

HOUSE BILL NO. 396

INTRODUCED BY G. OVERSTREET

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO BAIL; PROVIDING THAT A PERSON MAY NOT BE ADMITTED TO BAIL WITHOUT FIRST BEING TAKEN BEFORE A JUDGE IN A COURT OF RECORD IN THIS STATE; PROVIDING THAT THE TERMS OF AN INTERSTATE COMPACT OR AGREEMENT APPLY IN CERTAIN CIRCUMSTANCES; REVISING THE CRITERIA FOR BAIL AND DETERMINING THE AMOUNT OF BAIL; AND AMENDING SECTIONS 46-9-105, 46-9-109, AND 46-9-301, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-9-105, MCA, is amended to read:

"46-9-105. General authority for release and detention. (1) An arrested person must be released or detained pending judicial proceedings pursuant to Title 46, chapter 9. When a person is arrested on a judicial warrant after being returned from another state to this state under 46-30-411, the person may not be admitted to bail without first appearing before the judge who issued the warrant, unless that judge is unavailable, in which case another judge in the same jurisdiction may consider the matter. When an arrested person is subject to an interstate compact or agreement, the terms of the applicable interstate compact or agreement and applicable federal laws apply.

(2) If a person is released, that person shall appear to answer the charge for the alleged commission of the offense, as ordered, in the court having jurisdiction."

Section 2. Section 46-9-109, MCA, is amended to read:

"46-9-109. Release or detention hearing. (1) The release or detention of the defendant must be determined immediately upon the defendant's initial appearance.

(2) In determining whether the defendant should be released or detained, the court may use a validated pretrial risk assessment tool and shall take into account the available information concerning:

- 1 (a) the nature and circumstances of the offense charged, including whether the offense involved
2 the use of force or violence;
- 3 (b) the history and characteristics of the defendant, including:
- 4 (i) the defendant's character, physical and mental condition, family ties, employment, financial
5 resources, length of residence in the community, community ties, past conduct, history relating to alcohol or
6 drug abuse, criminal history, and record concerning the appearance at court proceedings; ~~and~~
- 7 (ii) whether at the time of the current arrest or offense, the defendant was on probation, on parole,
8 or on other release pending trial, sentencing, appeal, or completion of sentencing for an offense;
- 9 (iii) the defendant's prior history of abscondence and fugitivity, including costs incurred by a
10 government entity to transport the defendant to this state; and
- 11 (iv) whether the person must be detained pursuant to an interstate compact or agreement.
- 12 (c) the nature and seriousness of the danger to any person or the community that would be posed
13 by the defendant's release;
- 14 (d) the property available as collateral for the defendant's release to determine if it will reasonably
15 ensure the appearance of the defendant as required; and
- 16 (e) for a defendant charged with a violation of 45-5-202, 45-5-206, 45-5-213, or 45-5-215 against
17 an intimate partner, a dangerousness or lethality assessment if it is available to the court.
- 18 (3) Upon the motion of any party or the court, a hearing may be held to determine whether bail is
19 established in the appropriate amount or whether any other condition or restriction upon the defendant's release
20 will reasonably ensure the appearance of the defendant and the safety of any person or the community."
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22 **Section 3.** Section 46-9-301, MCA, is amended to read:

23 **"46-9-301. Determining amount of bail.** In all cases in which bail is determined to be necessary, bail
24 must be reasonable in amount and the amount must be:

- 25 (1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;
- 26 (2) sufficient to ensure compliance with the conditions set forth in the bail;
- 27 (3) sufficient to protect any person from bodily injury;
- 28 (4) not oppressive;

- 1 (5) commensurate with the nature of the offense charged;
- 2 (6) considerate of the financial ability of the accused;
- 3 (7) considerate of the defendant's prior record;
- 4 (8) considerate of the defendant's prior history of abscondence and fugitivity, including costs
- 5 incurred by a government entity to transport the defendant to this state;
- 6 ~~(8)~~(9) considerate of the length of time the defendant has resided in the community and of the
- 7 defendant's ties to the community;
- 8 ~~(9)~~(10) considerate of the defendant's family relationships and ties;
- 9 ~~(10)~~(11) considerate of the defendant's mental health status and of the defendant's participation in a
- 10 mental health treatment program;
- 11 ~~(11)~~(12) considerate of the defendant's employment status; and
- 12 ~~(12)~~(13) sufficient to include the charge imposed in 46-18-236."

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