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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO CRIMINAL PROCEDURE -- BAIL AND RECOGNIZANCE

Introduced By: Senator Stephen R. Archambault

Date Introduced: September 19, 2017

Referred To: Placed on Senate Calendar

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 12-13-10, 12-13-16 and 12-13-16.1 of the General Laws in  
2 Chapter 12-13 entitled "Bail and Recognizance" are hereby amended to read as follows:  
3           **12-13-10. Deposit of money in lieu of bail. --** Any person who is held in custody or  
4 committed upon a criminal charge, if entitled to be released on bail, may at any time, instead of  
5 giving surety or sureties, in the discretion of the court, give before the court in which he or she is  
6 held to appear his or her personal recognizance to appear and do as ordered by the court, and shall  
7 be allowed to deposit, either individually or by another on his or her behalf, with the court in  
8 money ten percent (10%) of the amount of bail which he or she is ordered to furnish, and the  
9 justice or clerk of the court shall give him or her a certificate, and upon delivery of the certificate  
10 to the officer in whose custody he or she is shall be released from custody, and the money shall be  
11 deposited in the registry of the court before which the person shall be recognized to appear.  
12 Consistent with Article 1, § 9 of the Rhode Island Constitution the giving of surety or in the  
13 alternative the deposit with the court of ten percent (10%) of the amount of bail set shall be the  
14 sole monetary conditions of the release on bail, except as set forth herein. No court shall require  
15 the deposit of cash as the sole monetary condition of the release on bail, except in those cases  
16 where the defendant owes court-imposed restitution. Upon the default of the defendant the court  
17 before which he or she is recognized to appear may, at any time thereafter, order the money  
18 deposited in the registry of the court ~~or in the discretion of the court the entire amount of the bail~~  
19 ~~set to~~ be forfeited, subject to the provisions of §§12-13-16, 12-13-16.1 and 12-13-16.2, and the

1 money shall be paid to the general treasurer. If money has been deposited and the defendant at  
2 any time before forfeiture shall appear before the court to which he or she was recognized to  
3 appear, and shall surrender himself or herself, or shall recognize before the court with sufficient  
4 surety or sureties, in such an amount, to appear and do as the court may order, or be in any  
5 manner legally discharged, then the court shall order the return of the deposit to the defendant. If  
6 the money remains on deposit at the time of a judgment for the payment of a fine and costs,  
7 restitution, or any other assessment issued by the court, the clerk must apply the money in  
8 satisfaction of the judgment, and after satisfying the fine and costs, restitution, or any other  
9 assessment must refund the surplus, if any, to the defendant or to the individual who posted the  
10 money on behalf of the defendant, as the case may be.

11 **12-13-16. Process on default of recognizance.** -- (a) Whenever any person under  
12 recognizance shall fail to perform the condition of his or her recognizance, [or failed to appear as](#)  
13 [required by the terms and conditions of their bail or recognizance](#), the default shall be recorded  
14 and process shall be issued against the persons bound in the recognizance, or those of them as the  
15 attorney general shall direct.

16 [\(b\) No process for forfeiture of bail nor any petition for forfeiture of bail may be filed by](#)  
17 [the attorney general, or designee, or otherwise initiated prior to the expiration of forty-five \(45\)](#)  
18 [days after any warrant issued by any court has been entered into the court's database, the database](#)  
19 [of the bureau of criminal identification \(BCI\) for the state of Rhode Island and the database for](#)  
20 [the National Crime Information Center \(NCIC\).](#)

21 **12-13-16.1. Forfeiture of bail.** -- (a) In any criminal case, whenever, after a hearing, it  
22 has been shown to the satisfaction of the court that the defendant has left the jurisdiction of the  
23 court or has failed to appear as required or has failed to perform the condition of his or her  
24 recognizance, the court shall order that the bail and/or any security for bail be forfeited.

25 [\(b\) Any person who has had bail posted with the assistance of a licensed bondsman,](#)  
26 [and who is subsequently arrested on a bench warrant and brought before the court, or who fails to](#)  
27 [appear and is subsequently brought before the court without the intervention of or through a](#)  
28 [licensed bondsman, shall not be released by the court on the same bail unless and until the](#)  
29 [licensed bondsman who posted the original bail has been notified and been provided an](#)  
30 [opportunity to be heard regarding the licensed bondsman's willingness to continue as surety for](#)  
31 [the defendant/bailee. The court may however release the defendant within twenty-four \(24\) hours](#)  
32 [if the licensed bondsman cannot be located or otherwise fails to appear to address the court](#)  
33 [relative to the original bail.](#)

34 SECTION 2. Chapter 12-13 of the General Laws entitled "Bail and Recognizance" is

1 hereby amended by adding thereto the following section:

2 **12-13-16.2. Forfeiture of bail -- Licensed bondsperson.** -- (a) In any criminal case,  
3 whenever a forfeiture of bail has been ordered pursuant to §12-13-16.1 and where the bail and/or  
4 security for bail has been posted by a licensed bondsperson registered with the court, the court  
5 shall only order an amount to be forfeited up to, but not more than ten percent (10%) of the  
6 original bail set and pledged as surety.

7 (b) Subsequent to any forfeiture of bail pursuant to §12-13-16.2(a) and prior to the  
8 forfeiture of further surety pledged by a licensed bondsperson provided herein, the court shall:

9 (1) Provide the licensed bondsperson a period of time equal to six (6) months to return  
10 the fugitive to the court before further pledged surety shall be forfeited. Before ordering further  
11 forfeiture the court shall conduct a hearing and provide the licensed bondsperson an opportunity  
12 to demonstrate all reasonable actions the bondsperson took to locate, apprehend, and return the  
13 fugitive to the court. The court shall consider the due diligence of the licensed bondsperson in  
14 determining how much, if any, of the remaining amount of surety the bondsperson shall be  
15 ordered to forfeit for the failure or inability to locate, apprehend and return the fugitive to the  
16 court. The court at that time may provide the licensed bondsperson with additional time in which  
17 to locate and return the fugitive.

18 (2) In the event that the licensed bondsperson fails or is unable to locate and return the  
19 fugitive, the court may order an amount to be forfeited up to, but not more than, ten percent  
20 (10%) of the original bail set and pledged as surety, plus the reasonable expenses incurred by the  
21 state in attempting to locate and apprehend the fugitive; and provided; further, that if the fugitive  
22 is found and presented before the court within six (6) months of the issuance of the warrant, there  
23 shall be no forfeiture.

24 (3) The bondsperson shall be responsible to pay all fees and costs associated with the  
25 entry of any warrant into the BCI or the NCIC prior to its entry into either database as required in  
26 §12-13-16(b). Upon request of the bondsperson, the clerk of the court shall provide a certified  
27 copy of the arrest warrant to the bondsperson without charge to insure the bondsperson's ability to  
28 locate, apprehend and return the fugitive from outside the state of Rhode Island.

29 SECTION 3. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO CRIMINAL PROCEDURE -- BAIL AND RECOGNIZANCE

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1           This act would limit the amount of bail that may be forfeited by the court upon a  
2 defendant's violation of the terms and conditions of their bail, to ten percent (10%) of the surety  
3 deposited with the court and would provide a licensed bondsperson additional time in which to  
4 locate and return a fugitive to the court before ordering further forfeiture of any surety posted. It  
5 would provide that the attorney general be prevented from filing a petition or beginning process  
6 to forfeit bail until at least forty-five (45) days have passed from the entry of an arrest warrant  
7 into the court's database and the databases of the Bureau of Criminal Identification and National  
8 Crime Information Center. In the event that the licensed bondsperson fails or is unable to locate  
9 and return the fugitive to the court, the court may order the forfeiture of the balance of any  
10 amount deposited by the bondsperson less reasonable expenses incurred by the state in attempting  
11 to return the fugitive.

12           This act would take effect upon passage.

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