

# THE CODE OF CRIMINAL PROCEDURE (EXCERPT)

## Act 175 of 1927

### CHAPTER V

#### BAIL

#### **765.1 Judges and district court magistrate empowered to let accused person to bail; recognizance for appearance of accused person.**

Sec. 1. (1) A judge of the circuit court, of the recorder's court of the city of Detroit, of the traffic and ordinance division of the recorder's court of the city of Detroit, of the district court, and of a municipal court, and a district court magistrate, shall have power to let an accused person brought before the judge or district court magistrate to bail pursuant to section 15 of article 1 of the state constitution of 1963 .

(2) A recognizance for the appearance of an accused person may be taken and entered into by and before the clerks of the courts listed in subsection (1), subject to the direction of the court if the amount of bail has been set by the judge.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17163;—CL 1948, 765.1;—Am. 1951, Act 3, Imd. Eff. Mar. 6, 1951;—Am. 1980, Act 506, Imd. Eff. Jan. 22, 1981.

**Former law:** See section 26 of Ch. 163 of R.S. 1846, being CL 1857, § 6002; CL 1871, § 7868; How., § 9479; CL 1897, § 11863; CL 1915, § 15690; and Act 4 of 1858.

#### **765.2 Repealed. 1980, Act 506, Imd. Eff. Jan. 22, 1981.**

**Compiler's note:** The repealed section pertained to admission to bail.

#### **765.3 Judges empowered to permit committed prisoners to post bail; notice to prosecuting attorney; inquiry.**

Sec. 3. A judge of the circuit court, the recorder's court of the city of Detroit, the traffic and ordinance division of the recorder's court of the city of Detroit, the district court, or a municipal court, on application of a prisoner committed for a bailable offense, and after due notice to the prosecuting attorney for the county, may inquire into the case and permit the prisoner to post bail. Any person committed for not finding sureties to recognize for him or her also may be permitted to post bail by any of the judges listed in this section.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17165;—CL 1948, 765.3;—Am. 1980, Act 506, Imd. Eff. Jan. 22, 1981.

**Former law:** See section 23 of Ch. 163 of R.S. 1846, being CL 1857, § 5999; CL 1871, § 7865; How., § 9476; CL 1897, § 11860; CL 1915, § 15687; and Act 134 of 1873.

#### **765.4 Admission to bail; procedure for information, same as under indictment.**

Sec. 4. Any person who may, according to law, be committed to jail or become recognized or held to bail with sureties for his appearance in court to answer to any indictment may, in like manner so be committed to jail, or become recognized and held to bail for his appearance, to answer to any information or indictment as the case may be.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17166;—CL 1948, 765.4.

**Former law:** See section 5 of Act 138 of 1859, being CL 1871, § 7941; How., § 9552; CL 1897, § 11937; and CL 1915, § 15764.

#### **765.5 Admission to bail; persons not entitled.**

Sec. 5. No person charged with treason or murder shall be admitted to bail if the proof of his guilt is evident or the presumption great.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17167;—CL 1948, 765.5.

#### **765.6 Accused persons entitled to bail; amount of bail; considerations and findings; surety bond; surrender by defendant of operator's or chauffeur's license as security; receipt; expiration date; extension; written notice; return of license.**

Sec. 6. (1) Except as otherwise provided by law, a person accused of a criminal offense is entitled to bail. The amount of bail shall not be excessive. The court in fixing the amount of the bail shall consider and make findings on the record as to each of the following:

- (a) The seriousness of the offense charged.
- (b) The protection of the public.
- (c) The previous criminal record and the dangerousness of the person accused.
- (d) The probability or improbability of the person accused appearing at the trial of the cause.

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

under subsection (1) and executed by a surety approved by the court.

(3) If a person is arrested for an ordinance violation or a misdemeanor and if the defendant's operator's or chauffeur's license is not expired, suspended, revoked, or cancelled, the court may require the defendant, in place of other security for the defendant's appearance in court for trial or sentencing or, as a condition for release of the defendant on personal recognizance, to surrender to the court his or her operator's or chauffeur's license. The court shall issue to the defendant a receipt for the license, as provided in section 311a of the Michigan vehicle code, 1949 PA 300, MCL 257.311a. If the trial date is set at the arraignment, the court shall specify on the receipt the date on which the defendant is required to appear for trial. If a trial date is not set at the arraignment, the court shall specify on the receipt a date on which the receipt expires. By written notice the court may extend the expiration date of the receipt, as needed, to secure the defendant's appearance for trial and sentencing. The written notice shall instruct the person to whom the receipt was issued to attach the notice to the receipt. Upon its attachment to the receipt, the written notice shall be considered a part of the receipt for purposes of determining the expiration date. At the conclusion of the trial or imposition of sentence, as applicable, the court shall return the license to the defendant unless other disposition of the license is authorized by law.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17168;—CL 1948, 765.6;—Am. 1969, Act 222, Imd. Eff. Aug. 6, 1969;—Am. 1983, Act 56, Eff. Mar. 29, 1984;—Am. 1988, Act 46, Eff. June 1, 1988;—Am. 2004, Act 167, Imd. Eff. June 24, 2004.

#### **765.6a Cash bond or surety as condition of granting application for bail.**

Sec. 6a. Before granting an application for bail, a court shall require a cash bond or a surety other than the applicant if the applicant

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

(2) Has been twice convicted of a felony within the preceding 5 years.

**History:** Add. 1974, Act 252, Imd. Eff. Aug. 1, 1974.

#### **765.6b Release of defendant subject to protective conditions; contents of order; purchase or possession of firearm; entering or removing order from LEIN; order to wear electronic monitoring device; other orders; definitions; authority to impose other conditions not limited; "LEIN" defined.**

Sec. 6b. (1) A judge or district court magistrate may release a defendant under this subsection subject to conditions reasonably necessary for the protection of 1 or more named persons. If a judge or district court magistrate releases a defendant under this subsection subject to protective conditions, the judge or district court magistrate shall make a finding of the need for protective conditions and inform the defendant on the record, either orally or by a writing that is personally delivered to the defendant, of the specific conditions imposed and that if the defendant violates a condition of release, he or she will be subject to arrest without a warrant and may have his or her bail forfeited or revoked and new conditions of release imposed, in addition to the penalty provided under section 3f of chapter XI and any other penalties that may be imposed if the defendant is found in contempt of court.

(2) An order or amended order issued under subsection (1) shall contain all of the following:

(a) A statement of the defendant's full name.

(b) A statement of the defendant's height, weight, race, sex, date of birth, hair color, eye color, and any other identifying information the judge or district court magistrate considers appropriate.

(c) A statement of the date the conditions become effective.

(d) A statement of the date on which the order will expire.

(e) A statement of the conditions imposed.

(3) An order or amended order issued under this subsection and subsection (1) may impose a condition that the defendant not purchase or possess a firearm. However, if the court orders the defendant to carry or wear an electronic monitoring device as a condition of release as described in subsection (6), the court shall also impose a condition that the defendant not purchase or possess a firearm.

(4) The judge or district court magistrate shall immediately direct the issuing court or a law enforcement agency within the jurisdiction of the court, in writing, to enter an order or amended order issued under subsection (1) or subsections (1) and (3) into LEIN. If the order or amended order is rescinded, the judge or district court magistrate shall immediately order the issuing court or law enforcement agency to remove the order or amended order from LEIN.

(5) The issuing court or a law enforcement agency within the jurisdiction of the court shall immediately enter an order or amended order into LEIN or shall remove the order or amended order from the law enforcement information network upon expiration of the order or as directed by the court under subsection

(4).

(6) If a defendant who is charged with a crime involving domestic violence, or any other assaultive crime, is released under this subsection and subsection (1), the judge or district court magistrate may order the defendant to wear an electronic monitoring device as a condition of release. With the informed consent of the victim, the court may also order the defendant to provide the victim of the charged crime with an electronic receptor device capable of receiving the global positioning system information from the electronic monitoring device worn by the defendant that notifies the victim if the defendant is located within a proximity to the victim as determined by the judge or district court magistrate in consultation with the victim. The victim shall also be furnished with a telephone contact with the local law enforcement agency to request immediate assistance if the defendant is located within that proximity to the victim. In addition, the victim may provide the court with a list of areas from which he or she would like the defendant excluded. The court shall consider the victim's request and shall determine which areas the defendant shall be prohibited from accessing. The court shall instruct the entity monitoring the defendant's position to notify the proper authorities if the defendant violates the order. In determining whether to order a defendant to wear an electronic monitoring device, the court shall consider the likelihood that the defendant's participation in electronic monitoring will deter the defendant from seeking to kill, physically injure, stalk, or otherwise threaten the victim prior to trial. The victim may request the court to terminate the victim's participation in the monitoring of the defendant at any time. The court shall not impose sanctions on the victim for refusing to participate in monitoring under this subsection. A defendant described in this subsection shall only be released if he or she agrees to pay the cost of the device and any monitoring as a condition of release or to perform community service work in lieu of paying that cost. An electronic monitoring device ordered to be worn under this subsection shall provide reliable notification of removal or tampering. As used in this subsection:

(a) "Assaultive crime" means that term as defined in section 9a of chapter X.

(b) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(c) "Electronic monitoring device" includes any electronic device or instrument that is used to track the location of an individual or to monitor an individual's blood alcohol content, but does not include any technology that is implanted or violates the corporeal body of the individual.

(d) "Informed consent" means that the victim was given information concerning all of the following before consenting to participate in electronic monitoring:

(i) The victim's right to refuse to participate in that monitoring and the process for requesting the court to terminate the victim's participation after it has been ordered.

(ii) The manner in which the monitoring technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim's location and movements.

(iii) The boundaries imposed on the defendant during the monitoring program.

(iv) Sanctions that the court may impose on the defendant for violating an order issued under this subsection.

(v) The procedure that the victim is to follow if the defendant violates an order issued under this subsection or if monitoring equipment fails to operate properly.

(vi) Identification of support services available to assist the victim to develop a safety plan to use if the court's order issued under this subsection is violated or if the monitoring equipment fails to operate properly.

(vii) Identification of community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other help in addressing the consequences and effects of domestic violence.

(viii) The nonconfidential nature of the victim's communications with the court concerning electronic monitoring and the restrictions to be imposed upon the defendant's movements.

(7) A judge or district court magistrate may release under this subsection a defendant subject to conditions reasonably necessary for the protection of the public if the defendant has submitted to a preliminary roadside analysis that detects the presence of alcoholic liquor, a controlled substance, or other intoxicating substance, or any combination of them, and that a subsequent chemical test is pending. The judge or district court magistrate shall inform the defendant on the record, either orally or by a writing that is personally delivered to the defendant, of all of the following:

(a) That if the defendant is released under this subsection, he or she shall not operate a motor vehicle under the influence of alcoholic liquor, a controlled substance, or another intoxicating substance, or any combination of them, as a condition of release.

(b) That if the defendant violates the condition of release under subdivision (a), he or she will be subject to arrest without a warrant, shall have his or her bail forfeited or revoked, and shall not be released from custody prior to arraignment.

(8) The judge or district court magistrate shall immediately direct the issuing court or a law enforcement

agency within the jurisdiction of the court, in writing, to enter an order or amended order issued under subsection (7) into LEIN. If the order or amended order is rescinded, the judge or district court magistrate shall immediately order the issuing court or law enforcement agency to remove the order or amended order from LEIN.

(9) The issuing court or a law enforcement agency within the jurisdiction of the court shall immediately enter an order or amended order into LEIN. If the order or amended order is rescinded, the court or law enforcement agency shall immediately remove the order or amended order from LEIN upon expiration of the order under subsection (8).

(10) This section does not limit the authority of judges or district court magistrates to impose protective or other release conditions under other applicable statutes or court rules, including ordering a defendant to wear an electronic monitoring device.

(11) As used in this section, "LEIN" means the law enforcement information network regulated under the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215, or by the department of state police.

**History:** Add. 1993, Act 53, Eff. July 1, 1993;—Am. 1994, Act 335, Eff. Apr. 1, 1996;—Am. 2008, Act 192, Imd. Eff. July 10, 2008 ;—Am. 2013, Act 54, Imd. Eff. June 11, 2013;—Am. 2014, Act 316, Eff. Jan. 12, 2015.

**Compiler's note:** Enacting section 1 of Act 192 of 2008 provides:

"Enacting section 1. This amendatory act shall be known and cited as 'Mary's Law' ".

#### **765.6c Bail; cash deposit; use.**

Sec. 6c. If a defendant for whom bail or bond is required personally fulfills that requirement by a cash deposit, the defendant shall be notified that upon the defendant's conviction the cash deposit may be used to collect a fine, costs, restitution, assessment, or other payment pursuant to section 15(2) of this chapter.

**History:** Add. 1993, Act 343, Eff. May 1, 1994.

#### **765.6d Release on bail; waiver of extradition.**

Sec. 6d. (1) Except as provided in subsection (2), the court may require an individual to sign a written waiver of extradition to this state before releasing the individual on bail under this chapter. If the individual fails to sign the waiver, the court may consider the failure in determining the amount of bail to be posted by the individual.

(2) The court shall require an individual charged with a crime for which bail may be denied under section 15 of article I of the state constitution of 1963 to sign a written waiver of extradition to this state before releasing the individual on bail under this chapter.

**History:** Add. 2002, Act 583, Eff. Jan. 1, 2003.

#### **765.6e Detainment period for individual arrested on warrant that originated in another county; exceptions.**

Sec. 6e. (1) Except in cases in which the person is alleged to have committed an assaultive crime or an offense involving domestic violence, a person who is detained on warrant of arrest in a county other than the county from which the warrant originated must be released from custody if the county from which the warrant originated does not make arrangements within 48 hours from the time the person was detained to pick the person up and does not in fact pick the person up within 72 hours after the time the person was detained. If a person is released from custody under this section, the releasing facility must contact the originating court and obtain a court date for the defendant to appear.

(2) As used in this section:

(a) "Assaultive crime" includes any of the following:

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

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

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

(iv) A violation of a law of another state or of a political subdivision of this state or of another state that substantially corresponds to a violation described in subparagraph (i), (ii), or (iii).

(b) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(c) "Violent felony" means that term as defined in section 36 of the corrections code of 1953, 1953 PA 232, MCL 791.236.

**History:** Add. 2020, Act 394, Eff. Apr. 1, 2021;—Am. 2023, Act 208, Eff. Feb. 13, 2024.

### **765.7 Permitting defendant to post bail on own recognizance if appeal taken by or on behalf of state; exception.**

Sec. 7. If an appeal is taken by or on behalf of the people of the state of Michigan from a court of record, the defendant shall be permitted to post bail on his or her own recognizance, pending the prosecution and determination of the appeal, unless the trial court determines and certifies that the character of the offense, the respondent, and the questions involved in the appeal, render it advisable that bail be required.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17169;—CL 1948, 765.7;—Am. 1980, Act 506, Imd. Eff. Jan. 22, 1981.

**Former law:** See section 3 of Act 159 of 1917.

### **765.8 Surety or bail posted by attorney or counselor prohibited.**

Sec. 8. A practicing attorney or counselor shall not become a surety or post bail for the appearance of a person charged with a felony, a misdemeanor, or an ordinance violation. A surety or bail posted by an attorney or counselor in violation of this section, taken by a judge or other officer authorized by law to take a recognizance, is void.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17170;—CL 1948, 765.8;—Am. 1980, Act 506, Imd. Eff. Jan. 22, 1981.

**Former law:** See section 75 of Chapter 1 of Act 314 of 1915, being CL 1915, § 12080; and section 1 of Act 61 of 1865, being CL 1871, § 5645; How., § 7196; CL 1897, § 1143.

### **765.9 Surety; person acting in same capacity on other bond.**

Sec. 9. Any magistrate or judge of any court shall have authority in his discretion to refuse to accept as surety upon a bond any person who shall, at the time of so offering himself, be acting as surety on any other bond pending in his court.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17171;—CL 1948, 765.9.

### **765.10, 765.11 Repealed. 1980, Act 506, Imd. Eff. Jan. 22, 1981.**

**Compiler's note:** The repealed sections pertained to recognizance for offenses against municipal bylaws and ordinances, and to cash in lieu of bond.

### **765.12 Deposit of cash; certified check or certain securities in lieu of bond or bail; right.**

Sec. 12. In any criminal cause or proceeding where bond or bail of any character is required or permitted for any purpose, the party or parties required or permitted to furnish such bail or bond may deposit, in lieu thereof, in the manner herein provided, cash, certified check on any state or national bank in this state, obligations of the United States government negotiable by delivery or bonds of any municipality of this state negotiable by delivery, equal in amount to the amount of the bond or bail so required or permitted.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17174;—CL 1948, 765.12.

**Former law:** See section 1 of Act 332 of 1919.

### **765.12a Money collected in addition to bail or bond money; disposition; purpose.**

Sec. 12a. (1) A law enforcement agency that obtains bail or bond money from or on behalf of a person arrested pursuant to a warrant issued by a court may collect, in addition to the bail or bond money, an amount not more than \$10.00 from the person arrested or from another person on behalf of the person arrested.

(2) A law enforcement agency collecting the amount of money under subsection (1) shall promptly deposit the money into an account created for that purpose in the treasury of the law enforcement agency's governing body.

(3) The money in the account created under subsection (2) may be expended by the governing body to defray the expense of receiving, depositing, and delivering bail or bond money.

**History:** Add. 2002, Act 631, Imd. Eff. Dec. 23, 2002.

### **765.13 Depository; receipt.**

Sec. 13. Such cash, check or security shall be deposited with the clerk of the court, if under bond, or with the treasurer of the county, city, village or township within which the bail or bond is to be furnished or, in any case, with the state treasurer. Such treasurer or clerk shall accept such cash, check or security and deliver to the depositor thereof a receipt, in duplicate, reciting the fact and purpose of such deposit. In case such bail or bond be required after the office hours of the treasurer or clerk with whom the deposit should be made, such deposit may be made with the officer who has the function of approving the bond or bail or with the sheriff of the county or his deputy in charge of the county jail or sheriff's office, who shall accept the same, give duplicate receipts therefor and cause the cash, check or security to be delivered to the proper treasurer or clerk within 48 hours thereafter.



**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17175;—CL 1948, 765.13;—Am. 1970, Act 78, Imd. Eff. July 16, 1970.

**Former law:** See section 4 of Act 332 of 1919.

#### **765.14 Deposit of cash; filing duplicate receipts in court, effect.**

Sec. 14. The filing of 1 of such duplicate receipts in the court in which such bond or bail is required or permitted to be filed shall have the same effect as the furnishing of such bond or bail and shall be taken and given effect by such court and its officers in lieu of such bond or bail.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17176;—CL 1948, 765.14.

**Former law:** See section 3 of Act 332 of 1919.

#### **765.15 Bail; cash, check, or security; disposition upon forfeiture or discharge of bond or bail.**

Sec. 15. (1) If bond or bail is forfeited, the court shall enter an order upon its records directing the disposition of the cash, check, or security within 45 days of the order. The treasurer or clerk, upon presentation of a certified copy of such order, shall dispose of the cash, check, or security pursuant to the order. The court shall set aside the forfeiture and discharge the bail or bond, within 1 year from the time of the forfeiture judgment, in accordance with subsection (2) if the person who forfeited bond or bail is apprehended, the ends of justice have not been thwarted, and the county has been repaid its costs for apprehending the person.

(2) If bond or bail is discharged, the court shall enter an order with a statement of the amount to be returned to the depositor. If the court ordered the defendant to pay a fine, costs, restitution, assessment, or other payment, the court shall order the fine, costs, restitution, assessment, or other payment collected out of cash bond or bail personally deposited by the defendant under this chapter, and the cash bond or bail used for that purpose shall be allocated as provided in section 22 of chapter XV. Upon presentation of a certified copy of the order, the treasurer or clerk having the cash, check, or security shall pay or deliver it as provided in the order to the person named in the order or to that person's order.

(3) If the cash, check, or security is in the hands of the sheriff or any officer other than the treasurer or clerk, the officer holding it shall dispose of the cash, check, or security as the court orders upon presentation of a certified copy of the court's order.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17177;—CL 1948, 765.15;—Am. 1970, Act 78, Imd. Eff. July 16, 1970;—Am. 1970, Act 226, Eff. Apr. 1, 1970;—Am. 1993, Act 343, Eff. May 1, 1994.

**Former law:** See section 4 of Act 332 of 1919.

#### **765.16 Subjection to legal process; assignment.**

Sec. 16. Cash, checks or securities deposited hereunder shall not be subject to garnishment or attachment. No assignment thereof shall be valid unless it be in writing, signed by the depositor, before 2 witnesses, acknowledged before an officer having authority to take the acknowledgment of deeds, and specifically stating the desired disposition of the whole of the deposit. An assignment made before the order of the court directing the disposition of such cash, check or security shall be contingent upon the discharge of the same and shall not be valid or effective unless and until it is filed with the court having jurisdiction to discharge the bond or bail. No assignment made after the order of the court discharging such bail or bond shall be valid unless it is indorsed upon or attached to the certified copy of the discharge order presented to the treasurer, clerk or officer having custody of the cash, check or security. In case 1 or more assignments be filed with the court before the order discharging the bail or bond, the court shall, in the order, determine the persons to whom such cash shall be paid or securities delivered.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17178;—CL 1948, 765.16;—Am. 1970, Act 78, Imd. Eff. July 16, 1970.

**Former law:** See section 4 of Act 332 of 1919.

#### **765.17 Deposit in special fund; interest.**

Sec. 17. Any cash or securities received by any treasurer or clerk under the provisions of this chapter shall be deposited in a special fund, or place of deposit subject to the order of the proper court. Any interest accumulating upon such fund shall be paid into the general fund or corresponding fund of the state, county, city, village or township according to the nature of the case or in accordance with the order of the proper court. When bonds or other securities are deposited the interest coupons shall not be detached therefrom but shall follow the disposition of the securities.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17179;—CL 1948, 765.17;—Am. 1970, Act 78, Imd. Eff. July 16, 1970.

**Former law:** See section 5 of Act 332 of 1919.

**765.18 Deposit of cash; redemption before forfeiture by substitution of bond.**

Sec. 18. Any person, firm or corporation availing himself or itself of the provisions of this chapter may, at any time before forfeiture of the same, redeem any cash or securities so deposited by substituting the bond originally required or permitted.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17180;—CL 1948, 765.18.

**Former law:** See section 6 of Act 332 of 1919.

**765.19 Repealed. 1980, Act 506, Imd. Eff. Jan. 22, 1981.**

**Compiler's note:** The repealed section pertained to construction of act.

**765.20 Administering oath to proposed surety to ascertain financial condition; requiring surety upon criminal recognizance to pledge real estate; value of surety's interest in real estate; executing recognizance and affidavit of justification; form; deposition of surety.**

Sec. 20. (1) A judge listed in section 1(1) of this chapter or a district court magistrate may administer an oath to a proposed surety upon a recognizance given for the release of a person accused of a felony, misdemeanor, or ordinance violation, to ascertain his or her financial condition. A judge or district court magistrate may require a surety upon a criminal recognizance taken before the judge or magistrate, to pledge to the people of the state, real estate owned by the surety and located in the county in which the court is established. The value of the interest of the surety in the real estate shall be at least equal to the penal amount of the recognizance. If a pledge of real estate is required, the surety shall execute the usual form of recognizance and, in addition, there shall be included in the recognizance, as a part of the recognizance, an affidavit of justification in substantially the following form. The affidavit shall be executed by the proposed surety under an oath administered by the clerk, a district court magistrate, or a judge of the court.

STATE OF MICHIGAN)

)ss.

COUNTY OF)

..... residing at..... who offers himself or herself as surety for..... being first duly sworn, deposes and says that he or she owns in his or her own right real estate subject to levy of execution located in the county of ..... state of Michigan, consisting of ..... and described as follows, to-wit: .....; that the title to the real estate is in his or her name only; that the value of the real estate is not less than \$..... and is subject to no encumbrances whatever except ..... mortgage of \$.....; that he or she is not surety upon any unpaid or forfeited recognizance and that he or she is not party to any unsatisfied judgment upon any recognizance; that he or she is worth in good property no less than \$..... over and above all debts, liabilities, and lawful claims against him or her and all liens, encumbrances, and lawful claims against his or her property.

..

Subscribed and sworn to before me this

day of .. 19\_\_\_\_.

..

..

Judge/district court magistrate/clerk of the court

..

county

(2) The judge or district court magistrate, in addition to the affidavit, may require the proposed surety to depose under oath that he or she is not at the time of executing the recognizance and affidavit a surety upon another recognizance and that there are no unsatisfied judgments or executions against the proposed surety. The judge or district court magistrate may require the proposed surety to depose to any other fact which is relevant and material to a correct determination of the proposed surety's sufficiency to act as bail. However, a lien upon real estate shall not be required for a minor offense.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17182;—CL 1948, 765.20;—Am. 1980, Act 506, Imd. Eff. Jan. 22, 1981.

**Former law:** See section 1 of Act 17 of 1926.

**765.21 Surety on recognizance; attachment of lien; record notice of lien, form, effect.**

Sec. 21. Upon the execution of any recognizance in the usual form and an affidavit of justification  
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containing a description of real estate there shall immediately attach to the said real estate, described in said affidavit of justification, a lien in favor of the people of the state of Michigan in the penal amount of the recognizance, which lien shall remain in full force and effect during the time that said recognizance remains effective, or until the further order of said court. Upon the acceptance by any of the judges of any such court of a recognizance in the usual form containing the above described affidavit of justification, and description of real estate, the said recognizance shall be immediately filed with the clerk of such court. The clerk of such court shall forthwith upon the filing with him of said recognizance, record with the register of deeds of the county in which said real estate is located, a notice of lien in writing in substantially the following form:

To Whom It May Concern:

TAKE NOTICE that the hereinafter described real estate located in the county of ..... has been pledged for the sum of ..... dollars (\$.....) to the people of the state of Michigan, by ..... surety upon the recognizance of ..... in a certain cause pending in ..... court for the city of.....

county

to-wit:

People of the state of Michigan, Plaintiff, vs.

Defendant, known and identified in said court as Cause No.

Description of Real Estate.

..

..

..

..

city

Clerk of the ..... Court.

For the county of

Dated

Said notice of lien, when recorded, shall constitute notice to everyone that the real estate therein described has been pledged to the people of the state of Michigan as security for the performance of the conditions of a criminal recognizance, in the penal amount set forth in said recognizance.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17183;—CL 1948, 765.21;—Am. 1958, Act 122, Eff. Sept. 13, 1958.

**Former law:** See section 2 of Act 17 of 1926.

## **765.22 Surety on recognizance; discharge; notice, form.**

Sec. 22. Whenever by the order of such court a recognizance in the above form shall have been cancelled, discharged or set aside, or the cause in which said recognizance is given shall have been dismissed, the clerk of such court shall forthwith record with the register of deeds of the county in which the real estate is located, a notice of discharge in writing in substantially the following form:

To Whom it May Concern:

TAKE NOTICE that by the order of the

of the city

county of ..... the recognizance of ..... as principal and

..... as surety, given in the cause of the people of the state of Michigan, Plaintiff, vs.

..... Defendant, known and identified as Cause No. .... in said court, is cancelled,

discharged and set aside and the lien of the people of the state of Michigan to the real estate therein pledged as security is hereby waived, discharged and set aside.

Description of Real Estate.

..

..

..

..

Clerk of the .....Court.

For the city

county of ..



Dated

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17184;—CL 1948, 765.22;—Am. 1958, Act 122, Eff. Sept. 13, 1958.

**Former law:** See section 3 of Act 17 of 1926.

### **765.23 Surety on recognizance; register of deeds; duty as to notices of lien and discharges; fees.**

Sec. 23. The register of deeds of the county in which such court is located shall properly keep and record all such notices of lien and notices of discharge as hereinbefore provided as may be recorded with him, and shall keep in addition thereto a book or record in which he shall properly index such notice of lien and notices of discharge as may be recorded with him. The register of deeds shall receive for such service the same fee as is provided by law for the recording of deeds.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17185;—CL 1948, 765.23;—Am. 1958, Act 122, Eff. Sept. 13, 1958.

**Former law:** See section 4 of Act 17 of 1926.

### **765.24 Effect of chapter on certain recognizances; order releasing lien.**

Sec. 24. Nothing in this chapter shall be construed as limiting or qualifying in any way the power of any such courts or any of the judges thereof to release any accused person upon his personal recognizance, or upon a recognizance executed by a surety in accordance with the provisions of Act No. 229 of the Public Acts of 1923, or upon the deposit with the clerk of such court of any cash bail or other security in accordance with the provisions of section 6 of Act No. 369, of the Public Acts of 1919. Whenever such surety deposits with the clerk of such court the penal amount of such recognizance in cash or in other security satisfactory to such court, an order shall issue releasing the lien on the real estate. Nothing in this act shall be construed as qualifying or in any way changing the usual and legal and existing procedure of collecting upon forfeited recognizances, as provided by law.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17186;—CL 1948, 765.24.

**Compiler's note:** For provisions of Act 229 of 1923, referred to in this section, see MCL 550.101. For provisions of section 6 of Act 369 of 1919, referred to in this section, see § 725.6.

**Former law:** See section 5 of Act 17 of 1926.

### **765.25 Perjury in affidavit of justification; penalty.**

Sec. 25. Any surety who shall swear falsely to any of the material facts set up in his affidavit of justification shall be deemed guilty of perjury and upon conviction thereof, shall be punished in accordance with the law in such case made and provided.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17187;—CL 1948, 765.25.

**Former law:** See section 6 of Act 17 of 1926.

### **765.26 Release of surety; arrest or detention of accused; mittimus.**

Sec. 26. (1) In all criminal cases where a person has entered into any recognizance for the personal appearance of another and such bail and surety afterwards desires to be relieved from responsibility, he or she may, with or without assistance, arrest or detain the accused and deliver him or her to any jail or to the sheriff of any county. In making the arrest or detainment, he or she is entitled to the assistance of any peace officer.

(2) The sheriff or keeper of any jail is authorized to receive the principal and detain him or her in jail until he or she is discharged. Upon delivery of his or her principal at the jail by the surety or his or her agent or any officer, the surety shall be released from the conditions of his or her recognizance.

(3) Whenever the prosecuting attorney of a county is satisfied that a person who has been recognized to appear for trial has absconded, or is about to abscond, and that his or her sureties or either of them have become worthless, or are about to dispose or have disposed of their property for the purpose of evading the payment or the obligation of such bond or recognizance or with intent to defraud their creditors, and that prosecuting attorney makes a satisfactory showing to this effect to the court having jurisdiction of that person, the court or judge shall promptly grant a mittimus to the sheriff or any peace officer of that county, commanding him or her forthwith to arrest the person so recognized and bring him or her before the officer issuing the mittimus and on the return of that mittimus may, after a hearing on the merits, order him or her to be recommitted to the county jail until such time as he or she gives additional and satisfactory sureties, or is otherwise discharged.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17188;—CL 1948, 765.26;—Am. 2002, Act 659, Eff. Apr. 1, 2003.

**Former law:** See Act 98 of 1840, being CL 1857, § 6009; CL 1871, § 7877; How., § 9488; CL 1897, § 11872; CL 1915, § 15699; and Act 82 of 1877.

### **765.27 Action on recognizance; technicality as bar.**

Sec. 27. No action brought upon any recognizance entered into in any criminal prosecution, either to appear and answer, or to testify in any court, shall be barred or defeated nor shall judgment thereon be arrested, by reason of any neglect or omission to note or record the default of any principal or surety at the time when such default shall happen, nor by reason of any defect in the form of the recognizance, if it sufficiently appear, from the tenor thereof, at what court the party or witness was bound to appear, and that the court or a magistrate before whom it was taken was authorized by law to require and take such recognizance.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17189;—CL 1948, 765.27.

**Former law:** See section 32 of Ch. 163 of R.S. 1846, being CL 1857, § 6008; CL 1871, § 7874; How., § 9485; CL 1897, § 11869; and CL 1915, § 15696.

### **765.28 Failure to appear; notice to surety; service; judgment; execution; set aside of forfeiture order; discharge of bail or surety bond; conditions.**

Sec. 28. (1) If a defendant fails to appear, within 7 days after the date of the failure to appear the court shall serve each surety notice of the failure to appear. The notice must be served upon each surety in person, left at the surety's last known business address, electronically mailed to an electronic mail address provided to the court by the surety, or mailed by first-class mail to the surety's last known business address. However, if the notice is served by first-class mail, it must be mailed separately from the notice of intent to enter judgment. Each surety must be given an opportunity to appear before the court on a day certain and show cause why judgment should not be entered against the surety for the full amount of the bail or surety bond. If good cause is not shown for the defendant's failure to appear, the court shall enter judgment against the surety on the recognizance for an amount determined appropriate by the court but not more than the full amount of the bail, or if a surety bond has been posted the full amount of the surety bond. If the amount of a forfeited surety bond is less than the full amount of the bail, the defendant shall continue to be liable to the court for the difference, unless otherwise ordered by the court. Execution must be awarded and executed upon the judgment in the manner provided for in personal actions.

(2) Except as provided in subsection (3), the court shall set aside the forfeiture and discharge the bail or surety bond within year from the date of forfeiture judgment if the defendant has been apprehended, the ends of justice have not been thwarted, and the county has been repaid its costs for apprehending the person. If the bond or bail is discharged, the court shall enter an order to that effect with a statement of the amount to be returned to the surety.

(3) Subsection (2) does not apply if the defendant was apprehended more than 56 days after the bail or bond was ordered forfeited and judgment entered and the surety did not fully pay the forfeiture judgment within that 56-day period.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17190;—CL 1948, 765.28;—Am. 2002, Act 659, Eff. Apr. 1, 2003;—Am. 2004, Act 332, Imd. Eff. Sept. 23, 2004;—Am. 2017, Act 174, Eff. Feb. 19, 2018.

**Compiler's note:** In subsection (2), the words “within year from the date of forfeiture judgment” evidently should read “within 1 year from the date of forfeiture judgment.”

### **765.29 Witness in criminal case; necessity of giving bail for appearance.**

Sec. 29. A witness in a criminal case need not give bail for his or her appearance as a witness unless required to do so by the order of a judge of a court of record as provided in section 35 of chapter 7.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17191;—CL 1948, 765.29;—Am. 1980, Act 506, Imd. Eff. Jan. 22, 1981.

**Former law:** See sections 19 and 22 of Ch. 163 of R.S. 1846, being CL 1857, §§ 5995 and 5998; CL 1871, §§ 7861 and 7864; How., §§ 9472 and 9476; CL 1897, §§ 11856 and 11859; CL 1915, §§ 15683 and 15686; Act 77 of 1871; Act 302 of 1925; Act 177 of 1875, being How., § 9453; CL 1897, § 11817; CL 1915, § 15644; and Act 141 of 1879.

### **765.30 Minor or material witness; recognizance.**

Sec. 30. If a material witness in a criminal case is a minor, any other person may be allowed to recognize for the appearance of the minor.

**History:** 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17192;—CL 1948, 765.30;—Am. 1980, Act 506, Imd. Eff. Jan. 22, 1981.

**Former law:** See section 21 of Ch. 163 of R.S. 1846, being CL 1857, § 5996; CL 1871, § 7863; How., § 9474; CL 1897, § 11858; and CL 1915, § 15685.

### **765.31 Proceeding to enforce recognizance; venue; service of process.**

Sec. 31. Any proceeding to enforce a recognizance taken, as provided in this act, may be brought in the county where the offense is charged to have been committed, and service of process issued in any such

proceeding may be made upon the principal or surety or both anywhere in the state, by any person authorized to serve process issued from a court of record.

**History:** Add. 1931, Act 309, Eff. Sept. 18, 1931;—CL 1948, 765.31.