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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)

May 8, 1989
Room 418
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Thomas J. Shusted, Chairman
Assemblyman William "Pat" Schuber, Vice Chairman
Assemblyman John A. Girgenti

ALSO PRESENT:

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

* * * * *

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

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THOMAS J. SHUSTED
CHAIRMAN
WILLIAM P. SCHUBER
VICE-CHAIRMAN
ROBERT J. MARTIN
JOHN A. GIRGENTI
BARBARA F. KALIK

New Jersey State Legislature
ASSEMBLY JUDICIARY COMMITTEE
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 292-5526

MEMORANDUM

TO: MEMBERS OF THE ASSEMBLY JUDICIARY COMMITTEE

FROM: THOMAS J. SHUSTED, CHAIRMAN

SUBJECT: REVISED AGENDA
COMMITTEE MEETING and PUBLIC HEARING,
MAY 8, 1989

Please address any comments or questions to
Patricia K. Nagle, Committee Aide at (609) 292-5526.

The Assembly Judiciary Committee will meet on **Monday, May 8, 1989**
at **10:00 a.m. in Room 418** in the State House Annex, Trenton, New Jersey.

The Committee will consider the following bills:

A-2136 Stuhltrager	Requires condemnor in condemnation proceedings to provide written appraisal of property to owner.
A-2795 Shusted/ Rocco	Revises Trade Names Law to create uniform system for filing of noncorporate trade names; follows recommendations in Final Report of the Corporation Law Revision Commission, dated February 1, 1986.
A-4283 Impreveduto	Prohibits disclosure of the identity of child victims of sexual assault and child abuse.
A-4353 Shusted/ Rocco	Extends intestate distribution to great-grandparents and their children.
A-4423 Singer/ Martin	Permits court to consider an award of equitable distribution to a surviving spouse in certain circumstances.
A-4459 Gill/ Shusted	Prohibits computer transmission of obscene materials.
A-4487 Kamin/ Frelinghuysen	Classifies as a crime of the fourth degree the disbursement of moneys or the incurrence of obligations in excess of appropriations or an amount limited by law.

(Continued next page)

- S-691(1R) Laskin Classifies as a crime of the fourth degree the disbursing of moneys or the incurring of obligations by public officials in excess of appropriations or an amount limited by law.
- S-1001(1R) Lipman Revises certain sections of the statutes pertaining to the administration of estates to eliminate inequities based on gender.

After the discussion of bills, the committee will hold its fourth and final **PUBLIC HEARING** on ACR-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 include written testimony for inclusion in the final record should submit it to the committee aide at that time.

Issued 5/5/89

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:

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PROPOSED AMENDMENT

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

13 11. No person shall, after acquittal, be tried for the same
offense. All persons shall, before conviction, be bailable by
15 sufficient sureties, except [for] as may be provided by
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.

33 3. This proposed amendment to the Constitution shall be
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.

Matter underlined thus is new matter.

1 There shall be printed on each official ballot to be used at the
general election, the following:

3 a. In every municipality in which voting machines are not
used, a legend which shall immediately precede the question, as
5 follows:

If you favor the proposition printed below make a cross (x),
7 plus (+), or check (✓) in the square opposite the word "Yes."

If you are opposed thereto make a cross (X), plus (+), or check
9 (✓) in the square opposite the word "No."

b. In every municipality the following question:

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	YES.	<p>DENYING RELEASE ON BAIL TO PERSONS IN CERTAIN CIRCUMSTANCES</p> <p>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>
	NO.	<p>INTERPRETIVE STATEMENT</p> <p>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>

1

CRIMINAL JUSTICE
Criminal Sentences and Bail

3

5 **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.

ASSEMBLYMAN THOMAS J. SHUSTED (Chairman): At this time, we are going to open the session for the public hearing on ACR-35, in order to comply with the statute.

I would, at this time, entertain a motion to incorporate all of the prior transcripts of the public hearings concerning ACR-35, and make them a part of the record. Do I hear a motion?

ASSEMBLYMAN SCHUBER: I so move.

ASSEMBLYMAN SHUSTED: Second?

ASSEMBLYMAN GIRGENTI: Second.

MS. NAGLE: (Committee Aide) Assemblyman Girgenti?

ASSEMBLYMAN GIRGENTI: Yes.

MS. NAGLE: Assemblyman Shusted?

ASSEMBLYMAN SHUSTED: Yes.

MS. NAGLE: Assemblyman Schubert?

ASSEMBLYMAN SCHUBER: Yes.

ASSEMBLYMAN SHUSTED: Is there any member of the public who wishes to testify for or against ACR-35, or on behalf of ACR-35? (no response)

I would entertain a motion to close the public record.

ASSEMBLYMAN SCHUBER: So moved.

ASSEMBLYMAN GIRGENTI: Second.

ASSEMBLYMAN SHUSTED: Roll call.

MS. NAGLE: Assemblyman Girgenti?

ASSEMBLYMAN GIRGENTI: Yes.

MS. NAGLE: Assemblyman Schubert?

ASSEMBLYMAN SCHUBER: Yes.

MS. NAGLE: Assemblyman Shusted?

ASSEMBLYMAN SHUSTED: Yes.

That concludes the business. I would entertain a motion to adjourn.

ASSEMBLYMAN SCHUBER: So moved.

ASSEMBLYMAN GIRGENTI: Second.

MS. NAGLE: Assemblyman Girgenti?

ASSEMBLYMAN GIRGENTI: Yes.

MS. NAGLE: Assemblyman Schuber?

ASSEMBLYMAN SCHUBER: Yes.

MS. NAGLE: Assemblyman Shusted?

ASSEMBLYMAN SHUSTED: Yes.

This meeting is adjourned. Thank you for coming.

(HEARING CONCLUDED)

APPENDIX



THOMAS J. SHUSTED
CHAIRMAN
SAM P. SCHUBER
VICE-CHAIRMAN
ROBERT J. MARTIN
JOHN A. GIRGENTI
BARBARA F. KALIK

New Jersey State Legislature
ASSEMBLY JUDICIARY COMMITTEE
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 292-5526

MEMORANDUM

October 11, 1988

TO: MEMBERS OF THE ASSEMBLY JUDICIARY COMMITTEE
FROM: THOMAS J. SHUSTED, CHAIRMAN
SUBJECT: COMMITTEE MEETING, OCTOBER 17, 1988

Please address any comments or questions to Barbara S. Hutcheon,
Committee Aide at (609) 292-5526.

The Assembly Judiciary Committee will meet on Monday, October
17, 1988 at 10:00 a.m. in the Council Chambers, First Floor,
Vineland Municipal Bldg., 6th and Wood Streets, Vineland, New Jersey.

The Committee will consider the following bills:

A-2177 X
Hardwick

The "Bail Act of 1988."

ACR-35 X
Kern

Amends the constitution to provide that release
on bail may be denied.

Witness List
Assembly Judiciary Committee Meeting
Vineland, New Jersey
October 17, 1988

Testimony on A-2177 - Hardwick and ACR-35 - Kern:

- 1) Speaker Chuck Hardwick
- 2) Steven Neder - Cumberland County Prosecutor
- 3) Jose LaBoy - Vineland City Councilman
- 4) Susan Crossley - Cumberland County Guidance Center
(Rape Crisis Intervention)
- 5) James Forcinito - Cumberland County Sheriff
- 6) James Rocco - Vineland City Police
- 7) Glenn Nickerson - Director of Public Relations for the
Cumberland County Freeholder Board
- 8) Carl Cauagnaro - Private attorney
- 9) Robert Robbins - Fraternal Order of Police
- 10) Peter Bruso, Esq. - Criminal Defense Lawyers Association
- 11) Ed Martone - American Civil Liberties Union



THAS J. SHUSTED
CHAIRMAN
WILLIAM P. SCHUBER
VICE-CHAIRMAN
ROBERT J. MARTIN
JOHN A. GIRGENTI
BARBARA F. KALIK

New Jersey State Legislature
ASSEMBLY JUDICIARY COMMITTEE
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MEMORANDUM

June 16, 1988

TO: MEMBERS OF THE ASSEMBLY JUDICIARY COMMITTEE
FROM: THOMAS J. SHUSTED, CHAIRMAN
SUBJECT: COMMITTEE MEETING, JUNE 23, 1988

Please address any comments or questions to Barbara S. Hutcheon, Committee Aide at (609) 292-5526.

The Assembly Judiciary Committee will meet on Thursday, June 23, 1988 at 10:00 a.m. in room 418 in the State House Annex, Trenton, New Jersey.

The Committee will consider the following bills:

Held
A-2177
Hardwick

The "Bail Act of 1988."

Held
ACR-35
Kern

Amends the Constitution to provide that release on bail may be denied.

Witness List
Assembly Judiciary Committee Meeting
Trenton, New Jersey
June 23, 1988

Testimony on A-2177 - Hardwick and ACR-35 - Kern:

In Support

- Speaker Chuck Hardwick
- Samuel Alito - United States Attorney for New Jersey
- Victoria Bramson - New Jersey Office of the Attorney General
- Bill Palatucci - Policeman's Benevolent Association

Opposed

- Dale Jones - New Jersey Public Advocate
- Michael D'Alessio - Association of Criminal Defense Lawyers
- New Jersey State Bar Association
- Frank Hartman - Lawyers Encouraging Government and Law
- Ed Martone - American Civil Liberties Union

New Jersey General Assembly

JUDICIARY COMMITTEE

Date of Meeting January 23, 1989

Date of Filing with Clerk _____

The committee releases ACR-35

☒ as referred to committee
☐ with committee amendments
☐ by committee substitute, numbered: _____

Prime Sponsor(s): Assemblyman Kern

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

Members	Motion to:				Motion to Release <input checked="" type="checkbox"/> favorably <input type="checkbox"/> w/o rec.	Signature
SHUSTED, THOMAS J. CHAIRMAN					Y	<i>Thusted</i>
SCHUBER, WILLIAM P. VICE CHAIRMAN					Y	<i>W. P. Schuber</i>
MARTIN, ROBERT J.					Y	<i>Robert J. Martin</i>
GIRGENTI, JOHN A.					Y	<i>John A. Giregenti</i>
KALIK, BARBARA F.					Y	<i>Barbara F. Kalik</i>

Legend: Y (yes); N (no); NV (not voting); A (absent)

Thusted

Chair

New Jersey General Assembly

JUDICIARY COMMITTEE

Date of Meeting January 23, 1989

Date of Filing with Clerk _____

The committee releases A-2177

☒ as referred to committee
☐ with committee amendments
☐ by committee substitute, numbered: _____

Prime Sponsor(s): Assemblyman Hardwick

Synopsis: Designates the "Bail Act of 1988" and establishes standards for fixing bail.

Members	Motion to:				MOTION TO Release <input checked="" type="checkbox"/> favorably <input type="checkbox"/> w/o rec.	Signature
				Amend		
SHUSTED, THOMAS J. CHAIRMAN				Y	Y	<i>Thomas J. Shusted</i>
SCHUBER, WILLIAM P. VICE CHAIRMAN				Y	Y	<i>William P. Schuber</i>
MARTIN, ROBERT J.				Y	Y	<i>Robert J. Martin</i>
GIRGENTI, JOHN A.				Y	Y	<i>John A. Girgenti</i>
KALIK, BARBARA F.				Y	Y	<i>Barbara F. Kalik</i>

Legend: Y (yes); N (no); NV (not voting); A (absent)

Thomas J. Shusted

 Chair

TESTIMONY

BY

ALFRED A. SLOCUM

PUBLIC ADVOCATE OF NEW JERSEY

BEFORE

ASSEMBLY JUDICIARY COMMITTEE

JUNE 23, 1988

GOOD MORNING, CHAIRMAN SHUSTED AND MEMBERS OF THE COMMITTEE. I THANK ASSEMBLYWOMAN KALIK FOR HER INVITATION TO EXPRESS MY VIEWS AND CONCERNS WITH RESPECT TO ASSEMBLY CONCURRENT RESOLUTION NO. 35, A PROPOSED AMENDMENT TO THE CONSTITUTION OF THE STATE OF NEW JERSEY, WHICH WOULD AUTHORIZE THE DENIAL OF BAIL UNDER CERTAIN CIRCUMSTANCES, AND A-2177, AN ENABLING ACT WHICH SETS FORTH THOSE CIRCUMSTANCES.

I AM STRONGLY OPPOSED TO THE PROPOSED AMENDMENT AND ENABLING LEGISLATION WHICH WOULD ELIMINATE A RIGHT WHICH NEW JERSEY CITIZENS HAVE ENJOYED FOR MORE THAN THREE CENTURIES.

I. [DIFFERENCE BETWEEN U.S. AND N.J. CONSTITUTION]

ALTHOUGH THE UNITED STATES SUPREME COURT HAS UPHELD THE POWER OF FEDERAL JUDGES TO DENY BAIL TO "DANGEROUS" DEFENDANTS, THE STATE CONSTITUTION HAS LONG PROVIDED A STRONGER GUARANTEE OF THE RIGHT TO BAIL THAN ITS FEDERAL COUNTERPART.

A PROVISION OF THE STATE CONSTITUTION, THAT DATES TO A 1682 LAW IN THE PROVINCE OF EAST JERSEY, AFFORDS ALL CRIMINAL DEFENDANTS, EXCEPT THOSE FACING A POSSIBLE DEATH SENTENCE, THE RIGHT TO BE RELEASED ON BAIL WHILE AWAITING TRIAL; THIS PROPOSED AMENDMENT, IF PASSED BY THREE-FIFTHS OF THE SENATE AND APPROVED BY THE VOTERS WOULD OVERTURN 306 YEARS OF NEW JERSEY CONSTITUTIONAL HISTORY.

II. [DIFFERENCE BETWEEN FEDERAL LAW "THE BAIL REFORM ACT OF 1984" (18 U.S.C. 3141, ET SEQ.) AND A-2177]

A-2177 FOLLOWS CLOSELY THE FEDERAL BAIL REFORM ACT OF 1984; HOWEVER, THERE IS A SIGNIFICANT DIFFERENCE IN THE FEDERAL RESPONSE TO FAILURE TO PROVIDE A SPEEDY TRIAL. THE FEDERAL SPEEDY TRIAL ACT (18 U.S.C. 3161, ET SEQ.) PROVIDES FOR MANDATORY DISMISSAL OF THE CHARGE, THUS DIMINISHING THE SPECTER OF UNNECESSARY DETENTION.

THIS BILL PROVIDES ONLY THAT A DEFENDANT "BE PLACED ON AN EXPEDITED CALENDAR" AND "BE GIVEN PRIORITY" AND UPON THE EXPIRATION OF 90 CALENDAR DAYS IS ENTITLED TO BE CONSIDERED FOR BAIL. NEITHER THIS BILL NOR THE PRESENT RULES OF COURT PROVIDE FOR MANDATORY DISMISSAL OR RELEASE FROM CUSTODY FOR EXCESSIVE PRETRIAL DETENTION.

UNLIKE THE FEDERAL LAW, NEW JERSEY PLACES NO PRESSURE WHATSOEVER ON THE PROSECUTION TO PROVIDE FOR A SPEEDY TRIAL.

IN THEORY AND PRACTICE, NEW JERSEY FALLS FAR SHORT OF THE FEDERAL STANDARD WHICH REQUIRES DISMISSAL FOR DELAY; OUR COURT RULE 3:25-3 PROVIDES FOR PERMISSIVE DISMISSAL WHERE THERE HAS BEEN UNREASONABLE DELAY. AS A PRACTICAL MATTER, JUDGES ARE EXTREMELY RELUCTANT TO DISMISS CRIMINAL CHARGES REGARDLESS OF THE LENGTH OF THE DELAY. THE FAILURE TO PROVIDE FOR MANDATORY DISMISSAL FOR UNREASONABLE DELAY WILL CONTINUE TO BE A PRIMARY REASON FOR THE OVERCROWDING IN OUR COUNTY JAILS.

THERE IS NOTHING IN THIS LEGISLATION TO PREVENT PEOPLE WHO HAVE NOT BEEN CONVICTED OF A CRIME FROM LANGUISHING IN JAILS ALREADY BURSTING AT THE SEAMS WITH PRETRIAL DETAINEES. PRETRIAL DETENTION UNDER THESE CIRCUMSTANCES AMOUNTS TO NOTHING LESS THAN PUNISHING PEOPLE FIRST AND THEN DECIDING WHETHER OR NOT THERE IS ANYTHING TO PUNISH THEM FOR.

NOR SHOULD THE FEDERAL EXPERIENCE ACT AS A MEANINGFUL INDICATOR FOR WHAT NEW JERSEY CAN EXPECT. THERE IS A QUANTITATIVE AND QUALITATIVE DIFFERENCE BETWEEN PERSONS CHARGED WITH FEDERAL OFFENSES AND THOSE CHARGED WITH CRIMES ON THE STATE LEVEL--FEDERAL PROSECUTORS RARELY, IF EVER, DEAL WITH SO-CALLED

"STREET CRIMES," STATE PROSECTUORS RARELY DEAL WITH ANYTHING ELSE. SINCE THE OFFICE OF THE PUBLIC DEFENDER REPRESENTS ONLY INDIGENTS, WHICH ARE 85% OF THOSE PERSONS CHARGED WITH CRIMES IN THIS STATE, CLEARLY THE IMPACT OF THIS LEGISLATION WILL FALL UPON THOSE WHO CAN LEAST AFFORD LENGTHY PRETRIAL DETENTION.

THAT A HEARING WITH RESPECT TO THE QUESTION OF PRETRIAL DETENTION, COMPLETE WITH PROCEDURAL SAFEGUARDS, IS PROVIDED FOR BY THE ENABLING LEGISLATION DOES NOT, IN MY MIND, SATISFY DUE PROCESS.

NOTIONS OF DUE PROCESS GO BEYOND THE HEARING TO DETERMINE WHETHER PRETRIAL DETENTION IS APPROPRIATE. IT IS QUESTIONABLE WHETHER THERE IS NOT AT LEAST AN ARGUMENT THAT THE CONSTITUTIONAL STANDARDS SET FOR AN INCARCERATING FACILITY OUGHT TO TAKE INTO ACCOUNT THE STATUS OF THE INMATES. THAT IS TO SAY THAT FOR THE LEGION OF CASES THAT HAVE DECIDED THAT OVERCROWDING, LACK OF ADEQUATE UTILITIES, AND AN ABSENCE OF HEALTH CARE IMPOSING SERIOUS HEALTH RISKS, WARRANT JUDICIALLY ORDERED RELEASES, WHILE NOTING THAT THOSE RELEASED HAVE BEEN CONVICTED OF WRONGFUL CONDUCT AND INDEED MAY WELL BE CONVICTED FELONS. THOSE CONDITIONS, WHEN NOT QUITE EGREGIOUS ENOUGH TO REQUIRE THE RELEASE OF THOSE CONFINED, MAY YET BE TOO EGREGIOUS TO PERMIT THE OPERATION OF A PRETRIAL DETENTION SYSTEM, BECAUSE THE

CIRCUMSTANCES MAY BE FAR TOO ONEROUS TO IMPOSE ON ANY INDIVIDUAL WHO DOES NOT STAND CONVICTED. HOW DOES THE PRESUMPTION OF INNOCENCE IMPACT UPON THAT JUDGMENT?

IF NOT SUCH THAT IT OFFENDS DUE PROCESS STANDARDS, IT WOULD SEEM THAT INCARCERATION UNDER THOSE CIRCUMSTANCES FOR PRETRIAL DETENTION PURPOSES WOULD AFFRONT THE EIGHTH AMENDMENT OF THE CONSTITUTION. SUCH INCARCERATION, OF A CERTAINTY, WOULD CONSTITUTE PUNISHMENT; PUNISHMENT FOR PRETRIAL PURPOSES UNDER THE ONEROUS CONDITIONS SUGGESTED VIOLATES NOT ONLY DUE PROCESS, BUT RAISES THE SPECTER OF CRUEL AND UNUSUAL PUNISHMENT AS WELL.

III. [IMPACT ON THE CRIMINAL JUSTICE SYSTEM]

ON JUNE 17, 1988, THE SPEEDY TRIAL EXECUTIVE COMMITTEE WAS ADVISED BY THE ADMINISTRATIVE OFFICE OF THE COURTS THAT THE "MEDIAN TIME FROM ARREST TO DISPOSITION HAS INCREASED FROM A LOW OF FIVE MONTHS TO ABOUT SIX AND ONE-HALF MONTHS." THIS ALREADY TROUBLESOME DELAY WILL BE EXACERBATED BY THE HEARINGS REQUIRED BY THIS BILL TO SATISFY DUE PROCESS; PROSECUTORS, WHO CANNOT NOW BRING A DEFENDANT TO TRIAL IN TIMELY FASHION DUE TO INADEQUATE RESOURCES, WILL CERTAINLY BE WITHOUT THE RESOURCES TO STAGE "MINI-TRIALS" IN ANY SIGNIFICANT NUMBER. THE NET EFFECT WILL BE A GREATER NUMBER OF PRETRIAL DETAINEES BEING HELD FOR A GREATER

PERIOD OF TIME WITHOUT ANY MEANS TO COMPEL THE CRIMINAL JUSTICE
SYSTEM TO PROVIDE HIM WITH A TRIAL AS TO GUILT OR INNOCENCE.



NEW JERSEY STATE BAR ASSOCIATION

NEW JERSEY LAW CENTER, ONE CONSTITUTION SQUARE
NEW BRUNSWICK, NJ 08901-1500
201-249-5000

Statement of the New Jersey State Bar Association
To The Assembly Judiciary Committee
June 23, 1988
ACR 35 and A-2177

The New Jersey State Bar Association wishes to thank the Assembly Judiciary Committee for the opportunity to speak today in opposition to ACR 35 and A-2177.

The State Bar Association opposes the proposed constitutional amendment and the concept of preventive detention based upon the recommendation of its Criminal Law Section, which is composed of both experienced prosecutors and defense counsel.

ACR-35 proposes to amend the New Jersey Constitution to permit the denial of bail, "where release will not reasonably assure the appearance of the defendant as required or where for the protection of other persons, it would be proper to deny bail." The enactment of such a constitutional amendment will allow for the adoption of a pretrial detention system.

A-2177 would implement the constitutional amendment by providing for the pretrial detention of defendants in certain specified circumstances. The bill would allow the court to order the pretrial detention of certain defendants where the court finds, upon clear and convincing evidence: the defendant is charged with certain violent crimes; the defendant is charged with a first or second degree crime involving violence and has either previously been convicted of a first or second degree crime or the offense was allegedly committed while the defendant was on bail, probation or parole for a crime of the first or second degree, or; the defendant, charged with any offense, threatens or injures a prospective witness or juror.

If a denial of bail is to be sought, the prosecutor must provide a written application to the court setting forth under oath, the facts giving reasonable cause to support a detention order. The legislation would require a hearing to be held within 72 hours. At the hearing, during which the defendant is entitled to counsel and has the right to present witnesses and to confront adverse witnesses, the prosecutor has the burden of proving the necessity for detention by clear and convincing evidence. A defendant who is detained is entitled to expedited disposition of his case.

Pretrial detention is undesirable because it infringes upon the constitutional right to bail and the long cherished presumption of innocence. This legislation is contrary to the basic principle of our criminal justice system that an individual is presumed innocent until proven guilty.

The enactment of this legislation may result in the incarceration of innocent people. The proposals would deny a person his liberty based on a judge's subjective opinion that a person is likely to cause harm to another. It punishes somebody for something a judge is afraid he might do. It also incarcerates people merely because they are suspected of having committed a crime. These people have not been convicted or even indicted. A system of statutory preventive detention is unnecessary inasmuch as the imposition of conditions on pretrial bail liberty are already a matter within the discretion of the court. Presently, where warranted, bail may be set at a high level and many prosecutors believe the present system works well. Thus, the constitutional right to bail should not be unduly burdened. To deny bail is to punish an accused before conviction and ignores the presumption of innocence to which every person charged with a crime is entitled.

Additionally, New Jersey jails are already overcrowded with individuals who cannot meet their bail requirements or who are serving sentences. Our jails would have a difficult time tolerating the additional burden of defendants who have been denied bail. The concept of bail was designed to alleviate the burden on jails and prisons by securing a defendant's presence in court without detention until trial. Bail was never meant to be used as punishment. The enactment of legislation permitting a system of preventive detention will increase the already overwhelming burden on our State's jails and prisons and punish unindicted, unconvicted citizens.

Moreover, the New Jersey State Bar Association maintains that the procedures for notice and hearing in those instances where the prosecutor seeks detention will place an intolerable burden upon the resources of the prosecutor's office. In order to move for detention, the prosecutor would have to provide the necessary court pleadings as well as complete discovery, within 72 hours of the defendant's arrest and before an indictment has even been handed down. The hearing would be, in effect, a

mini-trial at which time the prosecutor would be called upon to reveal the substance of the case, despite the fact that the investigation may yet be in progress.

The New Jersey State Bar Association believes that prosecutor's offices are generally satisfied with the present system of setting bail. Further, it would appear that any benefits of pretrial detention are far outweighed by the resulting costs in court time and jail space.

The State Bar Association respectfully urges you to oppose this legislation. Thank you for considering the views of the New Jersey State Bar Association on this important legislation.

CUMBERLAND COUNTY BOARD OF CHOSEN FREEHOLDERS

Remarks on
A-2177 (Pre-Trial Detention)
to the

Judiciary Committee
General Assembly of the State of New Jersey

Vineland City Hall

October 17, 1988

10 A.M.

Good morning. Cumberland County government is pleased to be able to welcome the Assembly Judiciary Committee to South Jersey.

I am Glenn Nickerson, Public Information Officer for Cumberland County. Freeholder Director Charles Fisher sends his regards, and has asked me to present the following remarks on behalf of himself and the Cumberland County Board of Chosen Freeholders:

The Cumberland County Board of Chosen Freeholders looks with favor upon legislative initiatives such as A-2177, the Bail Act of 1988, more commonly known as the Pretrial Detention Bill.

Pretrial detention, if used wisely and with discretion by the judiciary, could prevent those accused of violent crimes from having the opportunity to repeat the offense before being given their day in court.

We must stress that a careful balance needs to be drawn to prevent abuse of the authority to incarcerate without bail. The guidelines must be clearly spelled out in detail.

Safeguards, particularly those leading to a speedy trial, are essential for a pretrial detention system to work effectively.

We view pretrial detention as another tool to be used by the courts to help protect our society from those judged a threat to cause bodily harm if released hastily.

Of course, the balances to be drawn in implementing this legislation must take into account the space available for incarceration.

Warehousing of all accused, no matter how severe or how petty their alleged crime, is not a fiscally prudent answer.

While Cumberland County has a brand-new addition to its county jail, we must point out the complex currently holds 336 inmates and is well over its designed capacity of 222.

Under pretrial detention, it is likely the decision to hold one person in custody would automatically lead to the release of someone else who is deemed less of a threat.

There just isn't the space available to hold everyone.

County governments, which must bear the burden of funding jail space for those awaiting trial, are extremely sensitive to the cost implications of legislation. We sincerely hope that as this bill works its way through the legislative process, such concerns are taken into consideration.



Center for Human Development

Cumberland County Guidance Center, Inc.

(609) 825-6810

H. DIETER HOVERMANN, M.A.
Executive Director

GENERAL ASSEMBLY JUDICIARY COMMITTEE HEARING
TESTIMONY ON A 2177
VINELAND CITY COUNCIL CHAMBERS
OCTOBER 17, 1988

Testimony presented by: Susan O. Crossley, M.A., Director, Child & Family Services

I wish to offer my overall support of Assembly Bill 2177 that establishes standards for fixing bail and pre-trial detention. I view this legislation as addressing part of a larger system's problem and wish to address my comments to this viewpoint. Other components of that system need consideration for implementation to be most effective.

The court may order the release of a person on his own recognizance with conditions as determined by employment and family, among others. I wish to caution you that we have had cases where employers have subsequently suspended the offender in reference to the legal difficulties until disposition is made. This, then, invalidates what was originally valid. In regards to the family, often what appears on the surface when investigated more thoroughly has a different appearance. There are many dynamics within families that sometimes only subtly are present and contribute to the dysfunction. There needs to be an awareness of these points with someone responsible for monitoring and carefully evaluating.

The points regarding conditions of release raise similar concerns. Placing a defendant in the custody of a designated person is more than not a family member. Often family members sabotage the best made plans and withhold information. If one places restrictions on travel, association, so on, who will ensure its enforcement on an on-going, consistent basis?

Currently, the system does not support the supervision required. Restrictions/conditions may be ordered, but without the personnel and the commitment to enforcing it with consequences consistently implemented, it is meaningless.

I like the condition that releases a person for specified hours to work and then has to return to custody. There are some inherent safeguards within this condition and it allows the offender to pay off debts. Again, however, it requires someone to supervise closely, i.e. call work to ensure timely arrival, departure, and return to custody.

The attempt of this legislation to protect the civil liberties of the defendant is certainly necessary. However, I am concerned about bogging down the system even more than it already is. The defendant's right to be heard within 24 hours of the hearing for review of conditions, takes judicial time. And, if not indicted within three months after his commitment and if not tried



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within six months, he may be admitted to bail and discharged on his own recognizance respectively. This is understandable but frightening. The nature of the crime and the circumstances/characteristics of the offender have not changed.

Without more money in the court system for more judges, more probation officers and more prosecutors, we may be setting up a monster. Without timely implementation, close supervision, and careful monitoring at all levels, the intent of this legislation is diluted. Furthermore, whatever conditions are placed upon the defendant, they must be tangible expectations and guidelines. They must be as clearly stated as possible so there is no room for one's own interpretations. This type of clientele requires a great deal of firmness and monitoring because by and large dodging the system is their area of expertise.

Dodging the system leads me into another component of the system that requires examination, plea bargaining. This can totally undermine all good intentions. The message to the offender becomes distorted in regards to his crime(s), and the victim continues to be victimized. One example is the case of a sexual offender whose charges were downgraded through plea bargaining, and because he was a "respectable man in the community" was released on his own recognizance. The victim and offender lived in the same neighborhood which meant he walked the same streets. The fear this instills in the victim cannot be overly exaggerated, much less the anger. It also impacts on the testimony of the victim, whenever the trial ends up being scheduled. Often the trial date is postponed several times, a ploy to further break down the victim.

Overall, there needs to be education and an increased sensitivity of the legal system regarding the victim-offender process. Furthermore, most of the offenders we see, and the literature supports this, have been victims themselves. Hence, in order to truly impact on the criminal problems and to set our sights toward long-term solutions, we must give credence to prevention and education. We must break the cycle and avoid the pain of wounds that never fully heal. Part of this cycle requires us to stop offenders from continuing to offend, victims to be supported when they report, and children to be educated early so they are sufficiently yet non-threateningly armored.

Respectfully submitted,

Susan O. Crossley

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TESTIMONY OF KAREN SPINNER ON BEHALF OF THE
NEW JERSEY ASSOCIATION ON CORRECTION

ON
A-2177 and ACR 25
PRE-TRIAL DETENTION

The New Jersey Association on Correction, a state-wide citizens' organization working to improve the effectiveness of New Jersey's criminal justice and corrections system, once again must state its opposition to the proposed establishment of pre-trial detention. New Jersey's constitution gives its citizens the right to bail for all offenses except capital crimes. This is a constitutional right which has existed in New Jersey for over 300 years, tracing its roots to a 1682 law in the province of East Jersey.

There have been many arguments advanced by the bills' proponents, especially the fact that the federal government permits preventive detention and that it has passed constitutional muster. This argument denies the elemental differences between the kinds of crimes which concern the federal courts and the basic street crimes that are the concern of the state courts. Most of the offenders arrested on state charges are New Jersey residents; indeed, they generally reside in or near the jurisdiction where the offense was allegedly committed. They are often poor and have no access to the kinds of funds needed to flee. The comparison between the two are not valid.

And then, there is the entire question of why this proposed law is needed with its attendant costs of a "mini-trial" and lengthy incarceration if pre-trial detention is approved. Statistics indicate that the failure to appear rate nationally is about 4% and that the State rate is quite similar. In many instances, failure to appear is a result of the defendant not receiving the notice to appear because he/she has moved or the individual "forgot," not willful intent to avoid trial.

One of the purported goals of pre-trial detention is to keep dangerous people off the streets. No reliable statistics have been forthcoming from the State of New Jersey on the number of serious crimes committed by individuals who are on bail. The issue of preventive detention has been kicked around for at least six years in this state and such information has been requested by this Committee from the AOC. To the best of my knowledge, they still only have data that says 15% of individuals on bail have been re-arrested with no differentiation on

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severity of the offense. The evidence is not there to change over 300 years of a constitutional right.

Another factor to be considered is that in the United States, an individual is presumed "innocent until proven guilty." Prosecutors and judges would be asked to prove a case based on some vague notion of dangerousness. They are being asked to predict an individual's future behavior. Researchers who have done extensive work in the area of predicting future criminal behavior admit that there is considerable risk of error. Greenwood who developed a scale for determining who should be selectively incapacitated only correctly identified high risk offenders 45% of the time.

New Jersey's county jails are filled to overflowing. They are operating at 173% of capacity. Of the 11,735 individuals who are incarcerated in the county, more than half are held pre-trial, many of whom are unable to make even modest bail. Allowing for a formal system of pre-trial detention will only exacerbate this situation.

There is also a substantial body of literature which indicates that defendants who have been detained in jail because they could not make the bail set by the court are more likely to be convicted than those who were released on bail. A defendant who is denied bail through a court hearing would be doubly disadvantaged since a judge has already determined that he/she was likely to abscond or commit another crime.

The continued emphasis on trying to institute a pre-trial detention system in New Jersey detracts from the far greater need to seriously review and improve the existing bail system. A heavy reliance on monetary bail discriminates against the poor who are most likely to remain in jail due to lack of resources. Serious bail reform needs to occur and it is time to move to this issue to stop the practice of warehousing of those "presumed to be innocent" just because they are unable to post bond.

The New Jersey Association on Correction opposes pre-trial and urges you not to release A-2177 and ACR 35.

TESTIMONY AT THE PUBLIC HEARING ON ACR 35
PRE TRIAL DETENTION
APRIL 19, 1989

My name is Karen Spinner and I am the Director of Public Education and Policy for the New Jersey Association on Correction. The Association is a statewide citizens organization working to improve the effectiveness of New Jersey's criminal justice and corrections systems, we are also concerned with the enormous economic, social and humane costs associated with the administration of these systems.

ACR-35 is of serious concern to us because it proposes a significant change in the New Jersey Constitution which taints the cherished legal notion of "innocent until proven guilty". Our constitution currently permits bail for all offenses except capital crimes.

As I understand it, the primary purpose of bail is to assure that the accused will appear in court to answer the charges filed against him or her. ACR-35 would add to the constitution two other explicit exceptions: "where release will not reasonably assure the appearance of the defendant as required, or where for the protection of other persons it would be proper to deny bail". In setting up these additional reasons for denying bail, it also requires that a hearing be held to give the defendant an opportunity to be heard.

Looking first at the issue of non-appearance, the national rate of failure to appear for trial is 4%. Statistics for New Jersey, if available, would be comparable and in most cases, failure to appear is not intentional as defendants once reminded, keep other court dates.

The other issue, which I believe is the more central one, is the common assumption that defendants while on bail commit other crimes. Since 1982, NJAC has been asking for the New Jersey statistics on the number of crimes committed by persons while on bail. To date, all that is available is a 1980 study done by the AOC of arrest cycles that showed that 15.5% were rearrested while on bail or ROR. Unfortunately, the arrests were undifferentiated and there is no indication as to the seriousness of the crime. Proponents of this bill have not proved its need.

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They are asking that the prosecutor and judges be given the opportunity to deny an individual bail based on a prediction of how that individual will act in the future. Researchers in this area indicate that there is considerable room for error. Criminal justice scholars Norval Morris and Marc Miller, suggest that predictions may properly be used in sentencing decisions but not in decisions in determining guilt or innocence. According to Morris and Miller, the meaning of prediction is "that the individual has a condition - membership in a group with certain behavioral probabilities - and not that the individual has that likelihood of the predicted behavior." They caution about using predictive techniques to deny individuals of their liberty.

The second provision deals with the protection of other persons. What standards or criteria will be utilized to determine whether these persons could be protected in a less intrusive fashion? In setting bail, the judge already has the authority to set non-monetary conditions which would require that the defendant have no contact with victims or witnesses. If New Jersey had an effective pre-trial services system with a range of programs including day parole, some of these issues could be addressed without resorting to changing the state's constitution. Failure to conform to conditions of bail would result in a return to incarceration. This would be a more reasonable approach than overturning 300 years of legal tradition.

Costs of a preventive detention policy also need to be considered. They are both economic and humane. This proposed amendment would require a hearing before anyone could be detained pre-trial and this is an important safeguard. However, what impact will this have on an already crowded court calendar? Will this not in essence amount to two trials? While testimony given by the defendant at this hearing will not be admissible against him/her on the issue of guilt in any other judicial proceeding, this existing testimony becomes a permanent court record. Will not the existence of such testimony color a judge or jury's perception of the case when the accused is actually brought to trial? There is a substantial body of literature which indicates that defendants who have been detained in jail because they could not make the bail set for them by the court are more likely to be convicted than those who were able to afford bail. Is it likely that a defendant who is denied bail through a court hearing would

suffer any lesser fate especially when a judge has already determined that he/she was likely to abscond or commit another crime?

Who will pay for this two tier system of justice? Right now the State is facing a budget crisis and critical services are in danger of losing funding. Where will the money come from to have these "mini-trials"?

Jail overcrowding continues at an unprecedented rate. As of March 28, 1989, county jails were holding over 13,000 individuals. Just over 7000 were being held pre-trial, many on what might be considered relatively low bail. While the population is fluid with individuals entering and leaving due to bail being posted, there are still a significant number of individuals detained pre-trial because they are unable to meet bail conditions imposed.

New Jersey undoubtedly needs bail reform to help reduce the number of people held due to their economic status. New Jersey does not need a preventive detention system which will waste limited resources, overburden existing staff and exacerbate the already overcrowded jail system.

NOTE

Attached are copies of the cover sheets of three previous public hearings from earlier sessions which are available.

These hearings concerned Assembly Concurrent Resolutions identical to ACR-35 of 1988 which has been reintroduced for several sessions.

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PUBLIC HEARING

before

ASSEMBLY JUDICIARY COMMITTEE

on

ASSEMBLY CONCURRENT RESOLUTION 77

(Proposes an amendment to the Constitution denying release
on bail to persons under certain circumstances)

Held:

December 13, 1984

Room 446

State House Annex

Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Martin A. Herman, Chairman
Assemblywoman Angela L. Perun, Vice Chairwoman
Assemblyman Eugene H. Thompson
Assemblyman Walter M.D. Kern, Jr.

ALSO PRESENT:

Steven V. McGettigan, Research Assistant
Office of Legislative Services
Aide, Assembly Judiciary Committee

PUBLIC HEARING

before

ASSEMBLY JUDICIARY COMMITTEE

on

ASSEMBLY CONCURRENT RESOLUTION 77

(Proposes an amendment to the Constitution denying release
on bail to persons under certain circumstances)

Held:
February 14, 1985
Room 441
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Martin A. Herman, Chairman
Assemblywoman Angela L. Perun, Vice Chairman
Assemblyman Walter M. D. Kern
Assemblyman Thomas J. Shusted

ALSO PRESENT:

Steven V. McGettigan
Office of Legislative Services
Aide, Assembly Judiciary Committee

PUBLIC HEARING

before

ASSEMBLY JUDICIARY COMMITTEE

ON
ASSEMBLY CONCURRENT RESOLUTION 72

**(Denying Release on Bail to Persons
in Certain Circumstances)**

June 23, 1986
Room 418
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Walter M. D. Kern, Chairman
Assemblyman Gary W. Stuhltrager, Vice Chairman
Assemblyman Thomas J. Shusted
Assemblywoman Elizabeth Randall
Assemblyman William "Pat" Schuber
Assemblyman Eugene H. Thompson
Assemblyman John A. Girgenti

ALSO PRESENT:

Steven McGettigan
Office of Legislative Services
Aide, Assembly Judiciary Committee

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