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PUBLIC HEARING

before

ASSEMBLY JUDICIARY COMMITTEE

ASSEMBLY CONCURRENT RESOLUTION NO. 35

(Proposes an amendment to the State Constitution to provide  
that release on bail may be denied under  
certain circumstances)

April 19, 1989  
Freeholders' Public Meeting Room  
Morris County Courthouse  
Morristown, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Thomas J. Shusted, Chairman  
Assemblyman John A. Girgenti

ALSO PRESENT:

Patricia K. Nagle  
Office of Legislative Services  
Aide, Assembly Judiciary Committee

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Hearing Recorded and Transcribed by  
Office of Legislative Services  
Public Information Office  
Hearing Unit  
State House Annex  
CN 068  
Trenton, New Jersey 08625





THOMAS J. SHUSTED  
CHAIRMAN  
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## New Jersey State Legislature

### ASSEMBLY JUDICIARY COMMITTEE

STATE HOUSE ANNEX, CN-068  
TRENTON, NEW JERSEY 08625  
TELEPHONE: (609) 292-5526

## NOTICE OF PUBLIC HEARING

The Assembly Judiciary Committee will hold a public hearing on Wednesday, April 19, 1989 at 10:30 a.m. in the Freeholders' Public Meeting Room at the Morris County Courthouse, A-100 Ann Street, Morristown, New Jersey 07960.

The purpose of this public hearing is to discuss Assembly Concurrent Resolution No. 35 sponsored by Assemblyman Kern which proposes an amendment to the State Constitution to provide that release on bail may be denied under certain circumstances.

This public hearing has been ordered by the General Assembly under Rule 143 of the Rules of the General Assembly and in compliance with the requirements of Article IX, paragraph 1 of the State Constitution, concerning proposed constitutional amendments.

Anyone wishing to testify should contact Patricia K. Nagle, Committee Aide at (609) 292-5526.

Those persons presenting written testimony should provide 10 copies to the committee on the day of the hearing.



# ASSEMBLY CONCURRENT RESOLUTION No. 35

## STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman KERN

1 A **CONCURRENT RESOLUTION** proposing to amend Article I,  
paragraph 11 of the Constitution of the State of New Jersey.

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BE IT RESOLVED *by the General Assembly of the State of  
5 New Jersey (the Senate concurring):*

1. The following proposed amendment to the Constitution of  
7 the State of New Jersey is hereby agreed to:

9

### PROPOSED AMENDMENT

11 Amend Article I, paragraph 11 to read as follows: .

11. No person shall, after acquittal, be tried for the same  
13 offense. All persons shall, before conviction, be bailable by  
sufficient sureties, except [for] as may be provided by  
15 enactment of law in capital offenses when the proof is evident  
or presumption great, or where release will not reasonably  
17 assure the appearance of the defendant as required, or where for  
the protection of other persons it would be proper to deny bail.  
19 Any law providing for the denial of bail shall require a hearing  
at which time the defendant shall be given the opportunity to be  
21 heard.

(cf: Art. I, par. 11)

23 2. When this proposed amendment to the Constitution is  
finally agreed to, pursuant to Article IX, paragraph I of the  
25 Constitution, it shall be submitted to the people at the next  
general election occurring more than three months after the  
27 final agreement and shall be published at least once in at least  
one newspaper of each county designated by the President of the  
29 Senate and the Speaker of the General Assembly and the  
Secretary of State, not less than three months prior to the  
31 general election.

3. This proposed amendment to the Constitution shall be  
33 submitted to the people at the election in the following manner  
and form:

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

**b. In every municipality the following question:**

		<p><b>DENYING RELEASE ON BAIL TO PERSONS IN CERTAIN CIRCUMSTANCES</b></p> <p><b>YES.</b>            Shall the amendment to Article I, paragraph 11 of the Constitution providing that bail may be denied, after a hearing, in capital offenses, or to assure appearance of the defendant, or for the protection of other persons as provided by enactment of law be approved?</p>
		<p><b>INTERPRETIVE STATEMENT</b></p> <p><b>NO.</b>            This constitutional amendment would permit by enactment of law that a court could deny bail, after a hearing, in capital offenses, or for the protection of others, or where release of the defendant would not reasonably assure his appearance as required.</p>

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**CRIMINAL JUSTICE**  
**Criminal Sentences and Bail**

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Proposes an amendment to the Constitution to provide that  
release on bail may be denied under certain circumstances.



ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY CONCURRENT RESOLUTION, No. 35

STATE OF NEW JERSEY

DATED: JANUARY 23, 1989

The Assembly Judiciary Committee reports favorably Assembly Concurrent Resolution No. 35.

Assembly Concurrent Resolution No. 35 proposes a constitutional amendment to paragraph 11 of Article I which would allow the Legislature to enact legislation denying bail where release will not reasonably assure the defendant's appearance or where it is necessary for the protection of others. The amendment provides that any law providing for denial of bail shall require a hearing where the defendant shall be given an opportunity to be heard.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.



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ASSEMBLYMAN THOMAS J. SHUSTED (Chairman): Ladies and gentlemen, may I have your attention? We will call the meeting of the Assembly Judiciary Committee which has been scheduled for this morning to order. The purpose of this meeting is to discuss Assembly Concurrent Resolution No. 35, sponsored by Assemblyman Walter Kern, which proposes an amendment to the State Constitution to provide that release on bail may be denied under certain circumstances.

This public hearing has been ordered by the General Assembly under Rule 143 of the Rules of the General Assembly and in compliance with the requirements of Article IX, paragraph 1 of the State Constitution, concerning proposed constitutional amendments.

We have had other public hearings in other parts of the State concerning this resolution, having had one in the City of Vineland and one in the City of Trenton, and today we are here in Morristown, in order to get a geographic spread, and in order to hopefully get a consensus from people who might be interested in this resolution, in order that it may ultimately be placed on the ballot for consideration by the electorate.

I understand that Speaker Hardwick is here and wishes to testify, and here comes Speaker Hardwick. Good morning, Speaker.

S P E A K E R   C H U C K   H A R D W I C K: Good morning. Are you ready for me?

ASSEMBLYMAN SHUSTED: We're ready for you, sir, yes.

SPEAKER HARDWICK: Good morning to you, Mr. Chairman, members of the Committee. Thank you for inviting me here today for this public hearing as required by law to amend our State Constitution.

The issue before you today -- preventive detention of dangerous criminals -- is an extremely important issue. For a few of our residents, it may be the most important issue they

will face in their lives. They don't know who they are yet, but those are the innocent people who may become the next victim of thugs who are allowed out on the street, while they are awaiting trial.

If we don't protect potential victims from these predators, they may not live to debate any of the other issues that we consider so important this year. That is why I intend to post a preventive detention bill for a vote in the Assembly as soon as I can in an upcoming session.

By giving prosecutors and judges the ability to deny bail to the most dangerous defendants, we can protect the innocent would-be victims, the people who have had their lives irreparably changed, or ended, for the crime of getting in the way of a vicious criminal.

I know that few other issues have generated more emotion than the preventive detention of violent criminals, but I hope that the emotion of the issue does not cloud the central argument of this debate, and that is the rights of the victims and the innocent bystanders of our society. They must be protected.

For too long, our criminal justice system has zealously protected the rights of the violent defendants, without giving adequate consideration to protecting the rest of us. It is time that we realize that the right of innocent people to walk the streets in safety is every bit as important as the rights of criminal defendants.

Now, there is little we can do about predatory members of our society before they commit their first crime. But the good citizens of our State have every right to expect our criminal justice system to protect them from those who have already demonstrated that they are a threat to society. Preventive detention can give communities greater peace of mind. It is inexcusable that we should have to live in fear of

known violent offenders who roam the streets with impunity, released from jail to prey upon the innocent.

Preventive detention would give our courts the power to protect innocent men, women, and children, by denying bail to those violent offenders who are likely to continue to victimize the public if they are allowed back on the street.

The need for preventive detention was tragically illustrated by a case right here in Morris County. Dorina Vutca, and her mother, Maria Vacariu, are now dead for lack of preventive detention measures in New Jersey. They were the victims of her husband, Nickoli, a paroled murderer, charged with another offense, but released on \$500 bail. This murderer was let back on the streets despite the fact that he was sent to the courts for threatening the life of his wife in the first place. Was she scared? You bet she was, so much so that she fled to Pennsylvania, fearful that her violent husband might somehow escape the arms of the law.

But, he didn't have to escape. The law let him walk out the front door. Then the court system gave him her address, which he got directly from her filed complaint. The court system could hardly have done less to protect Dorina, or more to put her in jeopardy.

In another tragic case, a woman in Vineland was murdered by a man who had pled guilty to one of two rape charges against him, and was awaiting sentencing when he was released.

There is nothing we can do to bring these innocent victims back, but we can prevent the next one. Preventive detention would do nothing to keep a defendant from enjoying his right to a fair trial. And, in fact, this new tool would allow us to take some of the hypocrisy out of the system, and make it more fair for defendants, as well as victims.

Currently, if a judge feels that a defendant is a serious public safety risk, he is likely to set an inordinately

high bail to keep him off the street. Under the preventive detention system, a defendant would have the opportunity to face the charge that he is dangerous to society openly, through hearings set up to address the issue head-on. Any defendant who is denied bail by the preventive detention system would be put on the expedited calendar for a speedy trial, to ensure that he is not detained indefinitely. At the same time, the rights of our communities are protected, too.

Some opponents argue that preventive detention would be unconstitutional. That argument went up in smoke last year, when the United States Supreme Court ruled that preventive detention is constitutional and permissible, as long as you follow set guidelines. The court recognized what we knew all along: If someone is so dangerous that he meets the tests set up by the preventive detention system, it is inexcusable for the criminal justice system to fail to protect us from that criminal. There is nothing more sad or more preventable than a life-shattering crime committed by someone who is out on bail, after being caught committing an earlier violent crime.

By establishing preventive detention, we can protect the next victim before he is attacked, rather than mourning him afterward. We need, in the Legislature, to act now, before tragedy strikes again.

Mr. Chairman, you have been so thorough in your review of this issue, and you have expedited it. You have gone to localities like Morris County, which was the scene of a tragic, tragic case. And I want to commend you and the Committee members for your diligence, and hope that we, in the Assembly, and subsequently in the Senate, act as expeditiously as possible on this proposal.

ASSEMBLYMAN SHUSTED: Well, Mr. Speaker, it is encouraging to have you here to testify on the bill, because we know that once the Committee sees fit to release it, at least in the General Assembly it will be expeditiously handled. That

is encouraging to me, as Chairman of the Committee, and I am sure to my colleague, Assemblyman Girgenti, whom I did not introduce before. I apologize, John.

SPEAKER HARDWICK: Well, Mr. Girgenti has been on the front line, I think, of every major crime-fighting initiative we have had in the Assembly. It is good to see him here today, and I am not surprised to see him here today on the job.

ASSEMBLYMAN GIRGENTI: Thank you, Mr. Speaker.

SPEAKER HARDWICK: Thank you, Mr. Chairman.

ASSEMBLYMAN SHUSTED: Thank you very much, Mr. Speaker.

Is there any other member of the public who wishes to testify for or against this resolution? (no response)

I might just state for the record that we have taken testimony in the past. The PBA and the FOP, the United States Attorney's Office, the Attorney General of New Jersey, and the Governor have all indicated support for this resolution, while the criminal defense lawyers, the New Jersey Bar Association, the New Jersey Association of Corrections, and the American Civil Liberties Union have indicated opposition.

I am sure that, like any bill that comes before the Legislature, it is very rare that we have unanimity, but we have taken a lot of testimony, and I think in view of the Speaker's comments, the bill will be moved in the General Assembly in the very near future.

Hearing no other who wishes to testify at this time, I will entertain a motion to adjourn.

ASSEMBLYMAN GIRGENTI: So moved.

ASSEMBLYMAN SHUSTED: Second.

This hearing is adjourned. Thank you for coming.

**(HEARING CONCLUDED)**

