110TH CONGRESS
1ST SESSION

S. 2495

To amend title 18, United States Code, and the Federal Rules of Criminal
Procedure with respect to bail bond forfeitures.

IN THE SENATE OF THE UNITED STATES

DECEMBER 18, 2007

Mr. REID (for Mr. BIDEN (for himself, Mr. SPECTER, Mr. GRAHAM, and Mr.
CARDIN)) introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, and the Federal
Rules of Criminal Procedure with respect to bail bond
forfeitures.

1   *Be it enacted by the Senate and House of Representa-*

2   *tives of the United States of America in Congress assembled,*

3   **SECTION 1. SHORT TITLE.**

4   This Act may be cited as the "Bail Bond Fairness

5   Act of 2007".

6   **SEC. 2. FINDINGS AND PURPOSES.**

7   (a) FINDINGS.—The Congress makes the following

8   findings:

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1   (1) Historically, the sole purpose of bail in the
2   United States was to ensure the defendant's physical
3   presence before a court. The bail bond would be de-
4   clared forfeited only when the defendant actually
5   failed to appear as ordered. Violations of other, col-
6   lateral conditions of release might cause release to
7   be revoked, but would not cause the bond to be for-
8   feited. This historical basis of bail bonds best served
9   the interests of the Federal criminal justice system.

10   (2) Currently, however, Federal judges have
11   merged the purposes of bail and other conditions of
12   release. These judges now order bonds forfeited in
13   cases in which the defendant actually appears as or-
14   dered but he fails to comply with some collateral
15   condition of release. The judges rely on Federal Rule
16   of Criminal Procedure 46(f) as authority to do so.

17   (3) Federal Rule of Criminal Procedure 46(e)
18   has withstood repeated court challenges. In cases
19   such as United States v. Vaccaro, 51 F.3d 189 (9th
20   Cir. 1995), the rule has been held to authorize Fed-
21   eral courts specifically to order bonds forfeited for
22   violation of collateral conditions of release and not
23   simply for failure to appear. Moreover, the Federal
24   courts have continued to uphold and expand the rule
25   because they find no evidence of congressional intent

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1 to the contrary, specifically finding that the provi-

2 sions of the Bail Bond Act of 1984 were not in-

3 tended to supersede the rule.

4 (4) As a result, the underwriting of bonds for

5 Federal defendants has become virtually impossible.

6 Where once the bail agent was simply ensuring the

7 defendant's physical presence, the bail agent now

8 must guarantee the defendant's general good behav-

9 ior. Insofar as the risk for the bail agent has greatly

10 increased, the industry has been forced to adhere to

11 strict underwriting guidelines, in most cases requir-

12 ing full collateral. Consequently, the Federal crimi-

13 nal justice system has been deprived of any mean-

14 ingful bail bond option.

15 (b) PURPOSES.—The purposes of this Act are—

16 (1) to restore bail bonds to their historical ori-

17 gin as a means solely to ensure the defendant's

18 physical presence before a court; and

19 (2) to grant judges the authority to declare bail

20 bonds forfeited only where the defendant actually

21 fails to appear physically before a court as ordered

22 and not where the defendant violates some other col-

23 lateral condition of release.

1 **SEC. 3. FAIRNESS IN BAIL BOND FORFEITURE.**

2 (a)(1) Section 3146(d) of title 18, United States

3 Code, is amended by inserting at the end "The judicial

4 officer may not declare forfeited a bail bond for violation

5 of a release condition set forth in clauses (i)–(xi), (xiii),

6 or (xiv) of section 3142(c)(1)(B).".

7 (2) Section 3148(a) of title 18, United States Code,

8 is amended by inserting at the end "Forfeiture of a bail

9 bond executed under clause (xii) of section 3142(c)(1)(B)

10 is not an available sanction under this section and such

11 forfeiture may be declared only pursuant to section

12 3146.".

13 (b) Rule 46(f)(1) of the Federal Rules of Criminal

14 Procedure is amended by striking "a condition of the bond

15 is breached" and inserting "the defendant fails to appear

16 physically before the court".

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