

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 106

By: Newberry

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5
6 AS INTRODUCED

7 An Act relating to bond forfeiture; amending 59 O.S.
8 2011, Section 1332, as last amended by Section 1,
9 Chapter 187, O.S.L. 2015 (59 O.S. Supp. 2016, Section
10 1332), which relates to forfeiture proceedings;
11 providing for certain warrants and re-arrest
12 conditions; and providing an effective date.

13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 59 O.S. 2011, Section 1332, as
15 last amended by Section 1, Chapter 187, O.S.L. 2015 (59 O.S. Supp.
16 2016, Section 1332), is amended to read as follows:

17 Section 1332. A. If there is a breach of an undertaking, the
18 court before which the cause is pending shall issue, within ten (10)
19 days, an arrest warrant for the defendant and declare the
20 undertaking and any money, property, or securities that have been
21 deposited as bail, forfeited on the day the defendant failed to
22 appear. Within fifteen (15) days from the date of the forfeiture,
23 the order and judgment of forfeiture shall be filed with the clerk
24 of the trial court. Failure to timely issue the arrest warrant or
file the order and judgment of forfeiture as provided in this

1 subsection shall exonerate the bond by operation of law. In the
2 event of the forfeiture of a bail bond the clerk of the trial court
3 shall, within thirty (30) days after the order and judgment of
4 forfeiture is filed in the court, by mail with return receipt
5 requested, mail a true and correct copy of the order and judgment of
6 forfeiture to the bondsman, and if applicable, the insurer, whose
7 risk it is, and keep at least one copy of the order and judgment of
8 forfeiture on file; provided, the clerk shall not be required to
9 mail the order and judgment of forfeiture to the bondsman or insurer
10 if, within fifteen (15) days from the date of forfeiture, the
11 defendant is returned to custody, the bond is reinstated by the
12 court with the bondsman's approval, or the order of forfeiture is
13 vacated or set aside by the court. Failure of the clerk of the
14 trial court to comply with the thirty-day notice provision in this
15 subsection shall exonerate the bond by operation of law.

16 B. The order and judgment of forfeiture shall be on forms
17 prescribed by the Administrative Director of the Courts.

18 C. 1. The bail bondsman shall have ninety (90) days from
19 receipt of the order and judgment of forfeiture from the court clerk
20 or mailing of the notice if no receipt is made, to return the
21 defendant to custody.

22 2. The bondsman may contract with a licensed bail enforcer
23 pursuant to the Bail Enforcement and Licensing Act to recover and
24 return the defendant to custody within the ninety-day period, or as

1 | agreed, or notwithstanding the Bail Enforcement and Licensing Act if
2 | the bondsman is duly appointed in this state by an insurer operating
3 | in this state, the bondsman may seek the assistance of another
4 | licensed bondsman in this state who is appointed by the same
5 | insurer.

6 | 3. When the court record indicates that the defendant is
7 | returned to custody in the jurisdiction where forfeiture occurred,
8 | within the ninety-day period, the court clerk shall enter minutes
9 | vacating the forfeiture and exonerating the bond. If the defendant
10 | has been timely returned to custody, but this fact is not reflected
11 | by the court record, the court shall vacate the forfeiture and
12 | exonerate the bond.

13 | 4. For the purposes of this section, "return to custody" means:
14 | a. the return of the defendant to the appropriate
15 | Oklahoma law enforcement agency by the bondsman,
16 | b. an appearance of the defendant in open court in the
17 | court where charged,
18 | c. arrest or incarceration within this state of the
19 | defendant by law enforcement personnel, provided the
20 | bondsman has requested that a hold be placed on the
21 | defendant in the jurisdiction wherein the forfeiture
22 | lies and has guaranteed reasonable travel expenses for
23 | the return of the defendant, or
24 |

1 d. arrest or incarceration of the defendant in any other
2 jurisdiction, provided the bondsman has requested that
3 a hold be placed on the defendant in the jurisdiction
4 wherein the forfeiture lies and has guaranteed
5 reasonable travel expenses for the return of the
6 defendant.

7 5. In addition to the provisions set forth in paragraphs 3 and
8 4 of this subsection, the bond shall be exonerated by operation of
9 law in any case in which:

10 a. the bondsman has requested in writing of the sheriff's
11 department in the county where the forfeiture occurred
12 that the defendant be entered into the computerized
13 records of the National Crime Information Center, and
14 the request has not been honored within fourteen (14)
15 business days of the receipt of the written request by
16 the department, ~~or~~

17 b. the defendant has been arrested outside of this state
18 and the court record shows the prosecuting attorney
19 has declined to proceed with extradition,

20 c. the warrant issued by the court has not been entered
21 into an active warrant database available to law
22 enforcement within five (5) business days of its
23 issued date, or

1 d. the defendant has been arrested on new charges in the
2 same jurisdiction in which the bondsman or insurer has
3 posted the appearance bond or bonds for the defendant,
4 and the defendant had been subsequently released on
5 his or her own personal recognizance.

6 6. The court may, in its discretion, vacate the order of
7 forfeiture and exonerate the bond where good cause has been shown
8 for:

- 9 a. the defendant's failure to appear, or
10 b. the bondsman's failure to return the defendant to
11 custody within ninety (90) days.

12 D. 1. If, within ninety (90) days from receipt of the order
13 and judgment of forfeiture from the court clerk, or mailing of the
14 notice if no receipt is made, the defendant is not returned to
15 custody, or the forfeiture has not been stayed, the bondsman and, if
16 applicable, the insurer whose risk it is shall deposit cash or other
17 valuable securities in the face amount of the bond with the court
18 clerk ninety-one (91) days from receipt of the order and judgment of
19 forfeiture from the court clerk, or mailing of the notice if no
20 receipt is made; provided, this provision shall not apply if the
21 defendant has been returned to custody within the ninety-day period
22 and the court has failed to vacate the forfeiture pursuant to
23 paragraphs 3 through 6 of subsection C of this section.

1 2. After the order and judgment has been paid within ninety-one
2 (91) days from receipt of the order and judgment of forfeiture from
3 the court clerk, or mailing of the notice if no receipt is made, as
4 required in paragraph 1 of this subsection, the bondsman and, if
5 applicable, the insurer whose risk it is shall have one year from
6 the date payment is due to return the defendant to custody as
7 defined by paragraph 4 of subsection C of this section. In the
8 event the defendant is returned to custody and all expenses for the
9 defendant's return have been paid by the bondsman or insurer, the
10 bondsman's or insurer's property shall be returned; provided, the
11 request for remitter be made by motion filed within one (1) year
12 from the date payment is due.

13 3. If the additional cash or securities are not deposited with
14 the court clerk on or before the ninety-first day after the date of
15 service of the order and judgment of forfeiture from the court
16 clerk, or mailing of the notice if no receipt is made, then the
17 court clerk shall notify the Insurance Commissioner by sending a
18 certified copy of the order and judgment of forfeiture and proof
19 that the bondsman and, if applicable, the insurer have been notified
20 by mail with return receipt requested.

21 4. The Insurance Commissioner shall:

22 a. in the case of a surety bondsman, immediately cancel
23 the license privilege and authorization of the insurer
24 to do business within the State of Oklahoma and cancel

1 the appointment of all surety bondsman agents of the
2 insurer who are licensed by Section 1301 et seq. of
3 this title, and

4 b. in the case of a professional bondsman, withdraw the
5 face amount of the forfeiture from the deposit
6 provided in Section 1306 of this title. The
7 Commissioner shall then immediately direct the
8 professional bondsman, by mail with return receipt
9 requested, to make additional deposits to bring the
10 original deposit to the required level. Should the
11 professional bondsman, after being notified, fail to
12 make an additional deposit within ten (10) days from
13 the receipt of notice, or mailing of notice if no
14 receipt is made, the license shall be revoked and all
15 sums presently on deposit shall be held by the
16 Commissioner to secure the face amounts of bonds
17 outstanding. Upon release of the bonds, any amount of
18 deposit in excess of the bonds shall be returned to
19 the bondsman; provided, the bail bondsman shall have
20 had notice as required by the court, at the place of
21 the bondsman's business, of the trial or hearing of
22 the defendant named in the bond. The notice shall
23 have been at least ten (10) days before the required
24 appearance of the defendant, unless the appearance is

1 scheduled at the time of execution of the bond.

2 Notwithstanding the foregoing, the bondsman shall be
3 deemed to have had notice of the trial or hearing if
4 the defendant named in the bond shall have been
5 recognized back in open court to appear at a date
6 certain for the trial or hearing.

7 5. If the actions of any bail bondsman force the Insurance
8 Commissioner to withdraw monies, deposited pursuant to Section 1306
9 of this title, to pay past due executions more than two (2) times in
10 a consecutive twelve-month period, then the license of the
11 professional bondsman shall, in addition to other penalties, be
12 suspended automatically for one (1) year or until a deposit equal to
13 all outstanding forfeitures due is made. The deposit shall be
14 maintained until the Commissioner deems it feasible to reduce the
15 deposit. In no case shall an increased deposit exceed two (2) years
16 unless there is a recurrence of withdrawals as stated herein.

17 E. 1. If the defendant's failure to appear was the result of
18 the defendant's death or of being in the custody of a court other
19 than the court in which the appearance was scheduled, forfeiture
20 shall not lie. Upon proof to the court that the bondsman paid the
21 order and judgment of forfeiture without knowledge that the
22 defendant was deceased or in custody of another court on the day the
23 defendant was due to appear, and all expenses for the defendant's
24

1 return have been paid by the bondsman, the bondsman's property shall
2 be returned.

3 2. Where the defendant is in the custody of another court, the
4 district attorney or municipal attorney shall direct a hold order to
5 the official, judge, court or law enforcement agent wherein the
6 defendant is in custody; provided, that all expenses accrued as a
7 result of returning the custody of the defendant shall be borne by
8 the bondsman.

9 F. The district attorney or municipal attorney shall not
10 receive any bonuses or other monies or property for or by reason of
11 services or actions in connection with or collection of bond
12 forfeitures under the provisions of Section 1301 et seq. of this
13 title, except that the court may award a reasonable attorney fee in
14 favor of the prevailing party for legal services in any civil action
15 or proceeding to collect upon a judgment of forfeiture.

16 G. The above procedures shall be subject to the bondsman's
17 rights of appeal. The bondsman or insurer may appeal an order and
18 judgment of forfeiture pursuant to the procedures for appeal set
19 forth in Section 951 et seq. of Title 12 of the Oklahoma Statutes.
20 To stay the execution of the order and judgment of forfeiture, the
21 bondsman or insurer shall comply with the provisions set forth in
22 Section 990.4 of Title 12 of the Oklahoma Statutes.

23 H. For municipal courts of record, the above procedures are
24 criminal in nature and ancillary to the criminal procedures before

1 the trial court and shall be subject to the bondsman's right of
2 appeal. The bondsman or insurer may appeal an order and judgment of
3 forfeiture by the municipal courts of record to the Court of
4 Criminal Appeals.

5 I. Upon a motion to the court, any person executing a bail bond
6 as principal or as surety shall be exonerated after three (3) years
7 have elapsed from the posting of the bond, unless a judgment has
8 been entered against the surety or the principal for the forfeiture
9 of the bond, or unless the court grants an extension of the three-
10 year time period for good cause shown, upon motion by the
11 prosecuting attorney.

12 SECTION 2. This act shall become effective November 1, 2017.

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