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SYNOPSIS:

Under existing court rule, a court may continue a criminal and civil case upon a motion of a party or the court.

This bill would require a criminal and civil case be continued when a party, his or her leading attorney, or a witness satisfying certain criteria is absent because he or she is on active duty in the armed forces.

This bill would require in criminal cases that bail be set for certain defendants when the state is granted such a continuance.

This bill would also require the Alabama Supreme Court to amend its rules to conform with these requirements.

A BILL
TO BE ENTITLED
AN ACT

Relating to criminal and civil procedure; to provide requirements for a court to continue a case when certain parties to the case are absent due to service with the National Guard or Armed Forces of the United States; to



29 provide requirements in criminal cases for bail to be set for
30 a defendant when the state is granted such a continuance, with
31 exceptions; and to require the Alabama Supreme Court to amend
32 its rules accordingly.

33 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

34 Section 1. (a) (1) A court, upon motion, shall continue
35 a criminal case when the defendant, the defendant's attorney,
36 the victim, the victim's representative if the victim is
37 unavailable, or the prosecutor is absent from court when the
38 case is called for trial because he or she is on active duty
39 as a member of the National Guard or a reserve or active
40 component of the Armed Forces of the United States.

41 (2) The movant shall state under oath that the absence
42 is due to service on active duty as a member of the National
43 Guard or a reserve or active component of the Armed Forces of
44 the United States.

45 (b) A court shall continue a criminal case upon a
46 showing by the prosecution or the defendant that a witness is
47 unavailable because the witness is on active duty as a member
48 of the National Guard or as a member of a reserve or active
49 component of the Armed Forces of the United States if all of
50 the following are established by the movant:

51 (1) The witness is material and necessary.

52 (2) The movant has submitted a request to the proper
53 military authority for the testimony of the witness in
54 accordance with 5 U.S.C. § 301, and any rule or directive
55 adopted or issued by the proper authority pursuant to that
56 section.



57 (3) The provisions of Section 12-21-135.1, Code of
58 Alabama 1975, are not satisfied.

59 (c) (1) Except as provided in subdivisions (2) and (3),
60 in any case in which the prosecution is granted a continuance
61 pursuant to subsection (a) or (b), a court shall set bail upon
62 application by the defendant.

63 (2) For any case in which the defendant is accused of
64 committing a violent offense as defined in Section 12-25-32,
65 Code of Alabama 1975, or a sex offense as defined in Section
66 15-20A-5, Code of Alabama 1975, or for any case in which bail
67 has previously been revoked or denied, the court may set bail.

68 (3) This subsection does not apply to a case when the
69 defendant is charged with committing a capital offense under
70 Section 13A-5-40, Code of Alabama 1975.

71 (d) This section shall apply to a criminal case to
72 which a judge has been appointed pursuant to the Speedy Trial
73 Act, Article 2 of Chapter 1 of Title 12, Code of Alabama 1975.

74 Section 2. (a) (1) A court shall grant a continuance for
75 good cause shown when a party or his or her counsel of record
76 in a civil case is absent from court when the case is called
77 for trial because the party or counsel of record is on active
78 duty as a member of the National Guard or a reserve or active
79 component of the Armed Forces of the United States, unless the
80 court finds, on the record, that granting the continuance
81 would substantially prejudice another party, unduly burden the
82 administration of justice, or that reasonable alternatives
83 exist to protect the rights of the absent service member.

84 (2) The case may proceed if the party, in the absence



85 of his or her counsel of record, or the counsel of record in
86 the absence of the party, announces ready for trial on the
87 call of the case.

88 (b) A court shall continue a civil case upon a showing
89 by a party that a witness is unavailable because the witness
90 is on active duty as a member of the National Guard or as a
91 member of a reserve or active component of the Armed Forces of
92 the United States if all of the following are established by
93 the movant:

94 (1) The witness is material and necessary.

95 (2) The movant has submitted a request to the proper
96 military authority for the testimony of the witness in
97 accordance with 5 U.S.C. § 301, and any rule or directive
98 adopted or issued by the proper authority pursuant to that
99 section.

100 (3) The provisions of Section 12-21-135.1, Code of
101 Alabama 1975, are not satisfied.

102 Section 3. It is the intent of the Legislature that,
103 pursuant to Section 150 of the Constitution of Alabama of
104 2022, the Supreme Court of Alabama shall amend its rules to
105 conform with this act.

106 Section 4. This act shall become effective on October
107 1, 2026.