

# HOUSE BILL No. 4351

March 13, 2019, Introduced by Reps. LaGrand, Rabhi, Haadsma, LaFave, Howell, Neeley, Garrett, Yancey, Peterson, Brann, Steven Johnson, VanSingel, Kennedy, Cynthia Johnson, Brenda Carter, Garza, Tyrone Carter, Pohutsky, Lasinski, Sabo, Sowerby, Hoadley and Hertel and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 6 of chapter V (MCL 765.6), as amended by 2004 PA 167.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

CHAPTER V

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 ~~MUST~~ 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.~~

1 ~~—— (d) The probability or improbability of the person accused~~  
2 ~~appearing at the trial of the cause.~~

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

8 ~~—— (3) If a person is arrested for an ordinance violation or a~~  
9 ~~misdemeanor and if the defendant's operator's or chauffeur's~~  
10 ~~license is not expired, suspended, revoked, or cancelled, the court~~  
11 ~~may require the defendant, in place of other security for the~~  
12 ~~defendant's appearance in court for trial or sentencing or, as a~~  
13 ~~condition for release of the defendant on personal recognizance, to~~  
14 ~~surrender to the court his or her operator's or chauffeur's~~  
15 ~~license. The court shall issue to the defendant a receipt for the~~  
16 ~~license, as provided in section 311a of the Michigan vehicle code,~~  
17 ~~1949 PA 300, MCL 257.311a. If the trial date is set at the~~  
18 ~~arraignment, the court shall specify on the receipt the date on~~  
19 ~~which the defendant is required to appear for trial. If a trial~~  
20 ~~date is not set at the arraignment, the court shall specify on the~~  
21 ~~receipt a date on which the receipt expires. By written notice the~~  
22 ~~court may extend the expiration date of the receipt, as needed, to~~  
23 ~~secure the defendant's appearance for trial and sentencing. The~~  
24 ~~written notice shall instruct the person to whom the receipt was~~  
25 ~~issued to attach the notice to the receipt. Upon its attachment to~~  
26 ~~the receipt, the written notice shall be considered a part of the~~  
27 ~~receipt for purposes of determining the expiration date. At the~~

1 ~~conclusion of the trial or imposition of sentence, as applicable,~~  
2 ~~the court shall return the license to the defendant unless other~~  
3 ~~disposition of the license is authorized by law.~~

4 (2) ABSENT A PREPONDERANCE OF EVIDENCE THAT 1 OR BOTH OF THE  
5 FOLLOWING CIRCUMSTANCES APPLIES, THE COURT MUST RELEASE A DEFENDANT  
6 ON A PERSONAL RECOGNIZANCE BOND:

7 (A) IF RELEASED, A DEFENDANT WOULD POSE AN UNDUE DANGER TO THE  
8 COMMUNITY.

9 (B) IF RELEASED, THERE IS A SIGNIFICANT RISK THAT A DEFENDANT  
10 WOULD WILLFULLY FAIL TO APPEAR IN COURT AS REQUIRED.

11 (3) IF THE COURT DETERMINES 1 OR BOTH OF THE CIRCUMSTANCES  
12 DESCRIBED IN SUBSECTION (2) APPLY AND THAT THE DEFENDANT WILL NOT  
13 BE RELEASED ON A PERSONAL RECOGNIZANCE BOND, THE COURT, IN FIXING  
14 THE AMOUNT OF THE BAIL, SHALL CONSIDER THE FACTORS IN SUBDIVISIONS  
15 (A) TO (K) AND SHALL MAKE ITS FINDINGS ON THE RECORD. THE COURT  
16 SHALL BASE ITS WRITTEN OR ORAL DETERMINATION WHETHER OR NOT TO  
17 RELEASE A DEFENDANT OR ON WHAT CONDITIONS TO RELEASE A DEFENDANT ON  
18 A CONSIDERATION OF THE SPECIFIC FACTS AND CIRCUMSTANCES APPLICABLE  
19 TO THE PARTICULAR DEFENDANT. THE COURT SHALL CONSIDER ALL OF THE  
20 FOLLOWING FACTORS:

21 (A) THE DEFENDANT'S PRIOR ADULT PUBLIC CRIMINAL RECORD,  
22 INCLUDING ANY CHARGES THAT WERE DEFERRED AND DISMISSED BY LAW,  
23 INCLUDING, BUT NOT LIMITED TO, CHARGES DEFERRED AND DISMISSED UNDER  
24 SECTIONS 11 TO 15 OF CHAPTER II, SECTION 4A OF CHAPTER IX, OR  
25 SECTION 7411 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7411.

26 (B) THE DEFENDANT'S PRIOR JUVENILE CRIMINAL HISTORY AS  
27 FOLLOWS:

1 (i) ALL JUVENILE ADJUDICATIONS FOR CASES DESIGNATED UNDER  
2 SECTION 2D OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.2D,  
3 REGARDLESS OF WHEN THE ADJUDICATION OCCURRED.

4 (ii) AN ADJUDICATION FOR ANY OTHER JUVENILE OFFENSE THAT  
5 OCCURRED WITHIN 5 YEARS OF THE DEFENDANT'S ARRAIGNMENT.

6 (C) THE DEFENDANT'S RECORD OF APPEARANCE OR NONAPPEARANCE AT  
7 CRIMINAL COURT PROCEEDINGS OR FLIGHT TO AVOID PROSECUTION IN THE  
8 IMMEDIATELY PRECEDING 10 YEARS.

9 (D) THE DEFENDANT'S HISTORY OF SUBSTANCE ABUSE OR ADDICTION.

10 (E) THE DEFENDANT'S MENTAL CONDITION, INCLUDING CHARACTER AND  
11 REPUTATION FOR DANGEROUSNESS.

12 (F) THE SERIOUSNESS OF THE OFFENSE CHARGED AND THE PRESENCE OR  
13 ABSENCE OF THREATS BY THE DEFENDANT.

14 (G) THE DEFENDANT'S EMPLOYMENT AND FINANCIAL STATUS AND  
15 HISTORY AND FINANCIAL HISTORY INsofar AS THESE FACTORS RELATE TO  
16 THE ABILITY TO POST MONEY BAIL.

17 (H) THE AVAILABILITY OF RESPONSIBLE MEMBERS OF THE COMMUNITY  
18 WHO WOULD VOUCH FOR OR MONITOR THE DEFENDANT.

19 (I) ANY FACTS INDICATING THE DEFENDANT'S TIES TO THE  
20 COMMUNITY, INCLUDING FAMILY TIES AND RELATIONSHIPS.

21 (J) THE SCORE FROM A PRETRIAL RISK ASSESSMENT INSTRUMENT THAT  
22 HAS BEEN APPROVED FOR USE BY THE STATE COURT ADMINISTRATIVE OFFICE.

23 (K) ANY OTHER FACTS BEARING ON THE RISK OF NONAPPEARANCE OR  
24 DANGER TO THE PUBLIC.

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

27 Enacting section 2. This amendatory act does not take effect

1 unless all of the following bills of the 100th Legislature are  
2 enacted into law:

3 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 4360 (request no.  
4 00792'19 a).

5 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 4353 (request no.  
6 00821'19).

7 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 4352 (request no.  
8 00947'19).

9 (d) Senate Bill No. \_\_\_\_\_ or House Bill No. 4354 (request no.  
10 01820'19).