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JUDICIARY

HOUSE FILE 2097
BY HALVORSON

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to postconviction release bonds.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 811A.1 DEFINITIONS.

2 As used in this chapter:

3 1. "Breach" means a violation of any condition, other than
4 program noncompliance, imposed upon the defendant by court
5 order as a prerequisite to conditional release on
6 postconviction bond.

7 2. "Conditional release" means a release under a deferred
8 judgment, deferred sentence, or suspended sentence entered
9 pursuant to chapter 907.

10 3. "Demand for payment" means a written demand made to the
11 surety by the court upon the revocation by the court of the
12 postconviction bond based upon a breach of a condition of the
13 bond, other than program noncompliance. The amount of the
14 demand shall conform to the formula specified in section
15 811A.8.

16 4. "Notice of forfeiture" means a written notice to the
17 surety by the court of the total of the penal amount of the
18 postconviction bond upon the surety's failure to timely file a
19 report on the defendant's program noncompliance.

20 5. "Penal amount" means the amount determined by the court
21 to be the undertaking for the conditional release on
22 postconviction bond.

23 6. "Postconviction bond" means a written undertaking by a
24 surety to the court that describes the terms and conditions of
25 the surety's duties and includes a guarantee of the
26 defendant's compliance with the conditions imposed upon the
27 defendant by court order. The conditions of the defendant's
28 release shall be specified in the postconviction bond.

29 7. "Program noncompliance" means a failure of the
30 defendant to comply with a condition of drug testing or
31 electronic home detention.

32 8. "Surety" means a person qualified to take bail in
33 accordance with section 811.3.

34 Sec. 2. NEW SECTION. 811A.2 POSTCONVICTION BOND ORDERED.

35 1. The court may, as part of its order under section

1 907.3, require a defendant to post a postconviction bond to
2 secure the defendant's compliance with the conditions of a
3 conditional release pursuant to chapter 907.

4 2. A postconviction bond may be ordered by the court in
5 conjunction with other terms and conditions under section
6 907.3 or may stand alone as a probation requirement.

7 3. At the time of entry of an order under section 907.3
8 requiring a postconviction bond, the court shall impose an
9 alternative term of incarceration to be served in the event
10 the postconviction bond is revoked for failure to be posted or
11 other breach, notwithstanding section 908.11.

12 4. A person incarcerated under subsection 3 may petition
13 the court for an early release from custody. The court may
14 grant the petition if it finds that the defendant is able to
15 post a postconviction bond. The order may contain other
16 conditions in accordance with chapter 907 and this chapter.

17 5. The conditions of a postconviction bond may include a
18 requirement that the defendant participate in a drug testing
19 program, electronic home detention monitoring, or both.

20 6. A surety shall utilize a drug testing laboratory and
21 electronic home detention monitoring provider approved by the
22 court. The surety shall maintain in force at all times a
23 master agreement with the drug testing laboratory and home
24 detention monitoring provider providing that the laboratory or
25 provider shall notify the court within one day of program
26 noncompliance by the defendant.

27 Sec. 3. NEW SECTION. 811A.3 POSTCONVICTION BOND
28 REQUIREMENTS.

29 1. The postconviction bond shall be a written undertaking
30 in an amount to be determined by the court. The bond shall be
31 not less than five thousand dollars and not more than fifty
32 thousand dollars. The postconviction bond shall be delivered
33 by the surety to the court and shall describe the terms and
34 conditions of the surety's obligations as provided in section
35 811A.2.

1 2. The postconviction bond instrument shall have a term of
2 one year and may be renewed annually. The annual premium for
3 the postconviction bond shall be fully earned on execution or
4 renewal.

5 Sec. 4. NEW SECTION. 811A.4 RELEASE OF POSTCONVICTION
6 BOND REQUIREMENT.

7 A postconviction bond requirement shall be released by the
8 court at the conclusion of the conditional release period set
9 by the court if the defendant has complied with all conditions
10 of the conditional release or five years from the date the
11 postconviction bond instrument was posted, whichever is later.

12 Sec. 5. NEW SECTION. 811A.5 PENALTIES FOR NONCOMPLIANCE.

13 The court may do either of the following if it finds that a
14 defendant on conditional release has breached the requirements
15 of the conditional release order:

16 1. Revoke and immediately reinstate the postconviction
17 bond on the same or different terms with no penalty to the
18 surety. If the court elects to reinstate the postconviction
19 bond, the court shall mail notice of the reinstatement to the
20 surety within forty-eight hours of issuing the order to
21 reinstate the postconviction bond.

22 2. Revoke the postconviction bond and order the defendant
23 to be taken into custody to serve the alternative term of
24 incarceration under section 811A.2. The period of time during
25 which the defendant was on conditional release shall not be
26 credited against the defendant's term of incarceration.

27 Sec. 6. NEW SECTION. 811A.6 SURETY'S REQUIREMENTS.

28 1. During the term of the postconviction bond, the surety
29 shall be required to report in writing any instance of program
30 noncompliance to the court within ten days of the program
31 noncompliance. A written report of program noncompliance
32 shall be considered timely if it is either postmarked or
33 transmitted by facsimile to the court within ten days of an
34 instance of program noncompliance.

35 2. If the surety fails to report any program noncompliance

1 to the court as required in subsection 1, the penal amount of
2 the postconviction bond shall be forfeited to the court as
3 provided in section 811A.7, subsection 2.

4 3. A surety shall not be liable for more than the penal
5 amount of the postconviction bond.

6 Sec. 7. NEW SECTION. 811A.7 BREACH AND PROGRAM
7 NONCOMPLIANCE -- NOTICE TO SURETY.

8 1. a. Upon receiving a report of breach of the terms of
9 the conditional release, the court, if it elects to revoke the
10 conditional release, shall mail within thirty days of
11 receiving the report a demand for payment to the surety.

12 b. The surety shall pay a prorated percentage of the face
13 amount of the postconviction bond, as calculated pursuant to
14 section 811A.8 within thirty days of the mailing of the demand
15 for payment.

16 c. The failure of the court to timely mail the demand for
17 payment shall relieve the surety of all liability under the
18 postconviction bond.

19 2. a. Upon receiving independent knowledge of the
20 defendant's program noncompliance where the surety failed to
21 file the report required in section 811A.6, the court, if it
22 elects to revoke the conditional release, shall mail within
23 thirty days of receiving notice of the program noncompliance a
24 notice of forfeiture of the penal amount of the postconviction
25 bond to the surety.

26 b. The surety shall remit to the court the full penal
27 amount of the postconviction bond within thirty days of the
28 mailing of the notice of forfeiture.

29 c. The failure of the court to timely mail the notice of
30 forfeiture shall relieve the surety of all liability under the
31 postconviction bond.

32 Sec. 8. NEW SECTION. 811A.8 AMOUNTS PAYABLE BY SURETY --
33 DISTRIBUTION OF PROCEEDS.

34 1. The surety shall remit the amount due and payable to
35 the court pursuant to a valid issuance of a demand for payment

1 as follows:

2 a. Ten percent of the penal amount of the bond if the
3 breach giving rise to the demand for payment occurs in the
4 first quarter of any premium year on the postconviction bond.

5 b. Seven and one-half percent of the penal amount of the
6 bond if the breach giving rise to the demand for payment
7 occurs in the second quarter of any premium year on the
8 postconviction bond.

9 c. Five percent of the penal amount of the bond if the
10 breach giving rise to the demand for payment occurs in the
11 third quarter of any premium year on the postconviction bond.

12 d. Two and one-half percent of the penal amount of the
13 bond if the breach giving rise to the demand for payment
14 occurs in the fourth quarter of any premium year on the
15 postconviction bond.

16 2. Upon payment of the surety of a demand for payment
17 pursuant to this section, all further obligations of the
18 surety under the postconviction bond are immediately
19 discharged.

20 3. If the defendant is returned to the court within thirty
21 days of the mailing of a notice of forfeiture, the surety
22 shall be remitted or credited with seventy-five percent of the
23 penal amount of the postconviction bond.

24 4. If the defendant is returned to the court within one
25 hundred twenty days of the mailing of a notice of forfeiture,
26 the surety shall be remitted or credited with fifty percent of
27 the penal amount of the postconviction bond.

28 5. The proceeds from payments under this section shall be
29 distributed equally to the clerk of the district court, the
30 sheriff, the county attorney, and the victim compensation fund
31 established in section 912.14.

32 Sec. 9. NEW SECTION. 811A.9 DEFENDANT SURRENDERED TO
33 COURT.

34 A surety is authorized to surrender the defendant to the
35 court if the premium due on the bond is not paid in full. The

1 bond shall be released effective on the date of the surrender.
2 If the defendant is surrendered within thirty days of the
3 failure to pay the premium for the postconviction bond, the
4 bond shall be released retroactively to the date the premium
5 was initially earned by the surety.

6 Sec. 10. NEW SECTION. 811A.10 JUDGMENT AGAINST SURETY --
7 LIEN.

8 1. The court may enter a judgment against a surety who
9 fails to timely respond to a demand for payment or notice of
10 forfeiture. The judgment shall be for the amount payable to
11 the court and shall become a lien against the assets of the
12 surety.

13 2. The court shall not accept a postconviction bond of a
14 surety if a judgment under subsection 1 against the surety
15 remains unpaid twenty days after entry of the judgment.
16 However, if the surety challenges the validity of the judgment
17 within twenty days after the entry of the judgment, this
18 subsection shall not apply to the surety until the validity of
19 the judgment is finally determined.

20 3. If the court fails to enter a judgment within ninety
21 days from the date upon which it first may enter the judgment,
22 the postconviction bond shall be released.

23 Sec. 11. Section 907.3, Code Supplement 1995, is amended
24 by adding the following new subsection:

25 NEW SUBSECTION. 4. An order committing a defendant to
26 probation under this section may contain a requirement for a
27 postconviction bond under chapter 811A.

28 EXPLANATION

29 This bill provides that a court, when ordering a defendant
30 to probation for a deferred judgment, deferred sentence, or
31 suspended sentence, may order that the defendant post a
32 postconviction bond of between \$5,000 and \$50,000. The bond
33 process would be administered by private sureties who are
34 qualified to take bail bonds under chapter 811.

35 The bill also provides that the court, when ordering a

1 postconviction bond, is to impose an alternative term of
2 incarceration for the defendant in the event the bond is not
3 posted. Postconviction bond orders may include the
4 requirement that the defendant participate in drug testing and
5 electronic in-home detention. Postconviction bonds shall be
6 in effect for not more than five years.

7 A defendant who violates the terms of the probation order
8 or postconviction bond conditions is subject to being
9 imprisoned and having the bond revoked by the court. A surety
10 is also required to pay to the court certain percentages of
11 the bond for the defendant's breach or program noncompliance
12 with any terms of the probation order or bond conditions.

13 A surety who does not comply with payments to the court
14 required due to the defendant's breach or program
15 noncompliance or the surety's failure to report the program
16 noncompliance is subject to a judgment lien in the amount owed
17 the court.

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