

SECOND REGULAR SESSION

HOUSE BILL NO. 1447

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LUETKENHAUS.

Read 1st time January 14, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3836L.011

AN ACT

To repeal sections 544.455, 544.640, and 544.650, RSMo, and to enact in lieu thereof two new sections relating to bail bonds, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 544.455, 544.640, and 544.650, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 544.455 and 544.640, to read as follows:

544.455. 1. Any person charged with a bailable offense **that is a misdemeanor or**
2 **felony**, at his **or her** appearance before an associate circuit judge or **circuit** judge may be ordered
3 released **on his or her recognizance** pending trial, appeal, or other stage of the proceedings
4 against [him on his personal recognizance] **such person if such person is a local and if such**
5 **person has not previously pleaded guilty to or been found guilty of failure to appear**, unless
6 the associate circuit judge or **circuit** judge determines, in the exercise of his **or her** discretion,
7 that such a release will not reasonably assure the appearance of the person as required. When
8 such a determination is made, the associate circuit judge or judge may either in lieu of or in
9 addition to the above methods of release, impose any or any combination of the following
10 conditions of release which will reasonably assure the appearance of the person for trial:

11 (1) Place the person in the custody of a designated person or organization agreeing to
12 supervise him;

13 (2) Place restriction on the travel, association, or place of abode of the person during the
14 period of release;

15 (3) Require the execution of a bail bond with sufficient solvent sureties, or the deposit
16 of cash in lieu thereof;

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 (4) Require the person to report regularly to some officer of the court, or peace officer,
18 in such manner as the associate circuit judge or judge directs;

19 (5) Require the execution of a bond in a given sum and the deposit in the registry of the
20 court of ten percent, or such lesser percent as the judge directs, of the sum in cash or negotiable
21 bonds of the United States or of the state of Missouri or any political subdivision thereof;

22 (6) Impose any other condition deemed reasonably necessary to assure appearance as
23 required, including a condition requiring that the person return to custody after specified hours.

24 **2. If such person is not a local or has previously pleaded guilty to or been found**
25 **guilty of failure to appear such person may only be released upon the execution of a bail**
26 **bond with sufficient sureties, or the deposit of cash in lieu thereof. The associate circuit**
27 **judge or the circuit judge may in addition impose any or any combination of the following**
28 **conditions of release which will reasonably assure the appearance of the person for trial:**

29 (1) **Place the person in the custody of a designated person or organization agreeing**
30 **to supervise such person;**

31 (2) **Place restriction on the travel, association, or place of abode of such person**
32 **during the period of release;**

33 (3) **Require the person to report regularly to some officer of the court, or peace**
34 **officer, in such manner as the associate circuit judge or circuit judge directs;**

35 (4) **Impose any other condition deemed reasonably necessary to assure appearance**
36 **as required, including a condition requiring that the person return to custody after**
37 **specified hours.**

38 **3.** In determining which conditions of release will reasonably assure appearance, the
39 associate circuit judge or judge shall, on the basis of available information, take into account the
40 nature and circumstances of the offense charged, the weight of the evidence against the accused,
41 the accused's family ties, employment, financial resources, character and mental condition, the
42 length of his residence in the community, his record of convictions, and his record of appearance
43 at court proceedings or flight to avoid prosecution or failure to appear at court proceedings.

44 [3.] **4.** An associate circuit judge or judge authorizing the release of a person under this
45 section shall issue an appropriate order containing a statement of the conditions imposed, if any,
46 shall inform such person of the penalties applicable to violations of the conditions of his release
47 and shall advise him that a warrant for his arrest will be issued immediately upon any such
48 violation.

49 [4.] **5.** A person for whom conditions of release are imposed and who after twenty-four
50 hours from the time of the release hearing continues to be detained as a result of his inability to
51 meet the conditions of release, shall, upon application, be entitled to have the condition reviewed
52 by the associate circuit judge or judge who imposed them. The motion shall be determined

53 promptly.

54 [5.] **6.** An associate circuit judge or judge ordering the release of a person on any
55 condition specified in this section may at any time amend his order to impose additional or
56 different conditions of release; except that, if the imposition of such additional or different
57 conditions results in the detention of the person as a result of his inability to meet such
58 conditions or in the release of the person on a condition requiring him to return to custody after
59 specified hours, the provisions of subsection 4 shall apply.

60 [6.] **7.** Information stated in, or offered in connection with, any order entered pursuant
61 to this section need not conform to the rules pertaining to the admissibility of evidence in a court
62 of law.

63 [7.] **8.** Nothing contained in this section shall be construed to prevent the disposition of
64 any case or class of cases by forfeiture of collateral security where such disposition is authorized
65 by the court.

66 [8.] **9.** Persons charged with violations of municipal ordinances may be released by a
67 municipal judge or other judge who hears and determines municipal ordinance violation cases
68 of the municipality involved under the same conditions and in the same manner as provided in
69 this section for release by an associate circuit judge.

70 **10. As used in this section the following terms mean:**

71 **(1) "Cash", true money or other accepted negotiable items including but not limited**
72 **to money orders and checks;**

73 **(2) "Local", any person of legal age residing within the county having jurisdiction**
74 **of the charges, who has lived at a verifiable address for at least the last five years and who**
75 **has had verifiable employment for at least the last five years.**

544.640. **1.** If, without sufficient cause or excuse, the defendant fails to appear **either**
2 **in person or by legal counsel** for trial or judgment, or upon any other occasion when his
3 presence in court may be lawfully required, according to the condition of his recognizance, the
4 court must direct the fact to be entered upon its minutes, and thereupon [the recognizance is
5 forfeited, and the same shall be proceeded upon by scire facias to final judgment and execution
6 thereon, although the defendant may be afterward arrested on the original charge, unless remitted
7 by the court for cause shown] **at the end of the court day the court may forfeit the bond and**
8 **order an execution hearing not sooner than ninety days but not later than one hundred**
9 **fifty days after the date the person failed to appear. Notice of the execution hearing shall**
10 **be served within ten days of such failure to appear by certified mail to the surety's main**
11 **office. Service shall be complete upon mailing of such certified notice.**

12 **2. If at the execution hearing it is determined that the judgment should be entered,**
13 **the court shall so order and a writ of scire facis shall be filed in the office of the clerk of the**

14 court where such judgment is entered.

15 **3. The court shall issue a warrant for the defendant for failure to appear if**
16 **forfeiture is entered on the bond.**

17 **4. If the bail bond agent provides proof of the incarceration of the defendant who**
18 **failed to appear, or provides proof to the court that it is physically impossible for the**
19 **defendant, bail bond agent or surety to satisfy the conditions of the bond through no fault**
20 **of the bail bond agent or surety, the bail bond agent or surety shall be released from**
21 **liability and all money and property deposited with the court shall be returned within ten**
22 **days.**

23 **5. In cases in which subsection 2 of this section is not applicable, on application of**
24 **the surety filed within two years of the payment of final judgment, the court shall order**
25 **remission of one hundred percent of the bond amount to the surety under the following**
26 **conditions:**

27 **(1) Provided the bond forfeiture has been paid, within one year after final**
28 **judgment, such court shall direct remission of one hundred percent of the bond amount**
29 **remitted to the surety if the surety locates the defendant in custody. Within thirty days of**
30 **a two-year period following the final judgment, upon proof of incarceration, the surety**
31 **shall be entitled to a refund of fifty percent of the bond amount;**

32 **(2) Up to two years after final judgment, if the surety surrenders the principal to**
33 **an authorized officer, or such surrender has been denied by an authorized officer, or the**
34 **surety locates the defendant in custody in another jurisdiction and it is shown to the court**
35 **by presentation of competent evidence from the surety or the holding institution that such**
36 **surrender has been made or denied or that the defendant is in custody in another**
37 **jurisdiction or that such surrender has been made, the court shall direct that the judgment**
38 **be marked satisfied and that the writ of execution, fieri facias, be canceled.**

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40 **The court shall notify the surety's main office by certified mail within ten days notification**
41 **of defendant's incarceration.**

42 **6. A defendant shall be surrendered without the return of premium for the bond**
43 **if the indemnitor attests in writing the desire to be released from the bond or if the surety**
44 **or the bail agent discovers that the defendant is guilty of:**

45 **(1) Failing to appear in court;**

46 **(2) Changing his or her address without notifying the bail agent or surety in**
47 **writing;**

48 **(3) Concealing himself or herself;**

49 **(4) Leaving the jurisdiction of the court without the written permission of his or her**

50 **bail agent or surety or court;**

51 **(5) Violating his or her contract with the bail agent or surety in a way that may do**
52 **harm to the bail agent or the surety or violating his or her obligation to the court;**

53 **(6) Being arrested for a crime other than a traffic violation where the penalty is an**
54 **infraction or a misdemeanor;**

55 **(7) Failing to pay any fee due to the bail agent or surety;**

56 **(8) Providing false information to the bail agent or surety;**

57 **(9) Knowingly or unknowingly violating any other condition of the bail or bail**
58 **bond contract.**

59 **7. Upon forfeiture of the bond, the court may order that the defendant's drivers**
60 **license be suspended until such time as the defendant has satisfied the forfeiture.**

61 **8. The provisions of this section shall apply to all bail bonds.**

62 **9. As used in this section the term "bail bond" means the only form of security to**
63 **ensure subsequent court appearances accepted by the courts in this state except for cash**
64 **bonds or recognizance for people who are locals and who have not previously pleaded**
65 **guilty to or been found guilty of failure to appear.**

2 [544.650. Whenever any bail bond or recognizance has been given or entered
3 into in any criminal proceedings, conditioned for the appearance of any person
4 charged with, indicted for or convicted of any criminal offense, or for any other
5 purpose, and the conditions thereof shall become broken or the same shall be
6 forfeited, it shall be lawful and sufficient to serve the writ of scire facias or other writ
7 or process which may be issued in such proceeding, either by delivering a duly
8 certified copy of such writ or process to the person therein named, or by leaving such
9 duly certified copy of such writ or process at the usual place of abode of the person
therein named, with a member of his family over the age of fifteen years.]