



**House  
Legislative  
Analysis  
Section**

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**BAIL PROCEDURE**

**Senate Bill 429 (Substitute H-1)**  
**First Analysis (12-10-87)**

**Sponsor: Senator Doug Carl**  
**Senate Committee: Judiciary**  
**House Committee: Judiciary**

FEB 08 1988

MCL 756.6

***THE APPARENT PROBLEM:***

Under the Code of Criminal Procedure, except as otherwise provide by law, a person accused of a criminal offense is entitled to bail. In establishing the amount of bail for the accused, the court is required to give consideration to the seriousness of the offense charged, the previous criminal record of the accused, and the probability of the accused person appearing at the trial. Some people feel that such considerations should be placed on the record and should also include consideration of the protection of the public and the dangerousness of the person accused.

***THE CONTENT OF THE BILL:***

The bill would amend the Code of Criminal Procedure to require a court, in fixing the amount of bail for a criminal offense, to consider the protection of the public and the dangerousness of the accused, in addition to the seriousness of the offense, the previous criminal record of the accused, and the probability of the accused appearing at the trial. In addition, the court would be required to make findings on the above considerations on the record.

MCL 756.6

***HOUSE COMMITTEE ACTION:***

The House Judiciary committee adopted a substitute that is like the original bill in proposing the two additional factors of public protection and dangerousness of the defendant for consideration in setting the amount of bail. The Senate-passed substitute differed from the original and the House substitute by also requiring consideration of whether the offense charged was punishable by a mandatory minimum sentence.

***FISCAL IMPLICATIONS:***

According to the Senate Fiscal Agency, the bill would have no fiscal impact on state or local government. (11-4-87)

***ARGUMENTS:***

***For:***

The bill would require a judge to consider two additional criteria in fixing the amount of bail for a person, and to put all findings in consideration of the criteria on the record. The additional criteria to be considered would be the protection of the public and the dangerousness of the accused. Although these factors cannot be used constitutionally to deny bail, according to the Prosecuting Attorneys Coordinating Council, that is not what the bill proposes. Further, the court would still have to consider release on personal recognizance before considering bail. The bill would simply help remove some of the subjective nature of how a judge determines a particular level of bail, by adding to the list of criteria the judge must consider, and requiring the judge's findings to be explicitly placed on the record for examination by the public.

***Against:***

The purpose of bail is to ensure appearance at trial. The factors proposed by the bill do not reflect the likelihood of a defendant appearing in court. Rather, those factors would disproportionately affect poor defendants and effect a preventative detention for them.

***POSITIONS:***

The Prosecuting Attorneys Association of Michigan supports the bill. (12-8-87)

The Michigan Council on Crime and Delinquency opposes the bill. (12-8-87)

S.B. 429 (12-10-87)