
DIGEST

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HB 841 Reengrossed

2015 Regular Session

Lopinto

Abstract: Provides relative to bail for a person in custody charged with certain offenses involving the use or threatened use of force or a deadly weapon upon a household member, family 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) Authorizes, instead of requires, a contradictory bail hearing when a defendant is in custody

charged with the commission of domestic abuse battery, violation of protective orders, stalking, or any felony offense involving the use or threatened use of force or a deadly weapon upon the defendant's household member, as defined by the present law domestic abuse battery statute, or the defendant's family member or dating partner, as those terms are defined in proposed law.

- (2) Requires any contradictory hearing in this regard to be held within five days from the date of determination of probable cause, exclusive of weekends and holidays, to determine conditions of bail or whether the defendant should be held without bail pending trial. If the court decides not to hold a contradictory hearing, it shall notify the prosecuting attorney prior to setting bail.
- (3) Following a contradictory hearing and based upon the judge's or magistrate's review of certain factors, authorizes the judge or magistrate to order that the defendant be held without bail pending trial 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 or in determining the conditions of bail, requires the court to consider the previous criminal history 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 documented history or records (including sworn affidavits, police reports, or medical records) of substance abuse by the defendant, threats of suicide by the defendant, the defendant's use of force or threats of use of force against any victim, strangulation, forced sex, or controlling the activities of any victim by the defendant, and threats to kill.
- (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) Requires the court to consider the possibility of requiring the defendant to be placed under active electronic monitoring and house arrest.

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

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Clarify that while the contradictory hearing prior to setting bail is permissive, to hold a defendant without bail, a contradictory hearing is required.
2. Expand the factors that a court is required to consider in determining whether to release the defendant on bail or in determining the conditions of bail.

3. Make technical corrections.