

SUBJECT: Revising bail bond procedures

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Hinojosa, Talton, Garcia, Kitchen, Martinez Fischer, Shields

0 nays

3 absent — Dunnam, Keel, Green

WITNESSES: For — Kathy Braddock, Harris County District Attorney's Office; Roger Moore, Bail Agents of Allegheny Casualty Co., International Fidelity Insurance Co.; Tillmin Welch, Professional Bondsmen of Texas; *Registered but did not testify*: L. G. Cornish, Jr.; Ronnie Long; Marsha Mason; Paul Schuder; Marjorie Walstad; C. E. Watson

Against — Don Davis, Dallas County Commissioners Court; David Hudson, Tarrant County District Attorney's Office

BACKGROUND: A bail bond is a written undertaking entered into by a defendant, also known as a principal, to appear before a court or magistrate to answer a criminal accusation. A bond forfeiture occurs when the defendant fails to meet the conditions of the bail bond. A surety is a person who undertakes to pay money or perform other acts in the event that the defendant fails to meet the bond conditions, such as appearing before the court on a specific date. The surety is directly and immediately liable for the debt.

Code of Criminal Procedure, art. 22.16 sets guidelines for returning bond money to a surety after forfeiture. A final judgement cannot be entered against a bond until nine months have passed since the date of forfeiture in the case of a misdemeanor or 18 months have passed in the case of a felony. After forfeiture of a bond and before the time limits above expire, the court must, on written motion, remit to the surety the amount of the bond after deducting court costs, reasonable costs to the county for the return of the principal, and interest accrued on the bond if:

! the principal is incarcerated in the county in which the prosecution in

- pending;
- ! the principal is incarcerated somewhere else and the incarceration is confirmed by a law enforcement agency in that jurisdiction;
- ! the principal is released on new bail in the case;
- ! the principal has died; or
- ! the case for which the bond was given is dismissed.

Code of Criminal Procedure, art. 44.04(a) entitles a defendant to be released on reasonable bail pending the determination of any motion for a new trial or the appeal from any misdemeanor conviction. If a defendant charged with a misdemeanor is on bail, is convicted, and appeals that conviction, the defendant's bond is not discharged until the conviction is final or, in the case of an appeal to a court where a new trial is held, the defendant files an appeal bond.

DIGEST:

(The author plans to offer a floor substitute, and the following analysis reflects the substitute.)

HB 1102 as substituted would limit the liability of sureties by adding art. 22.135 to the Code of Criminal Procedure (CCP). If a principal failed to appear in court, the surety's liability would be limited if the principal were incarcerated then or at a later time. In addition to the liability outlined below, the surety would be liable for court costs, reasonable and necessary costs to the county for the return of the principal, interest accrued on the bond, and any actual costs incurred by the state in having a witness available for trial when a principal failed to appear for that trial.

In misdemeanor cases, the surety would incur:

- ! no penalty amount if the principal were incarcerated at the time of failing to appear in court or not later than six months after the signing of a final judgment as a result of the failure to appear in court;
- ! a penalty of 20 percent of the face amount of the bond if the principal were incarcerated more than six months but not more than seven months after the signing of a final judgment as a result of the failure to appear in court;
- ! a penalty of 40 percent of the face amount of the bond if the principal were incarcerated more than seven months but not more than eight

- months after the signing of a final judgment as a result of the failure to appear in court;
- ! a penalty of 60 percent of the face amount of the bond if the principal were incarcerated more than eight months but not more than nine months after the signing of a final judgment as a result of the failure to appear in court; or
 - ! a penalty of 80 percent of the face amount of the bond if the principal were incarcerated more than nine months but not more than ten months after the signing of a final judgment as a result of the failure to appear in court.

In felony cases, the surety would incur:

- ! no penalty amount if the principal were incarcerated at the time of failing to appear in court or not later than nine months after the signing of a final judgment as a result of the failure to appear in court;
- ! a penalty of 20 percent of the face amount of the bond if the principal were incarcerated more than nine months but not more than ten months after the signing of a final judgment as a result of the failure to appear in court;
- ! a penalty of 40 percent of the face amount of the bond if the principal were incarcerated more than ten months but not more than eleven months after the signing of a final judgment as a result of the failure to appear in court;
- ! a penalty of 60 percent of the face amount of the bond if the principal were incarcerated more than eleven months but not more than twelve months after the signing of a final judgment as a result of the failure to appear in court; or
- ! a penalty of 80 percent of the face amount of the bond if the principal were incarcerated more than twelve months but not more than thirteen months after the signing of a final judgment as a result of the failure to appear in court.

A district or county attorney could agree to a greater limitation of a surety's liability than provided above.

Sureties' liability would not be limited unless they made a written request for confirmation of the principal's incarceration to the law enforcement

agency of the county in which the prosecution were pending. The request would have to be made while the principal was incarcerated. The law enforcement agency receiving this request would be required to notify the surety and the court in which the prosecution was pending whether or not the principal were or had been incarcerated and the date of the incarceration.

The bill as substituted would amend CCP, art. 22.16 to strike current provisions regarding time limits on final judgment and refund of the bond. The court would be required to remit to the surety, on written motion, the amount of the bond after deducting court costs, reasonable and necessary costs to the county for returning the principal, and interest accrued on the bond if the principal were released on new bail in the case, were deceased, or in the case for which the bond was given the principal received deferred adjudication, or were acquitted, sentenced, placed on community supervision, or dismissed from the charge. For other good cause shown, the court could remit at its discretion all or part of the bond amount to the surety before final judgment were entered against the bond. The court still would be required to deduct court costs, interest on the bond, and reasonable and necessary costs to the county for return of the principal.

The substitute would strike provisions about a person's bond not being discharged until his or her conviction was final or appealed.

This bill would take effect on September 1, 2001, and would apply only to a bail bond executed on or after that date.

**SUPPORTERS
SAY:**

The responsibility of a bail bondsman is to make sure a defendant shows up in court. When a defendant flees, the state needs to give the bondsman enough time and incentive to find and bring in the defendant. Once the bond is forfeited and has been paid, there is no incentive for the bondsman to find the defendant. This bill would constitutionally provide a bail bondsman 10 months to find the defendant for a misdemeanor and 13 months for a felony to be eligible for a partial refund of the bond money.

HB 1102 as substituted would create for the first time a uniform statewide rule concerning the incentive to have bondsmen return defendants to court. Currently, every county has different rules. Some counties will take part of the bond if the defendant is five minutes late to court because they use bonds

as revenue raiser. Because of the differing policies in every county, it is difficult for insurers working in multiple counties to know all of the policies affecting them. In addition, a newly elected district attorney may change the policy, and a risk a bondsman underwrote under the old policy now could be something on which they cannot get their money back.

This bill would provide a uniform sliding scale for refunding bail bondsmen part of their money if a defendant is rearrested within a specific amount of time. Bondsmen should be refunded some of their expenses for searching for and getting a defendant. Right now in some counties, a sliding scale kicks in five minutes to 20 days after a defendant misses a court date. In other counties, bondsmen get nothing back if a defendant misses the court date. Bail bond sureties should be treated similarly to other types of insurance. Insurance companies that pay out for a stolen car, for example, get to keep the car if it later is recovered and recoup some of their costs.

OPPONENTS
SAY:

HB 1102 as substituted would reward bail bondsmen for failure to hold up their end of an agreement. They have promised to bring the defendant to court on a specific date — not 10 to 13 months from that date, and when they do not, their bond should be forfeited. This bill would ignore the fact that a bondsman failed to honor the original agreement and would give the bondsman additional chances. A bail bondsman already has inconvenienced the system by not bringing a defendant to court, and they shouldn't be allowed to inconvenience the system further. If an individual court wants to authorize an extension, it should be up to that court.

This bill would allow bondsmen to reap an unearned reward from the passage of time. Statistically, most absconding defendants are rearrested in less than a year for a new crime. This bill would put the burden on law enforcement to do a surety's work and determine if the defendant were in custody somewhere. If people are arrested in another state and there is a warrant in the system, Texas will get them automatically. A bail bondsman could make no effort to find a defendant who had fled, and the odds are that the person would get caught anyway within the 10- to 13-month time period outlined in the bill. If bondsmen actually returned persons to custody, they would deserve some of their money back, but if they sat back and waited for someone else to find the defendant, they should not be rewarded. If the

Legislature wants to provide incentive to bondsmen, it should tie their activity to the return of any money.

NOTES:

HB 1102 as filed would not have allowed forfeiture of a bail bond for 12 months after the principal's failure to appear in court and would not have required the bail bond surety to request confirmation that the defendant was incarcerated. It also would not have provided a sliding scale for returning bond money.

The companion bill, SB 1120 by Armbrister, was reported favorably from the Senate Criminal Justice Committee on April 30 and recommended for the Local and Uncontested Calendar.

During the 76th Legislature, HB 1481 by Hinojosa, a bill similar to HB 1102 as filed, was reported favorably by the Criminal Jurisprudence Committee, but died in the Calendars Committee.