

**TESTIMONY OF THE RHODE ISLAND PUBLIC DEFENDER'S OFFICE (RIPD)**

**House Bill No. 7353**

**BY Felix, Craven, McEntee, Knight, Kislak, Williams, Batista, Potter, Amore, Henries**

**ENTITLED, AN ACT RELATING TO CRIMINAL PROCEDURE -- BAIL AND  
RECOGNIZANCE {LC3388/1} (Prohibits the courts from setting cash or surety bail on  
any misdemeanor offense but would permit the court to set reasonable non-monetary  
conditions of bail to assure the defendant's presence in court as required and to protect the  
community.)**

The RIPD **supports** this legislation for the following reasons:

- The proposed legislation is intended to curtail the use of monetary conditions of bail in misdemeanor cases and strengthen the presumption of release on personal recognizance that has been part of Rhode Island law for many years. It would accomplish its worthy goals by:
  - Adding the following language to § 12-13-1. *Right to release pending trial on giving of recognizance*
    - (b) Misdemeanor cases:
      - (1) Every person who is subject to any misdemeanor criminal process shall be released without bail but on their own recognizance and an order to abide by any conditions set by the court.
      - (2) Release on non-monetary conditions shall be applied to assure the presence of the accused in court as required and to protect the safety of the community.
    - (c) In every case, the setting of bail and conditions shall be subject to § 12-13-1.3(e).
  - Empowering the increased use of and reliance upon *RIGL § 12-13-1.3 Pretrial release* which provides in pertinent part that upon a determination by the court that a defendant is suitable for release on recognizance subject to conditions set by the court, the court may also impose additional conditions (including field and community supervision) to ensure the defendant's appearance in court and promote public safety.
- The strengthened presumption of release on personal recognizance in misdemeanor cases created by this legislation is also consistent with RI Const. Art.1, Sec.9; the *Bail Guidelines*

promulgated by the RI Supreme Court as part of its rule making authority in 1986; and previous decisions on bail by the Rhode Island Supreme Court.

- The legislation appears to be inspired by litigation and legislative reforms being considered and adopted across the country. For example, courts have held that the detention of the indigent for the failure to post bail violates the constitutional provisions of equal protection and due process of law while legislative reforms focus upon the unique hardships that monetary conditions of bail visit upon the indigent.<sup>i</sup> In addition to the damage caused by pre-trial detention to such things as housing, education, employment, and treatment, studies have shown that it may worsen case outcomes and enhance the possibility of a failure to appear in court once released.<sup>ii</sup>
- Rhode Island last considered bail reform in a similar context in 2008 when it eliminated the imposition of ‘cash only’ bail except in cases of failure to pay restitution to victims of crime. It did so by adding the following language to *RIGL Sec. 12-13-10. Deposit of money in lieu of bail*:
  - Consistent with Article 1, § 9 of the Rhode Island Constitution, the giving of surety, or in the alternative the deposit with the court of ten percent (10%) of the amount of bail set, shall be the sole monetary conditions of the release on bail, except as set forth herein. No court shall require the deposit of cash as the sole monetary condition of the release on bail, except in those cases where the defendant owes court-imposed restitution. (emphasis added)<sup>iii</sup>

Therefore, the legislation being considered here is entirely consistent with pre-existing conditions of Rhode Island law as well as the movement away from monetary conditions of bail both here and across the country.

**QUESTIONS OR COMMENTS? PLEASE CONTACT:**

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## ENDNOTES

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- Litigation is pending or has been decided based on these grounds in Philadelphia, PA; St. Louis, MO; Jefferson County, AL; San Francisco, CA; Harris County (Houston), TX; Calhoun, GA; Velda, MO; Clanton, AL; and Richmond, MD. Available at <https://www.nacdl.org/Content/PretrialLitigation> (last visited 2/26/22).
  - Bail reform legislation curtailing the use of monetary conditions of bail has been filed or enacted in at least fourteen (14) states including California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Louisiana, New Hampshire, New Jersey, New York, Ohio, Texas, and Vermont. <https://www.nacdl.org/Content/Legislation-and-State-Practices> (last visited 2/26/22).
- ii Justice Denied: The Harmful and Lasting Effects of Pretrial Detention By Léon Digard, Senior Research Editor, and Elizabeth Swavola, Program Manager, Vera Institute of Justice (April 2019). Available at <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf> (last visited 2/26/22).
- iii 2008 RIPL ch. 234, § 1; 2008 RIPL ch. 320, § 1