

CHAPTER 811

PRETRIAL AND POST-TRIAL RELEASE — BAIL

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811.1 Bail and bail restrictions.

All defendants are bailable both before and after conviction, by sufficient surety, or subject to release upon condition or on their own recognizance, except that the following defendants shall not be admitted to bail:

1. A defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of a class “A” felony, murder, any class “B” felony included in section 462A.14 or 707.6A; felonious assault; felonious child endangerment; sexual abuse in the second degree; sexual abuse in the third degree; kidnapping; robbery in the first degree; arson in the first degree; burglary in the first degree; any felony included in section 124.401, subsection 1, paragraph “a” or “b”; or a second or subsequent offense under section 124.401, subsection 1, paragraph “c”; any felony punishable under section 902.9, subsection 1; any public offense committed while detained pursuant to section 229A.5; or any public offense committed while subject to an order of commitment pursuant to chapter 229A.

2. A defendant appealing a conviction of a class “A” felony; murder; any class “B” or “C” felony included in section 462A.14 or 707.6A; felonious assault; felonious child endangerment; sexual abuse in the second degree; sexual abuse in the third degree; kidnapping; robbery in the first degree; arson in the first degree; burglary in the first degree; any felony included in section 124.401, subsection 1, paragraph “a” or “b”; or a second or subsequent conviction under section 124.401, subsection 1, paragraph “c”; any felony punishable under section 902.9, subsection 1; any public offense committed while detained pursuant to section 229A.5; or any public offense committed while subject to an order of commitment pursuant to chapter 229A.

3. Notwithstanding subsections 1 and 2, a defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of, or appealing a conviction of, any felony offense included in section 708.11, subsection 3, or a felony offense under chapter 124 not provided for in subsection 1 or 2 is presumed to be ineligible to be admitted to bail unless the court determines that such release reasonably will not result in the person failing to appear as required and will not jeopardize the personal safety of another person or persons.

[C51, §3211 – 3213; R60, §4885, 4962; C73, §3845, 4107, 4511; C97, §5096, 5442; S13, §5096; C24, 27, 31, 35, 39, §13609, 13610, 13966; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §763.1, 763.2, 789.19; C79, 81, §811.1; 82 Acts, ch 1236, §1]

89 Acts, ch 138, §4, 5; 90 Acts, ch 1251, §61; 92 Acts, ch 1179, §2; 94 Acts, ch 1093, §6; 95 Acts, ch 87, §1; 97 Acts, ch 177, §30; 98 Acts, ch 1138, §27; 99 Acts, ch 12, §10; 99 Acts, ch 71, §1; 99 Acts, ch 123, §1; 2000 Acts, ch 1099, §10; 2002 Acts, ch 1139, §22, 27

[P] See R.Cr.P. 2.37 – Form 1

[P] See also §124.416

811.1A Detention hearing.

1. When a defendant is awaiting sentencing after conviction for a felony or is pursuing an appeal in such a case following sentencing, and the defendant would otherwise be eligible to be admitted to bail under this chapter, but it appears by clear and convincing evidence that if released the defendant is likely to pose a danger to another person or to the property of

others, the defendant may be detained under the authority of this section and in the manner provided in subsection 2.

2. The following procedures shall apply to a detention hearing:

a. The prosecuting attorney may initiate a detention hearing by a verified ex parte written motion. Upon such motion, the district court may issue a warrant for the immediate arrest of the defendant, if the defendant is not in custody.

b. The defendant shall be brought before the district court within twenty-four hours after arrest, or if the defendant is in custody, the defendant shall be brought before the district court within twenty-four hours of the prosecuting attorney's filing of the motion. The detention hearing shall be held within seventy-two hours of the defendant's arrest, or if the defendant is in custody, the detention hearing shall be held within seventy-two hours of the filing of the motion.

c. The defendant shall be entitled to representation by counsel, including appointed counsel if indigent, and shall be entitled to the right of cross-examination and to present information, to testify, and to present witnesses in the defendant's own behalf, but shall not be entitled to being admitted to bail.

d. Testimony of the defendant given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, except that such testimony shall be admissible in proceedings under section 811.2, subsection 8, and section 811.8, and in perjury proceedings.

e. Appeals from orders of detention may be taken in the manner provided under section 811.2, subsection 7.

f. If the trial court issues an order of detention, the order shall be accompanied by a written finding of fact and the reasons for the detention order.

g. For the purposes of such proceedings, the trial court is not divested of jurisdiction by the filing of a notice of appeal.

2004 Acts, ch 1084, §4

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, 3216 – 3218; 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, 763.17 – 763.19; C79, 81, §811.2]

83 Acts, ch 19, §1 – 3; 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, §23 – 25

[P] See R.Cr.P. 2.37 – Forms 2 and 3

811.2A Pretrial release. Repealed by 2007 Acts, ch 215, § 134.

811.3 Qualification and examination of surety.

1. Insurance companies doing business in this state under the provisions of section 515.48, subsection 2, may act as surety. Resident owners of property which is located within the state and which is worth the amount specified in the undertaking, may act as surety, and must in all cases justify by an affidavit taken before an officer authorized to administer oaths that such surety possesses such qualifications.

2. In taking bail each signer may justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to one sufficient bail.

3. The court in which the action is pending, or the clerk thereof, or magistrate may require the personal appearance of sureties offered, and may thereupon further examine them upon oath concerning their sufficiency, and may also receive other evidence for or against the sufficiency of the bail. When such examination is closed, the official conducting such examination must make an order, either allowing or disallowing the bail, and forthwith cause the same, with the affidavits or justification and undertaking of bail, to be filed with the clerk of the court to which the papers on the preliminary examination are required to be sent.

[C51, §3220 – 3224; R60, §4969 – 4973; C73, §4575 – 4579; C97, §5507 – 5510; C24, 27, 31, 35, 39, §13619 – 13622; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §763.11 – 763.14; C79, 81, §811.3]

811.4 Undertaking of bail as liens on real estate.

Undertakings of bail, immediately after such undertakings are filed with the clerk of the district court, shall be docketed as liens on real estate, entered upon the lien index as required for judgments in civil cases, and from the time of such entries, shall be liens upon real estate of the persons executing the same. Attested copies of such undertakings may be filed in the office of the clerk of the district court of the county in which the real estate is situated,

in the same manner and with like effect as attested copies of civil judgments, and shall be immediately docketed and indexed in the same manner.

[R60, §5000 – 5002; C73, §4606 – 4608; C97, §5513, 5514; C24, 27, 31, 35, 39, §13625, 13626; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §764.1, 764.2; C79, 81, §811.4]

811.5 Bail on appeal.

After conviction, upon appeal to the appellate court, the defendant must be admitted to bail, if it be from the judgment imposing a fine, upon the undertaking of bail that the defendant will, in all respects, abide the orders and the judgment of the appellate court upon appeal; if from a judgment of imprisonment, except as provided in section 811.1 upon the undertaking of bail that the defendant will surrender in execution of the judgment and direction of the appellate court, and in all respects abide the orders and judgment of the appellate court upon the appeal. Such bail may be taken, either by the court where the judgment was rendered, or the district court of the county in which the defendant is imprisoned, or by the appellate court, or a judge or clerk of any of such courts. Provided, that in lieu of bail, bailable defendants as described herein may be released in accordance with the provisions of section 811.2.

[R60, §4966, 4981; C73, §4587; C97, §5506; C24, 27, 31, 35, 39, §13617, 13618; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §763.9, 763.10; C79, 81, §811.5]

811.6 Forfeiture of bail.

1. A defendant released pursuant to this chapter shall appear at arraignment, trial, judgment, or such other proceedings where the defendant's appearance is required. If the defendant fails to appear at the time and place when the defendant's personal appearance is lawfully required, or to surrender in execution of the judgment, the court must direct an entry of the failure to be made of record, and the undertaking of the defendant's bail, or the money deposited, is thereupon forfeited. As a part of the entry, except as provided in rule of criminal procedure 2.72, the court shall direct the clerk of the district court of the county to give ten days' notice in writing to the defendant and the defendant's sureties to appear and show cause, if any, why judgment should not be entered for the amount of bail. If such appearance is not made, judgment shall be entered by the court. If appearance is made, the court shall set the case down for immediate hearing as an ordinary action.

2. Where a forfeiture and judgment have been entered as provided in this section, and the amount of the judgment has been paid to the clerk, the clerk shall hold the same as funds of the clerk's office for a period of sixty days from the date of judgment.

3. The court may, upon application, set aside such judgment if, within sixty days from the date thereof, the defendant shall voluntarily surrender to the sheriff of the county, or the defendant's sureties shall, at their own expense, deliver the defendant to the custody of the sheriff. Such judgment shall not be set aside, however, unless as a condition precedent thereto, the defendant and the defendant's sureties shall have paid all costs and expenses incurred in connection therewith.

[R60, §4990 – 4994; C73, §4596 – 4600; C97, §5515 – 5517, 5519; C24, 27, 31, 35, 39, §13631, 13633, 13635, 13636; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §766.1 – 766.3, 766.5, 766.6; C79, 81, §811.6]

2000 Acts, ch 1032, §6

811.7 Recommitment after bail.

1. The magistrate may, by an order entered on the record, direct the defendant to be arrested and committed to jail until legally discharged, after the defendant has given bail or deposited money in lieu thereof, or otherwise is released pursuant to this chapter, when it satisfactorily appears to the court that the defendant has failed to appear as required, or the defendant has violated a condition of release, or when, after the filing of an indictment or information, the court finds the bail taken or money deposited is insufficient.

2. Such order for recommitment must recite generally the facts upon which it is founded, and must direct that the defendant be arrested and committed to the custody of the sheriff of the county in which such order is entered. The defendant may be arrested pursuant to such order, upon a certified copy thereof, in any county of the state.

3. If the order recite, as the ground on which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirements of the order; if made for any other cause and the offense is bailable, the court must cause a direction to be inserted in the order that the defendant be admitted to bail, in a sum to be stated in the order.

[C51, §3243 – 3247; R60, §4995-4999; C73, §4601 – 4605; C97, §5520 – 5523; C24, 27, 31, 35, 39, §13637 – 13640; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §767.1 – 767.4; C79, 81, §811.7]

811.8 Surrender of defendant.

1. At any time before the forfeiture of the undertaking, the surety may surrender the defendant, or the defendant may surrender, to the officer to whose custody the defendant was committed at the time of giving bail, and such officer shall detain the defendant as upon a commitment and must, upon such surrender and the receipt of a certified copy of the undertaking of bail, acknowledge the surrender by a certificate in writing.

2. Upon the filing of the undertaking and the certificate of the officer, or the certificate of the officer alone if money has been deposited instead of bail, the court or clerk shall immediately order return of the money deposited to the person who deposited the same, or order an exoneration of the surety.

3. For the purpose of surrendering the defendant, the surety, subject to the limitations of section 811.12 and chapter 80A, at any time may arrest the defendant, or, by a written authority endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so. In making an arrest pursuant to this subsection, the surety or any person empowered by the surety shall possess no more authority than a peace officer would possess in making a lawful arrest under section 804.8, 804.13, 804.14, or 804.15.

[C51, §3236 – 3238; R60, §4987 – 4989; C73, §4593 – 4595; C97, §5528 – 5530; C24, 27, 31, 35, 39, §13641 – 13643; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §768.1 – 768.3; C79, 81, §811.8] 98 Acts, ch 1149, §12

811.9 Forfeiture of appearance bond and conditions to set aside.

Sections 811.6 through 811.8 shall not apply in a case where a simple misdemeanor is charged upon a uniform citation and complaint and where the defendant has submitted an unsecured appearance bond or has submitted bail in the form of cash, check, credit card as provided in section 805.14, or guaranteed arrest bond certificate as defined in section 321.1. When a defendant fails to appear as required in such cases, the court, or the clerk of the district court, shall enter a judgment of forfeiture of the bond or bail. The judgment shall be final upon entry and shall not be set aside unless the conviction is for a scheduled violation under chapter 321 that was set aside under the procedures established in section 321.200A, or upon a showing of good cause after the filing of a motion within ninety days of entry of the judgment, for mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty.

[C79, 81, §811.9]

99 Acts, ch 144, §14; 2009 Acts, ch 124, §3; 2010 Acts, ch 1069, §65; 2010 Acts, ch 1130, §2

[T] See Code editor's note to §8A.402 at the end of Vol VI

[T] Section amended

811.10 Discharge of surety.

When a defendant is admitted to bail by means of a surety bail bond pursuant to section 811.2, subsection 1, paragraph “d”, the obligation of surety shall be discharged, and the surety released, upon any of the following conditions:

1. Dismissal of the charges against the defendant.
2. Judgment of acquittal against the defendant.
3. Judgment of conviction against the defendant.
4. Entry of an order deferring judgment of the defendant.
5. Entry of an order by the court which, by its terms, continues the case against the defendant for a period exceeding six months.

84 Acts, ch 1152, §3

811.11 Bail after deferred judgment.

Upon entry of an order by the court deferring judgment, effecting a discharge of the surety as required under section 811.10, the defendant may be admitted to bail, as a condition of the deferral of judgment. Admittance to bail under this section, if required by the court, requires a new bail undertaking by the defendant. The surety under this section is responsible only for the failure of the defendant to appear at required court appearances during the period of deferral of judgment.

84 Acts, ch 1152, §4

811.12 Limitations.

1. A person shall not take or attempt to take into custody the principal on a bail bond, either as a surety on a bail bond in a criminal proceeding or as an agent of such surety, unless such person has complied with all of the following, if applicable:

a. Notification or registration with a chief law enforcement officer under section 80A.3A.

b. Licensing requirements for bail enforcement businesses and bail enforcement agents under chapter 80A.

2. A person other than a certified peace officer shall not be authorized to apprehend, detain, or arrest a principal on a bail bond, wherever issued, unless one of the following applies:

a. The person is a bail enforcement agent licensed under chapter 80A and has notified the chief law enforcement officer under section 80A.3A.

b. The person is a bail enforcement agent licensed under the laws of another state and has registered with the chief law enforcement officer under section 80A.3A.

c. The person is a bail enforcement agent from a state that does not license such businesses who has registered with the chief law enforcement officer under section 80A.3A.

d. The person is a bail enforcement agent exempt from licensing requirements pursuant to section 80A.2, subsection 3.

98 Acts, ch 1149, §13; 99 Acts, ch 105, §1