

HOUSE BILL NO. 4655

May 24, 2023, Introduced by Reps. Young, Wilson, Meerman, Price, Byrnes, Hood, O'Neal, Pohutsky, Hoskins, Hope, Grant, Weiss, Churches, Andrews, Morse, Rheingans, Scott, Rogers, McKinney, Tsernoglou, Brabec and Edwards and referred to the Committee on Criminal Justice.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 6 and 6a of chapter V (MCL 765.6 and 765.6a), section 6 as amended by 2004 PA 167, and by adding section 6g to chapter V.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER V

2

Sec. 6. (1) ~~Except as otherwise provided by law, Unless~~

3

section 15 of article I of the state constitution of 1963 applies,

1 a person accused of a criminal offense is entitled to **release on**
2 **personal recognizance or bail that is not excessive.** ~~The amount of~~
3 ~~bail shall not be excessive. The court in fixing the amount of the~~
4 ~~bail shall consider and make findings on the record as to each of~~
5 ~~the following:~~

6 ~~(a) The seriousness of the offense charged.~~

7 ~~(b) The protection of the public.~~

8 ~~(c) The previous criminal record and the dangerousness of the~~
9 ~~person accused.~~

10 ~~(d) The probability or improbability of the person accused~~
11 ~~appearing at the trial of the cause.~~

12 ~~(2) If the court fixes a bail amount under subsection (1) and~~
13 ~~allows for the posting of a 10% deposit bond, the person accused~~
14 ~~may post bail by a surety bond in an amount equal to 1/4 of the~~
15 ~~full bail amount fixed under subsection (1) and executed by a~~
16 ~~surety approved by the court.~~

17 ~~(3) If a person is arrested for an ordinance violation or a~~
18 ~~misdemeanor and if the defendant's operator's or chauffeur's~~
19 ~~license is not expired, suspended, revoked, or cancelled, the court~~
20 ~~may require the defendant, in place of other security for the~~
21 ~~defendant's appearance in court for trial or sentencing or, as a~~
22 ~~condition for release of the defendant on personal recognizance, to~~
23 ~~surrender to the court his or her operator's or chauffeur's~~
24 ~~license. The court shall issue to the defendant a receipt for the~~
25 ~~license, as provided in section 311a of the Michigan vehicle code,~~
26 ~~1949 PA 300, MCL 257.311a. If the trial date is set at the~~
27 ~~arraignment, the court shall specify on the receipt the date on~~
28 ~~which the defendant is required to appear for trial. If a trial~~
29 ~~date is not set at the arraignment, the court shall specify on the~~

1 ~~receipt a date on which the receipt expires. By written notice the~~
2 ~~court may extend the expiration date of the receipt, as needed, to~~
3 ~~secure the defendant's appearance for trial and sentencing. The~~
4 ~~written notice shall instruct the person to whom the receipt was~~
5 ~~issued to attach the notice to the receipt. Upon its attachment to~~
6 ~~the receipt, the written notice shall be considered a part of the~~
7 ~~receipt for purposes of determining the expiration date. At the~~
8 ~~conclusion of the trial or imposition of sentence, as applicable,~~
9 ~~the court shall return the license to the defendant unless other~~
10 ~~disposition of the license is authorized by law.~~

11 (2) In making any pretrial release decision, the court shall
12 make a determination on the record as to whether a defendant poses
13 a clear and convincing risk of any of the following:

14 (a) Nonappearance.

15 (b) Absconding.

16 (c) Personal harm to another reasonably identifiable person or
17 harm to the community at large.

18 (3) The court must base its determination of risk under
19 subsection (2) on the specific facts and circumstances applicable
20 to the particular defendant, and shall consider the following
21 factors:

22 (a) The nature, seriousness, and circumstances of the alleged
23 offense.

24 (b) The threat to the community, including any victims or
25 witnesses.

26 (c) The weight of the evidence against the defendant in the
27 present case.

28 (d) The defendant's criminal history, including any history of
29 nonappearance or absconding within the previous 2 years, and the

1 defendant's adult criminal history.

2 (e) Any juvenile adjudications that are substantially similar
3 to the current charges that occurred within the previous 3 years.

4 (f) Whether the defendant has another pending criminal charge
5 or is under criminal justice supervision, including probation or
6 parole.

7 (g) Any other relevant information, including information
8 provided by the defendant, prosecutor, victim, or a pretrial
9 services agency.

10 (h) The defendant's place and length of residence, community
11 ties, and employment and education commitments, but only as
12 mitigating factors that support release.

13 (4) According to the court's determination of risks described
14 under subsection (2), the court shall enter 1 of the following
15 orders:

16 (a) Personal recognizance bond with standard conditions. If
17 the court does not find any of the risks described under subsection
18 (2), or determines that any risk found can be mitigated by imposing
19 standard conditions of release, the defendant must be released on a
20 personal recognizance bond with standard conditions. Standard
21 conditions under this section are limited to the following:

22 (i) The defendant shall appear as required.

23 (ii) Except as otherwise provided in this subparagraph, if the
24 defendant is a resident of this state, the defendant shall not
25 change residence from this state without the permission of the
26 court. This condition may be waived by the court.

27 (iii) The defendant shall not engage in any illegal activity
28 while released.

29 (iv) The defendant shall immediately notify the court, in

1 writing, of any change of address or telephone number.

2 (v) The defendant shall not travel out of state without
3 permission of the court.

4 (b) Release with nonmonetary conditions beyond the standard
5 conditions. If the court finds any of the risks described under
6 subsection (2) apply, the court must impose the least restrictive
7 nonmonetary condition or conditions of release that reasonably
8 address the risk, subject to section 6b of this chapter.

9 (c) Release with secured money bond as provided under this
10 subdivision. Notwithstanding the court's discretion to deny bail
11 under section 15 of article I of the state constitution of 1963, if
12 the court finds any risk as under subsection (2) (b) or (c) applies,
13 the court determines that no combination of nonmonetary conditions
14 of release will reasonably address the risk, and if any of the
15 following circumstances apply, the court may require secured money
16 bond:

17 (i) The defendant is charged with an assaultive crime.

18 (ii) The defendant is charged with a listed offense.

19 (iii) The defendant is charged with a serious misdemeanor.

20 (iv) The defendant is charged with a violation of section 625
21 of the Michigan vehicle code, 1949 PA 300, MCL 257.625, or a local
22 ordinance substantially corresponding to section 625 of the
23 Michigan vehicle code, 1949 PA 300, MCL 257.625.

24 (v) The defendant is charged with a felony not otherwise
25 included under subparagraphs (i) to (iv) that is punishable by
26 imprisonment for 5 or more years.

27 (vi) The defendant is arrested and charged with a new offense
28 that involves harm to a person or property that is substantially
29 similar to an offense for which the defendant is awaiting trial and

1 which was allegedly committed while the defendant was on pretrial
2 release.

3 (vii) The defendant absconds in the present case while on any
4 form of pretrial release.

5 (5) The court shall not set an amount of secured money bond
6 based on a preestablished bail schedule, such as a schedule of bond
7 amounts fixed according to the nature of the charge.

8 (6) Except for circumstances described under subsection
9 (4) (c), the court shall not require a defendant to pay money to be
10 released from custody pretrial.

11 (7) If the court sets secured money bond under subsection
12 (4) (c), the court shall conduct an inquiry into the defendant's
13 ability to pay as provided under section 6a of this chapter.

14 (8) Each defendant released under this section must receive
15 automated text or mail reminders for required court appearances
16 from the court or the applicable pretrial services agency. The
17 court shall ask every defendant to provide a telephone number at
18 which the defendant can receive text messages. Text message
19 reminders must be sent to the number provided by the defendant
20 unless the defendant informs the court that the defendant does not
21 wish to receive text message reminders, in which case the defendant
22 must be sent mail reminders instead.

23 (9) As used in this section:

24 (a) "Abscond" means failure to appear with the willful intent
25 to avoid or delay adjudication. There is a rebuttable presumption
26 of absconding if more than 30 days have elapsed from the date of
27 the defendant's missed court appearance and the defendant has
28 failed to appear.

29 (b) "Assaultive crime" includes any of the following:

1 (i) A violation described in section 9a of chapter X.

2 (ii) A violation of chapter XI of the Michigan penal code, 1931
3 PA 328, MCL 750.81 to 750.90h, not otherwise included in
4 subparagraph (i).

5 (iii) A violation of section 110a, 136b, 234a, 234b, 234c, 349b,
6 or 411h of the Michigan penal code, 1931 PA 328, MCL 750.110a,
7 750.136b, 750.234a, 750.234b, 750.234c, 750.349b, and 750.411h, or
8 any other violent felony.

9 (c) "Clear and convincing" means that the evidence is highly
10 and substantially more likely to be true than untrue. This standard
11 of proof requires that the fact finder must be convinced that the
12 contention is highly probable. Clear and convincing evidence may be
13 established by any of the following:

14 (i) Established past conduct.

15 (ii) Testimony, including hearsay testimony, from a reliable
16 witness.

17 (iii) Review of police reports, witness statements, criminal
18 history information, or any other documentation in court records.

19 (d) "Harm to the community at large" means that clear and
20 convincing evidence demonstrates that the defendant's conduct would
21 likely result in personal harm to another person, even if that
22 person cannot be specifically identified.

23 (e) "Listed offense" means that term as defined in section 2
24 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

25 (f) "Nonappearance" means a failure to appear without the
26 intent to avoid or delay adjudication.

27 (g) "Personal harm" means bodily injury or emotional distress
28 as that term is defined in section 411h of the Michigan penal code,
29 MCL 750.411h, that can be specifically articulated on the record.

1 (h) "Serious misdemeanor" means that term as defined in
2 section 61 of the William Van Regenmorter crime victim's rights
3 act, 1985 PA 87, MCL 780.811.

4 (i) "Violent felony" means a felony, an element of which
5 involves a violent act or threat of a violent act against any other
6 person.

7 Sec. 6a. (1) ~~Before granting an application for bail, a court~~
8 ~~shall require a cash bond or a surety other than the applicant if~~
9 ~~the applicant~~

10 ~~(1) Is charged with a crime alleged to have occurred while on~~
11 ~~bail pursuant to a bond personally executed by him; or~~

12 ~~(2) Has been twice convicted of a felony within the preceding~~
13 ~~5 years.~~ setting a monetary or nonmonetary condition of bond under
14 section 6 of this chapter, the court must determine ability to pay
15 using financial information provided by the defendant on a
16 financial disclosure form. The court shall not detain a defendant
17 solely due to an inability to pay. The court should not detain any
18 defendant because of the unavailability of nonmonetary conditions.

19 (2) The court or holding facility shall provide a financial
20 disclosure form, developed by the state court administrative
21 office, to each defendant before arraignment for use by the court
22 at the defendant's arraignment. At or before arraignment, the court
23 shall provide a copy of the completed form to the prosecuting
24 attorney and defense counsel in the case. The court shall not draw
25 any adverse inference against a defendant, if a defendant is
26 incapable of answering every question on the financial information
27 form, particularly while the defendant is incarcerated. A defendant
28 may refuse to fill out the financial information form in its
29 entirety. If the defendant refuses to fill out a financial

1 information form, the court is not required to conduct an ability
2 to pay inquiry under this section. The form must contain the
3 following language or substantially similar language displayed in a
4 prominent position:

5 "Warning: You may be required to affirm the accuracy of this
6 form under oath at your arraignment. Filing an intentionally
7 inaccurate statement of finances may result in perjury charges
8 or action for contempt of court. By signing this form, you
9 authorize anyone possessing any information or records
10 pertaining to your personal finances or income to provide such
11 information to the courts.".

12 (3) If the court determines that the information provided by
13 the defendant on the form is not reliable, it shall do both of the
14 following:

15 (a) By inquiry, allow the defendant to correct the information
16 immediately on the record without penalty.

17 (b) State on the record if it is not using the information
18 provided, and its basis to reject the reliability of the
19 information.

20 (4) The inquiry required under this section must allow the
21 prosecutor of the case, defense counsel, and defendant an
22 opportunity to provide the court information pertinent to the
23 defendant's ability to pay bail.

24 (5) The information that is admissible under this section may
25 be provided to the court by proffer and may include statements by
26 individuals other than the defendant.

27 (6) The court, in determining ability to pay, may consider all
28 of the following:

29 (a) All personal financial resources available to the

1 defendant within 24 hours from any lawful personal sources.

2 (b) Any debts, financial obligations, or dependents.

3 (c) The defendant's basic living expenses, including, but not
4 limited to, food, shelter, clothing, transportation expenses,
5 necessary medical expenses, or child support.

6 (d) Any other special circumstances that may have bearing on
7 the defendant's ability to pay.

8 (7) All information offered to the court under this section is
9 admissible for the purposes of a hearing conducted under this
10 section if it is relevant and reliable, without regard to whether
11 it would be otherwise admissible under the rules of evidence of
12 this state.

13 (8) Any statements made by a defendant under this section are
14 admissible at a future proceeding for the purposes of impeachment
15 but are not admissible for the purposes of proving the defendant's
16 guilt.

17 (9) A defendant who knowingly misrepresents the defendant's
18 financial status on the financial disclosure form may be found in
19 contempt of court and may be punished as provided in section 1715
20 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1715.

21 Sec. 6g. (1) Each district and circuit court of this state
22 shall submit a quarterly report to the state court administrative
23 office that provides data on every bond decision issued by the
24 court for the previous quarter. The report required under this
25 section must include the following information for each bond
26 decision:

27 (a) Type of bond, including personal recognizance with
28 standard conditions, nonmonetary conditions beyond the standard
29 conditions, money bail with a 10% deposit bond or a cash bond for

1 the full bail amount set by the court, or denial of bond.

2 (b) Whether the defendant was detained or released.

3 (c) For bonds that included money bail, amount of money bail
4 requested.

5 (d) Judge or magistrate issuing the bond.

6 (e) Charge on which the defendant was released or detained.

7 (f) Demographic characteristics of the defendant released or
8 detained.

9 (g) Any failures to appear in court after release on bond.

10 (h) Any rearrests during the pretrial period, including any
11 rearrests for an assaultive crime.

12 (i) Any significant liberty restraints imposed.

13 (2) The supreme court may promulgate court rules regarding
14 additional requirements for the type and format of data that are
15 required to be submitted to the state court administrative office
16 under this section.

17 Enacting section 1. This amendatory act takes effect January
18 1, 2025.

19 Enacting section 2. This amendatory act does not take effect
20 unless all of the following bills of the 102nd Legislature are
21 enacted into law:

22 (a) Senate Bill No. ____ or House Bill No. 4660 (request no.
23 00502'23 a).

24 (b) Senate Bill No. ____ or House Bill No. 4659 (request no.
25 01606'23).

26 (c) Senate Bill No. ____ or House Bill No. 4661 (request no.
27 01607'23).