

- SUBJECT:** Setting a time limit on when bonds can be forfeited
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Keel, Riddle, Denny, Ellis, Hodge, Pena, Talton
0 nays
2 absent — Dunnam, P. Moreno
- SENATE VOTE:** On final passage, May 1 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** No public hearing.
- BACKGROUND:** When a criminal defendant is released on bail, a bail bondsman posts a bond for that defendant stating that the defendant will appear at a set court date or the bond will be forfeited. Generally, a surety is the bail bondsman and the principal is the defendant.
- Criminal Code of Procedure, art. 22.13 lists causes that will exonerate a defendant and his sureties from liability when a bond is forfeited, including that:
- the bond is not valid and binding under law;
 - the principal died before forfeiture was taken;
 - the principal did not appear in court due to illness or some uncontrollable circumstance, which was not the principal's fault; or
 - there is a failure to present an indictment or information at the first term of court held after the principal has been released on bail, and the prosecution has not been continued by order of the court.
- Code of Criminal Procedure, art. 22.16 requires a court to remit to the surety the amount of a forfeited bond minus court costs, any 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 prosecution is pending;

- the principal is incarcerated in another jurisdiction and the incarceration is verified;
- the principal is released on new bail in the case;
- the principal is deceased; or
- the case for which bond was given is dismissed.

A surety may request verification of the incarceration of his principal by written request to the law enforcement agency of the county where prosecution is pending. A final judgment may be entered against a bond not earlier than nine months after the date the forfeiture was entered for a misdemeanor and 18 months for a felony. After the expiration of these time limits, and before the entry of a final judgment against the bond, the court may remit to the surety all or part of 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.

Pending the determination of a motion for new trial or the appeal from a misdemeanor conviction, a defendant is entitled to be released on reasonable bail.

If a forfeiture of bail is declared or a surety surrenders a defendant in certain circumstances, then a *capias* shall be issued for the arrest of the defendant. A *capias* is similar to an arrest warrant, only the subject has not committed a crime.

DIGEST:

If a bond was forfeited due to the incarceration of the principal in any jurisdiction in the United States, SB 1336 would allow a defendant and the defendant's sureties to be exonerated from liability for up to:

- 180 days after the date the principal failed to appear in court in the case of a misdemeanor, and
- up to 270 days after the principal failed to appear in court in the case of a felony.

A surety exonerated because of the principal's incarceration still would be liable for court costs, any reasonable and necessary costs incurred by a county to secure the return of the principal, and interest accrued on the bond amount. SB 1336 would allow a court to remit to the surety, on showing of good cause

and before entering a final judgment against the bond, all or part of the bond amount minus court costs, reasonable and necessary costs to the county for the return of the principal, and the interest accrued on the bond.

SB 1336 would require a *capias* issued for forfeiture of bail to be issued within 10 business days of the court's issuance of the order of forfeiture or order permitting surrender of the bond. It would require the sheriff of each county to enter a *capias* issued for this reason into the local warrant system not later than 10 business days after the date of issuance of the *capias* by the clerk of the court.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

In the case of a principal who failed to appear in court due to incarceration, this bill would give bondsmen time to get released defendants into court before losing their bond money. Although a judge has the ability to forfeit a bond when a defendant does not show up for a court appearance, the state is more interested in having the defendant appear than in receiving forfeited bond money. Setting time limits on when bonds would be forfeited would result in more defendants ultimately appearing in court because bondsmen would have a financial incentive to produce the principal many weeks after he or she originally failed to appear in court.

SB 1336 would give consistency to the bonding industry around the state. Most judges and prosecutors give bondsmen some additional time to get defendants to court when they fail to appear, but the amount of time differs from county to county, and even case to case. SB 1336, by setting a separate baseline for misdemeanors and felonies, would give bondsmen consistency for principals who were incarcerated, while allowing a judge to adjust the time period as needed in a particular case.

**OPPONENTS
SAY:**

Bondsmen make a contract with the court to have the defendant appear on the court date or forfeit the bond amount. When the defendant fails to show up, the contract is breached and the bond amount should be forfeited, without delay. In 1999, then-Gov. George W. Bush vetoed SB 956 by Madla because it contained an amendment that inappropriately would have protected bail

bondsmen from liability on bond forfeitures for one year. This bill would allow bondsmen to delay in getting incarcerated defendants to court because they would be able to take the full six months to nine months and not forfeit their bond amount.