

HCS HB 1937 -- COURT RULES FOR CRIMINAL PROCEDURE

SPONSOR: Hill

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Judiciary by a vote of 11 to 5. Voted "Do Pass" by the Standing Committee on Rules- Administrative Oversight by a vote of 5 to 4.

The following is a summary of the House Committee Substitute for HB 1937.

This bill repeals language in Supreme Court Rule 21.03 that states that, when an information or indictment charges a corporation with a misdemeanor, a summons shall be issued. It also repeals language stating that, if a warrant is issued under this rule, the court must take certain factors into account when setting conditions of release. The bill repeals language that, if a warrant is requested in a statement of probable cause for misdemeanors or felonies, the statement must state the facts supporting a finding of reasonable grounds to believe the defendant will not appear upon a summons or the defendant poses a danger to a crime victim, the community, or any other person. The bill also repeals language requiring a person's appearance under warrant, for either a misdemeanor or a felony, to be held no later than 48 hours, excluding holidays and weekends, after the defendant is confined. The bill repeals language stating that, if a defendant's initial appearance for a misdemeanor or felony is upon release from custody on a warrant, the court must inform the defendant of the conditions of release and that a warrant may be issued for any violations of the conditions. It also repeals language stating that, if a defendant is in custody after arrest on a warrant, the court must inform the defendant of the conditions of release and determine whether the defendant can meet those conditions. Language stating that, if a defendant is unable to meet the conditions, the court may modify the conditions and inform the defendant that a warrant may be issued for any violations of the conditions is also repealed.

Currently, when a complaint is filed and sufficient facts have been stated to show probable cause that a felony has been committed, a summons is issued unless the court finds that there are reasonable grounds to believe the defendant will not appear upon a summons or that the defendant poses a danger to a crime victim, to the community, or to any other person, in which case an arrest warrant will be issued. This bill specifies that, unless the court orders the issuance of a summons, an arrest warrant will be issued upon the filing of a complaint and a finding by the court that sufficient facts have been stated in the complaint to show probable cause that a felony has been committed by the defendant, or upon

return of an indictment charging the commission of a felony. The bill repeals language that states that, if a warrant is issued under this rule, the court must take in certain factors when setting conditions of release.

The bill specifies that any person convicted of an offense entitled to be released upon appeal must be released upon appeal until adoption by the court of an opinion affirming the conviction. The affirming court may, by special order, permit the defendant to remain on bond after the affirmance, pending determination of motions or applications filed after the affirmance. The court will set conditions of release that will reasonably assure the appearance of the accused.

The bill repeals language in the Rules that require the court to release the defendant on his or her own recognizance subject only to conditions specified in the Rules, unless the court determines that such release will not secure the appearance of the defendant at trial or at any other stage of the proceedings or the safety of the community or any other person. In that case, the court may set additional conditions of release, and those conditions must be the least restrictive conditions and the court must not set any conditions greater than necessary to secure the appearance of the defendant at trial or at any other stage of the proceedings or the safety of the community or any other person. When considering the least restrictive conditions of release to set, the court must first consider non-monetary conditions. If the court determines that non-monetary conditions alone will not secure the appearance of the defendant at trial or at any other stage of the proceeding or the safety of the community or any other person, the court may consider monetary conditions but it is impermissible to set monetary conditions at an amount greater than is necessary. If the court determines that more conditions are necessary, the court may impose them. Under this bill, the court must, in all cases, release the accused upon his or her written promise to appear, unless the court determines that the release will not reasonably assure the appearance of the accused. If the court so determines, the court must impose one or more of the conditions specified in the bill, including requiring the execution of a bond in a stated amount with sufficient solvent sureties, or the deposit in the registry of the court of the sum in cash or negotiable bonds of the United States or of the State of Missouri or any political subdivision thereof.

The bill also repeals language that states that if the court determines that no combination of non-monetary and monetary conditions of release will secure the appearance of the defendant or the safety of the community or any other person, the court must order the defendant to be detained pending trial or any other stage

of the criminal proceedings. A detained defendant will, upon written request filed after arraignment, be entitled to a trial to begin within 120 days of the defendant's request or within 120 days of an order granting a change of venue, whichever occurs later. Any request to continue the trial beyond 120 days will be considered the defendant's waiver of the right to have the trial commence within 120 days.

When determining which conditions of release will reasonably assure the accused's appearance, the court must take certain factors into account. This bill specifies that, the court will no longer be required to consider whether the defendant was on probation, parole, or release pending trial or appeal at the time the current offense was committed or any validated evidentiary-based risk assessment tool approved by the Supreme Court of Missouri.

The bill repeals language entitling a detained defendant who is unable to comply with any condition of release to a release hearing. At such hearing, the court will allow either party to make a record on the defendant's financial status and ability to pay any monetary condition. The bill also repeals language requiring the court to inform the accused that conditions of release may be revoked and the accused detained for any violation of a condition. Instead, the court must inform the accused of the penalties applicable to violations of the conditions of his or her release and must advise the person that an arrest warrant will be issued immediately for any violation.

Currently, a defendant who continues to be detained after his or her initial appearance will have his or her detention or conditions of release reviewed at a hearing to occur no later than seven days, excluding weekends and holidays, after the initial appearance, unless good cause is shown by the parties or the court. This bill specifies that, a person for whom conditions of release are imposed and who after 24 hours from the time of the release hearing continues to be detained as a result of his or her inability to meet the conditions of release will, upon application, be entitled to have the conditions of release reviewed by the court that imposed them, and the application must be determined promptly.

This bill specifies that, the court may order the arrest of an accused person who has been released if it appears to the court that the bail should be increased or new or additional security is required or new conditions for release imposed. The bill repeals language stating that a defendant who has not previously had an initial appearance must be brought for an appearance before a judge no later than 48 hours, excluding weekends and holidays, after the defendant is confined under a warrant. It also repeals language stating that, if the defendant has previously had an initial

appearance, the defendant must appear before a judge on the rearrest no later than seven days, excluding weekends and holidays, after the defendant is confined under the rearrest warrant.

The following is a summary of the public testimony from the committee hearing. The testimony was based on the introduced version of the bill.

**PROPONENTS:** Supporters say that the Missouri Supreme Court legislated their current bail reform through its rulemaking process, and supporters would like the Supreme Court to come to the table to work with the legislature. The Supreme Court had a task force meeting that was closed to the public and it developed these rules by essentially adopting a bill that never received a public hearing. Since the implementation of the new bail rules, Missouri has seen increase in failures to appear. Judges should certainly have discretion about what conditions to place on a person, but we still need to keep public safety in mind. Previously, bail bond agents had incentive to seek out fugitives, but now it's up to the various sheriffs' departments. The new rules restrict judicial discretion and makes judges reach higher standards, creating a presumption favoring one type of release over another. A significant amount of money, time, and resources has been spent by law enforcement agencies having to retrieve individuals who have skipped out on bail or court appearances. Law enforcement agencies have a more difficult time keeping up with people who are scheduled to appear in court, whereas bail bondsmen have a system to keep up with defendants and ensure that they will appear in court.

Testifying for the bill were Representative Hill; David Millsap, Laclede County Sheriff's Office; Missouri Alliance of Professional Bail Bond Agents and Missouri Bail Association; Missouri Fraternal Order of Police; St. Louis Police Officers Association; Kansas City Fraternal Order of Police; Michael Bonham, Osage County Sheriff; Molly Lake; Janet Garms, Ray And Janet Garms Bail Bonds; Scott Lewis, St. Charles County Sheriff; Wayne Winn, Scotland County Sheriff's Office; and Shawn Webster, Clark County Sheriff's Office.

**OPPONENTS:** Those who oppose the bill say that sometimes people do not have the financial means to pay their bail so they can continue to be productive members of society. Bail organizations want to presume that people charged with offenses are guilty until they are proven innocent and therefore cannot be trusted to appear to answer to a charge unless they pay. This would swing the state back in the wrong direction.

Testifying against the bill were American Civil Liberties Union of Missouri and Missouri Association of Criminal Defense Lawyers.

OTHERS: Others testifying on the bill say there is room for a few more minor changes, specifically about victims being able to be heard at bond hearings, which used to be the case. The current standard for denying bond is "clear and convincing." If non-monetary conditions will not suffice, judges can impose monetary conditions. There are nonviolent offenders who continue to be released and the Public Defender's Office will not be able to handle the increased case load if those same people are incarcerated. The Supreme Court's task force studied this issue for a couple of years and received input from various departments. The current bail rules are not meant to limit judges' discretion; this ultimately requires judges to explain why they are not releasing people.

Testifying on the bill were Ryan Hehner, Missouri State Public Defender; Missouri State Public Defender System; Kansas City Missouri Board of Police Commissioners; Stephen Sokoloff, Missouri Office of Prosecution Services; Missouri Association of Prosecuting Attorneys; and Supreme Court of Missouri.