
VA HOUSE BILL 1321: Admission to Bail; Rebuttable Presumptions**SUPPORT**

January 31, 2022

This legislation creates a presumption against releasing persons on their own recognizance (get out of jail free), with exceptions, under circumstances that evidence clearly shows are predictive of pretrial failures: prior crimes, failures to appear, and repeat behavior.

Amidst the current crime wave, there are angry calls for more detention, which in part may be warranted. There are also calls in two states for mandatory minimum statutory bails for violent and repeat cases. However, because the vast majority of defendants will be released and the judicial discretion to set the figure of bail nearly absolute, **the real question is when defendants are bailable, how can we best ensure accountability to show up in court and protect public safety.** This bill aims to do just that – ensure accountable release and protect the public and victims of crime.

In fact, this legislation is similar to legislation that has been introduced or become law in the following states: Colorado,¹ Delaware,² Missouri,³ and Texas.⁴ In particular, this legislation is very similar to legislation pending in Missouri, which passed the Missouri has last year.

This legislation, however, is more balanced than Texas and Delaware because it creates a presumption against a personal recognizance bond rather than an absolute bar. A defendant then can come forward with clear and convincing evidence that the defendant will not be a risk to public safety and will appear in court in order to obtain a personal recognizance bond.

This legislation focuses judges and prosecutors on the important cases where personal recognizance bonds should generally not be used and should never automatically be used without a judge signing off. In doing so, it provides judges with discretion to overcome the presumption. It also provides prosecutors discretion because they can stipulate that the defendant is not a flight risk or danger sufficient to overcome the presumption.

The pretrial crime wave is happening right now, and what we are seeing nationally is that it is hardened, violent, and repeat defendants are slipping through the cracks.⁵ The burden should be on them if they are in certain categories to prove that they should be eligible for release without security or third-party involvement by a friend, family or bail agent with arrest powers.

¹ <http://leg.colorado.gov/bills/sb22-041>

² <https://legis.delaware.gov/BillDetail?LegislationId=78868>

³ <https://www.house.mo.gov/BillContent.aspx?bill=HB2246&year=2022&code=R%20>

⁴ <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=872&Bill=SB6>

⁵ For example, in Colorado it was found that 70% of persons arrested had already been convicted of another crime within the prior three years, and 54% of those arrested had already been convicted of an offense in the same year. https://commonsenseinstituteco.org/wp-content/uploads/2021/12/CSI_CRIME_SYNOPSIS_DEC2021_FINAL.pdf

Release on surety bonds, according to the U.S. Department of Justice, Bureau of Justice statistics, is the most effective form of release. Release on personal recognizance is the least effective.⁶

In short, this legislation is a balanced approach that doesn't disturb detention without bail, but instead stops people from potentially slipping out the back door on a personal recognizance bond when uncontroverted evidence for a generation says they are probably too risky to be released without bail and other conditions of release.

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⁶ <https://ambailcoalition.org/download/20/bureau-of-justice-statistics/806/bureau-of-justice-statistics.pdf>
