

SENATE BILL No. 968

February 10, 2004, Introduced by Senators CASSIS, PATTERSON, ALLEN and BIRKHOLZ and referred to the Committee on Judiciary.

A bill to create the pretrial services program act; to proscribe the duties of certain state and local agencies, officials, and employees; to establish certain criteria and procedures for releasing criminal defendants on bail and for revoking bail; to require certain reports; to provide for the confidentiality of certain information and reports; and to prohibit the use of certain information in making bail recommendations.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan pretrial services program act".

3 Sec. 2. As used in this act, "judicial officer" means a
4 district court magistrate or any judge.

5 Sec. 3. (1) A county, city, village, or township, or any
6 combination of a county, city, village, or township, may develop

1 and establish a local pretrial services program. A pretrial
2 services program may be funded through a local unit of government
3 or a combination of local units of government or through a state
4 or federal grant.

5 (2) An individual employed by a pretrial services program,
6 for the purposes listed in section 4, is considered an officer of
7 the court and may use the title of pretrial services investigator
8 or pretrial services officer while performing his or her official
9 duties.

10 Sec. 4. A pretrial services investigator or pretrial
11 services officer may do any of the following:

12 (a) Collect, verify, and report information for use by the
13 judicial officer in setting bail for a person charged with an
14 offense pending trial or a hearing.

15 (b) Make recommendations to the court regarding the release
16 suitability of the defendant based on the following factors:

17 (i) The defendant's prior criminal record, including juvenile
18 offenses.

19 (ii) The defendant's record of appearance or nonappearance at
20 court proceedings or flight to avoid prosecution.

21 (iii) The defendant's history of substance abuse or
22 addiction.

23 (iv) The defendant's mental condition, including character
24 and reputation for dangerousness.

25 (v) The seriousness of the offense charged, the presence or
26 absence of threats, and the probability of conviction and likely
27 sentence.

1 (vi) The defendant's employment status and history and
2 financial history insofar as these factors relate to the ability
3 to post money bond.

4 (vii) The availability of responsible members of the
5 community who would vouch for or monitor the defendant.

6 (viii) Facts indicating the defendant's ties to the
7 community, including family ties and relationships and length of
8 residence.

9 (ix) Any other facts bearing on the risk of nonappearance or
10 danger to the public.

11 (c) Supervise defendants under the jurisdiction of pretrial
12 services to ensure compliance with any conditions ordered under
13 section 5 and assist defendants in securing necessary services
14 such as employment, substance abuse treatment, or mental health
15 treatment.

16 (d) Report violations, as defined by each local agency, to
17 the appropriate county prosecuting or city attorney and to the
18 court.

19 (e) Perform other duties as directed by the court that would
20 serve to decrease the risk of pretrial misconduct and increase
21 the likelihood of appearance in court for any defendant.

22 (f) Seek a warrant or *capias* from any judicial officer for
23 the arrest of any defendant under the agency's supervision for
24 failure to comply with any conditions of release imposed by a
25 judicial officer or when there is reason to believe that the
26 defendant will fail to appear, will leave, or has left the
27 jurisdiction to avoid prosecution, or when the defendant presents

1 an imminent danger to a victim or witness or to the community.

2 (g) Maintain statistical information regarding cases in which
3 an individual is interviewed or supervised under a pretrial
4 services program. In addition, periodic reports may be made
5 available to any of the following:

6 (i) Judicial officers on the results of bail decisions.

7 (ii) The state court administrator's office to assist in the
8 improvement of the bail system.

9 Sec. 5. (1) A report under section 4 shall include a
10 recommendation as to the release suitability of the defendant.

11 If release other than personal recognizance is recommended,
12 appropriate conditions of release that will reasonably ensure the
13 appearance of the defendant as required and reasonably ensure the
14 safety of the public shall also be recommended. Conditions may
15 include requiring the defendant to comply with 1 or more of the
16 following:

17 (a) Make reports to a pretrial services program or other
18 court agency as specified by the court or agency.

19 (b) Not use alcohol or illicitly use any controlled
20 substance.

21 (c) Participate in a substance abuse testing or monitoring
22 program.

23 (d) Participate in a specified treatment program for any
24 physical or mental condition, including substance abuse.

25 (e) Comply with restrictions on personal association, place
26 of residence, place of employment, or travel.

27 (f) Surrender his or her driver license or passport.

1 (g) Comply with a specified curfew.

2 (h) Continue to seek employment.

3 (i) Continue or begin an educational program.

4 (j) Remain in the custody of a responsible member of the
5 community who agrees to monitor the defendant and report any
6 violation of any release condition to the court.

7 (k) Not possess a firearm or other dangerous weapon.

8 (l) Not enter a specified premises or areas and not assault,
9 beat, molest, or wound a named person or persons.

10 (m) Satisfy any injunctive order made a condition of
11 release.

12 (n) Comply with any other condition necessary to accomplish
13 the goal of this section.

14 (2) The conditions listed in subsection (1) may also be
15 ordered as part of a financial or monetary bond.

16 (3) Condition recommendations shall not be based on legally
17 irrelevant factors such as age, race, gender, or socio-economic
18 status. Appropriate recommendations regarding release shall be
19 made to ensure that similarly situated defendants receive similar
20 treatment and that a defendant is safeguarded while awaiting
21 trial against unwarranted detention.

22 Sec. 6. (1) Information obtained in the course of a
23 pretrial services investigation, either through the interview or
24 subsequent contacts in regard to a particular accused, shall only
25 be used for the determination of bail and shall otherwise be
26 confidential. Pretrial reports shall be made available to the
27 judicial officer, to the defense counsel for the accused, and to

1 the prosecuting attorney.

2 (2) Policies regarding the release of information shall be
3 established by each local pretrial agency. The policies may
4 provide exceptions to the confidentiality requirements of
5 subsection (1) to allow access to information by any of the
6 following:

7 (a) A qualified person for the purpose of research.

8 (b) A probation officer for the purpose of compiling
9 presentence reports.

10 (c) A law enforcement agency for law enforcement purposes.

11 (d) Any other pretrial service or diversion program.

12 (3) Information made confidential under subsection (1) is not
13 admissible on the issue of guilt in a criminal proceeding unless
14 the proceeding is to revoke bail due to noncompliance or for
15 failure to appear in court when required.