

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

ADMINISTRATIVE ORDER NUMBER

2010-064

BAIL AND PRETRIAL RELEASE IN CRIMINAL CASES

WHEREAS, the judges of the 16th Judicial Circuit are required to follow the law as set forth in the Constitution of the United States of America, and as set forth in the Constitution of the State of Missouri and the laws of the State of Missouri.

WHEREAS, the Sixth Amendment to the Constitution of the United States of America reads as follows:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary Notwithstanding.

WHEREAS, one of the responsibilities of a judge in a criminal case is to address the issue of bail and pretrial release of the accused.

WHEREAS, the Eight Amendment to the Constitution of the United States of America reads as follows:

Excessive bail shall not be required.

WHEREAS, Article I, Section 20 of the Constitution of the State of Missouri reads as follows:

§ 20. Bail guaranteed--exceptions

That all persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

WHEREAS, bail and pretrial release of the accused in criminal cases in Missouri is addressed by R.S.Mo. § 544.455, which reads as follows:

§ 544.455. Release of person charged, when--conditions which may be imposed

1. Any person charged with a bailable offense, at his appearance before an associate circuit judge or judge may be ordered released pending trial, appeal, or other stage of the proceedings against him on his personal recognizance, unless the associate circuit judge or judge determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the associate circuit judge or judge may either in lieu of or in addition to the above methods of release, impose any or any combination of the following conditions of release which will reasonably assure the appearance of the person for trial:
 - 1) Place the person in the custody of a designated person or organization agreeing to supervise him;
 - 2) Place restriction on the travel, association, or place of abode of the person during the period of release;
 - 3) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;
 - 4) Require the person to report regularly to some officer of the court, or peace officer, in such manner as the associate circuit judge or judge directs;
 - 5) Require the execution of a bond in a given sum and the deposit in the registry of the court of ten percent, or such lesser percent as the judge directs, of the sum in cash or negotiable bonds of the United States or of the state of Missouri or any political subdivision thereof;
 - 6) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.
2. In determining which conditions of release will reasonably assure appearance, the associate circuit judge or judge shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings.
3. An associate circuit judge or judge authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.
4. A person for whom conditions of release are imposed and who after twenty-four hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the condition reviewed by the associate

circuit judge or judge who imposed them. The motion shall be determined promptly.

5. An associate circuit judge or judge ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release; except that, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection 4 shall apply.
6. Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.
7. Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.
8. Persons charged with violations of municipal ordinances may be released by a municipal judge or other judge who hears and determines municipal ordinance violation cases of the municipality involved under the same conditions and in the same manner as provided in this section for release by an associate circuit judge.

WHEREAS, Supreme Court Rule 33.01 also addresses the issue of pretrial release and reads as follows:

33.01. Misdemeanors or Felonies--Right to Release—Conditions

- (a) Any person charged with a bailable offense shall be entitled to be released pending trial. Any person convicted of an offense entitled to be released upon appeal shall be released upon appeal until adoption by the court of an opinion affirming the judgment of conviction. The affirming court may, by special order, permit the defendant to remain on bond after affirmance pending determination of after-affirmance motions or applications.
- (b) The court shall set such conditions for release as will reasonably assure the appearance of the accused.
- (c) The release shall be upon condition that the accused will appear in the court, or in any other court, trial or appellate, in which the case may be prosecuted or appealed, from time to time as required to answer the criminal charge; that he will submit to the orders, judgment and sentence and process of any court having jurisdiction thereof; and that he will comply fully with any conditions imposed by the court in granting release.
- (d) The court shall in all cases release the accused upon his written promise to appear, unless the court determines that such release will not reasonably assure the appearance of the accused. If the court so determines it shall impose one or more of the following

conditions for his release which will reasonably assure such appearance:

- (1) Place the person in the custody of a designated person or organization agreeing to supervise him;
 - (2) Place restriction on the travel, association, or place of abode of the person during the period of release;
 - (3) Require the execution of a bond in a stated amount with sufficient solvent sureties, or the deposit in the registry of the court of the sum in cash or negotiable bonds of the United States or of the State of Missouri or any political subdivision thereof;
 - (4) Require the person to report regularly to some officer of the court or peace officer, in such manner as the court directs;
 - (5) Require the execution of a bond in a stated amount and the deposit in the registry of the court of ten 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 thereof;
 - (6) Impose any other conditions deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.
- (e) In determining which conditions of release will reasonably assure appearance, the court shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character, mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings.
- (f) A court releasing a person under this Rule shall enter an order stating the conditions imposed. The court shall inform such person of the conditions imposed and of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

WHEREAS, while there is a constitutional presumption created by Article I, Section 20, of the Constitution of the State of Missouri, that all accused persons are entitled reasonable bail in all cases except for capital cases, there is no absolute right to bail in all cases under Missouri law.

WHEREAS, upon a showing that the defendant poses a danger to a crime victim, the community, or any other person, bail can be denied or special conditions may be imposed on the defendant as provided in R.S.Mo. § 544.457, which reads as follows:

§ 544.457. Bail, amount of, information which may be considered -- denial of bail – special conditions

Notwithstanding the provisions of section 20 of article I of the Missouri Constitution to the contrary, upon a showing that the defendant poses a danger to a crime victim, the community, or any other person, the court may use such information in determining the appropriate amount of bail, to increase the amount of bail, to deny bail entirely or impose any special conditions which the defendant and surety shall guarantee.

WHEREAS, Missouri law provides that the court shall in all cases release the accused upon his/her written promise to appear, unless the court determines that such release will not reasonably assure the appearance of the accused.

WHEREAS, the Court requires reliable verified information in order to make an informed decision on whether or not to allow bail, and, if bail is permitted, whether or not bail should be upon written promise to appear, whether or not a cash or surety bond is appropriate, and whether or not there should be special conditions imposed as a condition of bail.

NOW, THEREFORE, IT IS ORDERED that, effective immediately, in all cases in which the State Of Missouri is requesting a bond that is not a simple written promise to appear (ROR), the State Of Missouri shall provide the Court with information that will inform the Court of the facts necessary for the Court to set a reasonable bail, or to deny bail in cases where the denial of bail is proper under the law. This information shall be provided as part of the probable cause statement, or by separate statement signed and on a form bearing notice that false statements made therein are punishable by law. The information shall be presented to the judge reviewing the probable cause statement and issuing the initial arrest warrant. The information provided to the reviewing judge may include, but is not limited to, the following information:

1. The criminal record of the accused, including all convictions and SIS cases; and
2. Any facts that indicate that the accused poses a danger to a crime victim, the community, or any other person; and
3. The failure to appear history of the accused if the accused has failed to appear for court dates in the past; and
4. All facts or information that the State Of Missouri contends justify denying bail upon a written promise to appear; and
5. A description of any special conditions that the State Of Missouri requests to be imposed as a conditions of bail, together with the reasons that justify the imposition of such special conditions of bail; and
6. The amount of any proposed cash or surety bond, and the reasons justifying that bond amount; and
7. In all cases where there is a charge of driving with a revoked license a statement setting forth the reason that the driver's license was revoked.

IT IS FURTHER ORDERED that the Jackson County Prosecuting Attorney shall notify all persons who have a right to notice of hearings under the victim rights laws of all hearings regarding bond and pretrial release.

IT IS FURTHER ORDERED that, after the initial bond is entered by the Court, upon motion to increase or decrease the bond, any judge entering an order regarding bail and pretrial release shall make specific findings on the issues of whether or not the defendant poses a danger to a crime victim, the community, or any other person, and whether or not to deny bail entirely or impose any special conditions which the defendant and any surety shall guarantee.

IT IS FURTHER ORDERED that, unless otherwise ordered by the judge assigned to the case, bond review hearings shall require the presentation of evidence on the issues of whether or not the defendant poses danger to a crime victim, the community, or any other person, the criminal history of the defendant, whether or not the defendant has a history of failing to appear in Court, the financial ability of the defendant to make bond, and any other issue raised by the parties.

IT IS FURTHER ORDERED that the Jackson County Prosecuting Attorney shall provide a copy of this Administrative Order to all assistant prosecuting attorneys working in the Jackson County Prosecuting Attorney's Office and shall make reasonable efforts to provide a copy of this Administrative Order to all law enforcement agencies operating in Jackson County, Missouri, that send cases to the Jackson County Prosecuting Attorney to review in anticipation of criminal charges being filed.

IT IS FURTHER ORDERED that the Public Defender shall provide a copy of this Administrative Order to all assistant public defenders who handle cases filed in the 16th Judicial Circuit.

IT IS FURTHER ORDERED that a copy of this Administrative Order shall be placed on the web page for the 16th Judicial Circuit.

IT IS FURTHER ORDERED that a copy of this Administrative Order shall be distributed to all local bar associations listed in the 2010 Directory of the Greater Kansas City Legal Community.

April 20, 2010



W. STEPHEN NIXON
Presiding Judge

Certificate Of Service

On April 21, 2010, a copy of the above order was delivered to:

James F. Kanatzar, Jackson County Prosecuting Attorney

Joel R. Elmer, District Defender

Attorney General, Kansas City, Missouri

Teresa L. York, Court Administrator

All Judges Of The 16th Judicial Circuit