

SB 150 – PRETRIAL RELEASE; OUT-OF-STATE CRIMINAL HISTORY LEGISLATION SECTIONAL ANALYSIS

January 18, 2018

Summary: Under the bail provisions enacted in 2016, persons charged with certain misdemeanors and who are assessed as low to moderate risk must be released on their own recognizance or on an unsecured bond. Further, persons charged with certain class C felonies and who are assessed as low risk must also be released on their own recognizance or on an unsecured bond. However, the risk assessment tool, as currently designed, does not take into account a person's out-of-state criminal history, if any. Therefore, judges are prohibited from imposing monetary bail for these individuals even if the out-of-state history suggests that the person is a flight-risk or a danger to the community.

The legislation will remove the provisions of law requiring release on a person's own recognizance or an unsecured bond if the person has an out-of-state criminal history that has not been used in determining the person's risk level by the risk assessment tool.

Section 1 allows a person to be held up to 48 hours if the person has an out-of-state criminal history that has not been used in determining the person's risk level by the risk assessment tool and the prosecution requests additional time to demonstrate that the release of the person will not reasonably ensure their appearance in court or the safety of the community.

Section 2 clarifies that a judge may order a person released on their own recognizance or upon unsecured bond unless other provisions of statute provide otherwise.

Section 3 makes conforming changes to exclude persons who have an out-of-state criminal history that has not been used in determining the person's risk level by the risk assessment tool from being statutorily required to be released on their own recognizance or upon unsecured bond.

Section 4 makes conforming changes to exclude persons who have an out-of-state criminal history that has not been used in determining the person's risk level by the risk assessment tool from being statutorily required to be released on their own recognizance or upon unsecured bond.

Section 5 clarifies that all persons released before trial must have certain conditions imposed: obey all court orders, obey all laws, make all court appearances, maintain contact with the person's pretrial services officer, maintain contact with the person's attorney notify the pretrial services officer and attorney of any change of address.

Section 6 clarifies that the judge should consider the person's record of convictions including any out-of-state convictions.

Section 7 instructs the judge to release a person who has an out-of-state criminal history that has not been used in determining the person's risk level by the risk assessment tool to impose the least restrictive conditions authorized under law to reasonably ensure the person's appearance in court and the safety of the community.

Section 8 defines "out-of-state criminal history" as a criminal history that is not included in the criminal justice information system operated by the Department of Public Safety (APSIN).

Section 9 Indirect Court Rule Amendment. Sections 2-7 have the effect of changing Criminal Rule 41 by changing release conditions for defendants.

Section 10 Conditional Effect. This Act only takes effect if the indirect court rule amendment receives a two-thirds majority vote.

Section 11 Applicability. This Act applies to offenses committed on or after the effective date.

Section 12 Effective Date. This Act takes effect immediately.