

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1516

SPONSOR: Criminal Justice Committee, Banking and Insurance Committee, and Senator Clary

SUBJECT: Bail Bonds

DATE: April 5, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Woodham</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	<u>Barrow</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Committee Substitute for Senate Bill 1516 revises bail bond provisions relating to continuing education, discharge of forfeitures, judgments against sureties, remissions of forfeitures, and original appearance bonds.

This bill revises various provisions in chapter 903, F.S., relating to requirements for bail bonds including:

- ▶ extending the time frame within which the court can discharge a forfeiture of a bail bond (from 35 to 60 days) and reducing the time frame after a judgment within which a bail bond agent must pay the judgment (from 60 to 35 days);
- ▶ requiring (rather than allowing) the court to set aside the forfeiture and discharge the bond if the defendant is arrested and returned to the county of jurisdiction prior to judgment;
- ▶ providing that original appearance bonds expire 36 months after the date the bond is posted.

The bill also amends s. 648.386, F.S., relating to continuing education requirements for bail bond agents, to allow classes to be taught by a guest instructor under certain conditions.

This bill amends the following sections of the Florida Statutes: 648.386, 648.44, 903.21, 903.26, 903.27, 903.28, and 903.31.

II. Present Situation:

A bail bond is a form of security provided to the court to ensure that a defendant will appear for judicial proceedings. Under Florida law, bail bond agents are usually "limited surety agents" who are agents for a surety insurance company, but they may also be "professional bail bond agents" which are persons who pledge money, postal money orders, or cashiers checks as security for a

bail bond. Bail bond agents are regulated under chapter 648, F.S., by the Department of Insurance. Statutes relating to the practice of bail bonding are in chapter 903, F.S.

Bail Bond Agents (Chapter 648, F.S., in the Insurance Code)

Chapter 648, F.S., provides for the licensure and regulation by the Department of Insurance of bail bond agents and for the regulation of the business of issuing bail bonds. The bail bond serves as a pledge by a bail bond agent that a defendant will appear at all scheduled proceedings before a court. According to Florida law, a "bail bond agent" is: (1) a limited surety agent of a surety company or (2) a professional bail bond agent, which is any person who pledges money, cashiers checks, or postal money orders as security for a bail bond.

Continuing education is required for bail bond agents to maintain their license. Section 648.385, F.S., requires bail bond agents to have 14 hours of continuing education courses every two years. This section also allows the department to grant, for good cause shown, extensions of up to a year in order to complete the continuing education requirements.

The department also oversees continuing education for health, property, casualty, title, and life agents as well as for workers' compensation adjusters. The department contracts with a private vendor for the purpose of tracking course completions for all of the different continuing education requirements for all of these licensees. Based on the compiled course information, this tracking system also determines compliance for each of the separate continuing education requirements and enables the department to establish a database for enforcement purposes.

Section 648.386, F.S., regulates the prelicensing and continuing education schools relating to bail bond agents. Section 648.386(4)(a)1.-6., F.S., requires all courses to have a supervising instructor, approved by the department, who is responsible for all course instructors, guest lecturers, course outlines and curriculum, certification of the bail bond agents, completion of all required forms, and ensuring that the course is approved.

Section 648.386(2)(c), F.S., also provides that continuing education schools must offer continuing education classes which are comprised of a minimum of 2 hours of approved course work and are "taught by an approved supervising instructor." The department has interpreted this section to mean that continuing education courses cannot be "taught" by guest lecturers -- but instead must actually be "taught" by the supervising instructor. As such, bail bond agents are not permitted to utilize guest lecturers for bail bond continuing education courses.

Statutory Bail Requirements (Chapter 903, F.S., in the Criminal Code)

Chapter 903, F.S., sets forth the requirements relating to bail and bail bonds. According to this chapter, "bail" and "bond" include any and all forms of pretrial release. s. 903.011, F.S.

Surrender of defendant

After a defendant has been released on bail, the bail bond agent has the authority to "surrender," or return the defendant to the custody of the person who would have held the defendant absent the bail. See s. 903.20, F.S. Ordinarily, a bail bond agent will do this if the bail bond agent believes the defendant is a flight risk or if the collateral provided for bail is discovered to be insufficient. Upon surrender, the official taking custody of the defendant will issue a certificate acknowledging the surrender. The bail bond agent then can present the certificate and bond to the

court which will issue an order exonerating the obligors and refunding money or bonds deposited as bail. See s. 903.21(2), F.S.

Forfeiture of the bond

If a defendant does not appear for judicial proceedings as ensured by the bail bond, the bond is considered breached and the court declares the bond "forfeited." After forfeiture of a bail bond, the court is authorized to sell the bonds and retain the money. According to Florida law, a bond shall not be forfeited unless the information, indictment, or affidavit was filed within 6 months of the date of the arrest and the clerk of the court gave the bail bond agent at least 72 hours notice before the time of the required appearance of the defendant.

After a breach of the bond, s. 903.26(5)(a)-(c), F.S., authorizes a court to "discharge" a forfeiture, before it is paid to the county, within 35 days upon:

- (a) a determination that it was impossible for the defendant to appear as required due to circumstances beyond the defendant's control;
- (b) a determination that, at the time of the appearance, the defendant was adjudicated insane and confined in an institution or hospital or was confined in a jail or prison; or
- (c) surrender or arrest of the defendant if the delay has not thwarted the proper prosecution of the defendant.

If a bond has been breached and forfeited and has not been discharged, the money from the bond is paid to the county clerk of court and can be used in any manner by the county.

Forfeiture to judgment

In cases where a bond has been forfeited and not paid or discharged by a court within 35 days, the court enters a judgment against the bail bond agent for the amount of the bond. After the judgment is entered, the court is required to furnish the department and the surety company issuing the bond with a certified copy of the judgment. If this judgment is not paid within 60 days, the court provides the department and the sheriff of the county in which the bond was executed, copies of the judgment and a certification that the judgment has not been satisfied. The department receives notice of the judgment and monitors unpaid judgments as a part of its regulation of surety insurance companies.

Bail bond agents who have outstanding judgments which are unpaid for 60 days are precluded by law from executing bail bonds. After 75 days of an unpaid judgment, the surety company is precluded by law from issuing bail bonds.

Remission of forfeiture

If there is a breach of a bail bond and a bond is forfeited and paid, s. 903.28, F.S., provides several conditions upon which the court may enter an order of "remission" or return of the forfeiture. Forfeitures may be remitted or returned, as set forth in the following sliding schedule:

- (1) By order of the court upon an application made within 2 years of forfeiture;
- (2) If the defendant surrenders or is apprehended within 90 days of the forfeiture, the court may order remission of up to 100 percent of the forfeiture if the bail bond agent:
 - (a) apprehended and surrendered the defendant,

- (b) substantially procured or caused the apprehension or surrender of the defendant,
 - (c) has attempted to procure or cause the apprehension or surrender of the defendant and the delay has not thwarted the proper prosecution of the defendant, or
 - (d) did not attempt to apprehend or surrender the defendant and the costs of returning the defendant have been deducted from the remission and the delay has not thwarted the proper prosecution of the defendant;
- (3) If the defendant surrenders or is apprehended within 180 days after forfeiture, the court may order remission of up to 95 percent of the forfeiture under the same circumstances listed in (2)(a) - (d), above;
 - (4) If the defendant surrenders or is apprehended within 270 days after forfeiture, the court may order remission of up to 90 percent of the forfeiture under the same circumstances listed in (2)(a) - (d), above;
 - (5) If the defendant surrenders or is apprehended within 1 year after forfeiture, the court may order remission of up to 85 percent of the forfeiture under the same circumstances listed in (2)(a) - (d), above; and
 - (6) If the defendant surrenders or is apprehended within 2 years after forfeiture, the court may order remission of up to 50 percent of the forfeiture under the same circumstances listed in (2)(a) - (d), above.

Canceling the bond

The law provides that within 10 days after all of the conditions of a bond have been satisfied or the forfeiture has been discharged or remitted, the court shall order the bond canceled. All of the conditions of a bond are deemed to be satisfied after the defendant has been adjudicated guilty or not guilty.

Application of the original appearance bond

Under Florida law, the original appearance bond does not guarantee deferred sentences, the appearance of the defendant during or after a presentence investigation, appearance during or after appeals, conduct during or appearance after admission to a pretrial intervention program, payment of fines, or attendance at educational or rehabilitation facilities.

III. Effect of Proposed Changes:

Section 1. Amends s. 648.386, F.S., relating to continuing education requirements for bail bond agents. The bill allows classes to be taught by a guest instructor approved by the continuing education school or the supervising instructor. It requires that all guest lecturers be approved by the supervising instructor or the department approved school and that the supervising instructor be present at all classes.

Section 2. Amends s. 648.44, F.S., relating to certain prohibited activities for bail bond agents. The bill changes the time period during which a bail bond agent may not execute a bond where the bail bond agent has an unpaid judgment on a bond which has remained unpaid for 35 days. The current law sets the time at 60 days. This change conforms to the amendments made to s. 903.27, F.S., summarized below.

Section 3. Amends s. 903.21, F.S., relating to method of surrender; exoneration of obligors. Currently, the surety (insurer or professional bail bond agent) is exonerated of liability on the

bond if it is determined that the defendant is in any jail and the surety agrees to pay the transportation costs of returning the defendant to the “jurisdiction of the court.” The bill defines the term “jurisdiction” to mean the judicial circuit as prescribed by law.

Section 4. Amends s. 903.26, F.S., relating to forfeiture of bonds and discharge of forfeiture, to extend the period of time from 35 to 60 days within which the court *shall* (rather than *may*) discharge a forfeiture upon certain conditions being met. This section would require the clerk of court, upon affirmation by the sheriff or chief correctional officer, without need for a court order, to set aside the forfeiture and discharge the bond if the defendant is arrested and returned to the county of jurisdiction of the court prior to judgment. The bill states that if the surety agent fails to pay the costs and expenses incurred in returning the defendant to the county of jurisdiction, the clerk shall not discharge the forfeiture. If the surety agent and the county attorney fail to agree on the amount of the costs, the court, upon notice to the county attorney, shall decide the matter.

Section 5. Amends s. 903.27, F.S., relating to forfeiture of judgment, to extend the period of time from 35 to 60 days before the clerk of court shall enter a judgment against the bail bond agent. The bill would also reduce the period of time from 60 to 35 days for the bail bond agent to pay the judgment (so that the current total time of these two periods remains at 95 days), and for a company from 75 to 50 days to pay the judgment (so that the current total time of these two periods remains at 110 days), before the matter is turned over to the Department of Insurance and the sheriff. The bill also states that if a defendant is returned to the county of jurisdiction of the court, these time frames are to be tolled *whenever* a motion to set aside the judgment is filed, until the court makes a disposition of the motion. The bill also allows 35 days, rather than the current 60 days, to file a motion to set aside a judgment or to stay the judgment.

Section 6. Amends s. 903.28, F.S., relating to remission of forfeiture. The bill requires (rather than allows) the court to direct remission of up to 100 percent of a forfeiture if the surety apprehended and surrendered the defendant, or if the apprehension or surrender of the defendant was substantially procured or caused by the surety.

Similarly, the bill mandates (changing *may* to *shall*) the court to direct remission of a certain percentage of the forfeiture, based on certain factors. The bill does not change the percentage amounts or the factors. If the defendant surrenders or is apprehended within 180 days after forfeiture, the court is required to direct remission of up to 95 percent of a forfeiture if the surety apprehended and surrendered the defendant, or procured or caused the surrender of the defendant.

If the defendant surrenders or is apprehended within 270 days after forfeiture, the court is required to direct remission of up to 90 percent of the forfeiture if the surety apprehended and surrendered the defendant. If the defendant surrenders or is apprehended within 1 year after forfeiture, the court must direct remission of up to 85 percent of the forfeiture. If the surrender or apprehension of the defendant occurs within 2 years after the forfeiture, the court shall direct remission up to 50 percent of the forfeiture.

Under all subsections of s. 903.28, F.S., remission shall be granted when the surety does not substantially participate in the apprehension or surrender of the defendant, once the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission.

Section 7. Amends s. 903.31, F.S., relating to canceling the bond, to provide that the original appearance bond expires 36 months after the bond has been posted for the release of the defendant from custody, except that this does not apply if the bond has been declared forfeited. The bill also provides that original appearance bonds which are forfeited or revoked shall not be reinstated without approval from the surety on the original bond.

Section 8. Provides for an effective date of October 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The CS for CS/SB 1516 would likely result in bail bond agents and surety companies receiving more money from remission or discharges of bond forfeitures because discharges of previously forfeited bonds would become mandatory, rather than permissive, in each time-frame group that is currently set out in statute. Additionally, the process of setting aside a forfeiture is automatic rather than necessitating an order of the court. The time period in which bail bondsmen (and surety companies) would be allowed to have bond forfeitures discharged would be extended from 35 days to 60 days, which would likely result in more bond forfeitures set aside.

Bail bondsmen and surety companies would also financially benefit from the provision that would allow bail bondsmen and surety companies to execute surety bail bonds sooner despite an unpaid bond forfeiture judgement against a bondsman or surety company. If a bail bondsman can execute a surety bond after 35 days subsequent to an unpaid forfeiture judgement, rather than waiting 60 days, there would be a financial benefit to such bail bondsmen; bail bondsmen may resume their business in approximately half the time than under current law when a judgement remains unpaid by that bondsman. Similarly, if a surety bond may not be executed for a surety company for 50 days subsequent to an unpaid

forfeiture judgement, rather than waiting 75 days, there would be a financial benefit to such surety companies; surety companies may resume their business in two-thirds the time than under current law when a judgement remains unpaid by that surety company.

C. Government Sector Impact:

The fiscal impact of the CS for CS/SB 1516 on government as it relates to bond forfeiture is indeterminate because the practices relating to bond forfeiture vary from county to county. Counties wherein bail bonds are frequently forfeited and not subsequently discharged or remitted, could experience a reduction in money raised through bail bond forfeitures. However, counties where bail bond forfeitures are discharged and remitted on a more liberal basis would be less likely to experience a reduction in money collected from bail bond forfeitures.

Counties may experience an indeterminate positive fiscal impact, although it is likely to be insignificant, if surety agents reimburse the counties for costs and expenses in returning a defendant to the county of jurisdiction where a defendant is arrested and returned to a county of jurisdiction after a bond forfeiture, but prior to forfeiture judgement.

Counties could experience an indeterminate negative fiscal impact in instances where there is a failure to agree on the amount of costs and expenses incurred in returning a defendant to a county with jurisdiction after a bond forfeiture, but prior to forfeiture judgement. In such cases, county attorneys are designated as responsible for negotiating an agreed-to amount with surety agents and presenting it to courts in cases where an agreement cannot be reached. More county attorney time is involved if they are responsible for negotiating cost agreements and presenting unresolved cases to the court.

As a result of a few provisions in this CS for CS/SB 1516, a larger number of hearings will be held, and they are likely to be more lengthy than previous forfeiture hearings. This may pose an additional burden on the state court system, counties that provide “Article V” funding, and the sheriffs. However, the fiscal impact is anticipated to be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.