



Comparison of HB 1390 and HB 1215

HB 1390 is aligned with the American Bar Association (ABA) Standards on Pre-trial Release, which call for a presumption for release on personal recognizance that must be overcome before imposing any conditions of pretrial release. The ABA Standards also require any conditions to be the least onerous needed to provide reasonable assurance of public safety and court appearance, and that financial conditions be used 1) only when no other non-financial conditions can provide reasonable assurance of appearance, and 2) never to address concerns about public safety. Most fundamentally, the ABA Standards state that the court should not impose a financial condition that results in pretrial detention solely due to the defendant's inability to pay. **HB 1215 fails to address any of these elements.**

HB 1390 (Barron)	HB 1215 (Anderson)
Authorizes pretrial release on personal recognizance or unsecured bond.	Authorizes pretrial release with either non-financial or financial conditions – putting financial conditions on the same footing as non-financial conditions.
Requires the least onerous conditions that will reasonably assure safety and appearance when the court determines a defendant cannot be released on personal recognizance or unsecured bond.	Contrary to ABA Standards, contains no language regarding the use of least onerous conditions.
Contains no automatic exclusions to the use of personal recognizance.	Contrary to ABA Standards, includes automatic exclusions to the use of personal recognizance for defendants meeting certain criteria, such as prior criminal history and prior history of Failure to Appear. (Automatic exclusions pre-empt individualized decision-making and will lead to unnecessary detention and higher system costs.)
Authorizes court to set a financial bond <u>only if no other condition of release will reasonably assure appearance.</u>	Contains no guidance regarding when to use non-financial vs. financial conditions, other than the provision stating that those charged with misdemeanors who do not meet the automatic exclusions shall be released on personal recognizance.

HB 1390 (Barron)	HB 1215 (Anderson)
Prohibits the court from setting a financial bond solely to address concerns about public safety.	Authorizes the court to set a financial bond to address concerns about either appearance or safety. (This means that defendants for whom the court has identified danger risks can buy their way out of jail, but need not worry about forfeiting their bail if they have new charges—unlike those who fail to appear.)
Prohibits courts from setting a financial bond that results in detention solely due to inability to pay.	<p>- Notwithstanding any other law or rule to the contrary, prohibits the court from setting a financial bond “higher than necessary” to ensure appearance or safety. (This vague language would overrule the amended court rule, is inconsistent with Attorney General Frosh’s opinion regarding the constitutional use of financial conditions of release, and would open the door to costly unnecessary detention)</p> <p>- A defendant still in custody 72 hours after the first bond review hearing due to inability to pay the bond may file a motion for re-consideration of the bond. In considering the motion, the court shall presume that the original bond set was reasonable and necessary, and may only change the bond if the defendant proves, by preponderance of evidence, that new information has surfaced or that the court failed to consider relevant information when the bail was set (Unlike the Barron Bill, which altogether prohibits detention based on inability to pay, this provision will generate a new layer of defense motion that will further clog the already over-burdened court process.)</p>
Authorizes courts to consider the results of a risk assessment, if conducted, in making release decisions.	Contains no language regarding use of risk assessment, which is now established as an evidence-based practice.
Lists electronic monitoring as a permissible condition of release; contains no mention of defendant paying the costs.	Lists electronic monitoring as a permissible condition of release; but the defendant is responsible for the costs.
Requires each county to establish pretrial services by end of 2021.	Contains no mention of starting pretrial services.