



Staff Memorandum

**HOUSE OF DELEGATES
Agenda Item #16
(New Business)**

REQUESTED ACTION: Approval of a proposed resolution offered by the Criminal Justice Section with respect to bail reform.

Attached is a resolution prepared by the Criminal Justice Section with respect to bail reform. The resolution notes that in this year's State of the State book, the Governor included a framework for a bail reform package to eliminate cash bail for people facing misdemeanor or non-violent felony charges and called upon the Association to support this framework. In addition, the resolution calls for enhanced training of judges, court personnel and lawyers to the availability of alternatives to cash bail; add supervised release as a recognized form of release on recognizance; amend the Criminal Procedure Law to provide that a court may not impose financial conditions on a defendant unless the defendant is charged with a violent crime or there is a risk that the defendant will not appear; and amend the Criminal Procedure Law with respect to the valuing of posted real estate.

Tucker C. Stanclift, chair of the Criminal Justice Section, will present the resolution at the January 26 meeting.

**NEW YORK STATE BAR ASSOCIATION
CRIMINAL JUSTICE SECTION
BAIL REFORM RESOLUTION**

WHEREAS, more than 60 percent of people in state jails in 2016 were pretrial defendants; and

WHEREAS, cash bail has created a two-tiered criminal justice system that puts an unfair burden on the economically disadvantaged; and

WHEREAS, variations in court practices across the state have resulted in a bail system where the location of an arrest often defines whether or not a person is released pre-trial; and

WHEREAS, New York Governor Andrew Cuomo recently released a framework for a bail reform package¹ that would:

- Create a presumption that defendants facing misdemeanor and non-violent felony charges be released without cash bail, either on their own recognizance (R.O.R.) or with non-monetary conditions imposed by the court, such as supervised release monitored by a pretrial services agency, absent of a record of bench warrants for non-appearance;
- Allow monetary bail, but does not require its use, in remaining cases, after an individualized assessment of the nature of the case and the defendant's personal and financial circumstances;
- Require the court, in cases when bail is set, to give the defendant a choice between cash or bail industry bonds and an alternative form of bail that the judge will set, such as an unsecured or partially secured bond;
- Allow the court, in cases involving domestic violence or other serious violence, or if, while on pretrial release, a defendant commits a crime or willfully fails to come to court, to order a defendant to be held in jail pretrial if the court finds, after due process, that the defendant poses a high risk of not returning to court or poses a current threat to the physical safety of a reasonably identifiable person or persons; and

WHEREAS, the Criminal Justice Section recognizes that many courts rely solely on cash bail or insurance company bond to secure a defendant's future appearances despite the availability of multiple alternatives set forth in the Criminal Procedure Law; and

WHEREAS, the Governor's proposal balances the need to keep our communities safe while minimizing financial hardship;

BE IT THEREFORE RESOLVED, the Office of Court Administration and the Chief Administrator of the Courts are urged to enhance and increase the training and education of judges and courtroom personnel and the Bar to the availability of alternatives to cash bail including but not limited to unsecured and partially secured bonds, as well as (i) simplify and make available forms compliant with the Criminal Procedure Law facilitating secured, partially

¹ Governor Andrew Cuomo, State of the State *Book* (2018), pp. 59-60, available at <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2018-stateofthestatebook.pdf>.

secured and unsecured (non-financial) release, and (ii) suggest that judges not impose financial conditions unless the arrested person is charged with a crime of violence or there is a likely risk that the arrested person will not appear in court; and be it further

RESOLVED, Supervised Release should be added to Article 530 of the Criminal Procedure Law as a recognized form of recognizance for the release of an arrested person; and be it further

RESOLVED, the Criminal Procedure Law should be amended to provide that the court may not impose financial conditions upon a defendant in a criminal action or proceeding unless the defendant is charged with a crime of violence or there is a likely risk that the defendant will not appear in court; and be it further

RESOLVED, Section 500.17(b) of the Criminal Procedure Law, requiring the “double valuing” of real estate posted to secure release, should be amended to require that the value of posted real estate be at least the amount as the total undertaking (addressing *People ex. Rel. Hardy v. Seiff*, 79 N.Y.2d 618, 620-21 [1992]); and be it further

RESOLVED, Section 70.25(2)b of the Penal Law should be amended to add the term, “supervised release”; and be it further

RESOLVED, the Criminal Justice Section urges the State Bar to support the Governor’s 2018 framework for bail reform proposal and to work with the Governor and the State Legislature to pass reform based on these principles.

Respectfully Submitted,



Tucker Stanclift
Chair, Criminal Justice Section