

811.2 Conditions of release penalty for failure to appear.

1. *Conditions for release of defendant.* All bailable defendants shall be ordered released from custody pending judgment or entry of deferred judgment on their personal recognizance, or upon the execution of an unsecured appearance bond in an amount specified by the magistrate unless the magistrate determines in the exercise of the magistrate's discretion, that such a release will not reasonably assure the appearance of the defendant as required or that release will jeopardize the personal safety of another person or persons. When such determination is made, the magistrate shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or deferral of judgment and the safety of other persons, or, if no single condition gives that assurance, any combination of the following conditions:

- a. Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant.
- b. Place restrictions on the travel, association or place of abode of the defendant during the period of release.
- c. Require the execution of an appearance bond in a specified amount and the deposit with the clerk of the district court or a public officer designated under section 602.1211, subsection 4, in cash or other qualified security, of a sum not to exceed ten percent of the amount of the bond, the deposit to be returned to the person who deposited the specified amount with the clerk upon the performance of the appearances as required in section 811.6.
- d. Require the execution of a bail bond with sufficient surety, or the deposit of cash in lieu of bond. However, except as provided in section 811.1, bail initially given remains valid until final disposition of the offense or entry of an order deferring judgment. If the amount of bail is deemed insufficient by the court before whom the offense is pending, the court may order an increase of bail and the defendant must provide the additional undertaking, written or in cash, to secure release.
- e. Impose any other condition deemed reasonably necessary to assure appearance as required, or the safety of another person or persons including a condition requiring that the defendant return to custody after specified hours, or a condition that the defendant have no contact with the victim or other persons specified by the court.

Any bailable defendant who is charged with unlawful possession, manufacture, delivery, or distribution of a controlled substance or other drug under chapter 124 and is ordered released shall be required, as a condition of that release, to submit to a substance abuse evaluation and follow any recommendations proposed in the evaluation for appropriate substance abuse treatment. However, if a bailable defendant is charged with manufacture, delivery, possession with the intent to manufacture or deliver, or distribution of methamphetamine, its salts, optical isomers, and salts of its optical isomers, the defendant shall, in addition to a substance abuse evaluation, remain under supervision and be required to undergo random drug tests as a condition of release.

2. *Determination of conditions.* In determining which conditions of release will reasonably assure the defendant's appearance and the safety of another person or persons, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of the defendant's residence in the community, the defendant's record of convictions, including the defendant's failure to pay any fine, surcharge, or court costs, and the defendant's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

3. *Release at initial appearance.* This chapter does not preclude the release of an arrested person as authorized by section 804.21, unless the arrested person is charged with manufacture, delivery, possession

with the intent to manufacture or deliver, or distribution of methamphetamine.

4. *Statement to all defendants.* When a defendant appears before a magistrate pursuant to rule of criminal procedure 2.2 or 2.3, the defendant shall be informed of the defendant's right to have said conditions of release reviewed. If the defendant indicates that the defendant desires such a review and is indigent and unable to retain legal counsel, the magistrate shall appoint an attorney to represent the defendant for the purpose of such review. Unless the conditions of release are amended and the defendant is thereupon released, the magistrate shall set forth in writing the reasons for requiring conditions imposed. A defendant who is ordered released by a magistrate other than a district court judge or district associate judge on a condition which required that the defendant return to custody after specified hours, shall, upon application, be entitled to review by the magistrate who imposed the condition in the same manner as a defendant who remains in full-time custody. In the event that the magistrate who imposed conditions of release is not available, any other magistrate in the judicial district may review such conditions.

5. *Statement of conditions when defendant is released.* A magistrate authorizing the release of a defendant under this section shall issue a written order containing a statement of the conditions imposed if any, shall inform the defendant of the penalties applicable to violation of the conditions of release and shall advise the defendant that a warrant for the defendant's arrest will be issued immediately upon such violation.

6. *Amendment of release conditions.* A magistrate ordering the release of the defendant on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release, provided that, if the imposition of different or additional conditions results in the detention of the defendant as a result of the defendant's inability to meet such conditions, the provisions of subsection 3 of this section shall apply.

7. *Appeal from conditions of release.*

a. A defendant who is detained, or whose release on a condition requiring the defendant to return to custody after specified hours is continued, after review of the defendant's application pursuant to subsection 3 or 5 of this section, by a magistrate, other than a district judge or district associate judge having original jurisdiction of the offense with which the defendant is charged, may make application to a district judge or district associate judge having jurisdiction to amend the order. Said motion shall be promptly set for hearing and a record made thereof.

b. In any case in which a court denied a motion under paragraph "a" of this subsection to amend an order imposing conditions of release, or a defendant is detained after conditions of release have been imposed or amended upon such a motion, an appeal may be taken from the district court. The appeal shall be determined summarily, without briefs, on the record made. However, the defendant may elect to file briefs and may be heard in oral argument, in which case the prosecution shall have a right to respond as in an ordinary appeal from a criminal conviction. The appellate court may, on its own motion, order the parties to submit briefs and set the time in which such briefs shall be filed. Any order so appealed shall be affirmed if it is supported by the proceeding below. If the order is not so supported, the court may remand the case for a further hearing or may, with or without additional evidence, order the defendant released pursuant to subsection 1 of this section.

8. *Failure to appear penalty.* Any person who, having been released pursuant to this section, willfully fails to appear before any court or magistrate as required shall, in addition to the forfeiture of any security given or pledged for the person's release, if the person was released in connection with a charge which constitutes a felony, or while awaiting sentence or pending appeal after conviction of any public offense, be guilty of a class "D" felony. If the defendant was released before conviction or acquittal in connection with a charge which constitutes any public offense not a felony, the defendant shall be guilty of a serious misdemeanor. If the person was released for appearance as a material witness, the person shall be guilty of a simple misdemeanor. In addition, nothing herein shall limit the power of the court to punish for contempt.

[C51, § 2876, 32163218; R60, § 4601, 4967; C73, § 4248, 4573; C97, § 5232, 5500; C24, 27, 31, 35, 39, § **13547, 13611**; C46, 50, 54, 58, 62, 66, § 761.21, 763.3; C71, 73, 75, 77, § 761.21, 763.17763.19; C79, 81, § 811.2]

83 Acts, ch 19, § 13; 83 Acts, ch 50, § 6, 7; 84 Acts, ch 1152, § 1, 2; 85 Acts, ch 17, §2; 88 Acts, ch 1033, §1; 93 Acts, ch 157, §10; 99 Acts, ch 12, §11; 2000 Acts, ch 1131, §6; 2005 Acts, ch 15, §10, 11, 14; 2005 Acts, ch 174, §2325

Footnotes

See R.Cr.P. 2.37Forms 2 and 3