



P.O. Box 32159  
Newark, NJ 07102

Tel: 973-642-2086  
Fax: 973-642-6523

info@aclu-nj.org  
www.aclu-nj.org

Frank Corrado  
*President*  
Udi Ofer  
*Executive Director*  
Edward Barocas  
*Legal Director*

## Memorandum

**From:** American Civil Liberties Union of New Jersey

**To:** Senator Donald Norcross

**Date:** June 9, 2014

**Re:** ACLU-NJ Proposed Amendments to S946/A1910

---

After months of work, the ACLU of New Jersey is pleased with the language of S946 as reported out of the Senate Budget Committee on June 5<sup>th</sup>. However, we remain concerned about a few sections of the bill that we believed could be strengthened with minor amendments. The ACLU-NJ hopes to be able to provide a full and robust endorsement of this bail reform package. These amendments would assure such an endorsement:

### The Role of Money Bail

**S946 (1R) Section 4c(1):** This section describes the limited circumstances under which a court may set a monetary bail. It prohibits monetary bails to be set with “the purpose of preventing the release of the defendant” but does not address bails that have the same result. Our current bail system, which keeps hundreds or even thousands of people in jail on low bails, is not caused exclusively by courts setting bails designed to preventatively detain people. It is caused in large part by courts setting bails that unwittingly result in detention. The section should be amended as follows:

(1) If the court determines that the release described in subsection a. or b. of this section will not reasonably assure that the defendant will appear in court as required, the court may order the pretrial release of the defendant on monetary bail, other than an unsecured appearance bond. The court may only impose a financial condition set forth in this subsection to reasonably assure the defendant’s appearance. The court shall not impose the condition to reasonably assure the safety of any other person or of the community if it results in the pretrial detention of the defendant. [or impose the condition for the purpose of preventing the release of the defendant.]

Further, **Section 4c(1)** should also have an enforcement mechanism. Washington, D.C.’s statute provides a good model that would be important in New Jersey’s scheme. The following language should be added at the end of **Section 4c(1)**:

A specified defendant for whom conditions of release are imposed and who, after 24 hours from the time of the release hearing, continues to be detained as a result of inability to meet the conditions of release, shall upon application be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the defendant is thereupon released, on another condition or conditions, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed.

### Cost of Electronic Monitoring

**S946 (1R) Section 4b(2):** This section lists the acceptable conditions of pretrial release that a court may order. Subsection (l) allows for home supervision, including the use of electronic monitoring devices. The subsection indicates that “The court may order the defendant to pay all or a portion of the costs of the electronic monitoring.” This makes sense, but should not apply to defendants who are represented by the Office of The Public Defender, who have already been determined to be indigent. Such an exception would be consistent with *New Jersey Court Rule* 1:13-2, which generally requires a person who seeks to proceed as an indigent person to file a motion, but waives the requirement wherever the person is represented by the Office of the Public Defender or other organizations or individuals who provide legal services exclusively to poor people. It is also consistent with *N.J.S.A.* 2C:44-2, which requires consideration of a defendant’s financial condition before the imposition of a fine or restitution order. Therefore, the section should be amended as follows:

(l) be placed in a pretrial home supervision capacity with or without the use of an approved electronic monitoring device. The court may order the defendant to pay all or a portion of the costs [attributable to] of the electronic monitoring, **unless the defendant is indigent. Defendants represented by the Office of the Public Defender shall be considered indigent for the purpose of this section** [of an offender shall be borne by the Pretrial Services Unit in the county in which the defendant resides].

### Speedy Trial Provisions

**S946 (1R) Section 1a(2)(a):** This section allows for a waiver of the speedy trial provisions upon a “significant showing that an injustice would follow from strict compliance with the defendant’s release from custody.” We want to ensure that speedy trial provisions incentivize prosecutors to prioritize cases of detained defendants, but also recognize that strict compliance for its own sake is pointless and detrimental to public safety. To that end, we propose limiting the exception to read as follows:

Except as otherwise provided in this paragraph, a defendant who has been indicted and for whom pretrial detention is ordered pursuant to sections 5 and 6 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall not remain detained in jail for more than 180 days on that charge following the return or unsealing of the indictment, whichever is later, before commencement of the trial. The 180-day time period shall commence to run from the date the indictment is returned, or the defendant, if a juvenile, has been waived to adult court. In the event a defendant’s trial does not begin within the specified 180 days, the defendant shall be released from jail upon motion of the defendant or the court’s own motion, unless the court finds that an injustice would follow from strict compliance with the defendant’s release. If the court finds **by clear and convincing evidence**, in the extraordinary case, that there has been a significant **threat to public safety** [showing that an injustice] would follow from strict compliance with the defendant’s release from custody, the court may allocate an additional period of time, **not to exceed 30 days**, in which the defendant’s trial shall commence before the defendant is released. Notwithstanding the court’s previous findings for ordering the defendant’s pretrial detention, the court shall release the defendant on the defendant’s own recognizance or set appropriate non-monetary conditions for the defendant’s release to reasonable assure defendant’s appearance in court.

**S946 (1R) Section 1b(1)** addresses the periods that shall be excludable time under the speedy trial provision. Three of the subsections are appropriate, but should not allow for indefinite extension of time. Otherwise, the possibility of abuse of the speedy trial requirements is too high. Therefore, subsections would be amended as follows:

**Section 1b(1)(c):** The time from the filing to the final disposition of a motion made before trial by the prosecutor or the defendant[;], provided that the period of excludable time under this subsection shall not exceed 30 days, except where an interlocutory appeal has been granted;

**Section 1b(1)(g):** On motion of the prosecutor, the delay resulting where the judge finds that the case is complex due to the number of defendants or the nature of the prosecution[;], provided that the period of excludable time under this subsection shall not exceed 60 days;

**Section 1b(1)(h):** The time resulting from a severance of codefendants when that severance permits only one trial to commence within the time period set forth in this section[;], provided that subsequent trials of co-defendants must be initiated within 30 days of the conclusion of the previous trial;

**S946 (1R) Section 1b(1)(i):** This section provides for the exclusion of time for speedy trial purposes whenever a defendant is “joined for trial with a codefendant for whom the time for trial has not run and there is good cause for not granting a severance.” There should be no such exclusion. If there are two co-defendants – one of whom poses significant danger to the community, and is therefore detained, and one of whom does not pose such a danger and is therefore released -- the State must proceed on the accelerated schedule applicable to the incarcerated defendant, not the slower pace allowable for defendants at liberty, if it opts to try the two defendants together. As such, Section 1b(1)(i) should be struck.

### **Eligibility for Preventative Detention**

**S946 (1R) Section 6a(4):** This section, which allows for the preventative detention of anyone charged with a “crime involving a victim who is a minor,” remains too broad. As currently written, a person who steals a bicycle from a seventeen-year-old child could be preventatively detained. The section should add the following limitations to ensure that it targets the correct, limited pool of defendants. These crimes are sex offenses and human trafficking offenses. As such, the subsection should be amended as follows:

**Section 6a(4):** any crime enumerated in N.J.S.A. 2C:7-2b(2) or N.J.S.A. 2C:13-8 involving a victim who is a minor.