

BAIL BOND AGENTS AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of the Bail Bond Act and the Utah Code of Criminal Procedure regarding bail bonds.

Highlighted Provisions:

This bill:

- ▶ defines a bail bond surety, agency, or organization;
- ▶ requires all principals to have a minimum of 2,000 hours of experience;
- ▶ modifies provisions regarding a pledge of real property;
- ▶ requires a licensee to attend at least one board meeting during the year;
- ▶ requires the Insurance Department to provide quarterly reports on the balance in the restricted account, Bail Bond Surety Administration Account;
- ▶ removes references to a bail recovery agent;
- ▶ removes a provision stating that the acts of any bail bond producer, enforcement agent, recovery agent, or recovery apprentice are considered to be the acts or conduct of the bail bond producer for which the bail enforcement agent is acting as agent;
- ▶ modifies terms for the management and records regarding cash and merchandise collateral;
- ▶ specifies the records a bail bond surety or agency shall maintain on current and closed accounts receivable regarding financed premiums;



- 28 ▶ provides that the premium on an original bond, regarding which the court later
- 29 increases the bail, may be applied to the new premium amount as specified;
- 30 ▶ provides that a bail bond producer may not submit a bail bond without a specified
- 31 signed agreement;
- 32 ▶ provides that unless a defendant has failed to appear on an original charge or the
- 33 defendant is subject to exceptions, the defendant is entitled to bondable bail, which
- 34 may not be less than the bail schedule, and may be more, and provides that the bail
- 35 is to guarantee appearance only;
- 36 ▶ requires at the time of booking that the arresting law enforcement agency exercise
- 37 due diligence to determine the arrested person's immigration status, record its
- 38 findings, and advise the entity undertaking a written surety contract;
- 39 ▶ deletes a provision requiring that a bond shall be exonerated when the sentence
- 40 includes commitment to jail or prison and the defendant appears at the incarceration
- 41 facility, unless the judge does not require the sentence to begin within seven days;
- 42 ▶ modifies the liability of the surety for the undertaking if the bond is issued after
- 43 sentencing;
- 44 ▶ provides that if a bail undertaking was posted for the original release of the
- 45 defendant, the court must obtain approval from the surety if the bond is to be
- 46 continued and the defendant not detained;
- 47 ▶ reduces the number of days within which a court is required to issue a bench
- 48 warrant and when a prosecutor may mail a notice of nonappearance after a
- 49 defendant's failure to appear;
- 50 ▶ requires a bench warrant to be entered with the National Crime Information Center;
- 51 ▶ modifies the requirements regarding proof a surety must provide in order for the
- 52 court to exonerate a bond;
- 53 ▶ provides that a bond shall be exonerated if the bench warrant is not entered on the
- 54 statewide warrant system or a felony offense is not entered with the National Crime
- 55 Information Center;
- 56 ▶ provides that the court shall exonerate a bond without requiring a motion when a
- 57 person is booked in for a failure to appear or the court recalls the warrant in
- 58 specified circumstances;

- 59 ▶ removes provisions requiring the surety to make reasonable efforts to determine if
- 60 the defendant is in the United States legally;
- 61 ▶ provides that a surety may file up to five aggregate statewide motions for
- 62 exoneration per calendar year if the surety does not deliver the defendant to court;
- 63 and
- 64 ▶ requires the court to provide to the bail bond surety its grounds for denying an
- 65 extension of the six-month period for bringing a defendant to court.

66 **Money Appropriated in this Bill:**

67 None

68 **Other Special Clauses:**

69 None

70 **Utah Code Sections Affected:**

71 AMENDS:

- 72 **31A-35-102**, as last amended by Laws of Utah 2003, Chapter 298
- 73 **31A-35-401.5**, as last amended by Laws of Utah 2012, Chapter 253
- 74 **31A-35-404**, as last amended by Laws of Utah 2000, Chapter 259
- 75 **31A-35-406**, as last amended by Laws of Utah 2011, Chapter 284
- 76 **31A-35-407**, as enacted by Laws of Utah 1998, Chapter 293
- 77 **31A-35-601**, as last amended by Laws of Utah 2003, Chapter 298
- 78 **31A-35-603**, as last amended by Laws of Utah 2003, Chapter 298
- 79 **31A-35-608**, as last amended by Laws of Utah 2003, Chapter 298
- 80 **31A-35-701**, as last amended by Laws of Utah 2004, Chapter 274
- 81 **77-20-1**, as last amended by Laws of Utah 2013, Chapter 240
- 82 **77-20-7**, as last amended by Laws of Utah 2011, Chapter 179
- 83 **77-20-8**, as last amended by Laws of Utah 1988, Chapter 160
- 84 **77-20b-101**, as last amended by Laws of Utah 2011, Chapter 179
- 85 **77-20b-102**, as last amended by Laws of Utah 2000, Chapter 259
- 86 **77-20b-104**, as last amended by Laws of Utah 2006, Chapter 332
- 87 **77-20b-105**, as enacted by Laws of Utah 2006, Chapter 332



88
89 *Be it enacted by the Legislature of the state of Utah:*

90 Section 1. Section 31A-35-102 is amended to read:

91 **31A-35-102. Definitions.**

92 As used in this chapter:

93 (1) "Bail bond" means a bond for a specified monetary amount that is:

94 (a) executed by a bail bond producer licensed in accordance with Section 31A-35-401;

95 and

96 (b) issued to a court, magistrate, or authorized officer as security for the subsequent
97 court appearance of the defendant upon the defendant's release from actual custody pending the
98 appearance.

99 (2) "Bail bond producer" means an individual who:

100 (a) is appointed by:

101 (i) a surety insurer that issues bail bonds; or

102 (ii) a bail bond surety company licensed under this chapter;

103 (b) is appointed to execute or countersign undertakings of bail in connection with
104 judicial proceedings; and

105 (c) receives or is promised money or other things of value for engaging in an act
106 described in Subsection (2)(b).

107 (3) "Bail bond surety" means a person that:

108 (a) (i) is a bail bond surety company licensed under this chapter; or

109 (ii) a surety insurer; and

110 (b) issues bonds to secure:

111 (i) the release of a person from incarceration; and

112 (ii) the appearance of that person at court hearings.

113 (4) "Bail bond surety," "agency," or "organization" means a surety, agency, or
114 organization that sells bail bond insurance and that is licensed under Title 31A, Chapter 35,
115 Bail Bond Act.

116 [~~4~~] (5) "Bail bond surety company" means any sole proprietor or entity who:

117 (a) (i) is the agent of a surety insurer that issues a bail bond in connection with judicial
118 proceedings;

119 (ii) pledges the assets of a letter of credit from a Utah depository institution for a bail
120 bond in connection with judicial proceedings; or

121 (iii) pledges personal or real property, or both, as security for a bail bond in connection
 122 with judicial proceedings; and

123 (b) receives or is promised money or other things of value for a service described in
 124 Subsection [~~(4)~~] (5)(a).

125 [~~(5)~~] (6) "Bail enforcement agent" means an individual who:

126 (a) is employed or contracted with to:

127 (i) enforce the terms and conditions of a defendant's release on bail in a civil or
 128 criminal proceeding;

129 (ii) apprehend a defendant or surrender a defendant to custody; or

130 (iii) act under both Subsections [~~(5)~~] (6)(a)(i) and (ii); and

131 (b) receives or is promised money or other things of value for the services described in
 132 Subsection [~~(5)~~] (6)(a).

133 [~~(6)~~] (7) "Board" means the Bail Bond Surety Oversight Board created in Section
 134 [31A-35-201](#).

135 [~~(7)~~] (8) "Certificate" means a certificate of authority issued under this chapter to allow
 136 an insurer to operate as a surety insurer.

137 [~~(8)~~] (9) "Indemnitor" means an entity or natural person who enters into an agreement
 138 with a bail bond surety to hold the bail bond surety harmless from loss incurred as a result of
 139 executing a bail bond.

140 [~~(9)~~] (10) "Liquid assets" means financial holdings that can be converted into cash in a
 141 timely manner without the loss of principal.

142 [~~(10)~~] (11) "Principal" means an individual or corporation:

143 (a) whose performance is guaranteed by bond[-]; or

144 (b) who owns not less than 10% of the bail bond agency.

145 [~~(11)~~] (12) "Surety insurer" means an insurer that:

146 (a) is licensed under Chapter 4, 5, or 14;

147 (b) receives a certificate under this title; and

148 (c) issues bail bonds.

149 [~~(12)~~] (13) "Utah depository institution" is a depository institution, as defined in
 150 Section [7-1-103](#), that:

151 (a) has Utah as its home state; or

152 (b) operates a branch in Utah.

153 (14) "Workforce services exemption" means a bail bond agency whose insurance
154 agents are paid solely by commission on sales.

155 Section 2. Section **31A-35-401.5** is amended to read:

156 **31A-35-401.5. Additional licensure requirements for a bail bond surety company.**

157 (1) A person applying for licensure or the reinstatement of a license
158 as a bail bond surety or agency for the first time shall, in addition to the requirements of
159 Section **31A-35-401**, provide proof that [~~at least one principal~~] each principal of the bail bond
160 surety or agency will have a minimum of 2,000 hours of experience working as an employee of
161 a bail bond surety or agency company as a licensed bail bond agent.

162 (2) The applicant shall provide proof of the experience claimed under Subsection (1),
163 including providing:

164 (a) the exact details of the character and nature of the experience on a form provided by
165 the department;

166 (b) a statement by each employer verifying the number of hours the applicant worked
167 for the employer; and

168 (c) (i) federal income reporting forms that account for the wages for hours claimed or
169 documented approval of the claimed hours by the insurance commissioner; and

170 (ii) the total of 2,000 hours may be proved in part by federal income reporting forms
171 and in part by approval by the insurance commissioner.

172 (3) The burden of proving the hours of experience as required in this section is upon
173 the applicant.

174 Section 3. Section **31A-35-404** is amended to read:

175 **31A-35-404. Minimum financial requirements for bail bond surety company**
176 **license.**

177 (1) (a) A bail bond surety company that pledges the assets of a letter of credit from a
178 Utah depository institution in connection with a judicial proceeding shall maintain an
179 irrevocable letter of credit with a minimum face value of \$300,000 assigned to the state from a
180 Utah depository institution.

181 (b) Notwithstanding Subsection (1)(a), a bail bond surety company described in
182 Subsection (1)(a) that is licensed under this chapter as of December 31, 1999, shall maintain an

183 irrevocable letter of credit with a minimum face value of \$250,000 assigned to the state from a
184 Utah depository institution.

185 (2) (a) A bail bond surety company that pledges personal or real property, or both, as
186 security for a bail bond in connection with a judicial proceeding shall maintain:

187 (i) (A) a current financial statement:

188 (I) reviewed by a certified public accountant; and

189 (II) showing a net worth of at least \$300,000, at least \$100,000 of which is in liquid
190 assets; or

191 (B) notwithstanding Subsection (2)(a)(i), if the bail bond surety company is licensed
192 under this chapter as of December 31, 1999, a current financial statement:

193 (I) reviewed by a certified public accountant; and

194 (II) showing a net worth of at least \$250,000, at least \$50,000 of which is in liquid
195 assets;

196 (ii) a copy of the applicant's federal income tax return for the preceding two years, but
197 only for an original application; and

198 (iii) for each parcel of real property owned by the applicant and included in net worth
199 calculations:

200 (A) a title letter[; ~~and~~] or report, or a current abstract of title from the office of the
201 county recorder;

202 [~~(B) an appraisal dated not more than two years prior to the date of application.~~]

203 (B) a certified appraisal report made fewer than six months prior to licensure for each
204 parcel and a title report that is current as of the date of licensure, if the bail bond surety or
205 agency is in its first year of licensure and has pledged real property owned by the applicant; and

206 (C) a certified appraisal report or a current tax notice and title letter or report, or a
207 current abstract of title from the county recorder if the bail bond surety or agency is in its
208 second or subsequent year of licensure and has pledged real property owned by the applicant.

209 (b) For purposes of this Subsection (2), only real or personal property located in Utah
210 may be included in the net worth of the bail bond surety company.

211 (3) A bail bond surety company shall maintain a qualifying power of attorney issued by
212 a surety insurer:

213 (a) if the bail bond surety company is the agent of the surety insurer; and

214 (b) the surety insurer:
215 (i) issues bail bonds;
216 (ii) is in good standing in its state of domicile; and
217 (iii) is granted a certificate to write bail bonds in Utah.
218 (4) The commissioner may revoke the license of a bail bond surety or agency company
219 that fails to maintain the minimum financial requirements required under this section.

220 (5) The commissioner may set by rule the limits on the aggregate amounts of bail
221 bonds issued by a bail bond surety company.

222 Section 4. Section 31A-35-406 is amended to read:

223 **31A-35-406. Renewal and reinstatement.**

224 (1) (a) A license under this chapter expires annually on August 14. To renew its
225 license under this chapter, on or before July 15 a bail bond surety company shall:

- 226 (i) complete and submit a renewal application to the department; ~~[and]~~
227 (ii) submit to the department written proof that a principal has attended at least one
228 board meeting during the prior year; and

229 ~~[(ii)]~~ (iii) pay the department the applicable renewal fee established in accordance with
230 Section 31A-3-103.

231 (b) A bail bond surety company shall renew its license under this chapter annually as
232 established by department rule, regardless of when the license is issued.

233 (2) A bail bond surety company may apply for reinstatement of an expired bail bond
234 surety company license within one year following the expiration of the license under
235 Subsection (1) by:

- 236 (a) submitting the renewal application required by Subsection (1); and
237 (b) paying a license reinstatement fee established in accordance with Section
238 31A-3-103.

239 (3) If a bail bond surety company license has been expired for more than one year, the
240 person applying for reinstatement of the bail bond surety license shall:

- 241 (a) submit a new application form to the commissioner; and
242 (b) pay the application fee established in accordance with Section 31A-3-103.

243 (4) If a bail bond surety company license is suspended, the applicant may not submit an
244 application for a bail bond surety company license until after the end of the period of

245 suspension.

246 (5) A fee collected under this section shall be deposited in the restricted account
247 created in Section [31A-35-407](#).

248 Section 5. Section **31A-35-407** is amended to read:

249 **31A-35-407. Restricted account.**

250 (1) There is created within the General Fund a restricted account known as the "Bail
251 Bond Surety Administration Account."

252 (2) (a) The account shall be funded from the fees imposed under this chapter.

253 (b) The department shall deposit all fees collected under this part in the account.

254 (c) The funds in the account shall be used by the department to administer this chapter.

255 (d) The account shall earn interest, which shall be deposited in the account.

256 (3) The department shall at the end of each quarter provide to the voting members of
257 the board a written and itemized accounting that includes the balances at the beginning and end
258 of the quarter.

259 Section 6. Section **31A-35-601** is amended to read:

260 **31A-35-601. Acts of producer.**

261 [~~(1) As used in this section:~~]

262 [~~(a) "Bail recovery agent" means an individual employed by a bail enforcement agent~~
263 ~~to assist the bail enforcement agent regarding civil or criminal defendants released on bail by:]~~

264 [~~(i) presenting a defendant for required court appearances;~~]

265 [~~(ii) apprehending or surrendering a defendant to a court; or]~~

266 [~~(iii) keeping the defendant under necessary surveillance.]~~

267 [~~(b) "Bail recovery apprentice" means an individual who:~~]

268 [~~(i) is employed by a bail enforcement agent; and]~~

269 [~~(ii) works under the direct supervision of that bail enforcement agent or under the~~
270 ~~direct supervision of a bail recovery agent employed also by the bail enforcement agent, unless~~
271 ~~the bail recovery apprentice is conducting activities at the direction of the employing bail~~
272 ~~enforcement agent that do not require direct supervision.]~~

273 [(2)] The acts or conduct of any bail bond producer [~~or bail enforcement agent, bail~~
274 ~~recovery agent, or bail recovery apprentice] who acts within the scope of the authority~~
275 ~~delegated to [him] the bail bond producer by the bail bond surety, are considered to be the acts~~

276 or conduct of the bail bond surety [~~for which the bail bond producer or bail bond enforcement~~
277 ~~agent, bail recovery agent, or bail recovery apprentice is acting as agent~~]. Bail bond sureties,
278 agencies, or organizations are not liable for the actions of bail enforcement agents, bail
279 recovery enforcement agents, or bail recovery apprentices.

280 [~~(3) The acts or conduct of any bail bond producer or bail enforcement agent, bail~~
281 ~~recovery agent, or bail recovery apprentice who acts within the scope of the authority delegated~~
282 ~~to him by the bail bond producer are considered to be the acts or conduct of the bail bond~~
283 ~~producer for which the bail enforcement agent is acting as agent.~~]

284 Section 7. Section **31A-35-603** is amended to read:

285 **31A-35-603. Collateral security.**

286 (1) A bail bond producer may accept collateral security in connection with a bail
287 transaction, if the collateral security is reasonable in relation to the face amount of the bail
288 bond.

289 (2) (a) The collateral security described in Subsection (1) shall be received by the bail
290 bond producer in the bail bond producer's fiduciary capacity.

291 (b) Before any judgment of forfeiture of bail, the bail bond producer shall keep the
292 collateral separate and apart from any other funds or assets of the licensee.

293 (c) All cash collateral shall be recorded into the bail bond surety's trust account within
294 five business days of receipt.

295 (d) All merchandise collateral shall be recorded into the bail bond surety's merchandise
296 log within five business days of receipt.

297 (3) (a) Any collateral that is deposited with a bail bond producer or bail bond surety
298 shall be returned to the person who deposited it within 10 days after the return is requested by
299 the person who deposited it if:

300 (i) the bail bond has been exonerated; and

301 (ii) all fees owed to the bail bond producer or bail bond surety have been paid.

302 (b) A certified copy of the minute order from the court stating the bail or undertaking
303 was ordered exonerated is prima facie evidence of exoneration or termination of liability.

304 (4) (a) If a bail bond producer accepts collateral, the bail bond producer shall give a
305 written receipt for the collateral.

306 (b) The receipt required by Subsection (4)(a) shall include a fully detailed account of

307 the collateral received.

308 (5) Upon return of collateral to the person who posted it, if any amount has been
309 deducted by the bail bond surety or bail bond producer as expense, the bail bond surety or bail
310 bond producer shall:

311 (a) include with the returned collateral an itemized statement of all expenses deducted
312 from the collateral; and

313 (b) maintain a copy of the statement required by Subsection (5)(a) in the records of the
314 bail bond surety or bail bond producer.

315 (6) If the bail bond secured by the collateral is forfeited and the bail bond producer or
316 bail bond surety retains possession of the collateral in payment of the forfeiture or otherwise
317 disposes of the collateral, the person retaining possession or disposing of the property shall
318 maintain a written record of the collateral, including any disposition.

319 (7) (a) If a document that conveys title to real property is used as collateral in a bail
320 bond transaction, the document shall state on its face that it is executed as part of a security
321 transaction.

322 (b) If the document described in Subsection (7)(a) is recorded, the bail bond producer
323 or the bail bond surety shall:

324 (i) execute a reconveyance of the property, executed so that the reconveyance can be
325 recorded; and

326 (ii) promptly deliver the reconveyance document to:

327 (A) the person executing the original conveyance; or

328 (B) the heirs, legal representative, or successor in interest of the person described in
329 Subsection (7)(b)(ii)(A).

330 (8) The bail bond surety shall maintain an itemized list of all merchandise collateral.

331 The list shall include the following information:

332 (a) the date of the bond;

333 (b) the full name of the defendant;

334 (c) the full name of each cosigner;

335 (d) a detailed description of the collateral;

336 (e) the amount of bail;

337 (f) the approximate value of the merchandise;

338 (g) a description of how the merchandise is being stored; and

339 (h) the final disposition of the merchandise.

340 Section 8. Section **31A-35-608** is amended to read:

341 **31A-35-608. Premiums and authorized charges.**

342 (1) A bail bond surety or bail bond producer may not, in any bail transaction or in
343 connection with that transaction, directly or indirectly, charge or collect money or other
344 valuable consideration from any person except to:

345 (a) pay the premium on the bail at the rates established by the bail bond surety;

346 (b) provide collateral;

347 (c) reimburse himself for actual expenses, as described in Subsection (2), incurred in
348 connection with the bail bond transaction; or

349 (d) to reimburse himself, or to establish a right of action against the principal or any
350 indemnitor, for actual expenses the bail bond surety or bail bond producer incurred:

351 (i) in good faith; and

352 (ii) which were by reason of breach by the defendant of any of the terms of the written
353 agreement under which the undertaking of bail or bail bond was written.

354 (2) (a) A bail bond surety may bring an action in a court of law to enforce its equitable
355 rights against the principal and the principal's indemnitors in exoneration if:

356 (i) a bail bond producer did not establish a written agreement; or

357 (ii) there is only an incomplete writing.

358 (b) Reimbursement claimed under this Subsection (2) may not exceed the sum of:

359 (i) the principal sum of the bail bond or undertaking; and

360 (ii) any reasonable expenses that:

361 (A) are verified by receipt;

362 (B) in total do not amount to more than the principal sum of the bail bond or
363 undertaking; and

364 (C) are incurred in good faith by the bail bond surety, its producers, and employees by
365 reason of the principal's breach.

366 (3) This section does not affect or impede the right of a bail bond producer to execute
367 undertaking of bail on behalf of a nonresident producer of the bail bond surety the bail bond
368 producer represents.

369 (4) A bail bond surety or agency shall maintain complete records of all current and
370 closed accounts receivable regarding financed premiums by providing the following
371 information:

- 372 (a) the date of bond;
- 373 (b) the total amount of bail;
- 374 (c) the defendant's name;
- 375 (d) any cosigner's name;
- 376 (e) the premium amount financed;
- 377 (f) the dates of all payments made and the amounts; and
- 378 (g) the current balance owed.

379 (5) The premium charged on an original bond regarding which the court subsequently
380 increases the bail without adding additional charges may be applied to the new premium
381 amount when the new bond replaces the original bond.

382 Section 9. Section **31A-35-701** is amended to read:

383 **31A-35-701. Prohibited acts.**

384 (1) A bail bond producer or bail bond surety may not:

385 (a) solicit business in or about:

386 (i) any place where persons in the custody of the state or any local law enforcement or
387 correctional agency are confined; or

388 (ii) any court;

389 (b) pay a fee or rebate or give or promise anything of value to any person in order to
390 secure a settlement, compromise, remission, or reduction of the amount of any undertaking or
391 bail bond;

392 (c) pay a fee or rebate or give anything of value to an attorney in regard to any bail
393 bond matter, except payment for legal services actually rendered for the bail bond producer or
394 bail bond surety;

395 (d) pay a fee or rebate or give or promise anything of value to the principal or anyone
396 in the principal's behalf; or

397 (e) engage in any other act prohibited by the commissioner by rule.

398 (2) The following persons may not act as bail bond producers and may not, directly or
399 indirectly, receive any benefits from the execution of any bail bond:

400 (a) a person employed at any jail, correctional facility, or other facility used for the
401 incarceration of persons;

402 (b) a peace officer;

403 (c) a judge; and

404 (d) a trusty or prisoner incarcerated in any jail, correctional facility, or other facility
405 used for the incarceration of persons.

406 (3) A bail bond producer may not:

407 (a) sign or countersign in blank any bail bond; ~~or~~

408 (b) give the power of attorney to, or otherwise authorize anyone to, countersign in the
409 bail bond producer's name to a bail bond~~[-];~~ or

410 (c) submit a bail bond to a jail or court in Utah without having completed an agreement
411 that:

412 (i) states the terms of the transaction;

413 (ii) is signed by the bail bond producer; and

414 (iii) is approved by the department.

415 (4) A bail bond producer may not advertise or hold himself out to be a bail bond surety.

416 (5) The following persons or members of their immediate families may not solicit
417 business on behalf of a bail bond surety or bail bond producer:

418 (a) a person employed at any jail, correctional facility, or other facility used for the
419 incarceration of persons;

420 (b) a peace officer;

421 (c) a judge; and

422 (d) a trusty or prisoner incarcerated in any jail, correctional facility, or other facility
423 used for the incarceration of persons.

424 Section 10. Section 77-20-1 is amended to read:

425 **77-20-1. Right to bail -- Denial of bail -- Immigration status -- Hearing.**

426 (1) A person charged with or arrested for a criminal offense shall be admitted to bail as
427 a matter of right, except if the person is charged with a:

428 (a) capital felony, when the court finds there is substantial evidence to support the
429 charge;

430 (b) felony committed while on probation or parole, or while free on bail awaiting trial

431 on a previous felony charge, when the court finds there is substantial evidence to support the
432 current felony charge;

433 (c) felony when there is substantial evidence to support the charge and the court finds
434 by clear and convincing evidence that the person would constitute a substantial danger to any
435 other person or to the community, or is likely to flee the jurisdiction of the court, if released on
436 bail; or

437 (d) felony when the court finds there is substantial evidence to support the charge and
438 it finds by clear and convincing evidence that the person violated a material condition of
439 release while previously on bail.

440 (2) Any person who may be admitted to bail may be released either on the person's own
441 recognizance or upon posting bail, on condition that the person appear in court for future court
442 proceedings in the case, and on any other conditions imposed in the discretion of the magistrate
443 or court that will reasonably:

444 (a) ensure the appearance of the accused;

445 (b) ensure the integrity of the court process;

446 (c) prevent direct or indirect contact with witnesses or victims by the accused, if
447 appropriate; and

448 (d) ensure the safety of the public.

449 (3) (a) The initial order denying or fixing the amount of bail shall be issued by the
450 magistrate or court issuing the warrant of arrest or by the magistrate or court presiding over the
451 accused's first judicial appearance.

452 (b) A person arrested for a violation of a jail release agreement or jail release order
453 issued pursuant to Section [77-36-2.5](#):

454 (i) may not be released before the accused's first judicial appearance; and

455 (ii) may be denied bail by the court under Subsection [77-36-2.5\(8\)](#) or (12).

456 (4) The magistrate or court may rely upon information contained in:

457 (a) the indictment or information;

458 (b) any sworn probable cause statement;

459 (c) information provided by any pretrial services agency; or

460 (d) any other reliable record or source.

461 (5) (a) Unless a defendant qualifies for an exception to bail under Subsection

462 77-20-1(1)(a), (b), (c), or (d), or the defendant has failed to appear on an original charge for
463 which a warrant has been issued, the defendant is entitled to bondable bail.

464 (b) The bail may not be in an amount less than the uniform bail schedule adopted by
465 the Judicial Council, but the bail amount may be greater than the amount in the uniform bail
466 schedule.

467 (c) The bail is for the purpose of guaranteeing appearance of the defendant.

468 [~~5~~] (6) (a) A motion to modify the initial order may be made by a party at any time
469 upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing
470 and to permit any victim to be notified and be present.

471 (b) Hearing on a motion to modify may be held in conjunction with a preliminary
472 hearing or any other pretrial hearing.

473 (c) The magistrate or court may rely on information as provided in Subsection (4) and
474 may base its ruling on evidence provided at the hearing so long as each party is provided an
475 opportunity to present additional evidence or information relevant to bail.

476 [~~6~~] (7) Subsequent motions to modify bail orders may be made only upon a showing
477 that there has been a material change in circumstances.

478 [~~7~~] (8) An appeal may be taken from an order of any court denying bail to the
479 Supreme Court, which shall review the determination under Subsection (1).

480 [~~8~~] (9) For purposes of this section, any arrest or charge for a violation of Section
481 76-5-202, Aggravated murder, is a capital felony unless:

482 (a) the prosecutor files a notice of intent to not seek the death penalty; or

483 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor
484 has not filed a notice to seek the death penalty.

485 (10) (a) At the time of booking, the arresting law enforcement agency shall exercise
486 due diligence in determining the arrested person's immigration status.

487 (b) The jail staff shall enter on the booking document the immigration status of the
488 person being booked or enter that the immigration status could not be determined.

489 (c) Information obtained by the arresting law enforcement agency regarding the booked
490 person's immigration status shall be made available to any entity undertaking a written surety
491 contract.

492 Section 11. Section 77-20-7 is amended to read:

493 **77-20-7. Duration of liability on undertaking -- Notices to sureties -- Exoneration**
494 **if charges not filed.**

495 (1) (a) Except as provided in Subsection (1)(b), the principal and the sureties on the
496 written undertaking are liable on the undertaking during all proceedings and for all court
497 appearances required of the defendant up to and including the surrender of the defendant for
498 sentencing, irrespective of any contrary provision in the undertaking. Any failure of the
499 defendant to appear when required is a breach of the conditions of the undertaking or bail and
500 subjects it to forfeiture~~[, regardless of whether or not notice of appearance was given to the~~
501 ~~sureties]~~. Upon sentencing the bond shall be exonerated without motion.

502 ~~[(b) If the sentence includes a commitment to a jail or prison, the bond shall be~~
503 ~~exonerated when the defendant appears at the appropriate jail or prison, unless the judge~~
504 ~~doesn't require the defendant to begin the commitment within seven days, in which case the~~
505 ~~bond is exonerated upon sentencing.]~~

506 ~~[(e)]~~ (b) For purposes of this section, an order of the court accepting a plea in abeyance
507 agreement and holding that plea in abeyance pursuant to Title 77, Chapter 2a, Pleas in
508 Abeyance, is considered to be the same as a sentencing upon a guilty plea.

509 ~~[(d)]~~ (c) Any suspended or deferred sentencing is not the responsibility of the surety
510 and the bond is exonerated without any motion, upon acceptance of the court and the defendant
511 of a plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred
512 sentencing reviews or any other deferred sentencing agreement.

513 ~~[(e)]~~ (d) If a surety issues a bond after the sentencing, the surety is liable on the
514 undertaking during ~~[all proceedings and for all]~~ court appearances required of the defendant up
515 to and including the defendant's initial appearance ~~[to commence serving the sentence imposed~~
516 ~~under Subsection (1)]~~ and review of resentencing.

517 (2) If no information or indictment charging a person with an offense is filed in court
518 within 120 days after the date of the bail undertaking or cash receipt, the court may relieve a
519 person from conditions of release at the person's request, and the bond or undertaking is
520 exonerated without further order of the court unless the prosecutor requests an extension of
521 time before the end of the 120-day period by:

522 (a) filing a notice for extension with the court; and

523 (b) serving the notice for extension upon the sureties and the person or his attorney.

524 (3) A court may extend bail and conditions of release for good cause.

525 (4) Subsection (2) does not prohibit the filing of charges against a person at any time.

526 (5) If the court does not set on a calendar any hearings on a case within 18 months of
527 the last court docket activity on a case, the undertaking of bail is exonerated without motion.

528 Section 12. Section **77-20-8** is amended to read:

529 **77-20-8. Grounds for detaining or releasing defendant on conviction and prior to**
530 **sentence.**

531 (1) Upon conviction, by plea or trial, the court shall order that the convicted defendant
532 who is waiting imposition or execution of sentence be detained, unless the court finds by clear
533 and convincing evidence presented by the defendant that the defendant is not likely to flee the
534 jurisdiction of the court, and will not pose a danger to the physical, psychological, or financial
535 and economic safety or well-being of any other person or the community if released.

536 (2) If the court finds the defendant does not need to be detained, the court shall order
537 the release of the defendant on suitable conditions, which may include the conditions under
538 Subsection 77-20-10(2).

539 (3) If an undertaking of bail was posted for the original release of the defendant, the
540 court shall obtain approval from the bail bond surety or its agent if the bond is to be continued
541 and the defendant is not to be detained.

542 Section 13. Section **77-20b-101** is amended to read:

543 **77-20b-101. Entry of nonappearance -- Notice to surety -- Release of surety on**
544 **failure of timely notice.**

545 (1) (a) If a defendant who has posted bail fails to appear before the appropriate court as
546 required, the court shall within [~~30~~] 10 days of the failure to appear issue a bench warrant that
547 includes the original case number.

548 (b) (i) The bench warrant shall be entered on the statewide warrant system. If the
549 offense is a felony, the offense shall also be entered with the National Crime Information
550 Center.

551 (ii) A bond shall be exonerated if the bench warrant is not entered on the statewide
552 warrant system or a felony charge is not entered with the National Crime Information Center.

553 (c) The court shall also direct that the surety be given notice of the nonappearance.

554 The clerk of the court shall:

555 [(a)] (i) mail notice of nonappearance by certified mail, return receipt requested, within
556 30 days to the address of the surety;

557 [(b)] (ii) notify the surety as listed on the bond of the name, address, and telephone
558 number of the prosecutor;

559 [(c)] (iii) deliver a copy of the notice sent under Subsection (1)[(a)](c)(i) to the
560 prosecutor's office at the same time notice is sent under Subsection (1)[(a)](c)(i); [and]

561 [(d)] (iv) ensure that the name, address, and telephone number of the surety or its agent
562 as listed on the bond is stated on the bench warrant[-]; and

563 [(e)] (v) mail notice of the failure to appear to the bail agent if the surety is different
564 than the producer's agent.

565 (2) The prosecutor [may] shall mail notice of nonappearance by certified mail, return
566 receipt requested, to the address of the surety as listed on the bond within [37] 17 days after the
567 date of the defendant's failure to appear.

568 (3) If notice of nonappearance is not mailed to a surety as listed on the bond, other than
569 the defendant, in accordance with Subsection (1) or (2), the surety and its agent are relieved of
570 further obligation under the bond if the surety's current name and address or the current name
571 and address of the surety's agent are on the bail bond in the court's file.

572 (4) (a) (i) If a defendant appears in court within seven days after a missed, scheduled
573 court appearance, the court may reinstate the bond without further notice to the bond company.

574 (ii) If the defendant, while in custody, appears on the case for which the bond was
575 posted, the court may not reinstate the bond without the consent of the bond company.

576 (b) If a defendant fails to appear within seven days after a scheduled court appearance,
577 the court may not reinstate the bond without the consent of the surety.

578 (c) If the defendant is arrested and booked into a county jail booking facility pursuant
579 to a warrant for failure to appear on the original charges [~~and the court is notified of the arrest~~],
580 or the court recalls the warrant due to the defendant's having paid the fine and prior to entry of
581 judgment of forfeiture, the court shall exonerate the bond without a motion.

582 (d) Unless the court makes a finding of good cause why the bond should not be
583 exonerated, it shall exonerate the bond if:

584 (i) the surety has delivered the defendant to the county jail booking facility in the
585 county where the original charge is pending;

586 (ii) the defendant has been released on a bond secured from a subsequent surety for the
587 original charge and the failure to appear;

588 (iii) after an arrest, the defendant has escaped from jail or has been released on the
589 defendant's own recognizance, pursuant to a pretrial release, under a court order regulating jail
590 capacity, or by a sheriff's release under Section [17-22-5.5](#);

591 (iv) the surety has transported or agreed to pay for the transportation of the defendant
592 from a location outside of the county back to the county where the original charge is pending,
593 and the payment is in an amount equal to government transportation expenses listed in Section
594 [76-3-201](#); or

595 (v) the surety demonstrates by a preponderance of the evidence that ~~[(A) at the time~~
596 ~~the surety issued the bond, it had made reasonable efforts to determine that the defendant was~~
597 ~~legally present in the United States; (B) a reasonable person would have concluded, based on~~
598 ~~the surety's determination, that the defendant was legally present in the United States; and (C)]~~
599 the surety has failed to bring the defendant before the court because the defendant is in federal
600 custody or has been deported.

601 (e) Under circumstances not otherwise provided for in this section, the court may
602 exonerate the bond if it finds that the prosecutor has been given reasonable notice of a surety's
603 motion and there is good cause for the bond to be exonerated.

604 (f) If a surety's bond has been exonerated under this section and the surety remains
605 liable for the cost of transportation of the defendant, the surety may take custody of the
606 defendant for the purpose of transporting the defendant to the jurisdiction where the charge is
607 pending.

608 Section 14. Section **77-20b-102** is amended to read:

609 **77-20b-102. Time for bringing defendant to court.**

610 (1) If notice of nonappearance has been mailed to a surety under Section [77-20b-101](#),
611 the surety may bring the defendant before the court or surrender the defendant into the custody
612 of a county sheriff within the state within six months of the date of ~~[nonappearance]~~ the
613 certified mailing under Section [77-20b-101](#), during which time a forfeiture action on the bond
614 may not be brought.

615 (2) A surety may request an extension of the six-month time period in Subsection (1),
616 if the surety within that time:

617 (a) files a motion for extension with the court; and

618 (b) mails the motion for extension and a notice of hearing on the motion to the
619 prosecutor.

620 (3) A surety, agency, or organization may file a maximum of five aggregate statewide
621 motions for exoneration per calendar year if the surety, agency, or organization does not deliver
622 the defendant to the court.

623 [~~3~~] (4) The court may extend the six-month time in Subsection (1) for not more than
624 60 days, if the surety has complied with Subsection (2) and the court finds good cause.

625 (5) If the court denies the motion for an extension, the court shall provide to the bail
626 bond surety the court's grounds for denying the extension.

627 Section 15. Section 77-20b-104 is amended to read:

628 **77-20b-104. Forfeiture of bail.**

629 (1) If a surety fails to bring the defendant before the court within the time provided in
630 Section 77-20b-102, the prosecuting attorney may request the forfeiture of the bail by:

631 (a) filing a motion for bail forfeiture with the court, supported by proof of notice to the
632 surety of the defendant's nonappearance; and

633 (b) mailing a copy of the motion to the surety.

634 (2) A court shall enter judgment of bail forfeiture without further notice if [it] the bail
635 bond surety has received notice of the motion for judgment and the court finds by a
636 preponderance of the evidence:

637 (a) the defendant failed to appear as required;

638 (b) the surety was given notice of the defendant's nonappearance in accordance with
639 Section 77-20b-101;

640 (c) the surety failed to bring the defendant to the court within the six-month period
641 under Section 77-20b-102; and

642 (d) the prosecutor has complied with the notice requirements under Subsection (1).

643 (3) If the surety shows by a preponderance of the evidence that it has failed to bring the
644 defendant before the court because the defendant is deceased through no act of the surety, the
645 court may not enter judgment of bail forfeiture and the bond is exonerated.

646 (4) The amount of bail forfeited is the face amount of the bail bond, but if the
647 defendant is in the custody of another jurisdiction and the state extradites or intends to extradite

648 the defendant, the court may reduce the amount forfeited to the actual or estimated costs of
649 returning the defendant to the court's jurisdiction. A judgment under Subsection (5) shall:

- 650 (a) identify the surety against whom judgment is granted;
 - 651 (b) specify the amount of bail forfeited;
 - 652 (c) grant the forfeiture of the bail; and
 - 653 (d) be docketed by the clerk of the court in the civil judgment docket.
- 654 (5) A prosecutor may immediately commence collection proceedings to execute a
655 judgment of bond forfeiture against the assets of the surety.

656 Section 16. Section **77-20b-105** is amended to read:

657 **77-20b-105. Revocation of bond.**

658 The surety is entitled to obtain the exoneration of its bond without motion prior to
659 judgment by providing written proof to the court and the prosecutor that:

- 660 (1) the defendant has been booked for failure to appear regarding the charge for which
661 the bond was issued; or
- 662 (2) the defendant is in custody and the surety has served the defendant's bond
663 revocation on the custodial authority.

Legislative Review Note
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