

Chapter 20b Bail Surety

77-20b-100 Definitions.

As used in this chapter:

- (1) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.
- (2) "Surety" and "sureties" mean a surety insurer or a bail bond agency.
- (3) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

Enacted by Chapter 234, 2016 General Session

77-20b-101 Entry of nonappearance -- Notice to surety -- Release of surety on failure of timely notice.

- (1) If a defendant who has posted bail fails to appear before the appropriate court as required, the court shall within 30 days of the failure to appear issue a bench warrant that includes the original case number. The court shall also direct that the surety be given notice of the nonappearance. The clerk of the court shall:
 - (a) mail notice of nonappearance by certified mail, return receipt requested, within 30 days to the address of the surety;
 - (b) notify the surety as listed on the bail bond of the name, address, and telephone number of the prosecutor;
 - (c) deliver a copy of the notice sent under Subsection (1)(a) to the prosecutor's office at the same time notice is sent under Subsection (1)(a);
 - (d) ensure that the name, address, business email address, and telephone number of the surety or its agent as listed on the bail bond is stated on the bench warrant; and
 - (e) mail notice of the failure to appear to the bail bond agency and the surety insurer.
- (2) The prosecutor may mail notice of nonappearance by certified mail, return receipt requested, to the address of the surety as listed on the bail bond within 37 days after the date of the defendant's failure to appear.
- (3) If notice of nonappearance is not mailed to a surety as listed on the bail bond, other than the defendant, in accordance with Subsection (1) or (2), the surety and its bail bond producer are relieved of further obligation under the bail bond if the surety's current name and address or the current name and address of the bail bond agency are on the bail bond in the court's file.
- (4)
 - (a)
 - (i) If a defendant appears in court within seven days after a missed, scheduled court appearance, the court may reinstate the bail bond without further notice to the surety.
 - (ii) If the defendant, while in custody, appears on the case for which the bail bond was posted, the court may not reinstate the bail bond without the consent of the bond company.
 - (b) If a defendant fails to appear within seven days after a scheduled court appearance, the court may not reinstate the bail bond without the consent of the surety.
 - (c) If the defendant is arrested and booked into a county jail booking facility pursuant to a warrant for failure to appear on the original charges and the court is notified of the arrest, or the court recalls the warrant due to the defendant's having paid the fine and prior to entry of judgment of forfeiture, the court shall exonerate the bail bond.
 - (d) Unless the court makes a finding of good cause why the bond should not be exonerated, it shall exonerate the bail bond if:

- (i) the surety has delivered the defendant to the county jail booking facility in the county where the original charge or charges are pending;
- (ii) the defendant has been released on a bond secured from a subsequent surety for the original charge and the failure to appear;
- (iii) after an arrest, the defendant has escaped from jail or has been released on the defendant's own recognizance, pursuant to a pretrial release, under a court order regulating jail capacity, or by a sheriff's release under Section 17-22-5.5;
- (iv) the surety has transported or agreed to pay for the transportation of the defendant from a location outside of the county back to the county where the original charge is pending, and the payment is in an amount equal to government transportation expenses listed in Section 76-3-201; or
- (v) the surety demonstrates by a preponderance of the evidence that:
 - (A) at the time the surety issued the bail bond, it had made reasonable efforts to determine that the defendant was legally present in the United States;
 - (B) a reasonable person would have concluded, based on the surety's determination, that the defendant was legally present in the United States; and
 - (C) the surety has failed to bring the defendant before the court because the defendant is in federal custody or has been deported.
- (e) Under circumstances not otherwise provided for in this section, the court may exonerate the bail bond if it finds that the prosecutor has been given reasonable notice of a surety's motion and there is good cause for the bail bond to be exonerated.
- (f) If a surety's bail bond has been exonerated under this section and the surety remains liable for the cost of transportation of the defendant, the surety may take custody of the defendant for the purpose of transporting the defendant to the jurisdiction where the charge is pending.

Amended by Chapter 234, 2016 General Session

77-20b-102 Time for bringing defendant to court.

- (1) If notice of nonappearance has been mailed to a surety under Section 77-20b-101, the surety may bring the defendant before the court or surrender the defendant into the custody of a county sheriff within the state within six months of the date of nonappearance, during which time a forfeiture action on the bail bond may not be brought.
- (2) A surety may request an extension of the six-month time period in Subsection (1), if the surety within that time:
 - (a) files a motion for extension with the court; and
 - (b) mails the motion for extension and a notice of hearing on the motion to the prosecutor.
- (3) The court may extend the six-month time in Subsection (1) for not more than 60 days, if the surety has complied with Subsection (2) and the court finds good cause.

Amended by Chapter 234, 2016 General Session

77-20b-103 Defendant in custody -- Notice to prosecutor.

- (1) If a surety is unable to bring a defendant to the court because the defendant is and will be in the custody of authorities of another jurisdiction, the surety shall notify the court and the prosecutor and provide the name, address, and telephone number of the custodial authority.
- (2) If the defendant is subject to extradition or other means by which the state can return the defendant to the court's custody, and the surety gives notice under Subsection (1), the surety's bail bond shall be exonerated:

- (a) if the prosecutor elects in writing not to extradite the defendant immediately; and
- (b) if the prosecutor elects in writing to extradite the defendant, to the extent the bail bond exceeds the reasonable, actual, or estimated costs to extradite and return the defendant to the court's custody, upon the occurrence of the earlier of:
 - (i) the prosecuting attorney's lodging a detainer on the defendant; or
 - (ii) 60 days after the surety gives notice to the prosecutor under Subsection (1), if the defendant remains in custody of the same authority during that 60-day period.

Amended by Chapter 234, 2016 General Session

77-20b-104 Forfeiture of bail.

- (1) If a surety fails to bring the defendant before the court within the time provided in Section 77-20b-102, the prosecuting attorney may request the forfeiture of the bail by:
 - (a) filing a motion for bail forfeiture with the court, supported by proof of notice to the surety of the defendant's nonappearance; and
 - (b) mailing a copy of the motion to the surety.
- (2) A court shall enter judgment of bail forfeiture without further notice if it finds by a preponderance of the evidence:
 - (a) the defendant failed to appear as required;
 - (b) the surety was given notice of the defendant's nonappearance in accordance with Section 77-20b-101;
 - (c) the surety failed to bring the defendant to the court within the six-month period under Section 77-20b-102; and
 - (d) the prosecutor has complied with the notice requirements under Subsection (1).
- (3) If the surety shows by a preponderance of the evidence that it has failed to bring the defendant before the court because the defendant is deceased through no act of the surety, the court may not enter judgment of bail forfeiture and the bail bond is exonerated.
- (4) The amount of bail forfeited is the face amount of the bail bond, but if the defendant is in the custody of another jurisdiction and the state extradites or intends to extradite the defendant, the court may reduce the amount forfeited to the actual or estimated costs of returning the defendant to the court's jurisdiction. A judgment under Subsection (5) shall:
 - (a) identify the surety against whom judgment is granted;
 - (b) specify the amount of bail forfeited;
 - (c) grant the forfeiture of the bail; and
 - (d) be docketed by the clerk of the court in the civil judgment docket.
- (5) A prosecutor may immediately commence collection proceedings to execute a judgment of bail bond forfeiture against the assets of the surety.

Amended by Chapter 234, 2016 General Session

77-20b-105 Revocation of bail bond.

The surety is entitled to obtain the exoneration of its bail bond prior to judgment by providing written proof to the court and the prosecutor that:

- (1) the defendant has been booked for failure to appear regarding the charge for which the bail bond was issued; or
- (2) the defendant is in custody and the surety has served the defendant's bail bond revocation on the custodial authority.

Amended by Chapter 234, 2016 General Session