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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement, Jr.

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## DIGEST

Claitor (SB 439)

Present law defines "bail" as the security given by a person to assure his appearance before the proper court whenever required.

Proposed law retains present law.

Proposed law defines "appearance" as a personal appearance before the court, or a designee thereof, before which the charges are pending.

Proposed law defines "surrender" as the detention of the defendant by the officer originally charged with his detention as upon the original commitment at the request of the surety.

Proposed law defines "constructive surrender" as the detention of the defendant in another parish of the state or a foreign jurisdiction when the surety has provided the court proof of the defendant's current incarceration and has paid the reasonable cost of returning the defendant to the jurisdiction where the warrant was issued. Proposed law further provides that a letter of incarceration issued by the officer charged with the detention of the defendant verifying that the defendant is incarcerated is adequate proof of the incarceration of the defendant. Proposed law further provides that the surety is to pay a fee of \$25 to the officer charged with the defendant's detention for the letter verifying the incarceration.

Present law provides that the defendant and personal surety signing a bail bond are to write the address at which each can be served under their respective signatures and the last four digits of their social security number.

Proposed law changes "served" to "sent notice" and otherwise retains present law.

Present law provides that the defendant and his counsel by joint affidavit filed of record in the proceeding in which the bond was given may appoint the defendant's counsel as his agent for service of notice to appear.

Proposed law makes the defendant's counsel the person to whom notice can be sent rather than the person on whom notice can be served. Proposed law otherwise retains present law.

Present law provides that by signing the bail bond, the defendant and his surety waive any right to notice.

Proposed law retains present law.

Present law provides that a surety may surrender the defendant or the defendant may surrender himself, in open court or to the officer charged with his detention, at any time prior to forfeiture or within the time allowed by law for setting aside a judgment of forfeiture of the bail bond, and further provides that upon surrender of the defendant, the officer is to detain the defendant in his custody as upon the original commitment and acknowledge the surrender by a certificate signed by him and delivered to the surety.

Proposed law changes present law to provide that upon surrender of the defendant, the officer is to forward a copy of the certificate to the court rather than the surety. Proposed law further provides that upon verified surrender of the defendant prior to 180 days after the notice of warrant of arrest was sent, the surety is to be fully and finally discharged and relieved of all obligations under the bond. Proposed law otherwise retains present law.

Present law provides that when the surety has requested the surrender of the defendant, the officer is to acknowledge the surrender by a certificate of surrender signed by him and delivered to the surety, and the surety is to pay a fee of \$25 to the officer charged with the defendant's detention for recalling the capias, accepting the surrender, processing the paperwork, and giving the surety a certificate of surrender.

Proposed law retains present law.

Present law provides that at any time prior to forfeiture or within the time allowed by law for setting aside a judgment for forfeiture of the bail bond, the surety may present to the court a certificate of death naming the defendant as the deceased party.

Proposed law changes present law to provide that the surety may present to the court a certificate of death naming the defendant as the deceased party at any time prior to the defendant's failure to appear or within 180 days after the notice of warrant of arrest is sent. Proposed law otherwise retains present law.

Proposed law provides that at any time during which there is an active arrest warrant in the proceeding for which the bond was posted, the surety or bail bond producer who posted the bond may file an affidavit requesting the defendant be remanded and surrendered upon his appearance before the court where the charges are pending. Proposed law further provides that the affidavit will meet all the requirements set forth in present law relative to bail enforcement agents and must be filed before the court in which the charges are pending, with a copy of the affidavit provided to the prosecuting attorney. Proposed law further provides that within 180 days of the date on which the notice of warrant of arrest was sent, the court may either grant or deny the relief requested. Proposed law further provides that if the court grants the relief requested, then it is to remand the defendant and relieve the surety of all obligations under the bond, but if the court denies the relief requested, then the surety may seek supervisory review.

Present law provides that during the period provided for surrendering the defendant, the surety may request that the officer originally charged with the detention of a felony defendant place the name of the felony defendant into the National Crime Information Center (NCIC) registry.

Proposed law changes the time for requesting placement of the defendant's name in the NCIC registry to any time after the defendant's failure to appear and the issuance of the warrant of arrest rather than during the period provided for surrender to the defendant.

Present law provides relative to bond forfeiture procedure.

Present law provides that if the defendant fails to appear as ordered, the court is to immediately issue a warrant for the arrest of the person failing to appear and order a judgment decreeing the forfeiture of the bond against the defendant and his sureties in solido for the full amount of the bond.

Present law does not require a contradictory hearing to order a judgment of bond forfeiture.

Proposed law requires a contradictory hearing to order a judgment of bond forfeiture.

Proposed law provides that if a defendant who was properly noticed fails to appear as ordered, the court, on its own motion or on motion of the prosecuting attorney, is to immediately issue a warrant for the arrest of the defendant. Proposed law further provides that after a warrant of arrest is issued, the clerk of court within 60 days is to send a "notice of warrant of arrest" to the prosecuting attorney. Proposed law further provides that this notice is to also be sent by U.S. mail or electronic means to the defendant, the agent or bondsman, and the personal surety, and by electronic means or certified mail to the commercial surety, to the addresses provided pursuant to proposed law or to an address registered with the Dept. of Insurance. Proposed law provides that after sending the notice of warrant of arrest, the clerk of court is to execute an affidavit that notice was sent and place the affidavit in the record.

Proposed law provides that if the defendant has not been surrendered, constructively surrendered, or appeared within 180 days since the notice of warrant of arrest was sent, the prosecuting attorney may file a rule to show cause requesting that a bond forfeiture judgment be rendered, which is to be mailed to the defendant and served on all other parties against whom a judgment is sought. Proposed law further provides that the rule to show cause is to be set for contradictory hearing.

Proposed law provides that upon proof at the contradictory hearing of the bail bond, the power of attorney, notice to the defendant and the surety as required by proposed law, and that more than 180 days have passed since the notice of the warrant of arrest was sent, the court is to forfeit the bail bond, and a judgment of bond forfeiture entered. Proposed law further provides that the judgment of bond forfeiture is to be issued against the defendant and his sureties in solido for the full amount of the bail. Proposed law further provides that a bail agent who represents the surety as an insurance agent cannot be held solidarily liable for the judgment of bond forfeiture against the defendant and his sureties, and in the event that a bail agent who represents the surety as an insurance agent is held solidarily liable, then the bail agent may request to be released from the judgment, and the release of the bail agent will have no effect on the judgment decreeing the forfeiture of the bond against the defendant and his sureties.

Present law provides that a judgment decreeing the forfeiture of a bail bond cannot be rendered if it is shown to the satisfaction of the court at the hearing on the rule to show cause that the defendant, principal in the bond, failed to appear in court because he has a physical disability, illness or injury; is being detained in the jail or penitentiary of another jurisdiction; was serving in the armed forces of the United States; was a member of the La. National Guard called to duty pursuant to present law; was prevented from appearing due to state of emergency declared by the governor.

Proposed law deletes physical disability, illness, or injury and detention in another jurisdiction from present law.

Present law provides a detailed procedure for notice of judgment to interested parties.

Proposed law deletes present law and provides that notice of the signing of the judgment of bond forfeiture is to be mailed by the clerk of court to the counsel of record for each party, and to each party not represented by counsel, pursuant to present law relative to notice of a civil judgment.

Present law provides that after mailing notice of the signing of the judgment of bond forfeiture, the district attorney must cause the judgment to be recorded in every parish in which the recordation may be proper, and every such recordation is without cost and operates as a judicial mortgage against the defendant and all his sureties.

Proposed law changes the recordation provision in present law from mandatory to discretionary but otherwise retains present law.

Present law provides detailed procedures for satisfaction and enforcement of a bond forfeiture judgment.

Proposed law deletes present law and provides that after the delay for filing a suspensive appeal has elapsed, the prosecuting attorney may file a rule to show cause with the commissioner of insurance in accordance with present law relative to failure to timely satisfy a claim under a criminal bond contract, or may collect the judgment in the same manner as a civil judgment.

Present law provides a procedure for appealing a judgment of bond forfeiture.

Proposed law deletes present law and provides that the rights of appeal of a bond forfeiture judgment are governed by present law relative to civil appeals.

Present law provides relative to a failure to timely satisfy a claim under a criminal bond contract.

Proposed law essentially retains present law but changes the trigger date for present law procedures from 6/22/93 to 1/15/15 relative to bond forfeiture judgment dates and the date after which a defendant fails to appear.

Present law provides relative to proof and procedures at a bond forfeiture hearing.

Proposed law retains present law and adds that a surety company may use evidence not contained in the record to show that it did not receive notice of the signing of the judgment of bond forfeiture.

Effective January 1, 2015.

(Amends C.Cr.P. Art. 311, 322(A) and (C), 345, 349, 349.1, 349.2, 349.3, 349.4, 349.5, 349.6, 349.7, 349.8, and 349.9, R.S. 15:85, and R.S. 22:1441(A), (C)(2), and (D))