

HB 731

2016

1 A bill to be entitled

2 An act relating to bail bonds; amending s. 903.045,
3 F.S.; revising legislative intent concerning the
4 obligations of a bail bond agent; amending s. 903.26,
5 F.S.; specifying that a failure to appear requires
6 bond and any bonds or money deposited as bail to be
7 forfeited; revising the circumstances that require a
8 forfeiture to be discharged; amending s. 903.28, F.S.;
9 revising the amount of forfeiture to be remitted under
10 different specified conditions; amending s. 903.31,
11 F.S.; specifying that certain provisions concerning
12 cancellation of a bond do not apply if the bond is
13 forfeited within a specified period after it has been
14 posted; providing that original appearance bond does
15 not guarantee placement in any court-ordered program;
16 providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 903.045, Florida Statutes, is amended
21 to read:

22 903.045 Nature of criminal surety bail bonds.—It is the
23 public policy of this state and the intent of the Legislature
24 that a criminal surety bail bond, executed by a bail bond agent
25 licensed pursuant to chapter 648 in connection with the pretrial
26 or appellate release of a criminal defendant, shall be construed

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27 | as a commitment by and an obligation upon the bail bond agent to
28 | ensure that the defendant appears at all ~~subsequent~~ criminal
29 | proceedings for which the surety bond was posted ~~and otherwise~~
30 | ~~fulfills all conditions of the bond~~. The failure of a defendant
31 | to appear at any subsequent criminal proceeding for which the
32 | surety bond was posted ~~or the breach by the defendant of any~~
33 | ~~other condition of the bond~~ constitutes a breach by the bail
34 | bond agent of this commitment and obligation.

35 | Section 2. Subsections (2), (5), (6), (7), and (8) of
36 | section 903.26, Florida Statutes, are amended to read:

37 | 903.26 Forfeiture of the bond; when and how directed;
38 | discharge; how and when made; effect of payment.-

39 | (2) (a) If there is a failure to appear ~~breach of the bond~~,
40 | the court shall declare the bond and any bonds or money
41 | deposited as bail forfeited. The clerk of the court shall mail
42 | or electronically transmit a notice to the surety agent and
43 | surety company within 5 days after the forfeiture. A certificate
44 | signed by the clerk of the court or the clerk's designee,
45 | certifying that the notice required herein was mailed or
46 | electronically transmitted on a specified date and accompanied
47 | by a copy of the required notice, shall constitute sufficient
48 | proof that such mailing or electronic transmission was properly
49 | accomplished as indicated therein. If such mailing or electronic
50 | transmission was properly accomplished as evidenced by such
51 | certificate, the failure of the surety agent, of a company, or
52 | of a defendant to receive such notice shall not constitute a

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53 defense to such forfeiture and shall not be grounds for
54 discharge, remission, reduction, set aside, or continuance of
55 such forfeiture. The forfeiture shall be paid within 60 days
56 after ~~of~~ the date the notice was mailed or electronically
57 transmitted.

58 (b) Failure of the defendant to appear at the time, date,
59 and place of required appearance shall result in forfeiture of
60 the bond. Such forfeiture shall be automatically entered by the
61 clerk upon such failure to appear, and the clerk shall follow
62 the procedures ~~outlined~~ in paragraph (a). However, the court may
63 determine, in its discretion, in the interest of justice, that
64 an appearance by the defendant on the same day as required does
65 not warrant forfeiture of the bond; and the court may direct the
66 clerk to set aside any such forfeiture which may have been
67 entered. Any appearance by the defendant later than the required
68 day constitutes forfeiture of the bond, and the court shall not
69 preclude entry of such forfeiture by the clerk.

70 (c) If there is a forfeiture ~~breach~~ of the bond, the clerk
71 shall provide, upon request, a certified copy of the warrant or
72 capias to the bail bond agent or surety company.

73 (5) The court shall discharge a forfeiture within 60 days
74 upon:

75 (a) A determination that it was impossible for the
76 defendant to appear as required or within 60 days after the
77 required appearance due to circumstances beyond the defendant's
78 control. The potential adverse economic consequences of

79 appearing as required may ~~shall~~ not be considered as
 80 constituting a ground for such a determination;

81 (b) A determination that, at the time of the required
 82 appearance or within 60 days after the required appearance, the
 83 defendant was ~~adjudicated insane and~~ confined in an institution
 84 or hospital; ~~or~~ was confined in any county, state, federal or
 85 immigration ~~a~~ jail or prison; or is deceased;

86 (c) Surrender or arrest of the defendant if the delay has
 87 not thwarted the proper prosecution of the defendant. If the
 88 forfeiture has been before discharge, the court shall direct
 89 remission of the forfeiture. The court shall condition a
 90 discharge or remission on the payment of costs and the expenses
 91 incurred by an official in returning the defendant to the
 92 jurisdiction of the court.

93 (d) A determination that the state is unwilling to seek
 94 nationwide extradition of the fugitive defendant within 10 days
 95 after a request by the surety to do so, and contingent upon the
 96 surety agent's consent to pay all transportation costs incurred
 97 by an official in returning the defendant to the jurisdiction of
 98 the court, up to the penal amount of the bond.

99 ~~(6) The discharge of a forfeiture shall not be ordered for~~
 100 ~~any reason other than as specified herein.~~

101 ~~(6)-(7)~~ The payment by a surety of a forfeiture under ~~the~~
 102 ~~provisions of~~ this law shall have the same effect on the bond as
 103 payment of a judgment.

104 ~~(7)-(8)~~ If the defendant is arrested and returned to the

105 | county of jurisdiction of the court or has posted a new bond for
106 | the case at issue before ~~prior to~~ judgment, the clerk, upon
107 | affirmation by the sheriff or the chief correctional officer,
108 | shall, without further hearing and order of the court, discharge
109 | the forfeiture of the bond. However, if the surety agent fails
110 | to pay the costs and expenses incurred in returning the
111 | defendant to the county of jurisdiction, the clerk shall not
112 | discharge the forfeiture of the bond. If the surety agent and
113 | the sheriff fail to agree on the amount of said costs, then the
114 | court, after notice to the sheriff and the state attorney, shall
115 | determine the amount of the costs.

116 | Section 3. Subsections (2), (3), (4), (5), and (6) of
117 | section 903.28, Florida Statutes, are amended to read:

118 | 903.28 Remission of forfeiture; conditions.—

119 | (2) If the defendant surrenders or is apprehended within
120 | 90 days after forfeiture, the court, on motion at a hearing upon
121 | notice having been given to the clerk of the circuit court and
122 | the state attorney as required in subsection (8), shall direct
123 | remission of ~~up to, but not more than,~~ 100 percent of a
124 | forfeiture if the surety apprehended and surrendered the
125 | defendant or if the apprehension or surrender of the defendant
126 | was substantially procured or caused by the surety, or the
127 | surety has substantially attempted to procure or cause the
128 | apprehension or surrender of the defendant, and the delay has
129 | not thwarted the proper prosecution of the defendant. In
130 | addition, remission shall be granted when the surety did not

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131 substantially participate or attempt to participate in the
132 apprehension or surrender of the defendant when the costs of
133 returning the defendant to the jurisdiction of the court have
134 been deducted from the remission and when the delay has not
135 thwarted the proper prosecution of the defendant.

136 (3) If the defendant surrenders or is apprehended within
137 180 days after forfeiture, the court, on motion at a hearing
138 upon notice having been given to the clerk of the circuit court
139 and the state attorney as required in subsection (8), shall
140 direct remission of ~~up to, but not more than,~~ 95 percent of a
141 forfeiture if the surety apprehended and surrendered the
142 defendant or if the apprehension or surrender of the defendant
143 was substantially procured or caused by the surety, or the
144 surety has substantially attempted to procure or cause the
145 apprehension or surrender of the defendant, and the delay has
146 not thwarted the proper prosecution of the defendant. In
147 addition, remission shall be granted when the surety did not
148 substantially participate or attempt to participate in the
149 apprehension or surrender of the defendant when the costs of
150 returning the defendant to the jurisdiction of the court have
151 been deducted from the remission and when the delay has not
152 thwarted the proper prosecution of the defendant.

153 (4) If the defendant surrenders or is apprehended within
154 270 days after forfeiture, the court, on motion at a hearing
155 upon notice having been given to the clerk of the circuit court
156 and the state attorney as required in subsection (8), shall

157 | direct remission of ~~up to, but not more than,~~ 90 percent of a
158 | forfeiture if the surety apprehended and surrendered the
159 | defendant or if the apprehension or surrender of the defendant
160 | was substantially procured or caused by the surety, or the
161 | surety has substantially attempted to procure or cause the
162 | apprehension or surrender of the defendant, and the delay has
163 | not thwarted the proper prosecution of the defendant. In
164 | addition, remission shall be granted when the surety did not
165 | substantially participate or attempt to participate in the
166 | apprehension or surrender of the defendant when the costs of
167 | returning the defendant to the jurisdiction of the court have
168 | been deducted from the remission and when the delay has not
169 | thwarted the proper prosecution of the defendant.

170 | (5) If the defendant surrenders or is apprehended within 1
171 | year after forfeiture, the court, on motion at a hearing upon
172 | notice having been given to the clerk of the circuit court and
173 | the state attorney as required in subsection (8), shall direct
174 | remission of ~~up to, but not more than,~~ 85 percent of a
175 | forfeiture if the surety apprehended and surrendered the
176 | defendant or if the apprehension or surrender of the defendant
177 | was substantially procured or caused by the surety, or the
178 | surety has substantially attempted to procure or cause the
179 | apprehension or surrender of the defendant, and the delay has
180 | not thwarted the proper prosecution of the defendant. In
181 | addition, remission shall be granted when the surety did not
182 | substantially participate or attempt to participate in the

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183 apprehension or surrender of the defendant when the costs of
184 returning the defendant to the jurisdiction of the court have
185 been deducted from the remission and when the delay has not
186 thwarted the proper prosecution of the defendant.

187 (6) If the defendant surrenders or is apprehended within 2
188 years after forfeiture, the court, on motion at a hearing upon
189 notice having been given to the clerk of the circuit court and
190 the state attorney as required in subsection (8), shall direct
191 remission of ~~up to, but not more than,~~ 50 percent of a
192 forfeiture if the surety apprehended and surrendered the
193 defendant or if the apprehension or surrender of the defendant
194 was substantially procured or caused by the surety, or the
195 surety has substantially attempted to procure or cause the
196 apprehension or surrender of the defendant, and the delay has
197 not thwarted the proper prosecution of the defendant. In
198 addition, remission shall be granted when the surety did not
199 substantially participate or attempt to participate in the
200 apprehension or surrender of the defendant when the costs of
201 returning the defendant to the jurisdiction of the court have
202 been deducted from the remission and when the delay has not
203 thwarted the proper prosecution of the defendant.

204 Section 4. Section 903.31, Florida Statutes, is amended to
205 read:

206 903.31 Canceling the bond.—

207 (1) Within 10 business days after the conditions of a bond
208 have been satisfied or the forfeiture discharged or remitted,

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209 the court shall order the bond canceled and, if the surety has
210 attached a certificate of cancellation to the original bond, the
211 clerk of the court shall mail or electronically furnish an
212 executed certificate of cancellation to the surety without cost.
213 An adjudication of guilt or innocence, an acquittal, or a
214 withholding of an adjudication of guilt shall satisfy the
215 conditions of the bond. The original appearance bond shall
216 expire 36 months after such bond has been posted for the release
217 of the defendant from custody. This subsection does not apply to
218 cases in which a bond has been declared forfeited before the 36-
219 month expiration.

220 (2) The original appearance bond does not guarantee
221 deferred sentences, appearance during or after a presentence
222 investigation, appearance during or after appeals, conduct
223 during or appearance after admission to a pretrial intervention
224 program, placement in any court-ordered program, including a
225 residential mental health facility, payment of fines, or
226 attendance at educational or rehabilitation facilities the court
227 otherwise provides in the judgment. If the original appearance
228 bond has been forfeited or revoked, the bond shall not be
229 reinstated without approval from the surety on the original
230 bond.

231 (3) If ~~In any case where~~ no formal charges are ~~have been~~
232 brought against the defendant within 365 days after arrest, the
233 court shall order the bond canceled unless good cause is shown
234 by the state.

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Section 5. This act shall take effect July 1, 2016.