



MISSOURI HOUSE OF REPRESENTATIVES
WITNESS APPEARANCE FORM

BILL NUMBER: HB 946		DATE: 2/18/2021	
COMMITTEE: Special Committee on Litigation Reform			
TESTIFYING: <input checked="" type="checkbox"/> IN SUPPORT OF <input type="checkbox"/> IN OPPOSITION TO <input type="checkbox"/> FOR INFORMATIONAL PURPOSES			
WITNESS NAME			
BUSINESS/ORGANIZATION:			
WITNESS NAME: DANIEL MENSE		PHONE NUMBER: 636-584-9400	
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CITY: UNION		STATE: MO	ZIP: 63084
EMAIL:	ATTENDANCE:	SUBMIT DATE: 2/18/2021 12:00 AM	
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WITNESS NAME			
REGISTERED LOBBYIST:			
WITNESS NAME: JAMES HARRIS		PHONE NUMBER: 573-761-7875	
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EMAIL:	ATTENDANCE:	SUBMIT DATE: 2/18/2021 12:00 AM	
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WITNESS NAME			
BUSINESS/ORGANIZATION:			
WITNESS NAME: JEFF CLAYTON		PHONE NUMBER: 3038855872	
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Dear Representative DeGroot and members of the House Special Committee on Litigation Reform: I am writing to express the support of the American Bail Coalition for the passage of House Bill 946. In particular, we support this legislation because it makes in our view three important changes. First, the legislation makes public safety the paramount consideration for purposes of offering bail, which is national best practices in our view. As we have seen, like in the State of New York, where consideration of public safety is either not allowed or in other states where other considerations are allowed into the question of bail, the system tends to go awry. In addition, the legislation creates presumptions against personal recognizance bonds in cases where national research supports a reasonable inference of a heightened risk of failing to appear in court or committing a crime while at liberty. Among the highest factors that correlate are the existence of a pending charge, number of prior convictions, and numbers of failing to appear in court. The presumptions against personal recognizance in this legislation are thus in line with national research that suggests the presence of these factors highly correlates with the risk of committing a new crime or failing to appear in court as required. One risk assessment tool weights prior crime and failures to appear as roughly 2/3 of the risk score on that instrument. That said, these presumptions may of course be overcome in such cases by defendants when there is clear and convincing evidence that they are not a flight risk or risk to public safety. Thus, judicial discretion is maintained. Second, the legislation simplifies the bail system in Missouri by creating two forms of bonds, a release on personal recognizance or a bail. All bails imposed will be 100% secured, and partially secured bonds, like 10% to the court, or fully unsecured bonds, both of which national research from the United States Department of Justice has concluded are no more effective at deterring pretrial crime or guaranteeing appearance in court than personal recognizance, are eliminated. In other words, if you are going to make defendants promise to pay some bail or all bail later, it would be equally as effective, according to the United States Department of Justice, to not make defendants promise to pay at all. This is important because if judges are giving a 90% bail discount by imposing 10% cash to the court, but then never collecting the remaining 90% of the bail when forfeited, it is quite likely that these judges are over-using 10% to the court bail. This makes sense, and we have seen this, where judges, as in Missouri, have the ability to select among a particular type of bond and then that choice then results in increased collections to the court, that type of bond will be over-used. Thus, we believe there is a large swath of defendants who should be and could safely be released on their own recognizance, because to do would be equally as effective at deterring pretrial crime and guaranteeing appearance and less restrictive upon liberty. That said, there is also some other group, perhaps 20-30% of defendants in this category who would be high risk, and under this legislation would then be required to fully secure a bond if imposed. Today they are in many cases getting a 90% discount on their bail, and as a result of this cash bail scheme a responsible third-

party licensed bail agent with nation-wide arrest powers will ever be involved in such cases. This legislation instead creates a better balance by having more accountable releases when bail is actually necessary forcing judges to make a real choice, but will also be relieving some large portion of defendants who are having to post a fraction of a bail that only serves to keep them in jail or if they post it enrich the courts and do nothing to reduce pretrial crime or guarantee appearances in court. With this legislation, we can anticipate thus that more lower risk defendants will be released on their own recognizance and more higher risk defendants will either remain in jail or when released will have a bond fully secured by a responsible third party or a bail agent with nationwide arrest powers. This will increase appearance rates and decrease pretrial crime. As national research by Professor Alex Tabarrok has shown, "people who are released on commercial bail are 28% more likely to show up and if they fail to show up, they're 50% more likely to be caught quickly and to not be at large within a year." In addition, we would point out that allowing defendants to select among their methods for posting bond is national best practices. This section is very similar to Colorado's law of defendant choice codified in 2013 and 2014, and is a near carbon copy of the language contained in both the Michigan and Washington State criminal rules of court. We think it is important to maintain this language to stop bail from being used as a collections mechanism rather than to encourage the twin goals of accountability and protection of the presumption of innocence. To that point, we would also point out that Missouri is virtually alone in allowing attorneys to get paid out of bail proceeds by court, which we think creates a conflict of interest as between attorney and client and a disincentive for the client to show up because the attorney is more likely to get paid if the defendant fails to appear and thus the cash intercepted for payment. Finally, there has been a lot of discussion about how jails are full of persons who, but for want of money, would be released from jail. According to Professor Alex Tabarrok in 2019, "the people who do not make bail they're obviously not a random sample of the people who have been arrested the people who do not, excuse me—the people who do not make bail are on average more dangerous—they have twice as many arrests and twice as many convictions. For example, the average defendant who doesn't make bail has six previous felony arrests and four previous failures to appear—four previous failures to appear—the average. In other words, the typical defendant who has a bail imposed that they are unable to post already has ten strikes against them." Sincerely, Jeffrey J. Clayton, Esq. jclayton@americanbail.org Executive Director American Bail Coalition



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WITNESS NAME			
BUSINESS/ORGANIZATION:			
WITNESS NAME: LARRY NEWMAN		PHONE NUMBER: 417-674-1600	
BUSINESS/ORGANIZATION NAME: MISSOURI ALLIANCE OF PROFESSIONAL BAIL BOND AGENTS		TITLE: PRESIDENT	
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Dear members of the Special Committee on Litigation Reform, I strongly encourage you to support House Bill 946, Rep. Justin Hill's bill to reform pre-trial release. In 2019, the Missouri Supreme Court issued broad changes to the rules governing bail. Once those rules went into effect last year, they caused tremendous changes that some have likened to "catch and release," with many more accused criminals being released without any conditions, only to reoffend again while awaiting trial or miss their trial altogether. HB946 will give judges the ability to use their own discretion when making decisions about conditions of release, while also ensuring public safety is the number one concern when considering pre-trial options. HB946 also eliminates the option of paying 10% of bond to the court. It reduces the incentives for people to appear to court, as it's difficult to hold them responsible for any amount beyond the 10% paid to the court, and there is no third party whose bond is at risk. Instead, the 10% to court arrangement ultimately makes local law enforcement act as bail bondsmen, responsible for recovering any fugitives who fail to appear for court. HB946 makes responsible changes that will protect our communities and allow judges to exercise discretion when making pre-trial decisions. Larry Newman, President The Missouri Alliance of Professional Bail Bond Agents



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WITNESS NAME			
REGISTERED LOBBYIST:			
WITNESS NAME: MARK BRUNS		PHONE NUMBER: 573-690-0342	
REPRESENTING: MISSOURI FRATERNAL ORDER OF POLICE		TITLE:	
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EMAIL: mark@brunslobby.com	ATTENDANCE: Written		SUBMIT DATE: 2/17/2021 2:30 PM
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The Missouri Fraternal Order of Police supports HB946.			



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WITNESS NAME			
BUSINESS/ORGANIZATION:			
WITNESS NAME: TIFFANY L. MARLER		PHONE NUMBER: 6362192748	
BUSINESS/ORGANIZATION NAME: NOMORETEARS21:4;SPECIAL FORCES OF LIBERTY		TITLE: COFOUNDER & VICE CHAIR, BOARD OF DIRECTORS	
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We are in support of this bill because it gives stronger protection for survivors and escapees of DV and sexual exploitation and we do believe if we have better Judicial and Legislative reform we will have better implementation of efforts and we will see county policy decisions follow thru down the line.



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WITNESS NAME			
INDIVIDUAL:			
WITNESS NAME: ARNIE "HONEST-ABE" DIENOFF-STATE PUBLIC ADVOCATE		PHONE NUMBER:	
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CITY:		STATE:	ZIP:
EMAIL: ArnieDienoff@Yahoo.Com	ATTENDANCE: Written		SUBMIT DATE: 2/18/2021 2:19 AM
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I am highly Opposed to this Bill. It makes it harder for a Defendant to get released on regonance and puts the burden of proof on the Defendant tp prove thaqt they are not a Flight-Risk or Danger to the Community on the Defendant. This is wrong for minor and Misdemeanor Municipal Offenses.



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WITNESS NAME			
REGISTERED LOBBYIST:			
WITNESS NAME: BRIAN BERNSKOETTER		PHONE NUMBER: 573-636-2822	
REPRESENTING: MISSOURI ASSOCIATION OF CRIMINAL DEFENSE LAWYERS		TITLE:	
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CITY: JEFFERSON CITY		STATE: MO	ZIP: 65109
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WITNESS NAME			
REGISTERED LOBBYIST:			
WITNESS NAME: MO DEL VILLAR		PHONE NUMBER: 816-929-6166	
REPRESENTING: AMERICAN CIVIL LIBERTIES UNION OF MISSOURI		TITLE: LEGISLATIVE ASSOCIATE	
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CITY: KANSAS CITY		STATE: MO	ZIP: 64111
EMAIL: mdelvillar@aclu-mo.org	ATTENDANCE: Written	SUBMIT DATE: 2/18/2021 10:00 AM	
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February 18, 2021 House Special Committee on Litigation Reform Chairman DeGroot HB 946 Dear Honorable Representatives: Thank you for allowing me to provide written testimony today. On behalf of the American Civil Liberties Union of Missouri and our approximately 15,000 supporters statewide, I would like to express our opposition to HB 946. HB 946 is riddled with procedural and constitutional flaws that will harm ordinary Missourians and leave the state ripe for legal challenges. This legislation is a direct attempt to overturn much of the Missouri Supreme Court's rules on bail. Those rules, as well as federal law, uphold the presumption of innocence and ensure that Missouri does not permit unconstitutional debtors' prisons. This legislation does the opposite. Under HB 946, setting the conditions of release would rest first and foremost on "public safety." While public safety is vital, it does not give the state the authority to overlook potential innocence or an individual's ability to pay their bond as a condition of release. The Missouri Supreme Court's rules governing pretrial release require judges to "take into account" information, if available, on an arrestee's "financial resources" before setting release conditions. The Court further requires that judges use the less restrictive alternatives to ensure the arrestee's appearance or public safety. The Court does not solely look at public safety when determining if an individual is eligible for release. Instead, judges must consider a myriad of factors including public safety. Under Missouri Supreme Court Rule 33.01 those factors include the "weight of the evidence against the defendant" as well as "the nature and circumstances of the offense charged." This legislation would remove the presumption of release even for low-level misdemeanor offenses. A judge may consider release but they are encouraged not to do so if an individual has been convicted of a sex offenses, even at the misdemeanor level. This bill would also dissuade judges from releasing a defendant who is on probation or parole, no matter the offense. This means that for 58,003 Missourians their chances of release from custody will plummet. Despite notoriously poor record keeping that fails to demonstrate the reason why a defendant failed to appear in court, this legislation stacks odds of release against anyone who has failed to appear for a court date within the last three years. Particularly given the turmoil of the last year and the global pandemic which uprooted court dates and delayed justice for many, this will ensnare Missourians who had legitimate reasons, including the failures of the courts themselves, to miss an appearance. Beyond the systemic problems this legislation presents, the constitutional burden cannot be ignored. First, the legislation's direct attempt to deny release to any individual who has allegedly committed "looting" or "rioting" will likely be abused to keep movement leaders off the streets and away from protected First Amendment activities. History demonstrates how the state uses and abuses criminal codes to repress the leadership of individuals it views as subversive. This happened to Martin Luther King Jr., jailed for offenses such as loitering, violating the terms of a suspended sentence and disobeying a police order. This happened to Congressman John Lewis, arrested 45 times, and held on charges such as "disorderly

conduct, "resisting the peace," and "resisting arrest." This type of legislation is not neutral. It is useful to a state hostile toward dissent to suppress speech. Secondly, this legislation will overburden an already stretched public defender system, leading to delays in representation and even failures of representation based on capacity. The deprivation of liberty must be met by upholding the Sixth Amendment right to counsel. Under this legislation, that imperative would prove practically impossible as current incentives for private criminal attorneys fall away and more and more defendants find themselves in need of a public defender. I strongly urge you to vote "no" on this legislation and I look forward to your questions. Sincerely, Mo Del Villar
Legislative Associate
ACLU of Missouri



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WITNESS NAME			
REGISTERED LOBBYIST:			
WITNESS NAME: MARY FOX		PHONE NUMBER: 573-777-4977	
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