
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1092 Session of
2017

INTRODUCED BY McCLINTON, BULLOCK, YOUNGBLOOD, KINSEY, SOLOMON,
V. BROWN, READSHAW, PASHINSKI, MADDEN AND COX, APRIL 7, 2017

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 7, 2017

AN ACT

1 Authorizing eligible counties to establish pretrial service
2 programs; providing for bail and detention prior to trial;
3 and imposing powers and duties on the Pennsylvania Commission
4 on Crime and Delinquency.

5 TABLE OF CONTENTS

6 Chapter 1. Preliminary Provisions

7 Section 101. Short title.

8 Section 102. Legislative intent.

9 Section 103. Definitions.

10 Chapter 3. Pretrial Service Programs

11 Section 301. Authorization.

12 Section 302. Risk assessment.

13 Section 303. Pretrial diversion.

14 Section 304. Judicial review.

15 Chapter 5. Bail and Detention Prior to Trial

16 Section 501. Monetary bail.

17 Section 502. Nonmonetary bail.

18 Section 503. Penalties.

19 Section 504. Right to counsel.

1 Chapter 7. Administrative Provisions

2 Section 701. Commission.

3 Section 702. Funding and audits.

4 Section 703. Prohibitions.

5 Section 704. Continued eligibility.

6 Chapter 9. Miscellaneous Provisions

7 Section 901. Training.

8 Section 902. Annual report.

9 Section 903. Effective date.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 CHAPTER 1

13 PRELIMINARY PROVISIONS

14 Section 101. Short title.

15 This act shall be known and may be cited as the Pilot
16 Pretrial Reform Act.

17 Section 102. Legislative intent.

18 The General Assembly finds that:

19 (1) The establishment of a pretrial service program
20 improves public safety, reduces corrections costs and
21 produces more effective outcomes for the betterment of the
22 community.

23 (2) There is a need for neutral, fact-driven entities to
24 provide accurate and timely information to assist courts in
25 making informed decisions regarding bond, competency and
26 treatment options.

27 (3) Many individuals imprisoned in correctional
28 institutions in this Commonwealth are simply awaiting trial
29 and have not been convicted of a crime.

30 (4) Indigent defendants remaining imprisoned due to an

1 inability to fulfill financial bail conditions present an
2 unnecessary financial burden to taxpayers.

3 (5) Excessive bail practices and unnecessary detention
4 also present constitutional concerns to the citizens of this
5 Commonwealth.

6 Section 103. Definitions.

7 The following words and phrases when used in this act shall
8 have the meanings given to them in this section unless the
9 context clearly indicates otherwise:

10 "Commission." The Pennsylvania Commission on Crime and
11 Delinquency.

12 "Correctional institution." As defined in 61 Pa.C.S. § 102
13 (relating to definitions).

14 "Eligible county." A county of the first class, second
15 class, second class A or third class.

16 "Nonprofit program." A not-for-profit human service
17 organization that provides treatment, guidance, counseling,
18 training or rehabilitation services to individuals, families or
19 groups.

20 "Participating county." An eligible county that establishes
21 a pretrial service program.

22 "Program." A pretrial service program established by a
23 participating county under this act.

24 "Released individual." An individual who is charged with a
25 criminal offense and released from custody by a county prior to
26 trial or adjudication.

27 CHAPTER 3

28 PRETRIAL SERVICE PROGRAMS

29 Section 301. Authorization.

30 (a) General rule.--An eligible county may establish and

1 operate a pretrial service program within an appropriate
2 department or system as designated by the county.

3 (b) Purpose.--A program shall be developed, implemented and
4 operated for the following purposes:

5 (1) To protect society and promote efficiency and ensure
6 equity during arraignment and bail determination.

7 (2) To provide evidence-based bail recommendations to
8 judicial officers that assess an offender's risk to public
9 safety and likelihood to appear in court if released pending
10 trial.

11 (3) To provide opportunities for defendants who
12 demonstrate special needs to receive services that enhance
13 their ability to become contributing members of the
14 community.

15 (c) Responsibilities.--A program shall:

16 (1) Conduct preliminary investigation and risk
17 assessment on all defendants arrested on new charges.

18 (2) Present accurate information to a judicial officer
19 related to a defendant's risk of failing to appear in court
20 or potential threats to the safety of the community.

21 (3) Develop and provide appropriate and effective
22 supervision for all individuals released to the program.

23 (4) Develop a procedure for the supervision of released
24 individuals, which may include, but not be limited to,
25 halfway houses, addiction treatment centers and counseling
26 services, sufficient to respond to the risks and problems
27 associated with released defendants.

28 (5) Monitor the compliance of released individuals with
29 the requirements of assigned release conditions and develop
30 relationships with alternative programs such as problem

1 solving programs or mental health support systems.

2 (6) Inform the court of apparent violations of pretrial
3 release conditions or arrests of released individuals pending
4 trial and recommend modification of release conditions.

5 (7) Review the status of detained individuals on an
6 ongoing basis for changes in eligibility for release options.

7 (8) Utilize an accurate information management system to
8 support the use of a risk assessment, release conditions,
9 selection, compliance monitoring, detention review functions
10 and data analysis.

11 (9) Refer conditionally released individuals to sources
12 that may increase the likelihood of compliance with
13 conditions and decrease a likelihood of rearrests, including,
14 but not limited to, employment or housing programs, medical,
15 drug, mental or other health treatment or legal or other
16 needed services.

17 (10) Remind released individuals of their court dates.

18 Section 302. Risk assessments.

19 (a) Duty to develop.--A participating county shall develop
20 or adopt a validated risk assessment.

21 (b) Purpose.--In all cases where a defendant is in custody
22 and charged with a criminal offense, the program shall conduct
23 an investigation for the following purposes:

24 (1) To assess whether the defendant is low risk,
25 moderate risk or high risk for failing to appear in court or
26 posing potential danger to the community.

27 (2) To collect information which may be crucial to
28 determine a defendant's risk to flee.

29 (3) To collect information that may be crucial to
30 determine a defendant's risk to the safety of the community.

1 (4) To devise a comprehensive report to be reviewed by
2 the court when setting bail.

3 (c) Interview process.--An individual who is arrested in a
4 participating county shall be offered a pretrial interview,
5 unless the validated pretrial risk assessment tool can be
6 completed without an interview. If the individual does not
7 refuse the pretrial interview, the program shall question the
8 individual. Following the interview, the program shall prepare a
9 comprehensive risk assessment report with recommendations on
10 conditions of release, if needed.

11 (d) Information to be provided.--If the validated risk
12 assessment requires an interview, the interviewer shall inform
13 the defendant, prior to the interview and an investigation or
14 collection, that:

15 (1) All risk assessment interviews are voluntary.

16 (2) Penalties may be imposed for providing false
17 information during interviews.

18 (3) Risk assessments are intended solely to assist in
19 determining pretrial release options for defendants.

20 (4) Information discovered and considered in formulating
21 recommendations to the court will be provided to the judicial
22 officer.

23 (5) Information obtained from or concerning the
24 defendant by a pretrial program shall be disclosed only to
25 the defendant, counsel for the defendant, the issuing
26 authority or judge setting bail, the attorney for the
27 Commonwealth and the county's department of probation and
28 parole preparing a presentence report regarding the
29 defendant. The information shall not be disclosed or used
30 except for the purposes relating to the defendant's bail or

1 presentence report about the defendant, or in a prosecution
2 based on the falsity of the information, or for impeachment
3 purposes to the extent permitted by law.

4 (6) Interviewers and other staff members of the program
5 are not exempt from subpoena and there should be no
6 expectation of privacy or privileged information.

7 (e) Investigatory focus.--Program investigations shall focus
8 on assembling reliable and objective information relevant to
9 determining release options. Risk assessment interviews shall
10 exclude questions relating to the events or details of the
11 current charge but may consider:

12 (1) The nature of circumstances of the charge, when
13 relevant to release conditions.

14 (2) Character, physical or mental condition, family
15 ties, employment, financial resources, length of residence in
16 community, community ties, past conduct, history relating to
17 drug or alcohol abuse, criminal history and record concerning
18 appearance at court proceedings.

19 (3) Whether, at the time of the current offense or
20 arrest, the defendant is currently on probation or parole or
21 on other release pending trial.

22 (4) The availability of persons who agree to assist the
23 defendant attending court.

24 (5) Information voluntarily provided by the defendant.

25 (6) Facts justifying a concern that the defendant will
26 fail to attend court or pose a threat to the community.

27 (7) Factors that may demonstrate the defendant's
28 eligibility for conditional release, diversion or alternate
29 adjudication release options.

30 (f) Right of refusal.--Risk assessment interviews shall be

1 voluntary. An individual has a right to refuse questioning
2 during the interview.

3 (g) No unnecessary delay in process.--The program shall make
4 a pretrial release recommendation for all defendants arrested on
5 new charges without unnecessary delay.

6 (h) Assessment report.--The program shall provide an in-
7 depth assessment report to be given to judges as prescribed by
8 statute. The report shall include the risk assessment and
9 additional relevant background information that was considered,
10 including, but not limited to:

- 11 (1) Ability to confirm identity.
- 12 (2) Information provided by the defendant.
- 13 (3) Nature of the charge.
- 14 (4) History of failure to report or appear in court.
- 15 (5) Criminal history.
- 16 (6) Information contained in pretrial supervision
17 records.
- 18 (7) Information provided by references regarding drug
19 use, mental health or additional relevant information.
- 20 (8) Miscellaneous information that was collected,
21 considered and could aid in the determination of the most
22 effective release decision.

23 Section 303. Pretrial diversion.

24 (a) Establishment.--The program may develop, expand or
25 participate in diversionary options that provide alternatives to
26 criminal charge with the intent to effectively avert individuals
27 into programs that produce beneficial results for the individual
28 and the community.

29 (b) Recommendations.--Program interviewers may, through the
30 risk assessment process, make recommendations about efficient

1 release options that may incorporate direct referrals of
2 diversionary suggestions, including, but not limited to:

- 3 (1) Mental health services.
- 4 (2) Drug and alcohol rehabilitation or treatment.
- 5 (3) Accelerated Rehabilitative Disposition.
- 6 (4) Specialty courts.
- 7 (5) Anger management and other counseling.
- 8 (6) Additional human service agencies.

9 (c) Diversionary resources.--A participating county may work
10 with public or nonprofit organizations to develop or enhance
11 diversionary services.

12 (d) Eligibility.--Defendants may be eligible to enroll in a
13 diversionary program based on the recommendation of the
14 assessment report or the judicial officer.

15 Section 304. Judicial review.

16 (a) Risk assessment report.--The court in a participating
17 county shall review the program's risk assessment report and
18 recommendations on the least restrictive conditions of release
19 prior to a pretrial release decision for an eligible defendant.

20 (b) Least restrictive conditions.--

21 (1) When determining a bail decision, the judicial
22 officer shall impose the least restrictive conditions that
23 will reasonably ensure a defendant's attendance at future
24 court proceedings and enhance public safety.

25 (2) In order to determine whether to release a defendant
26 and what conditions, if any, to impose, the bail authority
27 shall consider all available information as that information
28 is relevant to the defendant's appearance or nonappearance at
29 subsequent proceedings, or compliance or noncompliance with
30 the conditions of the bail bond, including information about:

1 (i) The nature of the offense charged and any
2 mitigating or aggravating factors that may bear upon the
3 likelihood of conviction and possible penalty.

4 (ii) The defendant's employment status and history
5 and financial condition.

6 (iii) The nature of the defendant's family
7 relationships.

8 (iv) The length and nature of the defendant's
9 residence in the community and any past residences.

10 (v) The defendant's age, character, reputation,
11 mental condition and whether addicted to alcohol or
12 drugs.

13 (vi) If the defendant has previously been released
14 on bail, whether he or she appeared as required and
15 complied with the bail conditions.

16 (vii) Whether the defendant has a record of flight
17 to avoid arrest or prosecution or of escape or attempted
18 escape.

19 (viii) The defendant's prior criminal record.

20 (ix) Use of false identification.

21 (x) Other factors relevant to whether the defendant
22 will appear as required and comply with the bail
23 conditions.

24 (3) The decision of a defendant not to admit culpability
25 or not to assist in an investigation shall not be a reason to
26 impose additional or more restrictive conditions of bail on
27 the defendant.

28 CHAPTER 5

29 BAIL AND DETENTION PRIOR TO TRIAL

30 Section 501. Monetary bail.

1 (a) General rule.--If bail is set under Pa.R.Crim.P. No. 520
2 (relating to bail before verdict), the defendant shall be
3 eligible for the types of release on bail as specified in this
4 section. The bail authority, after considering the release
5 criteria in Pa.R.Crim.P. No. 523 (relating to release criteria),
6 shall determine the type or combination of types of release on
7 bail reasonably necessary, in the bail authority's discretion,
8 to ensure that the defendant will appear at all subsequent
9 proceedings and comply with the conditions of the bail bond.

10 (b) Condition.--All of the types of release in subsection
11 (c) shall be conditioned upon the defendant's written agreement
12 to appear and to comply with the conditions of the bail bond
13 specified in Pa.R.Crim.P. No. 526(A) (relating to conditions of
14 bail bond).

15 (c) Types.--Types of release on bail are as follows:

16 (1) Release on recognizance. Release shall be
17 conditioned upon the defendant's written agreement to appear
18 when required and to comply with the conditions of the bail
19 bond in Pa.R.Crim.P. No. 526(A).

20 (2) Release on nonmonetary conditions. Release shall be
21 conditioned upon the defendant's agreement to comply with
22 nonmonetary conditions, as specified in Pa.R.Crim.P. No. 527
23 (relating to nonmonetary conditions of release on bail),
24 which the bail authority determines are reasonably necessary
25 to ensure the defendant's appearance and compliance with the
26 conditions of the bail bond.

27 (3) Release on unsecured bail bond. Release shall be
28 conditioned upon the defendant's written agreement to be
29 liable for a fixed sum of money if the defendant fails to
30 appear as required or fails to comply with the conditions of

1 the bail bond. No money or other form of security may be
2 required.

3 (4) Release on nominal bail. Release shall be
4 conditioned upon the defendant's depositing a nominal amount
5 of cash which the bail authority determines is sufficient
6 security for the defendant's release and the agreement of a
7 designated person, organization or bail agency to act as
8 surety for the defendant. A nominal amount may be \$1.

9 (5) Release on a monetary condition. Release shall be
10 conditioned upon the defendant's compliance with a monetary
11 condition imposed under Pa.R.Crim.P. No. 528 (relating to
12 monetary condition of release on bail). The amount of the
13 monetary condition shall not be greater than necessary to
14 reasonably ensure the defendant's appearance and compliance
15 with the conditions of the bail bond.

16 (d) Detention.--

17 (1) When a judicial officer finds no conditions of
18 release are sufficient to accomplish the aims of pretrial
19 release, a defendant may be held without bail.

20 (2) If a defendant is considered high risk and the only
21 reasonable disposition is detention without bail, the court
22 shall require an accelerated trial.

23 (3) If a defendant is detained prior to trial,
24 disposition may not prejudice the defendant at the time of
25 trial or sentencing. In the case of a jury trial, the court
26 shall ensure that the jury is unaware of the defendant's
27 detention.

28 (4) A convicted defendant shall be given credit against
29 both a maximum and minimum term or a determinate sentence for
30 all time spent in custody as a result of criminal charges for

1 which sentence of imprisonment is imposed.

2 (5) A defendant detained pending adjudication shall be
3 confined in a separate part of a facility from convicted
4 persons awaiting sentencing or serving sentences. The
5 restrictions on the defendant may not be more limited than
6 for convicted persons.

7 (6) A defendant detained shall be provided with adequate
8 means to assist in the defendant's own defense. This
9 requirement may include the following:

10 (i) Reasonable telephone rates.

11 (ii) Unmonitored telephone access to the defendant's
12 attorney.

13 (iii) A law library.

14 (iv) A space for unmonitored meetings with the
15 defendant's attorney.

16 Section 502. Nonmonetary bail.

17 (a) Elimination option.--The decision to eliminate monetary
18 bail conditions shall be determined by the president judge of
19 each participating county. The president judge may consider the
20 efficiency of the monetary bail systems operating within the
21 county. If the president judge chooses to preserve a monetary
22 bail system, adjudications shall coincide with least restrictive
23 conditions specified in this section.

24 (b) Development of alternatives.--A participating county
25 shall develop, test, validate and refine nonmonetary conditions
26 for release which shall correspond with the risk assessment
27 implemented by the participating county.

28 (c) Nonmonetary conditions.--The court shall impose the
29 least restrictive of release conditions reasonably necessary to
30 ensure the defendant's appearance in court, to protect the

1 safety of the community or any person and to safeguard the
2 integrity of the judicial process. Options include, but are not
3 limited to:

4 (1) Releasing the defendant to the supervision of the
5 program or requiring the defendant to report on a regular
6 basis.

7 (2) Releasing of the defendant into the custody or care
8 of some other qualified organization or person responsible
9 for supervising the defendant and assisting the defendant in
10 making court appearances. The supervisor shall maintain close
11 contact with the defendant, to assist the defendant in making
12 arrangements to appear in court and, when appropriate,
13 accompany the defendant to court. The supervisor may not be
14 financially responsible for the defendant to forfeit money in
15 the event the defendant fails to appear in court. The
16 supervisor should promptly report a defendant's failure to
17 comply with release conditions.

18 (3) Imposing reasonable restrictions on the activities,
19 movements, associations and residences of the defendant.

20 (4) Prohibiting the defendant from possessing dangerous
21 weapons and ordering the defendant to immediately turn over
22 all firearms and other dangerous weapons in the defendant's
23 possession or control to a program or responsible third party
24 designated by the court and prohibiting the defendant from
25 engaging in certain prescribed activities or using
26 intoxicating liquors or certain drugs.

27 (5) Imposing conditional release of the defendant
28 pending participation in a diversionary or alternative
29 problem solving program.

30 (6) Requiring the defendant to return to custody for

1 specified hours following release for employment, schooling
2 or other limited purposes.

3 (7) Requiring the defendant to be released on electronic
4 monitoring, to be placed under house arrest, to be evaluated
5 for substance abuse, to undergo regular drug testing, to be
6 screened for eligibility for drug court or other drug
7 treatment program, to undergo mental health or physical
8 health screening for treatment, to participate in appropriate
9 treatment or supervision programs or to be subject to other
10 release options or conditions as may be reasonably necessary
11 to ensure attendance in court, prevent risk of crime and
12 protect the community or any person during the pretrial
13 period.

14 (8) Imposing other reasonable restrictions designed to
15 ensure the defendant's appearance, to protect the safety of
16 the community or any person and to prevent intimidation of
17 witnesses or interference with the orderly administration of
18 justice.

19 (d) Notice to victims.--

20 (1) Each participating county shall ensure that victims
21 and witnesses are informed by the appropriate agent whenever
22 the defendant is confined or released or other changes occur
23 in the defendant's status that may be germane to the safety
24 of the community or of any person.

25 (2) Victims and witnesses shall be afforded readily
26 accessible means to inform the court, through the appropriate
27 agent.

28 Section 503. Penalties.

29 A defendant who willfully fails to appear or is arrested for
30 an additional crime during release may be subject to penalties

1 at the discretion of the judicial officer, including:

2 (1) contempt by the court with a detainment sentence of
3 up to five days;

4 (2) cash bail, if permitted by the county;

5 (3) complete revocation of release; or

6 (4) other measures deemed necessary to ensure the
7 defendant's appearance or to ensure the safety of the
8 community.

9 Section 504. Right to counsel.

10 (a) General rule.--An individual who is to be arraigned
11 shall be provided with an option for suitable representation
12 prior to the arraignment or pretrial detention hearing.

13 (b) Access to assessment.--In a participating county,
14 counsel for a defendant shall be provided information enclosed
15 in the assessment report provided by the program prior to
16 arraignment.

17 (c) Appeal.--A defendant not granted least restrictive
18 conditions may immediately appeal the bail determination.

19 CHAPTER 7

20 ADMINISTRATIVE PROVISIONS

21 Section 701. Commission.

22 Subject to the availability of funds, the commission shall
23 make grants available to the courts to assist in the
24 establishment or enhancement of pretrial service or diversion
25 programs in each judicial district within an eligible county. To
26 the extent that funds are available, the commission may:

27 (1) Identify sources of funding for pretrial service or
28 diversion programs and their related services, including the
29 availability of grants.

30 (2) Provide coordination and technical assistance for

1 grant applications.

2 (3) Develop, in conjunction with the Administrative
3 Office of Pennsylvania Courts, model guidelines for the
4 administration of pretrial service or diversion programs and
5 their related services.

6 (4) For pretrial service or diversion programs and
7 related services funded by the commission, establish
8 procedures for monitoring and evaluating the effectiveness of
9 pretrial service or diversion programs and their related
10 services.

11 Section 702. Funding and audits.

12 (a) Eligibility.--Subject to the availability of funding,
13 participating counties with approved plans shall be eligible for
14 direct funding determined by the commission to support the cost
15 of programs.

16 (b) Alternative funding.--The commission may solicit and
17 accept alternative funding, including Federal funds, grants and
18 donations from any source whatsoever to assist with the
19 administration of this act. All money received by the department
20 to improve, enhance and expand programs shall be deposited into
21 a restricted account within the General Fund.

22 (c) Audit.--Annual reports and all financial records shall
23 be subject to annual audit by the Auditor General.

24 Section 703. Prohibitions.

25 (a) General rule.--Recipients may not use funds granted
26 under this chapter to supplant existing funds from the State or
27 local government for the construction, renovation or general
28 operation of a correctional institution.

29 (b) Administrative costs.--Administrative costs connected
30 with the expenditure of funds under this act may not exceed a

1 percentage amount established by the commission.

2 Section 704. Continued eligibility.

3 (a) Evaluation.--In order to remain eligible for continued
4 grant funding, a participating county shall comply with
5 commission standards and regulations and participate in an
6 evaluation to determine program effectiveness. The form of the
7 evaluation shall be determined by the commission.

8 (b) Suspension of funding.--

9 (1) If the commission determines that there are
10 reasonable grounds to believe that a participating county is
11 not complying with its plan, minimum standards or the
12 provisions of this act, the commission shall give 30 days'
13 written notice to the participating county.

14 (2) If the commission finds noncompliance, it shall
15 require the participating county to provide a written
16 agreement as to how and when the specific deficiencies
17 identified will be corrected.

18 (3) If no agreement is submitted to the commission
19 within the time limit or if the deficiencies are not
20 corrected within 45 days after an agreement has been approved
21 by the commission, the commission may suspend part or all of
22 the funding to the participating county until compliance is
23 achieved.

24 CHAPTER 9

25 MISCELLANEOUS PROVISIONS

26 Section 901. Training.

27 The following apply:

28 (1) Training specific to a participating county's
29 established program and risk assessment model shall include
30 the purpose and goals of the program and model, how to read a

1 risk assessment and other information regarding the program
2 deemed necessary by the program.

3 (2) Judges, magisterial district judges, legal
4 counselors, bail bondsmen and all staff crucially involved in
5 the pretrial process shall complete training within six
6 months of the establishment of the participating county's
7 program.

8 (3) Nonessential support staff who may benefit from the
9 informational session may be offered the opportunity to
10 participate in training.

11 Section 902. Annual report.

12 A participating county shall submit an annual report to the
13 General Assembly by January 1 describing the operation and
14 performance of the program, the effectiveness of pretrial
15 conditions, including failure to appear rates and reoffense on
16 release rates, information related to case processing and all
17 information deemed relevant by the participating county.

18 Section 903. Effective date.

19 This act shall take effect in 90 days.