

[Third Reprint]

ASSEMBLY, No. 2987

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED MAY 15, 2006

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SYNOPSIS

Requires court to conduct inquiry at prosecutor's request concerning source of bail funds where defendant is charged with crime with bail restrictions.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on December 11, 2006, with amendments.

(Sponsorship Updated As Of: 1/9/2007)

1 AN ACT concerning sources of bail, ²and² amending ³P.L.1994,
2 c.144 and³ P.L.2003, c.213 ²[and supplementing Title 2A of the
3 New Jersey Statutes]².

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 ³1. Section 1 of P.L.1994, c.144 (C.2A:162-12) is amended to
9 read as follows:

10 1. a. As used in this section:

11 "Crime with bail restrictions" means a crime of the first or
12 second degree charged under any of the following sections:

- 13 (1) Murder 2C:11-3.
- 14 (2) Manslaughter 2C:11-4.
- 15 (3) Kidnaping 2C:13-1.
- 16 (4) Sexual Assault 2C:14-2.
- 17 (5) Robbery 2C:15-1.
- 18 (6) Carjacking P.L.1993, c.221, s.1 (C.2C:15-2).
- 19 (7) Arson and Related Offenses 2C:17-1.
- 20 (8) Causing or Risking Widespread Injury or Damage 2C:17-2.
- 21 (9) Burglary 2C:18-2.
- 22 (10) Theft by Extortion 2C:20-5.
- 23 (11) Endangering the Welfare of Children 2C:24-4.
- 24 (12) Resisting Arrest; Eluding Officer 2C:29-2.
- 25 (13) Escape 2C:29-5.
- 26 (14) Corrupting or Influencing a Jury 2C:29-8.
- 27 (15) Possession of Weapons for Unlawful Purposes 2C:39-4.
- 28 (16) Weapons Training for Illegal Activities P.L.1983, c.229,
29 s.1 (C.2C:39-14).
- 30 (17) Soliciting or Recruiting Gang Members P.L.1999, c.160,
31 s.1 (C.2C:33-28).

32 "Crime with bail restrictions" also includes any first or second
33 degree drug-related crimes under chapter 35 of Title 2C of the New
34 Jersey Statutes and any first or second degree racketeering crimes
35 under chapter 41 of Title 2C of the New Jersey Statutes.

36 b. Subject to the provisions of subsection c. of this section, a
37 person charged with a crime with bail restrictions may post the
38 required amount of bail only in the form of:

- 39 (1) Full cash;
- 40 (2) A surety bond executed by a corporation authorized under
41 chapter 31 of Title 17 of the Revised Statutes; or

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALP committee amendments adopted May 18, 2006.

²Senate SLP committee amendments adopted November 27, 2006.

³Senate SBA committee amendments adopted December 11, 2006.

1 (3) A bail bond secured by real property situated in this State
2 with an unencumbered equity equal to the amount of bail
3 undertaken plus \$20,000.

4 c. There shall be a presumption in favor of the court
5 designating the posting of full United States currency cash bail to
6 the exclusion of other forms of bail when a defendant is charged
7 with an offense as set forth in subsection a. of this section and:

8 (1) has two other indictable cases pending at the time of the
9 arrest; or

10 (2) has two prior convictions for a first or second degree crime
11 or for a violation of section 1 of P.L.1987, c.101 (C.2C:35-7) or any
12 combination thereof; or

13 (3) has one prior conviction for murder, aggravated
14 manslaughter, aggravated sexual assault, kidnapping or bail
15 jumping;or

16 (4) was on parole at the time of the arrest,

17 unless the court finds on the record that another form of bail
18 authorized in subsection b. of this section will ensure the
19 defendant's presence in court when required.

20 d. When bail is posted in the form of a bail bond secured by real
21 property, the owner of the real property, whether the person is
22 admitted to bail or a surety, shall also file an affidavit containing:

23 (1) A legal description of the real property;

24 (2) A description of each encumbrance on the real property;

25 (3) The market value of the unencumbered equity owned by the
26 affiant as determined in a full appraisal conducted by an appraiser
27 licensed by the State of New Jersey; and

28 (4) A statement that the affiant is the sole owner of the
29 unencumbered equity.

30 e. Nothing herein is intended to preclude a court from releasing
31 a person on the person's own recognizance when the court
32 determines that such person is deserving.³

33 (cf: P.L.2003, c.177, s.1)

34

35 ³[1.] 2.³ Section 1 of P.L.2003, c.213 (C.2A:162-13) is
36 amended to read as follows:

37 1. ²a.² When a person charged with ²[an offense] a crime with
38 bail restrictions, as defined in subsection a. of section 1 of
39 P.L.1994, c.144 (C.2A:162-12),² posts cash bail or secures a bail
40 bond, the ²person, no later than the time of posting bail or
41 proffering the surety or bail bond, shall provide to the prosecutor,
42 on a form promulgated by the Attorney General, relevant
43 information under penalty of perjury about the obligor, indemnifier
44 or person posting cash bail, the security offered, and the source of
45 any money or property used to post the cash bail or secure the
46 surety or bail bond, as the case may be. This required information
47 shall include, but not be limited to, the defendant's employment
48 history, the names and addresses of any persons who contributed

1 money or pledged security for the proffered bail or toward a surety
2 bond, the amount, nature and timing of such contributions, and the
3 relationship to the defendant of any such persons contributing
4 resources. Bail may not be accepted from a person subject to the
5 requirements of this subsection until the prosecutor is provided the
6 completed form required by this subsection.

7 b. When a person charged with an offense posts cash bail or
8 secures a bail bond in any amount, the² court may, upon the request
9 of the prosecutor, ²[and, in the cases set forth in section 2 of
10 P.L. c. (C.) (pending before the Legislature as this bill),
11 the court shall,]² conduct an inquiry to determine the reliability of
12 the obligor or person posting cash bail, the value and sufficiency of
13 any security offered, the relationship of the obligor or person
14 posting cash bail to the defendant and the defendant's interest in
15 ensuring that the bail is not forfeited, and whether the funds used to
16 post the cash bail or secure the bail bond were acquired as a result
17 of criminal or unlawful conduct. ²When the offense charged
18 against such person is a crime with bail restrictions as defined in
19 subsection a. of section 1 of P.L.1994, c.144 (C.2A:162-12), the
20 court shall, upon the request of the prosecutor, conduct an inquiry
21 pursuant to the provisions of this subsection.² The court may
22 examine, under oath or otherwise, any person who may possess
23 relevant information, and may inquire into any matter appropriate to
24 its determination, including, but not limited to, the following:

25 ²[a.] (1)² The character, background and reputation of the
26 person posting cash bail;

27 ²[b.] (2)² The relationship of the person posting cash bail or
28 securing a bail bond to the defendant;

29 ²[c.] (3)² The source of any money posted as cash bail and
30 whether any such money constitutes the fruits of criminal or
31 unlawful conduct;

32 ²[d.] (4)² The character, background and reputation of any
33 person who has indemnified or agreed to indemnify ¹[and] an¹
34 obligor on the bond;

35 ²[e.] (5)² The character, background and reputation of any
36 obligor, or, in the case of a surety bond, the qualifications of the
37 surety and its executing agent;

38 ²[f.] (6)² The source of any money or property deposited by any
39 obligor as security and whether such money or property constitutes
40 the fruits of criminal or unlawful conduct; and

41 ²[g.] (7)² The source of any money or property delivered or
42 agreed to be delivered by any obligor as indemnification on the
43 bond and whether such money or property constitutes the fruits of
44 criminal or unlawful conduct.

45 At the conclusion of the inquiry, the court shall issue an order
46 either approving or disapproving the bail. ²The court shall not issue
47 an order approving the bail unless it is satisfied that the evidence

1 adduced in the inquiry establishes the reliability of the source of the
2 funds used to post bail or security offered, that the relationship of
3 the obligor or person posting cash bail is sufficient to ensure the
4 defendant's presence in court when required, and that the funds
5 used to post cash bail or secure a bail bond were not acquired as a
6 result of criminal or unlawful conduct.²

7 (cf: P.L.2003, c.213, s.1)

8

9 ²[2. (New section) The court shall conduct an inquiry in
10 accordance with the provisions of section 1 of P.L.2003, c.213
11 (C.2A:162-13) in any case where the defendant is charged with a
12 violation of ¹[N.J.S.2C:35-5, manufacturing, distributing or
13 dispensing controlled dangerous substance or analog;]

14 a. a crime of the first or second degree;

15 b.¹ N.J.S.2C:39-4, possession of a weapon for unlawful purpose;

16 ¹c.¹ N.J.S.2C:39-5, unlawful possession of weapon;¹[or]

17 d.¹ a crime related to criminal street gang activity as defined in
18 subsection h. of N.J.S.2C:44-3 ¹; or

19 e. N.J.S.2C:35-5, manufacturing, distributing or dispensing
20 controlled dangerous substance or analog, other than a violation of
21 paragraphs (3), (5) and (11) through (14) of subsection b. of that
22 section¹.]²

23

24 ²[3. Section 2 of P.L.2003, c.213 (C.2A:162-14) is amended to
25 read as follows:

26 2. The procedure to determine the sufficiency of bail in
27 accordance with the provisions of section 1 of P.L.2003, c.213
28 (C.2A:162-13) and section 2 of P.L. , c. (C.) (pending before
29 the Legislature as this bill) shall be governed by rules adopted by
30 the Supreme Court.

31 (cf: P.L.2003,c.213,s.2)]²

32

33 ²[4.] ³[2.²] ³3.³ This act shall take effect on the ¹[90th] first¹
34 day ¹of the fourth month¹ following enactment.