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Delaware Senate Majority Caucus

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**Constitutional amendment granting judges   
greater leeway on bail returns to Senate**

DOVER – A Constitutional amendment allowing judges the option of holding some of Delaware’s most dangerous and habitual offenders without bail is returning to a Senate committee for debate.

Members of the Senate Executive Committee Wednesday sent Senate Bill 18 to the full Senate for consideration. The bill, sponsored by Sen. Robert Marshall, D-Wilmington West, is the second phase of Delaware’s two-step process for amending the Constitution.

Under the Constitution, an amendment must be enacted by two consecutive General Assemblies before it is codified. It first passed in the 147th General Assembly on June 30 of last year. Amendments are enacted without the governor’s signature.

If the measure is passed by the Senate and House, violent offenders charged with the state’s most serious violent felonies, could be denied bail if a judge deems that releasing them would pose a threat to the community. But someone denied bail would have to stand trial within 120 days of being denied bail or they would receive a bail hearing.

Outright denial of bail is an option currently afforded to Delaware judges only in murder cases where an offender could face the death penalty.

Marshall worked closely with former Attorney General Beau Biden to shepherd the measure through the General Assembly before his second term as Attorney General came to an end. Biden died last month of brain cancer and Marshall said that has inspired him to work expeditiously to get the amendment approved by the 148th General Assembly.

“This is a big part of Beau’s legacy to the people of Delaware. It’s something he told me was ‘critically important’ to do,” Marshall said. “He set up camp here in my office and worked tirelessly with me to get the first leg of this amendment passed because he knew it would give us an important weapon in our fight against violent criminals.”

Marshall’s proposal would grant Delaware judges the same discretion to hold potentially dangerous offenders without bail that federal judges have had since the 1980s.

“Congress passed this law because it understood the threat to communities posed by violent offenders,” he said. “When we debated this last year, we heard powerful testimony and real-life stories about clearly dangerous, violent criminals who were able to post bail, then go out and commit horrific crimes within days or even hours of their release. If we’re going to get a handle on violent crime in this state, we have to do something about that.”

Fred Calhoun, president of the Fraternal Order of Police’s Delaware state lodge, said the amendment gives judges a powerful tool in helping protect citizens while protecting the rights of the accused.

“Judges know the facts surrounding these cases and we should give them the leeway to protect public safety, if they see a threat,” he said. “We in law enforcement understand the concerns. We don’t think people should be held indefinitely without bail and this doesn’t do that, but it gives judges the option to deny bail for a reasonable time to keep really dangerous offenders off the streets while they’re awaiting trial.”

Marshall said he’s hopeful the measure can be approved before lawmakers go home on July 1.

“We’ve done our due diligence on this, now we just have to push it over the finish line,” he said. “This is a good legislation that balances the need to protect our communities as well as protecting the rights of criminal defendants.”

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