deposit in court of cash in the amount of 10% of the bail fixed may be accepted in lieu of full cash or a surety or bail bond for persons charged with a crime with bail restrictions. Nothing in the bill, however, is intended to preclude a court from releasing a person on the person's own recognizance when the court determines that such person is deserving.

This bill would also require in all cases where a defendant is required to post bail, that \$10.00 of the bail posted be forwarded to the State Treasury for use by the Violent Crimes Compensation Board in compensating victims of violent crimes. This fee would not apply to any bail posted prior to the effective date of this bill.

This bill is identical to the Assembly Committee Substitute for Assembly Bills Nos. 526/212.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 418

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 24, 1994

The Senate Law and Public Safety Committee favorably reports with committee amendments Senate Bill No. 418.

Under the provisions of this bill as amended and released by the committee, certain crimes would be designated as crimes with bail restrictions. Those crimes would include offenses such as murder, kidnapping, burglary, arson, drug-related crimes, racketeering and robbery. The bill provides that persons charged with a crime with bail restrictions would only be permitted to post bail in one of these forms: full cash, a surety bond executed by a licensed corporation, or a bail bond secured by real property.

When a bail bond secured by real property is posted, the property must have an unencumbered equity equal to the amount of bail undertaken plus \$20,000. At the time bail is posted, the owner of the real property must file an affidavit containing a description of the property and of each lien on that property, the market value of the unencumbered equity and a statement that the affiant is the sole owner of that equity.

This bill would eliminate the current practice established by court rule whereby a deposit in court of cash in the amount of 10% of the bail fixed may be accepted in lieu of full cash or a surety or bail bond. Nothing in the bill, however, is intended to preclude a court from releasing a person on the person's own recognizance when the court determines that such person is deserving.

In all cases where a defendant is required to post bail, the bill also would require that \$10 of the bail posted be forwarded to the State Treasury for use by the Violent Crimes Compensation Board in compensating victims of violent crimes.

The committee amended the bill to provide that when a person charged with a crime with bail restrictions posts bail in the form of a bail bond secured by real property, the property must have an unencumbered equity equal to the amount of bail plus \$20,000. As originally drafted, the property was required to have unencumbered equity equal to the bail plus \$5000. The amendments also provide that the market value of the property be determined in a full appraisal by an appraiser licensed in this State. The committee further amended the bill to provide that the \$10 fee would not apply to any bail posted prior to the bill's effective date.

This bill was prefiled for introduction in the 1994 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

FISCAL NOTE TO

[FIRST REPRINT]

SENATE, No. 418

STATE OF NEW JERSEY

DATED: June 13, 1994

Senate Bill No. 418 (1R) of 1994 provides that persons charged with a crime with bail restrictions would only be permitted to post bail in one of these forms: full cash, a surety bond executed by a licensed corporation, or a bail bond secured by real property. Crimes designated as crimes with bail restrictions would include offenses such as murder, kidnapping, burglary, arson, drug-related crimes, racketeering and robbery.

This bill would eliminate the current practice established by court rule whereby a deposit in court of cash in the amount of 10 percent of the bail fixed may be accepted in lieu of full cash or a surety or bail bond. The court may also release a person on the person's own recognizance when the court determines that such person is deserving.

In all cases where a defendant is required to post bail, the bill also would require that \$10 of the bail posted be forwarded to the State Treasury for use by the Violent Crimes Compensation Board in compensating victims of violent crimes.

The Administrative Office of the Courts (AOC) states that since this bill encompasses 32 different offenses, it is impossible to assess the total impact of lost interest revenue to the State and counties or the total increase in the county prison population. However, in recent correspondence, the AOC has noted that if only one-third of offenders who currently post ten percent bail cannot raise the non-refundable bond premium that sureties require, the county jail population, statewide, will increase by 4,000 - 5,000 inmates. The AOC notes that in the long term this population may lessen as judges adjust bail practices, but the impact will continue for a significant period.

Currently, bail funds that are on deposit with the counties earn interest revenue for the courts until they are returned to the defendant. All forfeited bail funds become court revenue. The AOC states that since the bill eliminates the 10 percent bail option for all of the crimes listed in the bill, all interest revenue and forfeiture funds would be lost. For drug offenses alone, the AOC estimates that the interest bearing principal on deposit Statewide was \$5.0 million.

The Office of Legislative Services concurs.

This fiscal note has been prepared pursuant to P.L.1980, c.67.

#

October 13, 1994

SENATE BILL NO. 418 (SECOND REPRINT)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 418 (Second Reprint) with my recommendations for reconsideration.

A. Summary of Bill

Senate Bill No. 418 (Second Reprint) would eliminate the ten percent (10%) cash bail option established pursuant to New Jersey Court Rule 3:26-4(g) for a criminal offense defined by the bill as a "crime with bail restrictions." A "crime with bail restrictions" includes twenty-seven crimes listed in the bill as well as all crimes involving drugs, racketeering or any violation of a protective order issued by a court pursuant to N.J.S.A. 2C:28-5.1 et seq. The bill provides that persons charged with a crime with bail restrictions may post bail only in the form of full cash, a surety bond executed by a corporation authorized under chapter 31 of Title 17 of the Revised Statutes, or a bail bond secured by real property situated in the State with an unencumbered equity equal to the amount of bail undertaken plus \$20,000.

The bill also provides that all persons posting bail must pay a nonrefundable \$10.00 bail fee. The nonrefundable bail fee is to be used by the Violent Crimes Compensation Board in satisfying claims filed under the provisions of the "Criminal Injuries Compensation Act of 1971" (C.52:43-1 et seq.).

The bill provides for an immediate effective date.

B. Recommended Action

I agree with the Legislature and the proponents of this bill that a person charged with a serious offense should not be permitted to post only ten percent of the bail set by a court. The amount of bail set for a person charged with a serious offense should be adequate to ensure that the person will return to court and not become a fugitive from justice. I believe, however, that the bail restrictions imposed by this legislation should be limited to crimes of the first and second degree. Such a limitation would accomplish the purpose of the bill, which is to decrease the fugitive rate for persons charged with serious offenses, and not result in a substantial burden to county prison facilities.

Additionally, I commend the Legislature on its efforts to supplement the funding of the Violent Crimes Compensation Board by imposing upon defendants a nonrefundable \$10.00 bail fee. However, I am advised by my chief counsel that such a fee is unconstitutional as it ignores the presumption of innocence to which defendants are entitled. Accordingly, I recommend elimination of this provision of the bill.

I also recommend that the bill's effective date be delayed for 90 days to provide counties with an opportunity to plan for any increases in the jail population.

For these reasons, I herewith return Senate Bill No. 418 (Second Reprint) and recommend that it be amended as follows:

Page 1, Section 1, Line 8: After "crime" insert "of the first or second degree charged"

Page 1, Section 1, Line 9: After "following" insert "sections:" and delete "."

Page 1, Section 1, Line 12: Delete in entirety

Page 1, Section 1, Lines 14-15: Delete in entirety

Page 1, Section 1, Line 16: Delete "(6)" and insert "(3)"

Page 1, Section 1, Lines 17-18: Delete in entirety

Page 1, Section 1, Line 19: Delete "(9)" and insert "(4)"

Page 1, Section 1, Line, 20: Delete in entirety

Page 1, Section 1, Line 21: Delete "(11)" and insert "(5)"

Page 1, Section 1, Line 22: Delete "(12)" and insert "(6)"

Page 1, Section 1, Line 25: Delete "(13)" and insert "(7)"

Page 1, Section 1, Line 26: Delete "(14)" and insert "(8)"

Page 1, Section 1, Line 28: Delete "(15)" and insert "(9)"

Page 1, Section 1, Line 29: Delete "(16)" and insert "(10)"

Page 1, Section 1, Line 30: Delete "(17)" and insert "(11)"

Page 1, Section 1, Lines 31-32: Delete in entirety

Page 1, Section 1, Line 37: Delete "(19)" and insert "(12)"

Page 1, Section 1, Line 38: Delete in entirety

Page 1, Section 1, Line 39: Delete "(21)" and insert "(13)"

Page 1, Section 1, Lines 40-41: Delete in entirety

Page 2, Section 1, Lines 1-2: Delete in entirety

Page 2, Section 1, Line 3: Delete "(24)" and insert "(14)"

Page 2, Section 1, Line 4: Delete in entirety

Page 2, Section 1, Line 13: Delete "(26)" and insert "(15)"

Page 2, Section 1, Line 15: Delete "(27)" and insert "(16)"

Page 2, Section 1, Line 20: After "any" insert "first or second degree"

Page 2, Section 1, Line 21: After "chapter 35" delete "or chapter 36"

Page 2, Section 1, Line 22: After "Statutes" delete ";" and insert "and any first or second second degree" and after "racketeering" insert "crimes"

Page 2, Section 1, Lines 23-24: After "Statutes" delete "and any violation of a protective order issued pursuant to the provisions of P.L. 1985, c.250 (C.2C:28-5.1 et seq.)"

Page 2, Section 1, Line 25:

After "b." delete "A" and insert "Subject to subsection c. of this section, a"

Page 2, Section 1, Lines 26:

After "bail" insert "only"

Page 2, Section 1, Lines 33-37:

After "c." delete in entirety and insert "A defendant may post bail in any combination of forms authorized in subsection b. of this section provided the court does not direct otherwise."

Page 2, Section 2, Lines 51-54:

After "2." delete in entirety

Page 3, Section 2, Lines 1-8:

Delete in entirety

Page 3, Section 3, Line 9:

Delete "3." and after "effect" delete "immediately" and insert "90 days after enactment"

Respectfully,

/s/ Christine Todd Whitman

GOVERNOR

Attest:

/s/ Peter Verniero

Chief Counsel to the Governor