

The Just Criminal Justice Group, LLC



Michael A. DiLauro, Esq.
Owner/Manager

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Senator Matthew L. LaMountain, Chair
Senate Judiciary Committee
The Statehouse
Providence, RI 02903

Representative Carol Hagan McEntee, Chair
House Judiciary Committee
The Statehouse
Providence, RI 02903

RE:

Senate Resolution No. 2993
BY Mack, Kallman, Acosta
ENTITLED, SENATE RESOLUTION
CREATING A SPECIAL LEGISLATIVE
COMMISSION TO STUDY THE IMPACT AND
POTENTIAL ECONOMIC BENEFITS OF BAIL
REFORMS ON BLACK RHODE ISLANDERS
AND THE STATE (Creates an 11 member
commission to analyze the impact and
potential economic benefits of bail reforms
on Black Rhode Islanders, and would
report back by February 5, 2027, and expire
on April 5, 2027.)

RE:

House Bill No. 7280
BY Place, Cruz, Potter, J. Lombardi,
Newberry, Tanzi, Felix, J. Brien, Hull, Ajello
ENTITLED, AN ACT RELATING TO CRIMINAL
PROCEDURE -- BAIL AND RECOGNIZANCE
{LC4338/1} (Creates a 10 member bail task
force to study the need of monetary
conditions of bail and to consider other
methods for ensuring an accused's
appearance in court, enhance public safety
and honor the presumption of innocence and
to file report by 1/1/2028.)

Dear Chairman LaMountain, Chairperson Hagan McEntee, and Members of the Senate and House Judiciary Committees:

Thank you for this opportunity to express strong support for both Senator Mack and Representative Place's thoughtful legislation creating a task force to study, analyze, and make recommendations for improvements to Rhode Island's current bail system. Although different in certain respects, both would continue a long and proud tradition of lawmakers achieving much needed positive and impactful reforms that have both improved the quality of justice and enhanced public safety in Rhode Island. These successful efforts took place through the collaborative efforts of criminal justice stakeholders, community members, and others.¹

¹ These efforts include the enactment of legislation creating a task force to study and make recommendations regarding improving eyewitness identification procedures (2010 - § 12-1-16. Improvement of lineup procedures task force); enhance the electronic recording of custodial interrogations in their entirety (2011 - § 12-7-22. Electronic recording of custodial interrogations task force); Special Senate Task Force to Investigate and Make Recommendations for Any Changes to the

A number of states have already addressed issues regarding bail reform using a variety of measures including constitutional amendments, legislation, litigation, court rule changes and orders, and statewide study groups made up criminal justice stakeholders and others. Most recently the Ohio Supreme Court ordered the creation of a task force of criminal justice stakeholders to study and make recommendations considering:

- Pros and cons of a money bail system and/or bail bond schedule
- Data results following the elimination of money bail or a bond schedule, specifically pertaining to failure-to-appear (FTA) rates, jail population, and financial impact
- Information regarding the use of risk assessment tools
- Experience using evidence-based alternatives to pretrial detention

The final report of the Ohio Supreme Court’s task force made a comprehensive series of recommendations for changes to that state’s bail system including the use of a validated risk assessment tool to inform judges required to make decisions regarding release; certain amendments to court rules; requiring the presence of counsel at initial appearance; tailoring pre-trial services; considering alternatives to detention; enhanced use of technology; education and training of judges and counsel; and uniform data collection.²

At the outset it must be recognized that when it comes to bail Rhode Island starts from a much different place than other states. Rhode Island bail law is made up of a complex and interrelated mesh of state constitutional provisions, statutes, and court decisions and rules favoring release on personal recognizance—a practice that is consistent with the presumption of innocence—being favored in most cases, especially the less serious ones. Notwithstanding, every year the General Assembly considers a number of thoughtful bills (presumably deemed necessary and at the behest of the constituents served by the

Law, Court Rules or to Policies and Procedures Currently in Place to Enhance the Timely and Complete Disclosure of Discoverable Material in Criminal Cases (2018 -- R 0328 (2018 -- S 2984)). The final reports of these groups and the improvements to standards, procedures, and policies they inspired are available upon request. At other times criminal justice stakeholders have come together without a legislative mandate and worked collaboratively and successfully to achieve other reforms including The Justice Reinvestment Initiative (beginning work in 2016) and the enactment of the Comprehensive Community Police Relationship Act (CCPRA) in 2015 (2015 RIPL Chapters 214, 235)

² These nationwide efforts are described in Wendy R. Calaway and Taylor Wadian, ARTICLE: JUDICIAL DISCRETION AND BAIL REFORM, 92 University of Missouri Kansas City 235 (Winter, 2023); REPORT AND RECOMMENDATION OF THE SUPREME COURT OF OHIO TASK FORCE TO EXAMINE THE OHIO BAIL SYSTEM, SUP. CT. OHIO (July 2019), <https://www.supremecourt.ohio.gov/docs/Publications/bailSys/report.pdf> (last visited 5/1/25)

legislators introducing them) that would serve to make the Rhode Island bail system fairer and more equitable especially in the use of pre-adjudication detention and the use of monetary conditions of bail (MCOB). This legislation recognizes an inconvenient and unfortunate truth - MCOB fall hardest on the indigent. The reasons for this are self-evident - those able to post money or property to secure their release are able to have liens on the property posted lifted and most if not all of the money posted returned to them at the end of the case, assuming that they appear for their court dates. Those that cannot must seek the services of a bail bondsman and pay the non-refundable fee necessary to secure their release. The regressive nature of such a system is readily apparent. It falls heaviest upon the indigent and those most likely to have MCOB imposed upon them. This may be why, in the not-too-distant past, the General Assembly took additional actions to reduce the reliance on MCOB and other sanctions resulting from poverty that are imposed for non-payment.³

Statistics collected in 2018 from the Rhode Island Department of Corrections (RIDOC) via APRA provide impetus for further study of the reasons why MCOB are imposed, especially in less serious cases. The following information was requested -

- For each of the calendar years 2015, 2016, 2017, and 2018, the number of criminal defendants charged solely with misdemeanor offenses who were:
 - detained for failure to post monetary bail and
 - the average length of stay at the ACI for such defendants for each calendar year

The data collected demonstrated that while almost all misdemeanants upon which MCOB are eventually released, most before their first court date. This of course begs the question – why are such conditions imposed in the first place, especially when considering the

³ These efforts include:

- 2008 – Elimination of “Cash Only” bail (2008 RIPL Chapters 234, 320)
- 2006 – Adjustment to what a day at the ACI is worth resulting in less detention for failure to pay court costs (2006 RIPL Chapters 374, 443)
- 2022 - comprehensive and wide-ranging legislation, introduced at the request of The Judiciary, which completely revamped the way in which court costs, fees, and assessments are assessed and waived, especially in cases of indigency, resulting in almost the complete eradication of incarceration resulting from the failure to pay court costs (2022 RIPL Chapters 200, 201)

collateral consequences that arise from pre-trial detention, such as the loss of housing, employment, and education? ⁴

Finally, the legislature may wish to adjust the makeup of the task force or the objectives delegated to it. At a minimum any task force formed for this purpose should be required to study and make recommendations regarding the following:

- Is additional legislation or changes to court rules such as the Bail Guidelines needed.
- Is additional regulation of bail bondsman and bail commissioners advisable, given the pervasive nature of money in the Rhode Island bail system, its negative impact and potential for abuse. In the case of bail commissioners, consideration should be given to what may appear, at least to some, to be unseemly – the requirement of payment for judicial services to secure release on weekends and other times when the court is not in session. ⁵
- Appropriate use of Pre-Trial Services by the court and counsel especially in light of the obligation imposed upon it by § 12-13-24.1 to provide information relevant to the court’s decision to impose MCOB or a less restrictive alternative at the defendant’s initial appearance in court, which on many occasions takes place without the assistance of counsel. ⁶
- Negative impact of pre-trial detention on defendants including the loss of employment, housing, and educational opportunities.
- Impact of MCOB on failure-to-appear rates, jail population, and the direct and indirect costs involved

⁴ The spreadsheets provided by RIDOC in response to the 2018 APRA request are available upon request.

⁵ Potential and actual abuses of MCOB are described in the following: DiLauro, Time to take next step in making RI’s bail system more fair / Opinion. The Providence Journal (4/6/25); Mulvaney, Well known bondsman is rebuked by RI judge. The Providence Journal (2/7/25)

⁶ § 12-13-24.1 provides in pertinent part that the Pre-Trial Services Unit’s primary purpose is to provide pre-arraignment and post-arraignment services to defendants and that its pre-arraignment reports to the court may include the results of a risk screen, mental health and substance use needs, and an opinion if an in-depth assessment is needed post-arraignment. (emphasis added)

- Use of appropriate risk assessment tools to inform the decision regarding whether or not to impose MCOB at initial appearance
- Alternatives to pretrial detention
- Availability of counsel at initial appearance

Rhode Island's successful use of task forces made up of criminal justice stakeholders has worked extraordinarily well in the past to address thorny criminal justice issues, strongly mitigates in favor of creating one here to address the difficult problems inherent in our current bail system, including the pervasive role that money plays in it. The 'past is prologue' and thoughtful solutions are possible using this method.⁷

Thank you again for this opportunity to express strong support for both Senator Mack and Representative Place's thoughtful legislation. Please feel free to contact me at any time should you have any questions or concerns.

Respectfully Submitted,

Michael A. DiLauro, Esq. (s)

Michael A. DiLauro, Esq.
The Just Criminal Justice Group, L.L.C.
P.O. Box 7000
Warwick, RI 02887-7000
401-487-3644
madpd2001@yahoo.com

CC: Members, Senate and House Judiciary Committees

⁷ William Shakespeare, *The Tempest*, Act II, Scene 1 ("Whereof what's past is prologue, what to come in yours and my discharge"); these prior successful efforts are described in footnote 1, *supra*.