
DIGEST

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HB 251 Original

2015 Regular Session

Lopinto

Abstract: Authorizes the use of a contradictory hearing prior to release on bail in certain cases of domestic abuse against a family member, household member, or dating partner.

Present law provides for the following:

- (1) Requires a contradictory hearing to be held within five days prior to setting bail for a person in custody charged with a felony offense against the defendant's family or household member or dating partner as those terms are defined by the Protection from Family Violence Act and the Protection from Dating Violence Act.
- (2) Provides that in addition to hearing whatever evidence it finds relevant, the court shall, with the consent of the prosecuting attorney, perform an ex parte examination of the evidence against the accused.
- (3) Requires the court to also take into consideration the previous criminal record of the defendant and any potential threat or danger the defendant poses to the victim, the family of the victim, or to any member of the public, especially children.
- (4) Requires the court to perform a risk assessment that will give ample consideration to certain risk factors.
- (5) Authorizes the court to order the defendant be held without bail upon proof by clear and convincing evidence that the defendant might flee, that the defendant poses a threat or danger to the victim, or that the defendant poses an imminent danger to any other person or the community.
- (6) Authorizes the court to require a defendant to be placed under active electronic monitoring.
- (7) Provides that a violation of the conditions of bail may be punishable by the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding of the defendant to custody or a modification of the terms of bail.

Proposed law amends present law as follows:

- (1) Provides that, except in capital cases in which present law requires that the defendant be held without bail, when a defendant is in custody charged with the commission of an offense

involving the use or threatened use of force or a deadly weapon upon the defendant's household member or the defendant's family member or dating partner, a judge or magistrate may order the temporary detention of the defendant for a period of not more than five days from the date of the determination of probable cause, exclusive of weekends and holidays, pending a contradictory bail hearing.

- (2) Provides that the contradictory bail hearing may be held to determine the conditions of bail or whether the defendant should be held without bail pending trial.
- (3) Provides that, following the contradictory hearing, the judge or magistrate may order that the defendant be held without bail pending trial, if the proof is evident and the presumption of guilt is great and upon proof by clear and convincing evidence that the defendant may flee or that the defendant poses an imminent danger to any other person or the community.
- (4) In making this determination, requires the court to consider the previous criminal record of the defendant; any potential threat or danger the defendant poses to the victim, the family of the victim, or to any member of the public, especially children; and other risk factors including but not limited to substance abuse, gun ownership, record of violence, employment status, prior threats with a dangerous weapon, threats to kill, forced sex, choking, control of daily activities, threats of suicide, and threats to harm children.
- (5) If the judge or magistrate determines that the defendant shall be released on bail, proposed law requires the judge or magistrate to comply with the provisions of present law regarding release on bail for a defendant charged with stalking or an offense against the defendant's family or household member or dating partner as applicable.
- (6) Retains present law relative to the court's authority to order that the defendant be electronically monitored.
- (7) Provides definitions of "dating partner" and "family member".

(Amends C.Cr.P. Art. 330.3)