

HOUSE BILL NO. 5436

October 20, 2021, Introduced by Reps. Fink, LaGrand, Steven Johnson, Brann, Young, Hood, Sowerby, Rogers, Aiyash, Kuppa, Stone, Whitsett and Yancey and referred to the Committee on Judiciary.

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 of chapter V as amended by 2004 PA 167, and by adding
section 6g to chapter V.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER V

Sec. 6. (1) ~~Except as otherwise provided by law,~~ **In order to
comply with sections 15 and 16 of article I of the state**

1 **constitution of 1963, a person accused of a criminal offense to**
2 **whom the circumstances under subsection (2) do not apply is**
3 **entitled to release on personal recognizance or bail that is not**
4 **excessive. The amount of bail shall not be excessive. The court in**
5 **fixing the amount of the bail shall consider and make findings on**
6 **the record as to each of the following:**

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

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

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

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

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

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

(2) The court may order a defendant to be detained without bond if the court determines on the record that the defendant poses an articulable and substantiated risk of absconding, or an articulable risk of causing personal harm to another reasonably identifiable person, the community at large, or himself or herself; no conditions of release will reasonably address the risk; the proof is evident or the presumption of guilt is great; and 1 or both of the following circumstances apply:

(a) The defendant is charged with murder, treason, first degree criminal sexual conduct, armed robbery, or kidnapping with the intent to extort.

(b) The defendant is charged with a violent felony and 1 or both of the following apply:

(i) At the time of the commission of the violent felony, the defendant was on probation, on parole, or released pending trial, for the commission of another violent felony.

(ii) During the 15 years preceding the commission of the violent felony, the defendant had been convicted of 2 or more

1 violent felonies under the laws of this state, or substantially
2 similar laws of the United States or another state, arising out of
3 separate incidents, events, or transactions.

4 (3) When making a pretrial release decision, the court must
5 determine on the record any articulable and substantiated risk of
6 nonappearance or absconding, or any articulable risk of causing
7 personal harm to another reasonably identifiable person, the
8 community at large, or himself or herself, that is posed by the
9 defendant. The court must base its determination of risk under this
10 section on the specific facts and circumstances applicable to the
11 particular defendant. The court shall consider all of the following
12 factors:

13 (a) The nature, seriousness, and circumstances of the alleged
14 offense.

15 (b) The threat to the community, including any victims or
16 witnesses.

17 (c) The weight of the evidence against the defendant.

18 (d) The defendant's criminal history, including any history of
19 nonappearance or absconding, and the defendant's adult criminal
20 history and juvenile criminal history as follows:

21 (i) All juvenile adjudications for cases designated under
22 section 2d of chapter XIIA of the probate code of 1939, 1939 PA
23 288, MCL 712A.2d, regardless of when the adjudication occurred.

24 (ii) An adjudication for any other juvenile offense that
25 occurred within 5 years prior to the defendant's arraignment for
26 the current offense.

27 (e) Whether the defendant has another pending criminal charge
28 or is under criminal justice supervision, including probation or
29 parole.

1 (f) Any other relevant information, including information
2 provided by the defendant, prosecutor, victim, or a pretrial
3 services agency.

4 (g) The defendant's place and length of residence, community
5 ties, and employment and education commitments, but only as
6 mitigating factors that support release.

7 (4) If the court does not find an articulable and
8 substantiated risk of nonappearance or absconding, or an
9 articulable risk of causing personal harm to another reasonably
10 identifiable person, the community at large, or himself or herself,
11 the defendant must be released on a personal recognizance bond with
12 standard conditions. Standard conditions under this section are
13 limited to the following:

14 (a) The defendant shall appear as required.

15 (b) If the defendant is a resident of this state, the
16 defendant shall not change residence from this state without the
17 permission of the court. This condition may be waived by the court.

18 (c) The defendant shall not commit a new crime while released.

19 (d) The defendant shall immediately notify the court, in
20 writing, of any change of address or telephone number.

21 (5) If the court determines on the record that the defendant
22 poses an articulable and substantiated risk of nonappearance or
23 absconding, or an articulable risk of causing personal harm to
24 another reasonably identifiable person, the community at large, or
25 himself or herself, the court may impose the least restrictive
26 nonmonetary condition or conditions of release that reasonably
27 address the risk, subject to section 6b of this chapter. Before
28 imposing a condition under this subsection, the court shall do both
29 of the following:

1 (a) Conduct an inquiry into the defendant's ability to pay for
2 such a condition according to the process set forth in section 6a
3 of this chapter.

4 (b) Consider whether practical assistance or voluntary
5 supportive services, including, but not limited to, court
6 reminders, service referrals, transportation assistance, and
7 voluntary remote check-ins, would be sufficient to address any
8 pretrial risks posed by the defendant.

9 (6) In cases where the defendant poses only an articulable and
10 substantiated risk of nonappearance, and not a risk of absconding
11 or causing personal harm to another reasonably identifiable person,
12 the community at large, or himself or herself, the court shall not
13 impose a condition of release that results in the defendant's
14 detention.

15 (7) The court may require cash bail only if it determines on
16 the record that the defendant poses an articulable and
17 substantiated risk of absconding, or an articulable risk of causing
18 personal harm to a reasonably identifiable person, the community at
19 large, or himself or herself, and that no combination of
20 nonmonetary conditions of release will reasonably address the risk,
21 and if the defendant is charged with any of the following:

22 (a) An assaultive crime.

23 (b) A listed offense.

24 (c) A serious misdemeanor.

25 (d) A violation of section 625 of the Michigan vehicle code,
26 1949 PA 300, MCL 257.625, or a local ordinance substantially
27 corresponding to section 625 of the Michigan vehicle code, 1949 PA
28 300, MCL 257.625.

29 (e) A felony not otherwise included under subdivisions (a) to

1 (d) that is punishable by imprisonment for 5 or more years.

2 (8) The court shall not set an amount of cash bail based on a
3 preestablished bail schedule, such as a schedule of bond amounts
4 fixed according to the nature of the charge. If the court requires
5 cash bail it shall do both of the following:

6 (a) State on the record why no combination of nonmonetary
7 conditions would reasonably address the risk.

8 (b) Conduct an inquiry into the defendant's ability to pay
9 according to the process under section 6a of this chapter.

10 (9) Every defendant released under this section must be
11 offered practical assistance or voluntary supportive services where
12 available, including, but not limited to, court reminders, service
13 referrals, transportation assistance, and voluntary remote check-
14 ins.

15 (10) If the court determines that the defendant poses an
16 articulable risk of causing personal harm only to himself or
17 herself, and that the defendant must be detained to reasonably
18 address the risk, the court must do 1 of the following:

19 (a) If the risk the defendant poses to himself or herself is
20 related to the defendant's mental illness, the defendant must be
21 brought before the probate court not more than 12 hours after his
22 or her initial court appearance to determine whether he or she is a
23 person requiring treatment pursuant to the process outlined in
24 chapter 4 of the mental health code, 1974 PA 258, MCL 330.1400 to
25 330.1490. The defendant must be detained until the determination is
26 made. If the defendant is determined to be a person requiring
27 treatment, he or she must be transferred to an appropriate
28 therapeutic environment as soon as possible. Unless subdivision (b)
29 applies, if the defendant is not determined to be a person

1 requiring treatment, he or she must not be considered to be a risk
2 of causing personal harm to himself or herself and must be released
3 according to this section.

4 (b) If the risk the defendant poses to himself or herself is
5 related to the defendant's substance use, the court may detain the
6 defendant until the defendant no longer poses a risk to himself or
7 herself or until he or she is transferred to an appropriate
8 therapeutic environment, which must occur as soon as possible.

9 (11) As used in this section:

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

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

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

15 (iii) A violation of section 110a, 136b, 234a, 234b, 234c, 349b,
16 or 411h of the Michigan penal code, 1931 PA 328, MCL 750.110a,
17 750.136b, 750.234a, 750.234b, 750.234c, 750.349b, and 750.411h, or
18 any other violent felony.

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

21 (c) "Person requiring treatment" means that term as defined in
22 section 401 of the mental health code, 1974 PA 258, MCL 330.1401.

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

26 (e) "Serious misdemeanor" means that term as defined in
27 section 61 of the William Van Regenmorter crime victim's rights
28 act, 1985 PA 87, MCL 780.811.

29 (f) "Substantiated" means supported by evidence, which may

1 include the following:

2 (i) Established past conduct, including history of
3 nonappearance or absconding in previous cases.

4 (ii) Testimony, including hearsay testimony, from a reliable
5 witness that the defendant has a willful intent to abscond.

6 (iii) Other facts found on the record that support an
7 articulated risk of nonappearance or absconding.

8 (g) "Violent felony" means a felony, an element of which
9 involves a violent act or threat of a violent act against any other
10 person.

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

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

16 ~~(2) Has been twice convicted of a felony within the preceding~~
17 ~~5 years.~~ The court must provide a financial disclosure form,
18 developed by the state court administrative office, to each
19 defendant prior to arraignment for use by the court at the
20 defendant's arraignment. At or prior to arraignment, the court
21 shall provide a copy of the completed form to the prosecuting
22 attorney and defense counsel in the case. The form must contain the
23 following language or substantially similar language displayed in a
24 prominent position:

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

8 (2) Before setting a monetary or nonmonetary condition of bond
9 under section 6 of this chapter, the court must determine ability
10 to pay using the financial information provided by the defendant on
11 the financial disclosure form. If the court determines that the
12 information provided by the defendant on the form is not reliable,
13 it shall do both of the following:

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

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

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

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

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

28 (a) All financial resources available to the defendant within
29 24 hours from any lawful personal sources.

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

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

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

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

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

16 (8) An individual who knowingly misrepresents his or her
17 financial status on the financial disclosure form may be found in
18 contempt of court and may be punished as provided in section 1715
19 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1715.

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

26 (a) Type of bond, including personal recognizance with
27 standard conditions, nonmonetary conditions beyond the standard
28 conditions, money bail with a 10% deposit bond or a cash bond for
29 the full bail amount set by the court, or denial of bond.

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

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

4 (d) Judge or magistrate issuing the bond.

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

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

8 (g) The results of any actuarial risk assessment instrument
9 used in the bond decision.

10 (h) Any failures to appear in court after release on bond.

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

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 (3) As used in this section, "assaultive crime" includes any
18 of the following:

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

20 (b) A violation of chapter XI of the Michigan penal code, 1931
21 PA 328, MCL 750.81 to 750.90h, not otherwise included in
22 subparagraph (a).

23 (c) A violation of section 110a, 136b, 234a, 234b, 234c, 349b,
24 or 411h of the Michigan penal code, 1931 PA 328, MCL 750.110a,
25 750.136b, 750.234a, 750.234b, 750.234c, 750.349b, and 750.411h, or
26 any other felony that involves a violent act or threat of a violent
27 act against any other person.

28 Enacting section 1. This amendatory act takes effect 90 days
29 after the date it is enacted into law.

1 Enacting section 2. This amendatory act does not take effect
2 unless all of the following bills of the 101st Legislature are
3 enacted into law:

4 (a) Senate Bill No.____ or House Bill No. 5442 (request no.
5 00900'21 a).

6 (b) Senate Bill No.____ or House Bill No. 5441 (request no.
7 04537'21).

8 (c) Senate Bill No.____ or House Bill No. 5443 (request no.
9 04538'21).