

SECOND REGULAR SESSION

# HOUSE BILL NO. 2442

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BRANDOM.

5474L.02I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 221.105, 544.455, 544.470, and 557.011, RSMo, and to enact in lieu thereof five new sections relating to house arrest for certain offenders, with penalty provisions.

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

Section A. Sections 221.105, 544.455, 544.470, and 557.011, RSMo, are repealed and  
2 five new sections enacted in lieu thereof, to be known as sections 221.025, 221.105, 544.455,  
3 544.470, and 557.011, to read as follows:

**221.025. The sheriff of a county jail may in his or her discretion place any offender**  
2 **ordered to be confined in the county jail for a nonviolent offense, whether before, during,**  
3 **or after trial, on house arrest with electronic monitoring or shackling as an alternative to**  
4 **such jail confinement as long as the court has not specifically ordered that house arrest**  
5 **shall not be used in that particular case or shall not be used for offenders charged with that**  
6 **type of offense.**

221.105. 1. The governing body of any county and of any city not within a county shall  
2 fix the amount to be expended for the cost of incarceration of prisoners confined in jails [or] ,  
3 medium security institutions **or on house arrest with electronic monitoring or shackling**. The  
4 per diem cost of incarceration of these prisoners chargeable by the law to the state shall be  
5 determined, subject to the review and approval of the department of corrections.

2. When the final determination of any criminal prosecution shall be such as to render  
7 the state liable for costs under existing laws, it shall be the duty of the sheriff to certify to the  
8 clerk of the circuit court or court of common pleas in which the case was determined the total  
9 number of days any prisoner who was a party in such case remained in the county jail **and the**  
10 **total number of days, if any, any such prisoner accused of a nonviolent offense remained**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 **on house arrest with electronic monitoring or shackling.** It shall be the duty of the county  
12 commission to supply the cost per diem for county prisons **and the cost per diem for house**  
13 **arrest with electronic monitoring or shackling** to the clerk of the circuit court on the first day  
14 of each year, and thereafter whenever the amount may be changed. It shall then be the duty of  
15 the clerk of the court in which the case was determined to include in the bill of cost against the  
16 state all fees which are properly chargeable to the state. In any city not within a county it shall  
17 be the duty of the superintendent of any facility boarding prisoners to certify to the chief  
18 executive officer of such city not within a county the total number of days any prisoner who was  
19 a party in such case remained in such facility **and the total number of days, if any, any such**  
20 **prisoner accused of a nonviolent offense remained on house arrest with electronic**  
21 **monitoring or shackling.** It shall be the duty of the superintendents of such facilities to supply  
22 the cost per diem **for prisons and for house arrest with electronic monitoring or shackling**  
23 to the chief executive officer on the first day of each year, and thereafter whenever the amount  
24 may be changed. It shall be the duty of the chief executive officer to bill the state all fees for  
25 boarding such prisoners **and for house arrest with electronic monitoring or shackling** which  
26 are properly chargeable to the state. The chief executive may by notification to the department  
27 of corrections delegate such responsibility to another duly sworn official of such city not within  
28 a county. The clerk of the court of any city not within a county shall not include such fees in the  
29 bill of costs chargeable to the state. The department of corrections shall revise its criminal cost  
30 manual in accordance with this provision.

31       **3. Except as provided in subsection 4 of this section** the actual costs chargeable to the  
32 state, including those incurred for a prisoner who is incarcerated in the county jail because the  
33 prisoner's parole or probation has been revoked or because the prisoner has, or allegedly has,  
34 violated any condition of the prisoner's parole or probation, and such parole or probation is a  
35 consequence of a violation of a state statute, or the prisoner is a fugitive from the Missouri  
36 department of corrections or otherwise held at the request of the Missouri department of  
37 corrections regardless of whether or not a warrant has been issued shall be the actual cost of  
38 incarceration not to exceed:

- 39       (1) Until July 1, 1996, seventeen dollars per day per prisoner;  
40       (2) On and after July 1, 1996, twenty dollars per day per prisoner;  
41       (3) On and after July 1, 1997, up to thirty-seven dollars and fifty cents per day per  
42 prisoner, subject to appropriations, but not less than the amount appropriated in the previous  
43 fiscal year.

44       **4. If a court, judge or sheriff places an individual accused of a nonviolent offense**  
45 **on house arrest with electronic monitoring or shackling in any case where the state is**

46 **determined to be liable for costs, the state shall provide reimbursement for the total cost**  
47 **of the house arrest program for such individual.**

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

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

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

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

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

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

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

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

28 3. An associate circuit judge or judge authorizing the release of a person under this  
29 section shall issue an appropriate order containing a statement of the conditions imposed, if any,  
30 shall inform such person of the penalties applicable to violations of the conditions of his release  
31 and shall advise him that a warrant for his arrest will be issued immediately upon any such  
32 violation.

33 4. A person for whom conditions of release are imposed and who after twenty-four hours  
34 from the time of the release hearing continues to be detained as a result of his inability to meet

35 the conditions of release, shall, upon application, be entitled to have the condition reviewed by  
36 the associate circuit judge or judge who imposed them. The motion shall be determined  
37 promptly.

38 5. An associate circuit judge or judge ordering the release of a person on any condition  
39 specified in this section may at any time amend his order to impose additional or different  
40 conditions of release; except that, if the imposition of such additional or different conditions  
41 results in the detention of the person as a result of his inability to meet such conditions or in the  
42 release of the person on a condition requiring him to return to custody after specified hours, the  
43 provisions of subsection 4 shall apply.

44 6. Information stated in, or offered in connection with, any order entered pursuant to this  
45 section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

46 7. Nothing contained in this section shall be construed to prevent the disposition of any  
47 case or class of cases by forfeiture of collateral security where such disposition is authorized by  
48 the court.

49 8. Persons charged with violations of municipal ordinances may be released by a  
50 municipal judge or other judge who hears and determines municipal ordinance violation cases  
51 of the municipality involved under the same conditions and in the same manner as provided in  
52 this section for release by an associate circuit judge.

53 **9. Any person charged with a bailable nonviolent offense who does not post bail**  
54 **prior to his or her appearance before an associate circuit judge or judge may be ordered**  
55 **to be placed on house arrest with electronic monitoring or shackling.**

544.470. 1. If the offense is not bailable, **or if the person is not placed on house arrest**  
2 **with electronic monitoring or shackling** or if the person does not meet the conditions for  
3 release, as provided in section 544.455, the prisoner shall be committed to the jail of the county  
4 in which the same is to be tried, there to remain until he be discharged by due course of law.

5 2. There shall be a presumption that releasing the person under any conditions as  
6 provided by section 544.455 shall not reasonably assure the appearance of the person as required  
7 if the circuit judge or associate circuit judge reasonably believes that the person is an alien  
8 unlawfully present in the United States. If such presumption exists, the person shall be  
9 committed to the jail, as provided in subsection 1 of this section, until such person provides  
10 verification of his or her lawful presence in the United States to rebut such presumption. If the  
11 person adequately proves his or her lawful presence, the circuit judge or associate circuit judge  
12 shall review the issue of release, as provided under section 544.455, without regard to previous  
13 issues concerning whether the person is lawfully present in the United States. If the person  
14 cannot prove his or her lawful presence, the person shall continue to be committed to the jail and  
15 remain until discharged by due course of law.

557.011. 1. Every person found guilty of an offense shall be dealt with by the court in accordance with the provisions of this chapter, except that for offenses defined outside this code and not repealed, the term of imprisonment or the fine that may be imposed is that provided in the statute defining the offense; however, the conditional release term of any sentence of a term of years shall be determined as provided in subsection 4 of section 558.011.

2. Whenever any person has been found guilty of a felony or a misdemeanor the court shall make one or more of the following dispositions of the offender in any appropriate combination. The court may:

- (1) Sentence the person to a term of imprisonment as authorized by chapter 558, RSMo;
- (2) Sentence the person to pay a fine as authorized by chapter 560, RSMo;
- (3) Suspend the imposition of sentence, with or without placing the person on probation;
- (4) Pronounce sentence and suspend its execution, placing the person on probation;
- (5) Impose a period of detention as a condition of probation, as authorized by section 559.026, RSMo.

3. Whenever any person has been found guilty of an infraction, the court shall make one or more of the following dispositions of the offender in any appropriate combination. The court may:

- (1) Sentence the person to pay a fine as authorized by chapter 560, RSMo;
- (2) Suspend the imposition of sentence, with or without placing the person on probation;
- (3) Pronounce sentence and suspend its execution, placing the person on probation.

4. Whenever any organization has been found guilty of an offense, the court shall make one or more of the following dispositions of the organization in any appropriate combination. The court may:

- (1) Sentence the organization to pay a fine as authorized by chapter 560, RSMo;
- (2) Suspend the imposition of sentence, with or without placing the organization on probation;
- (3) Pronounce sentence and suspend its execution, placing the organization on probation;
- (4) Impose any special sentence or sanction authorized by law.

5. This chapter shall not be construed to deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. An appropriate order exercising such authority may be included as part of any sentence.

**6. Whenever a defendant pleads guilty to or is found guilty of a nonviolent offense and the court sentences the defendant to imprisonment in a county jail or imposes a period of detention in a county jail as a condition of probation, the court may in its discretion order the defendant to be placed on house arrest with electronic monitoring or shackling**

37 in lieu of any or all of the period of confinement in the county jail that has been ordered.  
38 The court may also in its discretion order that in a particular case a defendant shall not be  
39 placed on house arrest by the sheriff or that defendants charged with certain types of  
40 offenses shall not be placed on house arrest by the sheriff.

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