

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1251

By: Leewright

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5
6 AS INTRODUCED

7 An Act relating to bail bonds; amending 59 O.S. 2011,
8 Sections 1327, as last amended by Section 2, Chapter
9 16, O.S.L. 2016, and 1332, as last amended by Section
10 5, Chapter 161, O.S.L. 2017 (59 O.S. Supp. 2017,
11 Sections 1327 and 1332), which relate to exoneration
12 of bond and forfeiture; modifying placement of
13 certain exoneration requirement; requiring
14 exoneration of bond under certain circumstances;
15 requiring credit for certain premiums paid; and
16 providing an effective date.

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

18 SECTION 1. AMENDATORY 59 O.S. 2011, Section 1327, as
19 last amended by Section 2, Chapter 16, O.S.L. 2016 (59 O.S. Supp.
20 2017, Section 1327), is amended to read as follows:

21 Section 1327. A. At any time before there has been a breach of
22 the undertaking in any type of bail provided herein, the surety or
23 bondsman or a licensed bail enforcer pursuant to a client contract
24 authorized by the Bail Enforcement and Licensing Act may surrender
the defendant, or the defendant may surrender himself or herself, to
the official to whose custody the defendant was committed at the
time bail was taken, or to the official into whose custody the

1 defendant would have been given had he or she been committed. The
2 defendant may be surrendered without the return of premium for the
3 bond if he or she has been guilty of nonpayment of premium, changes
4 address without notifying his or her bondsman, conceals himself or
5 herself, leaves the jurisdiction of the court without the permission
6 of his or her bondsman, or violates his or her contract with the
7 bondsman in any way that does harm to the bondsman, or the surety,
8 or violates his or her obligation to the court. When a bondsman or
9 surety, or a licensed bail enforcer, surrenders a defendant pursuant
10 to this subsection, the bondsman or surety shall file written
11 notification of the surrender. After surrender, and upon filing of
12 written notification of the surrender, the bond shall be exonerated
13 and the clerk shall enter a minute in the case exonerating the bond.

14 B. If the defendant has been placed in custody of another
15 jurisdiction, the district attorney shall direct a hold order to the
16 official, judge or law enforcement agency where the defendant is in
17 custody. All reasonable expenses accrued in returning the defendant
18 to the original court shall be borne by the bondsman who posted the
19 bond with that court. Upon application, the bond in the original
20 court shall be exonerated when the hold order is placed and upon
21 proof of payment of expenses by the bondsman.

22 C. If the defendant has been arrested on new charges and is in
23 the custody of the same jurisdiction in which the bondsman or surety
24 has posted an appearance bond or bonds for the defendant, and the

1 bond or bonds have not been exonerated, and certified copies of
2 bonds are not reasonably available, the bondsman or surety may
3 recommit the defendant to be held in custody on the charges for
4 which the bondsman or surety has previously posted appearance bonds
5 thereon, in accordance with the following procedure:

6 1. On a Recommitment of Defendant by Bondsman form approved by
7 the Administrative Office of the Courts, the bondsman or surety
8 shall personally affix his or her signature to an affidavit
9 attesting to the following:

10 a. the defendant is presently in the custody of the
11 jurisdiction in which the bondsman or surety has
12 posted a bond or bonds,

13 b. the case number, if any, assigned to each bond,

14 c. that the bond or bonds have not been exonerated, and

15 d. the specific charges and bond amount or amounts;

16 2. The bondsman or surety shall present the Recommitment of
17 Defendant by Bondsman form to the official in whose custody the
18 defendant is being held, and the official shall detain the defendant
19 in his or her custody, thereon, as upon a commitment, and by a
20 certificate in writing acknowledging the surrender; and

21 3. When a bondsman or surety recommits a defendant pursuant to
22 this subsection, the bondsman or surety shall file a written
23 notification thereof to the court, and after such notification, the

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1 bond or bonds shall be exonerated, and the clerk shall enter a
2 minute in the case exonerating the bond or bonds.

3 D. When a defendant does appear before the court as required by
4 law and enters a plea of guilty or nolo contendere, is sentenced or
5 a deferred sentence is granted as provided for in Section 991c of
6 Title 22 of the Oklahoma Statutes, or deferred prosecution is
7 granted as provided by law, in such event the undertaking and
8 bondsman and insurer shall be exonerated from further liability.

9 E. The bond shall be exonerated by operation of law in any case
10 in which the defendant has been arrested on new charges in the same
11 jurisdiction in which the bondsman or insurer has posted the
12 appearance bond or bonds for the defendant, and the defendant has
13 been subsequently released on his or her own personal recognizance.

14 F. The bond shall be exonerated by operation of law in any case
15 in which there is an added charge to a case that would result in a
16 higher fine or longer term of sentence if convicted, or an amendment
17 to a charge that would result in a higher fine or longer term of
18 sentence if convicted; provided, however, any premium paid by the
19 defendant to the bondsman or insurer from the original charge shall
20 be credited to the defendant if the same bondsman or insurer posts
21 the appearance bond or bonds on the added or amended charge.

22 SECTION 2. AMENDATORY 59 O.S. 2011, Section 1332, as
23 last amended by Section 5, Chapter 161, O.S.L. 2017 (59 O.S. Supp.
24 2017, Section 1332), is amended to read as follows:

1 Section 1332. A. If there is a breach of an undertaking, the
2 court before which the cause is pending shall issue, within ten (10)
3 days, an arrest warrant for the defendant and declare the
4 undertaking and any money, property, or securities that have been
5 deposited as bail, forfeited on the day the defendant failed to
6 appear. Within fifteen (15) days from the date of the forfeiture,
7 the order and judgment of forfeiture shall be filed with the clerk
8 of the trial court. Failure to timely issue the arrest warrant or
9 file the order and judgment of forfeiture as provided in this
10 subsection shall exonerate the bond by operation of law. In the
11 event of the forfeiture of a bail bond the clerk of the trial court
12 shall, within thirty (30) days after the order and judgment of
13 forfeiture is filed in the court, by mail with return receipt
14 requested, mail a true and correct copy of the order and judgment of
15 forfeiture to the bondsman, and if applicable, the insurer, whose
16 risk it is, and keep at least one copy of the order and judgment of
17 forfeiture on file; provided, the clerk shall not be required to
18 mail the order and judgment of forfeiture to the bondsman or insurer
19 if, within fifteen (15) days from the date of forfeiture, the
20 defendant is returned to custody, the bond is reinstated by the
21 court with the bondsman's approval, or the order of forfeiture is
22 vacated or set aside by the court. Failure of the clerk of the
23 trial court to comply with the thirty-day notice provision in this
24 subsection shall exonerate the bond by operation of law.

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

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

7 2. The bondsman may contract with a licensed bail enforcer
8 pursuant to the Bail Enforcement and Licensing Act to recover and
9 return the defendant to custody within the ninety-day period, or as
10 agreed, or notwithstanding the Bail Enforcement and Licensing Act if
11 the bondsman is duly appointed in this state by an insurer operating
12 in this state, the bondsman may seek the assistance of another
13 licensed bondsman in this state who is appointed by the same
14 insurer.

15 3. When the court record indicates that the defendant is
16 returned to custody in the jurisdiction where forfeiture occurred,
17 within the ninety-day period, the court clerk shall enter minutes
18 vacating the forfeiture and exonerating the bond. If the defendant
19 has been timely returned to custody, but this fact is not reflected
20 by the court record, the court shall vacate the forfeiture and
21 exonerate the bond.

22 4. For the purposes of this section, "return to custody" means:
23 a. the return of the defendant to the appropriate
24 Oklahoma law enforcement agency by the bondsman,

- 1 b. an appearance of the defendant in open court in the
2 court where charged,
- 3 c. arrest or incarceration within this state of the
4 defendant by law enforcement personnel, provided the
5 bondsman has requested that a hold be placed on the
6 defendant in the jurisdiction wherein the forfeiture
7 lies and has guaranteed reasonable travel expenses for
8 the return of the defendant, or
- 9 d. arrest or incarceration of the defendant in any other
10 jurisdiction, provided the bondsman has requested that
11 a hold be placed on the defendant in the jurisdiction
12 wherein the forfeiture lies and has guaranteed
13 reasonable travel expenses for the return of the
14 defendant.

15 5. In addition to the provisions set forth in paragraphs 3 and
16 4 of this subsection, the bond shall be exonerated by operation of
17 law in any case in which:

- 18 a. the bondsman has requested in writing of the sheriff's
19 department in the county where the forfeiture occurred
20 that the defendant be entered into the computerized
21 records of the National Crime Information Center, and
22 the request has not been honored within fourteen (14)
23 business days of the receipt of the written request by
24 the department,

1 b. the defendant has been arrested outside of this state
2 and the court record shows the prosecuting attorney
3 has declined to proceed with extradition, or

4 c. the warrant issued by the court has not been entered
5 into an active warrant database available to law
6 enforcement within five (5) business days after its
7 issued date, ~~or~~

8 ~~d. the defendant has been arrested on new charges in the
9 same jurisdiction in which the bondsman or insurer has
10 posted the appearance bond or bonds for the defendant,
11 and the defendant has been subsequently released on
12 his or her own personal recognizance.~~

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

16 a. the defendant's failure to appear, or

17 b. the bondsman's failure to return the defendant to
18 custody within ninety (90) days.

19 D. 1. If, within ninety (90) days from receipt of the order
20 and judgment of forfeiture from the court clerk, or mailing of the
21 notice if no receipt is made, the defendant is not returned to
22 custody, or the forfeiture has not been stayed, the bondsman and, if
23 applicable, the insurer whose risk it is shall deposit cash or other
24 valuable securities in the face amount of the bond with the court

1 clerk ninety-one (91) days from receipt of the order and judgment of
2 forfeiture from the court clerk, or mailing of the notice if no
3 receipt is made; provided, this provision shall not apply if the
4 defendant has been returned to custody within the ninety-day period
5 and the court has failed to vacate the forfeiture pursuant to
6 paragraphs 3 through 6 of subsection C of this section.

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

19 3. If the additional cash or securities are not deposited with
20 the court clerk on or before the ninety-first day after the date of
21 service of the order and judgment of forfeiture from the court
22 clerk, or mailing of the notice if no receipt is made, then the
23 court clerk shall notify the Insurance Commissioner by sending a
24 certified copy of the order and judgment of forfeiture and proof

1 that the bondsman and, if applicable, the insurer have been notified
2 by mail with return receipt requested.

3 4. The Insurance Commissioner shall:

4 a. in the case of a surety bondsman, immediately cancel
5 the license privilege and authorization of the insurer
6 to do business within the State of Oklahoma and cancel
7 the appointment of all surety bondsman agents of the
8 insurer who are licensed by Section 1301 et seq. of
9 this title, and

10 b. in the case of a professional bondsman, withdraw the
11 face amount of the forfeiture from the deposit
12 provided in Section 1306 of this title. The
13 Commissioner shall then immediately direct the
14 professional bondsman, by mail with return receipt
15 requested, to make additional deposits to bring the
16 original deposit to the required level. Should the
17 professional bondsman, after being notified, fail to
18 make an additional deposit within ten (10) days from
19 the receipt of notice, or mailing of notice if no
20 receipt is made, the license shall be revoked and all
21 sums presently on deposit shall be held by the
22 Commissioner to secure the face amounts of bonds
23 outstanding. Upon release of the bonds, any amount of
24 deposit in excess of the bonds shall be returned to

1 the bondsman; provided, the bail bondsman shall have
2 had notice as required by the court, at the place of
3 the bondsman's business, of the trial or hearing of
4 the defendant named in the bond. The notice shall
5 have been at least ten (10) days before the required
6 appearance of the defendant, unless the appearance is
7 scheduled at the time of execution of the bond.
8 Notwithstanding the foregoing, the bondsman shall be
9 deemed to have had notice of the trial or hearing if
10 the defendant named in the bond shall have been
11 recognized back in open court to appear at a date
12 certain for the trial or hearing.

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

23 E. 1. If the defendant's failure to appear was the result of
24 the defendant's death or of being in the custody of a court other

1 than the court in which the appearance was scheduled, forfeiture
2 shall not lie. Upon proof to the court that the bondsman paid the
3 order and judgment of forfeiture without knowledge that the
4 defendant was deceased or in custody of another court on the day the
5 defendant was due to appear, and all expenses for the defendant's
6 return have been paid by the bondsman, the bondsman's property shall
7 be returned.

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

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

21 G. The above procedures shall be subject to the bondsman's
22 rights of appeal. The bondsman or insurer may appeal an order and
23 judgment of forfeiture pursuant to the procedures for appeal set
24 forth in Section 951 et seq. of Title 12 of the Oklahoma Statutes.

1 To stay the execution of the order and judgment of forfeiture, the
2 bondsman or insurer shall comply with the provisions set forth in
3 Section 990.4 of Title 12 of the Oklahoma Statutes.

4 H. For municipal courts of record, the above procedures are
5 criminal in nature and ancillary to the criminal procedures before
6 the trial court and shall be subject to the bondsman's right of
7 appeal. The bondsman or insurer may appeal an order and judgment of
8 forfeiture by the municipal courts of record to the Court of
9 Criminal Appeals.

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

17 SECTION 3. This act shall become effective November 1, 2018.

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