No. 19-26

IN THE
Supreme Court of the United States

DARLENE COLLINS, ET AL

v.

CHARLES W. DANIELS, ET AL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR REHEARING

A. BLAIR DUNN
Counsel of Record

Western Agriculture, Resource and Business Advocates, LLP
400 Gold Ave SW,
Suite 1000
Albuquerque, NM 87102
abdunn@ablairdunn-esq.com
(505) 750-3060

CURRY & TAYLOR ♦ 202-393-4141

PETITION FOR REHEARING

I. INTERVENING CIRCUMSTANCES OF CONTROLLING EFFECT, NOT PREVIOUSLY PRESENTED, WARRANTING REHEARING.

In the time since the Petition for Certiorari was presented to this Court, the usurpation of the policy making function of the legislative branches has come to culmination. In Missouri, a despotic high court has adopted the same policy making legislative action as the New Mexico Supreme Court to eliminate a bail system ensuring the right of the accused to bail on the least restrictive set of conditions in compliance with the Court's holding in *US v. Salerno*, 481 U.S. 739, 742, 107 S. Ct. 2095, 2099, 95 L. Ed. 2d 697 (1987) in favor of a system not adopted by Missouri's legislature, and one that does violence to the presumption of innocence and the protection thereof found in the Eighth Amendment. Though a cursory reference to this action was found as a footnote in the Petition for Certiorari, the full effect of this matter in Missouri was unseen,[1] but more importantly no action to hold the Missouri High Court accountable for its usurpations has occurred, ostensibly and likely because no attorney is willing to face the type of retaliation against undersigned counsel upheld by the Tenth Circuit in the decision below.

Likewise, in California the high court has not only pressed forward with policy making but has notoriously continued reforms after they have been certified to be presented to the people by referendum

[1] Pet.App. 20b-51b

on the 2020 ballot. In fact there is no clearer statement of this intervening circumstance than the statement of the Chief Justice of the California Supreme Court stating "In California, we are leading and experiencing reforms driven by best practices, but also pilot projects, court decisions, and legislation," Cantil-Sakauye said. "This workgroup will help continue progress toward reform that benefits the branch, enhances public safety and promotes equitable treatment of all who come through our criminal justice system." [2] Thus, the California High Court has engaged in a legislative and policy making exercise that the legislature itself can no longer pursue until the voters decide the question. And more concerning, yet, the California Supreme Court is pressing forward with policy reforms costing the taxpayers $75 million for pilot programs of arguably dubious constitutional correctness, that again, remain unchallenged by any legal counsel likely due to the threat of sanctions upheld by the Tenth Circuit and unaddressed by this Court.

Alexander Hamilton said, "There is no liberty if the power of judging be not separated from the legislative and executive powers." Federalist 78, Federalist Papers (Clinton Rossiter, ed., New York: Penguin Books, 1961).

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[2] Pet.App. 6b; *See also* 1b-5b and 7b-19b

II. UNCHECKED JUDICIAL ACTIVISM BY STATE HIGH COURTS THREATEANS OUR REPRESENTATIVE GOVERNMENT AND THIS COURT SHOULD GRANT THE PETITION

Robert Bork articulated well that a respect by the judiciary for the balance of powers as originally intended by the framers must:

> appeal to a common sense of what judges' roles ought to be in a properly functioning constitutional democracy. Judges are to overturn the will of legislative majorities absent a violation of a constitutional right, as those rights were understood by the Framers.

John E. Thompson, "What's the Big Deal? The Unconstitutionality of God in the Pledge of Allegiance", 38 Haw. C.R.-C.L.L. Rev. 563, Summer: citing Robert Bork, the Tempting of America: The Usurpation of Law By Politics (1999). Therefore, it is clear from New Mexico, Missouri, and now California that the greatest threat to liberty, our representative government, and the rule of law, is judicial activism in the name of legislating policy reforms perceived to be a social good or remedying some perceived inequality or injustice. "There is in all of us a strong disposition to believe that anything lawful is also legitimate. This belief is so widespread that many persons have erroneously held that things are 'just' because law makes them so." Frédéric Bastiat, *The Law*, The Foundation for Economic Education, Inc., Irvington-on-Hudson, New York 10533.

Thus, protecting liberty in this instance, though normally deferential to concerns of Federalism, requires this Court's review at least as much if not more so than this Court's intervention in *Bush v. Gore*, 531 U.S. 98, 114 (2000). Just as in *Bush v. Gore*, this case plus the recent actions of the Missouri Supreme Court and the California Supreme Court warrant action by this Court as the unique situation where this Court should

> "…determine whether a state court has infringed upon the legislature's authority, we necessarily must examine the law of the State as it existed prior to the action of the court. Though we generally defer to state courts on the interpretation of state law—see, *e.g.*, *Mullaney v. Wilbur*, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975)—there are of course areas in which the Constitution requires this Court to undertake an independent, if still deferential, analysis of state law.

Bush v. Gore, 531 U.S. 98, 114 (2000). Just as the Federal Judiciary is a check on the other two branches of the Federal government, so too is the U.S. Supreme Court a check of the power of state judiciaries against the same concerns of despotism. Thomas Jefferson illustrated the need for this check, warning about a Federal judiciary behaving as these state high courts now behave, stating "[b]ut the opinion which gives the judges the right to decide what laws are constitutional and what not, not only for themselves in their own sphere of action but for the Legislature and Executive also in their spheres would make the Judiciary a despotic branch". Letter from Thomas Jefferson to

Abigail Adams, 1804. Available at etext.lib.virginia.edu/jefferson/quotations/jeff1030.htm. Alexander Hamilton agreed, stating "that there is no liberty, if the power of judging be not separated from the legislature and executive powers." Clinton Rossiter, ed., Federalist 78, Federalist Papers (New York Penguin Books, 1961).

Indeed, it appears that this case was only a precursor to judicial activism in Missouri and California, which should now demonstrate to this Court that there are substantial circumstances brewing of judicial activism in state high courts across the nation that should not be left unaddressed and unchecked. Indeed, "the American people will never be able to regain democratic self-government – and thus shape policy – until we curb activist judges." Edwin Meese III, "How Congress Can Rein in the Courts", Hoover Digest, 1997 No. 4, adapted from Intellectual Capital.com, Volume 2 Issue 16, April 17, 1997, from an article entitled "The Judiciary vs. The Constitution?"

Therefore, just as this Court stepped in, in *Bush v. Gore*, to protect the integrity of the Constitution surrounding the election of the President, so too should this Court now step in to protect the structural integrity of the separation of powers in the several states, and the integral structural integrity of the legal profession's ability to safeguard against judicial tyranny and usurpation of powers reserved to the people and their state legislatures. The antidote to judicial activism by state high courts is judicial accountability. The Tenth Circuit's decision in this regard destroys any chance of an antidote ever reaching this Court again to safeguard the liberties of

bail protected by the Eighth Amendment. By allowing the Tenth Circuit to uphold sanctions against undersigned counsel, this Court sends a clear message that under absolutely no circumstances may the judiciary anywhere in the Nation be held accountable for violating the Constitution.

James Madison once said, "[j]ustice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit."

CONCLUSION

The Court should grant the Petition.

A. Blair Dunn
WESTERN AGRICULTURE RESOURCE AND BUSINESS ADVOCATES, LLP

400 Gold Ave SW, Suite 1000
Albuquerque, NM 87102
(505) 760-5060
abdunn@ablairdunn-esq.com
C*ounsel for Petitioners*

RULE 44 CERTIFICATE OF COUNSEL

As required by Supreme Court Rule 44.2, I certify that the Petition for Rehearing is limited to "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented." And that the Petition is presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of November 2019.

Respectfully submitted,

A. Blair Dunn
WESTERN AGRICULTURE RESOURCE AND BUSINESS ADVOCATES, LLP

400 Gold Ave SW, Suite 1000
Albuquerque, NM 87102
(505) 760-5060
abdunn@ablairdunn-esq.com
Counsel for Petitioners

https://www.visaliatimesdelta.com/story/news/2019/04/03/california-voters-get-say-bail-system-judges-urge-reform/2598147002/

California voters will get say on bail system, judges urge reform
Sheyanne N Romero, Visalia Times-Delta

Published 8:04 a.m. PT April 3, 2019

California's no cash bail law is on hold until the November 2020 election.

But, leaders in criminal justice plan to move forward with reforms to the state's pretrial detention system.

Chief Justice Tani Cantil-Sakauye recently met with 12 members of the criminal justice system from across the state to review pretrial detention progress and identify possible improvements.

The group included trial court judges, appellate justices and court executive officers from courts of all sizes and from both rural and urban areas.

The review began in February.

"In California, we are leading and experiencing reforms driven by best practices, but also pilot projects, court decisions, and legislation," Cantil-Sakauye said. "This workgroup will help continue progress toward reform that benefits the branch, enhances public safety and promotes equitable treatment of all who come through our criminal justice system."

Across California, pretrial release and detention primarily based on cash bail are slowly being replaced.

Senate Bill 10 was passed by former Gov. Jerry Brown and meant to put an end to cash bail.

However, the bill was met with strong opposition — bail agents and prosecutors.

Tulare County wasn't apart of February discussions but court officials intend to continue using its pretrial risk assessment tool.

The Arnold Foundation's pretrial risk assessment tool was implemented in June and is administered by court and probation. Court and probation employees were trained for months before using the tool.

"Pretrial justice itself has been a long overlooked area in which resources and creative thought should be given," said Tulare County Presiding Judge Brett Alldredge. "We have dozens of cases on the calendar with defense and prosecution trying to negotiate deals."

The court is given recommendations on what they should do with a defendant based on a number of factors including public safety and flight risk — failure to appear.

Alldredge said having a probation office on hand as a resource has been a "boon" in the courtroom.

"It's made us much more effective," he said. "The court's relationship with the probation department has been outstanding."

Along with recommendations from the probation department, judges use nine factors to determine a defendant's release including the risk of failure to appear, behavior, and violence. The defendant's age,

charge and any prior law enforcement encounters are also taken into consideration.

"I truly believe that justice is best delivered if it's done in a considered fashion on an individualized basis with a judge that is as fully informed as possible," Alldredge said.

Other California jurisdictions have implemented bail reform using a similar risk assessment tool that classifies a defendant into one of three categories.

Low risk means release from jail for free; medium risk means there is increased supervision and monitoring; and high risk means preventative detention — no release at all.

However, these risk assessment tools aren't always reliable.

Some violent offenders have been declared as safe, while others with seemingly minor blemishes on their records have been categorized as dangerous.

This means there are violent offenders being released for free, while others with minor blemishes on their records have been deemed “high risk” and are stuck in jail.

Despite debates, many feel that pretrial detention will never be what it once was. Courts will have a better idea of how they should move on.

"If we are to continue to adopt programs consistent with the spirit of SB 10, I know that we've already done that here," Alldredge said. "We are ahead of the curve, by quite a ways."

A previous workgroup established by the chief justice to study pretrial detention released a slate of recommendations in 2017.

Those recommendations included replacing money bail with a risk-based assessment and supervision program that base decisions on whether to jail offenders before trial based on their threat to public safety and their likelihood of making a court appearance.

Brown signed SB 10 into law in August. His decision relied heavily on the workgroup's recommendations.

However, some weren't in favor of the bill.

"I didn't support SB 10 when it came through the Assembly. I didn't think it was fully cooked. The bill was very rushed," said Assemblyman Devon Mathis. "I'm glad it made it back to the ballot. It's allowing the voters to decide."

The new law — which would have taken effect on Oct. 1 — was immediately met with resistance from both civil rights groups, politicians and the bail bond industry.

"This measure has a lot of repercussions and we should respect the will of the people," Mathis said. "As of late, it feels like California has forgotten about its duty to its citizens."

Bail industry leaders collected the more than 500,000 signatures needed to place SB 10 on the November 2020 ballot. The signatures were certified by the Secretary of State, which places the bill on hold.

"We knew with the momentum against this law from people on all sides of the issue, getting on the ballot

would not be the problem," said Jeff Clayton, executive director of the American Bail Coalition. "Now we can move on toward defeating this reckless law.

https://newsroom.courts.ca.gov/news/chief-justice-names-group-to-review-pretrial-reform-efforts-in-california

Chief Justice Names Group to Review Pretrial Reform Efforts in California

Twelve jurists are selected to serve on the Pretrial Reform and Operations Workgroup

January 15, 2019

Chief Justice Tani G. Cantil-Sakauye on Tuesday announced a new work group to review progress on reforms to California's system of pretrial detention and identify next steps to continue work on the issue.

The 12-person group—which includes trial court judges, appellate justices and court executive officers from courts of all sizes and from both rural and urban areas—will begin meeting in February.

"Across California and the nation, pretrial release and detention primarily based on cash bail are slowly being replaced with safer and fairer alternatives. In California, we are leading and experiencing reforms driven by best practices, but also pilot projects, court decisions, and legislation," Chief Justice Cantil-Sakauye said. "This work group will help continue progress toward reform that benefits the branch, enhances public safety and promotes equitable treatment of all who come through our criminal justice system."

The members of the Pretrial Reform and Operations Workgroup include:

Justice Marsha Slough (Chair), Associate Justice of the Court of Appeal, Fourth Appellate District, Division Two (Riverside)

Judge Marla Anderson, Monterey County Superior Court

Judge C. Todd Bottke, Tehama County Superior Court

Justice Tom DeSantos, Associate Justice of the Court of Appeal, Fifth Appellate District (Fresno)

Judge Judith Dulcich, Kern County Superior Court

Judge Jackson Lucky, Riverside County Superior Court

Judge Serena Murillo, Los Angeles County Superior Court

Judge Sam Ohta, Los Angeles County Superior Court

Judge Winnifred Younge Smith, Alameda County Superior Court

Alex Calvo, Court Executive Officer, Santa Cruz County Superior Court

Sherri R. Carter, Court Executive Officer, Los Angeles County Superior Court

David Yamasaki, Court Executive Officer, Orange County Superior Court

The workgroup will review progress on reforms to California's system of pretrial detention and identify next steps to continue work on this important issue, including developing recommendations for funding allocations of the pilot projects and examining risk

assessment tools.

A previous workgroup established by the Chief Justice to study pretrial detention released a slate of recommendations in 2017. Those recommendations included replacing money bail with a risk-based assessment and supervision program that bases decisions on whether to jail arrestees before trial based on their threat to public safety and their likelihood of making a court appearance.

Last August, former Gov. Jerry Brown signed a pretrial reform bill that relied heavily on the workgroup's recommendations. Gov. Gavin Newsom's January budget proposal released last week included $75 million to the Judicial Council of California to fund programs related to pretrial decision-making.

Chief Justice Cantil-Sakauye first called for a review of California's pretrial detention system during her 2016 State of the Judiciary address to the Legislature, asking whether the current system effectively serves its purpose or unfairly penalizes the poor.

https://newsroom.courts.ca.gov/news/judicial-council-funds-16-pretrial-pilot-programs

Judicial Council Funds 16 Pretrial Pilot Programs

$75 million funds pretrial reform efforts in courts of all sizes throughout California

August 09, 2019

Merrill Balassone

415-865-7740

SAN FRANCISCO—The Judicial Council on Friday awarded millions of dollars to fund 16 pretrial projects in trial courts throughout the state.

This year's state budget earmarked $75 million to the Judicial Council to launch and evaluate two-year pretrial projects in local trial courts. As directed by the Legislature, the projects aim to increase the safe and efficient release of arrestees before trial; use the least restrictive monitoring practices possible while protecting public safety and ensuring court appearances; validate and expand the use of risk assessment tools; and assess any bias.

"This is another example of action by the three branches of state government to address an issue of fairness and equal access to justice for all Californians," said Chief Justice Tani G. Cantil-Sakauye.

"When I first publicly called for a review of California's pretrial detention system during my 2016 State of the Judiciary address, it was because I was questioning

whether the current system effectively served its purpose or unfairly penalized the poor. My first workgroup on pretrial detention reform found that the current system was 'unsafe and unfair.' Today, we are harnessing innovation from courts throughout the state to make our system safer and fairer for all."

The approved projects are:

COURT	FUNDING	NEW / EXISTING PROGRAM
Alameda	$14.4 million	Restore program
Calaveras	$531,000	New program
Kings	$1.12 million	New program
Los Angeles	$17.3 million	Expand program
Modoc	$746,000	New program
Napa	$1.7 million	Expand program
Nevada-Sierra	$331,000	Expand program
Sacramento	$9.59 million	New program
San Joaquin	No funds requested	Maintain program
San Mateo	$6.19 million	Expand program
Santa	$1.6 million	Expand program

Barbara		
Sonoma	$5.76 million	Expand program
Tulare	$3.77 million	Expand program
Tuolumne	$632,000	Expand program
Ventura	$3.7 million	Expand program
Yuba	$844,000	Expand program

Each of the pretrial pilot projects will operate under existing law and incorporate release decisions made by judicial officers prior to arraignment—or at arraignment if a hearing is required—informed by a risk assessment conducted by county probation departments.

Highlights of the approved pilot projects can be found here.

The pilot projects were recommended by the Pretrial Reform and Operations Workgroup, which was launched by Chief Justice Tani Cantil-Sakauye in January. The 12-person group includes trial court judges, appellate justices and court executive officers from courts of all sizes and from both rural and urban parts of the state.

"The majority of California's trial courts applied to the program and selecting just 16 was no easy task," said Justice Marsha G. Slough, who chairs the workgroup. "Their interest is a strong indicator of the judicial

branch's commitment to enhancing fairness, safety, and efficiency in the release of individuals before trial."

A previous workgroup established by the Chief Justice to study pretrial detention released a slate of recommendations in 2017. Those recommendations included replacing money bail with a risk-based assessment and supervision program that bases decisions on whether to jail arrestees before trial based on their threat to public safety and likelihood of showing up to court.

https://www.courthousenews.com/judicial-council-oks-68m-for-pretrial-release-pilot-program/

Judicial Council OKs $68M for Pretrial-Release Pilot Program

August 9, 2019

MARIA DINZEO

SAN FRANCISCO (CN) – The Judicial Council of California approved $68 million Friday to fund pilot projects in 16 trial courts aimed at releasing more arrestees from jail while they await trial.

Legislation dismantling the for-profit bail system in California is currently on hold pending a repeal referendum next November. The courts, which will shoulder the burden of pretrial reform, are preparing for an alternative system that emphasizes both public safety and monitored release that is not based on a person's ability to pay.

Fourth Appellate District Justice Marsha Slough, who chairs the Pretrial Reform and Operations Workgroup created by Chief Justice Tani Cantil-Sakauye in January, said the move is far from perfect but will lead to a more equitable criminal justice system.

"I have no doubt that there are people, there are naysayers that are looking and waiting for that very first release decision gone wrong," she said. "We also know of people who are losing their jobs and losing their homes and sometimes losing their family simply because they cannot afford to pay bail."

It wasn't easy for the workgroup to winnow down the list of 31 applicant courts. Slough said the tremendous amount of interest was sobering.

The pot of available money promised by the Legislature this year is $75 million, and the workgroup received funding requests totaling $106 million from large courts alone, Slough said.

Some projects are already up and running and requested funding to expand. Others are starting from scratch.

The courts selected are in Alameda, Los Angeles, Sacramento, San Mateo, Santa Barbara, Sonoma, Tulare, Ventura, Kings, Napa, Sierra, Yuba, Nevada-Sierra, Tuolumne, Modoc and Calaveras counties.

San Joaquin County's current pretrial program was selected as one of the 16, though it didn't request any funding.

"That is because they have a good robust program up and running. But they also felt like it had room for improvement and they could learn from what we are doing and they felt that the data exchange piece was really important," Slough said.

The funding from the Legislature comes with some conditions. The courts must increase the number of detainees released before trial, using the least restrictive monitoring tools necessary to keep the public safe while ensuring defendants make their court dates.

All of the courts plan to use risk-assessment tools, as required by the Legislature, and will be keeping data

on any bias based on race, ethnicity and gender in pretrial decision making.

Since bail is part of existing law, it is still available as an option.

Council staff member Shelley Curran, who directs the Criminal Justice Services division, said the courts will also collect data on failure-to-appear rates, re-arrest rates, and the effectiveness of court date reminder systems.

“We get reminders for haircuts and restaurants or the dentist, so it’s one of the things we know that works in the pretrial arena,” she said.

David Mauroff, CEO of the nonprofit San Francisco Pretrial Diversion Project, spoke during the council’s public comment period. Founded by the San Francisco Bar Association and municipal court judges in 1976, SF Pretrial is considered one of the most successful long-running pretrial projects in the state but faces elimination as an unexpected consequence of last year’s bail reform legislation.

His program already conducts pretrial risk assessments for San Francisco apart from law enforcement, but Senate Bill 10 requires counties to create pretrial programs within court probation departments. San Francisco Superior Court’s probation department plans to take over pretrial services in the city and was one of the 31 courts that applied for funding. Mauroff said this was done without consulting SF Pretrial or any of its justice partners.

Mauroff said he was relieved the San Francisco court did not make the cut, because that gives his program at better shot at preservation.

“For now, we’re saved. It’s a deep sigh of relief. But you never know when the next hurdle is going to come,” he said after the vote. “We were there to support the recommendations and our understanding is even though the recommendations were made, there were still opportunities to change them and we wanted to make sure our voice was heard.”

His group plans to continue working with legislators to carve out an exemption to the constraints of SB 10. “There’s still work to be done,” he said.

(chart)

https://www.courts.ca.gov/pretrial.htm

SB 10: Pretrial Release and Detention

Notice

Referendum 1856 (18-0009), *Referendum to Overturn a 2018 Law That Replaced Money Bail System with a System Based on Public Safety Risk*, qualified for the November 2020 ballot, after being certified by the Secretary of State on January 16, 2019. Qualification of the referendum has the effect of staying SB 10. At this time, the Judicial Council of California has suspended implementation of the legislation, including adoption of California Rules of Court. If you have specific questions, please contact the council's Criminal Justice Services office: crimjusticeoffice@jud.ca.gov

Overview

Senate Bill 10 (Hertzberg, Stats. 2018, ch. 244) authorizes a change to California's pretrial release system from a money-based system to a risk-based release and detention system.

SB 10 assumes that a person will be released on his or her own recognizance or supervised own recognizance with the least restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and the defendant's return to court.

. **What Does SB 10 Do?**

Creates series of categories of persons and offenses:

Different levels of review

Misdemeanors - Most are cited and released within 12 hours

Greater scrutiny as seriousness of the offense increases

Detention is based on risk, not lack of money

Eliminates cash bail or bail bonds

When there is very strong evidence that no conditions of release can reasonably assure public safety, a defendant can be detained pretrial, regardless of financial resources

Important Information on SB 10

SB 10 Overview Updated November 8, 2018

Summary of Release and Detention Process Under SB 10

Overview of the Pretrial Process Under SB 10

(charts)

Frequently Asked Questions

expand all collapse all

Does SB 10, the pretrial reform legislation, mean a judge has less discretion to decide who to detain or release before trial?

Under SB 10, will an algorithm decide who is eligible for release before trial?

What are the benefits of a Pretrial Assessment System?

What California counties have used pretrial assessment systems?

What percentage of the people held in California jails are unsentenced?

What is the size of California's bail industry?

Have other U.S. states implemented bail reform?

https://www.courts.mo.gov/sup/index.nsf/d45a7635d4bfdb8f862566200063263 8/beec23ef4487304b86258367006ca1c6?OpenDocument

Order dated December 18, 2018, re: Rules 21, 22 and 33

SUPREME COURT OF MISSOURI
en banc

December 18, 2018
Effective July 1, 2019

In re:

(1) Repeal of subdivision 21.03, entitled "Misdemeanors – Summons or Warrant of Arrest – When Issued;" subdivision 21.04, entitled "Misdemeanors – Statement of Probable Cause – Contents;" subdivision 21.05, entitled "Misdemeanor – Summons – Contents;" the heading title and subdivision 21.06, entitled "Misdemeanors – Warrant of Arrest – Contents;" the heading title and subdivision 21.09, entitled "Misdemeanors – Appearance Under Warrant Before Judge;" and the heading title and subdivision 21.10, entitled "Misdemeanors – Initial Proceedings Before Judge," of Rule 21, entitled "Procedure Applicable to Misdemeanors Only," and in lieu thereof adoption of a new subdivision 21.03, entitled "Misdemeanors – Summons or Warrant of Arrest – When Issued;" a new subdivision 21.04, entitled "Misdemeanors – Statement of Probable Cause – Contents;" a new subdivision 21.05, entitled "Misdemeanor – Summons – Contents;" a new heading title and a new subdivision 21.06, entitled "Misdemeanors – Warrant for Arrest – Contents;" a new heading title and a new subdivision 21.09, entitled

"Misdemeanors – Appearance Under Warrant Before the Court;" and a new heading title and a new subdivision 21.10, entitled "Misdemeanors – Initial Appearance Before the Court."

(2) Repeal of subdivision 22.03, entitled "Felonies – Statement of Probable Cause – Contents;" subdivision 22.04, entitled "Felonies – Warrant of Arrest – When Issued;" the heading title and subdivision 22.05, entitled "Felonies – Warrant of Arrest – Contents;" the heading title and subdivision 22.07, entitled "Felonies – Appearance Under Warrant Before Judge;" the heading title and subdivision 22.08, entitled "Felonies – Initial Proceedings Before Judge;" and subdivision 22.09, entitled "Felonies – Preliminary Hearing," of Rule 22, entitled "Procedure Applicable to Felonies Only," and in lieu thereof adoption of a new subdivision 22.03, entitled "Felonies – Statement of Probable Cause – Contents;" a new subdivision 22.04, entitled "Felonies – Warrant of Arrest – When Issued;" a new heading title and a new subdivision 22.05, entitled "Felonies – Warrant for Arrest – Contents;" a new heading title and a new subdivision 22.07, entitled "Felonies – Appearance Under Warrant Before the Court;" a new heading title and a new subdivision 22.08, entitled "Felonies – Initial Appearance Before the Court," and a new subdivision 22.09, entitled "Felonies – Preliminary Hearing."

(3) Repeal of subdivision 33.01, entitled "Misdemeanors or Felonies – Right to Release – Conditions;" the heading title and subdivision 33.02, entitled "Misdemeanors or Felonies – Warrant for Arrest – Officials Authorized to Set Conditions of Release – Conditions to be Stated on Warrant;" subdivision 33.04, entitled "Misdemeanors or Felonies – Officer Authorized to Accept Conditions of Release;" the heading title and subdivision 33.05, entitled "Misdemeanors or

Felonies – Right to Review of Conditions;" subdivision 33.06, entitled "Misdemeanors or Felonies – Modification of Conditions of Release;" subdivision 33.07, entitled "Misdemeanors or Felonies – Rules of Evidence Inapplicable;" the heading title and subdivision 33.08, entitled "Misdemeanors or Felonies – Rearrest of Accused; subdivision 33.09, entitled "Misdemeanors or Felonies – Failure of Court to Set Conditions or Setting of Inadequate or Excessive Conditions for Release – Application to Higher Court;" subdivision 33.10, entitled "Misdemeanors or Felonies – Transmittal of Record by Clerk of the Releasing Court;" and subdivision 33.11, entitled "Misdemeanors or Felonies – Bonds – Where Filed – Certification by Sheriff or Peace Officer – Cash Bonds," of Rule 33, entitled "Misdemeanors or Felonies – Release Pending Further Proceedings," and in lieu thereof adoption of a new subdivision 33.01, entitled "Misdemeanors or Felonies – Right to Release – Conditions;" a new heading title and a new subdivision 33.02, entitled "Misdemeanors or Felonies – Warrant for Arrest – Conditions to be Stated on Warrant;" a new subdivision 33.04, entitled "Misdemeanors or Felonies – Officer Authorized to Accept Conditions of Release;" a new heading title and a new subdivision 33.05, entitled "Misdemeanors or Felonies – Release Hearing;" a new subdivision 33.06, entitled "Misdemeanors or Felonies – Modification of Conditions of Release;" a new subdivision 33.07, entitled "Misdemeanors or Felonies – Rules of Evidence Inapplicable;" a new heading title and a new subdivision 33.08, entitled "Misdemeanors or Felonies – Rearrest of Defendant;" a new subdivision 33.09, entitled "Misdemeanors or Felonies – Failure of Court to Set Conditions or Setting of Inadequate or Excessive Conditions for Release – Application to Higher Court;" a new subdivision 33.10, entitled "Misdemeanors or Felonies – Transmittal of Record by Clerk of the Releasing Court," and a new subdivision 33.11, entitled "Misdemeanors or Felonies –

Bonds – Where Filed – Certification by Sheriff or Peace Officer – Cash Bonds."

ORDER

1. It is ordered that effective July 1, 2019, subdivision 21.03, subdivision 21.04, subdivision 21.05, the heading title and subdivision 21.06, the heading title and subdivision 21.09, and the heading title and subdivision 21.10 of Rule 21 be and the same are hereby repealed and a new subdivision 21.03, a new subdivision 21.04, a new subdivision 21.05, a new heading title and a new subdivision 21.06, a new heading title and a new subdivision 21.09, and a new heading title and a new subdivision 21.10 adopted in lieu thereof to read as follows:

21.03 MISDEMEANORS – SUMMONS OR WARRANT OF ARREST – WHEN ISSUED

(a) When an information is filed pursuant to Rule 21.02, a summons shall be issued unless the court finds that sufficient facts have been stated to show probable cause that a misdemeanor has been committed and there are reasonable grounds to believe:

(1) The defendant will not appear upon the summons; or

(2) The defendant poses a danger to a crime victim, the community, or any other person.

If the court so finds, a warrant of arrest for the defendant may be issued.

(b) When an indictment charging the commission of a misdemeanor is returned, either a summons or warrant of arrest may be issued.

(c) If a warrant is issued under this rule, the court shall take into account, on the basis of available information, the factors set forth in Rule 33.01(e) when setting the condition or combination of conditions of release, if any, required by Rule 33.01(b) and allowed by Rule 33.01(c).

21.04 MISDEMEANORS – STATEMENT OF PROBABLE CAUSE – CONTENTS

A statement of probable cause must be in writing and shall:

(a) State the name of the defendant or, if not known, designate the defendant by any name or description by which the defendant can be identified with reasonable certainty;

(b) State the date and place of the offense as definitely as can be done;

(c) State the facts that support a finding of probable cause to believe an offense was committed and that the defendant committed it;

(d) If a warrant will be requested, state the facts, if any, that support a finding of reasonable grounds to believe the defendant will not appear upon a summons or the defendant poses a danger to a crime victim, the community, or any other person;

(e) State that the facts contained therein are true; and

(f) Be signed and on a form bearing notice that false statements made therein are punishable by law.

21.05 MISDEMEANOR – SUMMONS – CONTENTS

The summons shall:

(a) Be in writing and in the name of the State of Missouri;

(b) State the name of the defendant summoned;

(c) Describe the misdemeanor charged;

(d) Be signed by the court, or clerk at the court's direction for a specific summons; and

(e) Command the defendant to appear before the court at a stated time and place in response thereto.

21.06 MISDEMEANORS – WARRANT FOR ARREST – CONTENTS

(a) The warrant for arrest must be in writing and issued in the name of the State of Missouri. It may be directed to any peace officer in the state.

(b) The warrant shall:

(1) Contain the name of the defendant to be arrested or, if not known, any name or description by which the defendant can be identified with reasonable certainty;

(2) Describe the offense charged in the information or indictment;

(3) State the date when issued and the county where issued;

(4) Command that the defendant named or described therein be arrested and brought before the court designated in the warrant as soon as practicable, but when the defendant is confined in the county where issued, no later than 48 hours after confinement, excluding weekends and holidays;

(5) Specify the condition or combination of conditions of release, if any, required by Rule 33.01(b) and allowed by Rule 33.01(c); and

(6) Be signed by the court, or clerk at the court's direction for a specific warrant.
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21.09 MISDEMEANORS – APPEARANCE UNDER WARRANT BEFORE THE COURT

A defendant arrested under a warrant for any misdemeanor shall be brought for an appearance before a judge of the court from which the warrant was issued as soon as practicable, but when the defendant is confined in the county where issued, no later than 48 hours after confinement, excluding weekends and holidays.

The warrant, with proper return thereon, shall be filed with the court as soon as practicable.

21.10 MISDEMEANORS – INITIAL APPEARANCE BEFORE THE COURT

Upon the defendant's initial appearance:

(a) The court shall inform the defendant of the misdemeanor charged, the right to retain counsel, the right to request the appointment of counsel if the defendant is unable to retain counsel, and the right to remain silent. The court shall also inform the defendant that any statement made by the defendant may be used against the defendant.

(b) If the defendant is appearing after release from custody on a warrant, the court shall inform the defendant of the conditions of release and that a warrant may be issued immediately upon any violation of a condition of release. The court shall also advise the defendant of the right to apply for a modification of any conditions of release at a hearing pursuant to Rule 33.06.

(c) If the defendant is in custody after arrest on a warrant, the court shall inform the defendant of the conditions of release, if any, and determine whether the defendant can meet the conditions. If a defendant is unable to meet the conditions, then, subject to the right of a victim to be informed of and heard at a bail hearing, the court may modify the conditions of release, if the court determines the circumstances of the defendant and the case require modification of the conditions. The court shall inform the defendant that a warrant for arrest may be issued immediately upon any violation of a condition of release. If the defendant is not released from custody following the initial appearance, the court shall advise the defendant of the right to a release hearing pursuant to Rule 33.05.

(d) If the defendant has appeared on a summons and the offense is required to be given an offense cycle

number, the court shall ensure the defendant has been fingerprinted and processed by the appropriate law enforcement agency for the purposes of creating an offense cycle number.

2. It is ordered that effective July 1, 2019, subdivision 22.03, subdivision 22.04, the heading title and subdivision 22.05, the heading title and subdivision 22.07, the heading title and subdivision 22.08, and subdivision 22.09 of Rule 22 be and the same are hereby repealed and a new subdivision 22.03, a new subdivision 22.04, a new heading title and a new subdivision 22.05, a new heading title and a new subdivision 22.07, a new heading title and a new subdivision 22.08, and a new subdivision 22.09 adopted in lieu thereof to read as follows:

22.03 FELONIES – STATEMENT OF PROBABLE CAUSE – CONTENTS

A statement of probable cause must be in writing and shall:

(a) State the name of the defendant or, if not known, designate the defendant by any name or description by which the defendant can be identified with reasonable certainty;

(b) State the date and place of the offense as definitely as can be done;

(c) State the facts that support a finding of probable cause to believe an offense was committed and that the defendant committed it;

(d) If a warrant will be requested, state the facts, if any, that support a finding of reasonable grounds to believe the defendant will not appear upon a summons or the

defendant poses a danger to a crime victim, the community, or any other person;

(e) State that the facts contained therein are true; and

(f) Be signed and on a form bearing notice that false statements made therein are punishable by law.

22.04 FELONIES – WARRANT OF ARREST – WHEN ISSUED

(a) When a complaint is filed pursuant to Rule 22.02 and sufficient facts have been stated to show probable cause that a felony has been committed, a summons shall be issued unless the court finds there are reasonable grounds to believe:

(1) The defendant will not appear upon the summons; or

(2) The defendant poses a danger to a crime victim, the community, or any other person.

If the court so finds, a warrant of arrest for the defendant may be issued.

(b) When an indictment charging the commission of a felony is returned, either a summons or warrant of arrest may be issued.

(c) When a complaint or an indictment charges a corporation with the commission of a felony, a summons shall be issued.

(d) If a warrant is issued under this rule, the court shall

take into account, on the basis of available information, the factors set forth in Rule 33.01(e) when setting the condition or combination of conditions of release, if any, required by Rule 33.01(b) and allowed by Rule 33.01(c).

22.05 FELONIES – WARRANT FOR ARREST – CONTENTS

(a) The warrant for arrest must be in writing and issued in the name of the State of Missouri. It may be directed to any peace officer in the state.

(b) The warrant shall:

(1) Contain the name of the defendant to be arrested or, if not known, any name or description by which the defendant can be identified with reasonable certainty;

(2) Describe the felony charged in the complaint or indictment;

(3) State the date when issued and the county where issued;

(4) Command that the defendant named or described therein be arrested and brought before the court designated in the warrant as soon as practicable, but when the defendant is confined in the county where issued, no later than 48 hours after confinement, excluding weekends and holidays;

(5) Specify the condition or combination of conditions of release, if any, required by Rule 33.01(b) and allowed by Rule 33.01(c); and

(6) Be signed by the court, or clerk at the court's direction for a specific warrant.

22.07 FELONIES – APPEARANCE UNDER WARRANT BEFORE THE COURT

A defendant arrested under a warrant for any felony shall be brought for an appearance before a judge of the court from which the warrant was issued as soon as practicable, but when the defendant is confined in the county where issued, no later than 48 hours after confinement, excluding weekends and holidays.

The warrant, with proper return thereon, shall be filed with the court as soon as practicable.

22.08 FELONIES – INITIAL APPEARANCE BEFORE THE COURT

Upon the defendant's initial appearance:

(a) The court shall inform the defendant of the felony charged, the right to retain counsel, the right to request the appointment of counsel if the defendant is unable to retain counsel, and the right to remain silent. The court shall also inform the defendant that any statement made by the defendant may be used against the defendant.

(b) If the defendant is appearing after release from custody on a warrant, the court shall inform the defendant of the conditions of release and that a warrant may be issued immediately upon any violation

of a condition of release. The court shall also advise the defendant of the right to apply for a modification of any conditions of release at a hearing pursuant to Rule 33.06.

(c) If the defendant is in custody after arrest on a warrant, the court shall inform the defendant of the conditions of release, if any, and determine whether the defendant can meet the conditions. If a defendant is unable to meet the conditions, then, subject to the right of a victim to be informed of and heard at a bail hearing, the court may modify the conditions of release, if the court determines the circumstances of the defendant and the case require modification of the conditions. The court shall inform the defendant that a warrant for arrest may be issued immediately upon any violation of a condition of release. If the defendant is not released from custody following the initial appearance, the court shall advise the defendant of the right to a release hearing pursuant to Rule 33.05.

(d) If the defendant has appeared on a summons and the offense is required to be given an offense cycle number, the court shall ensure the defendant has been fingerprinted and processed by the appropriate law enforcement agency for the purposes of creating an offense cycle number.

22.09 FELONIES – PRELIMINARY HEARING

(a) Preliminary Hearing. After the filing of a felony complaint, a preliminary hearing shall be held within a reasonable time. At the preliminary hearing the defendant shall not be called upon to plead.

If the defendant waives preliminary hearing, the court shall order the defendant to appear to answer to the charge.

(b) Conduct of Hearing and Finding by the Court. If the defendant does not waive preliminary hearing, the hearing shall be held. The defendant may cross-examine witnesses and may introduce evidence.

If the court finds probable cause to believe a felony has been committed and the defendant has committed it, the court shall order the defendant to appear and answer to the charge; otherwise, the court shall discharge the defendant.

(c) Defendant to Appear in Court to Answer the Charge. If the defendant is held to answer to the charge, the court shall order the defendant to appear in the appropriate division on a day certain as soon as practicable, but not more than 40 days after completion of the preliminary hearing.

Within five days after concluding the proceedings, the court shall cause all papers in the proceeding and any bail posted by the defendant to be transmitted to that division.

3. It is ordered that effective July 1, 2019, subdivision 33.01, the heading title and subdivision 33.02, subdivision 33.04, the heading title and subdivision 33.05, subdivision 33.06, subdivision 33.07, the heading title and subdivision 33.08, the heading title and subdivision 33.09, subdivision 33.10, and subdivision 33.11 of Rule 33 be and the same are hereby repealed and a new subdivision 33.01, a new heading title and a new subdivision 33.02, a new subdivision 33.04, a new

heading title and a new subdivision 33.05, a new subdivision 33.06, a new subdivision 33.07, a new heading title and a new subdivision 33.08, a new heading title and a new subdivision 33.09, a new subdivision 33.10, and a new subdivision 33.11 adopted in lieu thereof to read as follows:

33.01 MISDEMEANORS OR FELONIES – RIGHT TO RELEASE – CONDITIONS

(a) A defendant charged with a bailable offense shall be entitled to be released from custody pending trial or other stage of the criminal proceedings.

(b) The defendant's release shall be upon the conditions that:

(1) The defendant will appear in the court in which the case is prosecuted or appealed, from time to time as required to answer the criminal charge;

(2) The defendant will submit to the orders, judgment and sentence, and process of the court having jurisdiction over the defendant;

(3) The defendant shall not commit any new offenses and shall not tamper with any victim or witness in the case, nor have any person do so on the defendant's behalf; and

(4) The defendant will comply fully with any and all conditions imposed by the court in granting release.

(c) The court shall release the defendant on the

defendant's own recognizance subject only to the conditions under subsection (b) with no additional conditions of release unless the court determines such release will not secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses. If the court so determines, it shall set and impose additional conditions of release pursuant to this subsection.

The court shall set and impose the least restrictive condition or combination of conditions of release, and the court shall not set or impose any condition or combination of conditions of release greater than necessary to secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses.

When considering the least restrictive condition or combination of conditions of release to set and impose, the court shall first consider non-monetary conditions. Should the court determine non-monetary conditions alone will not secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses, then the court may consider monetary conditions or a combination of non-monetary and monetary conditions to satisfy the foregoing. After considering the defendant's ability to pay, a monetary condition fixed at more than is necessary to secure the appearance of the defendant at trial, or at any other

stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses, is impermissible.

If the court determines additional conditions of release are required pursuant to this subsection, it shall set and impose one or more of the following conditions of release:

(1) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(2) Place restrictions on the travel, association, or place of abode of the defendant during the period of release, including the holding by the court of the defendant's passport;

(3) Require the defendant to report regularly to some officer of the court or peace officer, in such manner as the court directs;

(4) Require the use of electronic monitoring of defendant's location, the testing of defendant for drug or alcohol use, or the installation and use of ignition interlock devices. The court may order the eligible defendant to pay all or a portion of the costs of such conditions, but the court shall consider how best to minimize the costs to the defendant and waive the costs for an eligible defendant who is indigent and who has demonstrated to the court an inability to pay all or a portion of the costs;

(5) Require the defendant to seek employment, to maintain employment, or to maintain or commence an

educational program;

(6) Require the defendant to comply with a specified curfew;

(7) Require the defendant to refrain from possessing a firearm or other deadly weapon;

(8) Require the defendant to abstain from possession or use of alcohol or any controlled substance without a physician's prescription;

(9) Require the defendant to undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol dependency and remain in a specified institution if required for that purpose;

(10) Require the defendant to return to custody for specified hours following release for employment, school, treatment, or other limited purpose;

(11) Require the defendant to be placed on home supervision with or without the use of an electronic monitoring device. The court may order the eligible defendant to pay all or a portion of the costs of the electronic monitoring, but the court shall consider how best to minimize the costs of such condition to the defendant and waive the costs and ineligible defendant who is indigent and who has demonstrated to the court an inability to pay all or a portion of the costs;

(12) Require the defendant to execute a monetary bond in a stated amount wherein the defendant promises to pay to the court the stated amount should the defendant fail to appear or abide by the conditions of

release;

(13) Require the execution of a monetary bond in a stated amount with sufficient sureties, or the deposit in the registry of the court of a sum in cash or negotiable bonds of the United States or the State of Missouri or any political subdivision;

(14) Require the execution of a monetary bond in a stated amount and the deposit in the registry of the court of 10 percent, or such lesser sum as the court directs, of such sum in cash or negotiable bonds of the United States or the State of Missouri or any political subdivision;

(15) Require the deposit of a property bond of sufficient value as approved and directed by the court;

(16) Impose other conditions necessary to secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses.

(d) Should the court determine upon clear and convincing evidence that no combination of non-monetary conditions and monetary conditions will secure the safety of the community or other person, including but not limited to the crime victims and witnesses, then the court shall order the defendant detained pending trial or any other stage of the criminal proceedings. A defendant so detained shall, upon written request filed after arraignment, be entitled to a trial which begins within 120 days of the defendant's

request or within 120 days of an order granting a change of venue, whichever occurs later. Any request by the defendant to continue the trial beyond the 120 days shall be considered a waiver by the defendant of the right to have the trial conducted within 120 days.

(e) In determining whether to detain the defendant pursuant to subsection (d) or release the defendant with a condition or combination of conditions of release, if any, pursuant to subsection (c), the court shall base its determination on the individual circumstances of the defendant and the case. Based on available information, the court shall take into account: the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, including ability to pay, character, and mental condition; the length of the defendant's residence in the community; the defendant's record of convictions; the defendant's record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings; whether the defendant was on probation, parole or release pending trial or appeal at the time the offense for which the court is considering detention or release was committed; and a validated evidentiary-based risk assessment tool approved by the Supreme Court of Missouri.

(f) A court detaining or releasing the defendant under this rule shall enter an order stating the condition or combination of conditions of release, if any, set and imposed by the court. If the defendant is detained and unable to comply with any condition of release, the defendant shall have the right to a release hearing pursuant to Rule 33.05. At any hearing conducted

under Rule 33, the court shall permit but not require either party to make a record on the defendant's financial status and ability to pay any monetary condition. At such hearing, the court shall also make written or oral findings on the record supporting the reasons for detention or conditions set and imposed. The court shall inform the defendant of the conditions set and imposed, if any, and that the conditions of release may be revoked and the defendant detained until trial or other stage of the criminal proceedings for violation of any of the conditions of release and that a warrant for the defendant's arrest may be issued immediately upon notification to the court of any such violation.

33.02 MISDEMEANORS OR FELONIES – WARRANT FOR ARREST – CONDITIONS TO BE STATED ON WARRANT

The court, or clerk at the court's direction for a specific warrant, issuing a warrant for the arrest of any defendant shall state the condition or combination of conditions of release, if any, on the warrant for arrest.

33.04 MISDEMEANORS OR FELONIES – OFFICER AUTHORIZED TO ACCEPT CONDITIONS OF RELEASE

The court that set conditions of release, the clerk thereof, or the sheriff may accept the conditions of release and release the defendant.

33.05 MISDEMEANORS OR FELONIES – RELEASE HEARING

A defendant who continues to be detained after the initial appearance under Rule 21.10 or Rule 22.08 shall have defendant's detention or conditions of release reviewed at a hearing by the court subject to the right of a victim to be informed of and heard at the hearing. The hearing shall occur as soon as practicable but no later than seven working days after the initial appearance, absent good cause shown by the parties or the court. At the hearing, the court shall determine the defendant's right to release and any conditions of release as provided in Rule 33.01. Nothing herein shall prohibit a defendant from making subsequent application for review of the defendant's detention or conditions of release under Rule 33.01.

33.06 MISDEMEANORS OR FELONIES – MODIFICATION OF CONDITIONS OF RELEASE

(a) Upon motion by the state or by the defendant, or upon the court's own
motion, the court, subject to the right of a victim to be informed of and be heard, and after notice to the parties and hearing, may modify the conditions of release when the court finds that:

(1) New, different or additional requirements for release are necessary; or

(2) The conditions of release which have been set are excessive; or

(3) The defendant has failed to comply with or has violated the conditions of release; or

(4) The defendant has been convicted of the offense charged.

(b) When the conditions of release are increased by the court, or new conditions of release are set and imposed, the defendant shall be remanded to the custody of the sheriff or other officer until compliance with the modified conditions. If the defendant is not in custody, the court may order that a warrant for the defendant's arrest be issued.

33.07 MISDEMEANORS OR FELONIES – RULES OF EVIDENCE INAPPLICABLE

Proceedings under Rule 33 shall be informal and rules of evidence need not apply.

33.08 MISDEMEANORS OR FELONIES – REARREST OF DEFENDANT

The court may order the arrest of a defendant who has been released if it shall appear to the court that:

(a) There has been a breach of any condition of release; or

(b) The conditions of release should be modified or new or additional conditions imposed.

The defendant shall be entitled to a hearing concerning the reasons for the issuance of the warrant as soon as practicable, but when the defendant is confined in the county where issued, no later than 48 hours after confinement, excluding weekends and holidays.

33.09 MISDEMEANORS OR FELONIES - FAILURE OF COURT TO SET CONDITIONS OF RELEASE, OR SETTING OF INADEQUATE OR EXCESSIVE CONDITIONS OF RELEASE - APPLICATION TO HIGHER COURT

Pursuant to these rules, applicable statutes and constitutional provisions, if the defendant or the state allege the court unlawfully detained the defendant, failed to detain the defendant, or set inadequate or excessive conditions of release, the defendant or the state may seek remedial writ relief in a higher court pursuant to Rule 84.24.

33.10 MISDEMEANORS OR FELONIES – TRANSMITTAL OF RECORD BY CLERK OF THE RELEASING COURT

When any defendant is released by a court other than the court in which the defendant is to appear, the clerk of the releasing court shall transmit a record of the release, together with any conditions of release imposed, to the clerk of the court in which the defendant released is required to appear.

33.11 MISDEMEANORS OR FELONIES – BONDS – WHERE FILED – CERTIFICATION BY SHERIFF OR PEACE OFFICER – CASH BONDS

All bonds shall be filed by the clerk of the court in which the defendant is required to appear. All bonds taken by the sheriff or by any other peace officer shall be certified by such officer and transmitted to the clerk of the court in which the defendant is required to

appear. When cash or securities specified in Rule 33.01 are taken they shall be delivered to the clerk of the court in which the defendant is required to appear and deposited in the registry of the court.

4. It is ordered that notice of this order be published in the Journal of The Missouri Bar.

5. It is ordered that this order be published in the South Western Reporter.

Day – to – Day

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ZEL M. FISCHER
Chief Justice

https://nemonews.net/2019/08/21/confused-about-the-new-court-rules-surrounding-bond-reform-we-were-too/

Confused About the New Court Rules Surrounding Bond Reform? We Were Too.

August 21, 2019
By Echo Menges

Sweeping statewide jail bond reforms have been made by the Missouri Supreme Court (MSC), which have been confusing. NEMOnews Media Group is on a mission to understand these reforms and adequately explain them to our readers throughout the region by publishing a series about them in all of our publications and online. This article is the first installment of the effort to better explain what "pretrial release reform" is, where it came from, how it works and who is affected. So, here goes.

What's going on?

Besides presiding over and issuing decisions and opinions on a myriad of cases, the MSC oversees all of the courts in the state, which includes the courts in our individual counties, by setting all of the "court rules" statewide. These court operating rules layout everything from how court is conducted to the duties of each officer of the court (judge, jury, council, court reporter, etc.).

Article V Section 5 of the Missouri Constitution basically entrusts the MSC justices to be the court

policy and procedure writers for the entire Missouri judicial system.

At the end of 2018 and the beginning of 2019, the MSC issued orders changing some court rules and setting some new court rules into motion, which took effect on July 1, 2019. These court rule changes have brought sweeping reform where jailing defendants (people charged with crimes) is concerned - especially those unable to post high bond amounts.

The Backstory - Why is this happening?

Then Chief Justice Patricia Breckenridge briefly mentioned the effort to tackle pretrial release reform during her State of the Judiciary address on January 24, 2017, while introducing the state to a special task force charged with identifying problems built into the Missouri court system and recommending needed changes saying:

Our next goal is to improve pretrial incarceration practices. Incarcerating persons simply because they are too poor to post bond needs to be examined in both municipal and criminal cases. Under our Missouri Constitution, an individual may be incarcerated before trial only when charged with a capital offense; when a danger to a crime victim, a witness, or the community; or a flight risk.

All other persons are entitled to reasonable conditions of release prior to trial, based on the particular circumstances of their cases.

Our cities and counties incur costs for pretrial incarcerations of people who simply are poor. There are

individual and societal consequences from these unwarranted pretrial incarcerations. The consequences impact the defendants, their families and, ultimately, the state. Defendants lose not only their freedom but also their ability to earn a living and to provide for loved ones. Children may even come into state custody, because incarcerated parents are not home to care for them. And – after only three days in jail – the likelihood that an individual will commit future crimes also increases.

A Supreme Court task force will examine how other states and cities have addressed the problem of unwarranted pretrial incarceration and recommend changes to our practices. We look forward to sharing what we learn with you and working together to enact common-sense reforms.

Pretrial release was again highlighted one year later when it was mentioned by then MSC Chief Justice Zel Fischer during the State of the Judiciary address on January 24, 2018. The Chief Justice told the Missouri General Assembly in Jefferson City:

Last June (of 2017), the Court established a task force focused broadly on criminal justice.

This group is led by Judge Michael Noble of St. Louis, Christian County Prosecutor Amy Fite and defense attorney J.R. Hobbs of Kansas City. They will recommend evidence-based risk-assessment tools for determining a defendant's suitability for pretrial release; recommend ways to improve how courts impose fines, fees and costs; and identify technological opportunities to improve notice, compliance and public safety.

These efforts are part of broader national movement away from bail release decisions based on financial conditions toward considerations of the risks posed by individual defendants. The national experts suggest there are ways to provide effective screening and supervision to monitor those defendants deemed safe for release during the pretrial period.

It seems obvious and important that – before a trial is held and guilt or innocence is determined – we reserve our jail space for those who pose the most danger to the community or risk of fleeing the jurisdiction, and not those who simply may be too poor to post bail. Studies show even short stints in jail increase the likelihood of missing school or losing jobs and housing. And, of course, pretrial supervision costs a local community substantially less than pretrial incarceration.

Justice Fischer further elaborated during an address at the annual meeting of The Missouri Bar and the Judicial Conference of Missouri in St. Louis on September 27, 2018, saying, "Earlier this year, the 5th Circuit Court of Appeals ruled the cash bail system in Texas' most populous county, and the third biggest in the whole nation, violates the due process and equal protection rights of defendants charged with misdemeanor offenses who simply could not afford to post bail. And just last month, California enacted legislation abolishing cash bail. Washington, D.C., already has a cashless bail system, and states like New Jersey have reduced their reliance on monetary bail. The discussion continues in Missouri, where we all share a responsibility to protect the public but ensure those accused of crime are treated fairly and equitably according to the law."

During the same address, Justice Fischer also said, "Too often, though, bail is based on an outdated schedule handed down from one well-meaning judge to another. While our judges generally have considered an accused individual's circumstances appropriately in response to a motion to reduce bail, even relatively short periods of jail time can cause long term detrimental effects. We have charged the task force with finding ways to move away from the use of bail schedules to help ensure the determinations – and conditions – of pretrial release are made more accurately and with the best information, and are not based on race, gender, ethnicity or economic conditions. I look forward to the time when those who are most likely to receive probation at the resolution of their cases but do not have enough money to post bail at the outset are released on their own recognizance with appropriate conditions, and when those who truly pose a danger to crime victims or our communities will be held pending trial regardless of their wealth."

Less than three months after making those remarks, Justice Fischer and the rest of the MSC, rolled out the new changes in the form of an MSC Order dated December 18, 2018, with an effective date of July 1. On February 13, 2019, the MSC issued a new order after correcting a typographical error in the December 2018 order, sticking to the effective date of July 1, 2019.

Just ahead of the pretrial release reform rules going into effect, the MSC issued another order on June 25 rewriting and further elaborating on some of the rules set forth in the corrected February order, then vacated that order and issued a new order on June 30, which caused a considerable amount of confusion among court personnel locally and the general public at large.

I'm confused. Are the new rules in effect or not?

Yes, according to a representative of the Missouri Supreme Court, the February order did go into effect on July 1. The changes made to the new rules on June 30 will go into effect on January 1, 2020, because there has to be a six month period between the time a MSC order is given and the time the order can go into effect, which is laid out in Article V Section 5 of the Missouri Constitution.

Also, the MSC Task Force on Criminal Justice issued a statement on July 12 explaining, yes, the new rules are in effect. Yes, some modifications were made on June 30, which go into effect on January 1. They wrote:

Following Chief Justice Fischer's announcement, and during the more than six months before the changes became effective, numerous judges, prosecutors, defense attorneys, law enforcement officers, and other individuals and entities made timely and notable suggestions concerning the rule changes. The Task Force considered these suggestions and proposed certain modifications to the rule changes. Once again, the Task Force recommended the Supreme Court adopt these corrections, and the Court adopted many, if not most, of the recommended corrections in late June. The rule changes the Court adopted in December 2018 became effective July 1, 2019, while the modifications the Court subsequently adopted will become effective January 1, 2020.

What are the changes?

Then MSC Chief Justice Fischer's remarks during the State of the Judiciary address to a joint session of

the Missouri General Assembly in Jefferson City on January 30, 2019, laid out the following major changes:

1) The court must start with non-monetary conditions of release and may impose monetary conditions only if necessary and only in an amount not exceeding that necessary to ensure safety or the defendant's appearance.

2) The court may not order a defendant to pay any portion of the costs of any conditions of release without first considering how to minimize or whether to waive those costs.

3) A court may order a defendant's pretrial detention only if it determines – by clear and convincing evidence – that no combination of non-monetary and monetary conditions will ensure (the) safety of the community or any person.

4) The new rule also limits how long a defendant may be detained without a court hearing, and ensures a speedy trial for those who remain in jail.

"These new rules that went into effect on July 1, for the most part, pertain to letting somebody out of jail on bond while their case is pending," said Kevin Locke, District Defender for the Missouri Public Defender's Office in Kirksville. "I think the spirit behind it is that you're innocent until you're proven guilty and the only purpose of bond is to ensure that you're going to appear for trial when you're supposed to, ensure you're going to appear for court when you need to, and to make sure that you don't pose a danger to the general public or any particular person."