
Public Safety Committee

HB 1312

Brief Description: Concerning the limited exoneration of bail forfeitures in instances where the prosecuting agency declines extradition of a defendant.

Sponsors: Representatives Goodman and Moscoso.

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| <p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Requires a court to vacate a bail forfeiture and return a bond when a defendant is beyond the jurisdiction of the court that ordered the forfeiture and the prosecuting attorney elects not to seek extradition of the defendant. |
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Hearing Date: 1/26/16

Staff: Kelly Leonard (786-7147).

Background:

Pretrial release is the release of a defendant from custody pending trial. A personal recognizance release is the release of the defendant from custody solely upon his promise to appear for future court proceedings. Bail allows the defendant to be released from custody only upon the posting of cash or other security with the court. The property is held as collateral to assure the defendant's appearance in future court proceedings. The state Constitution guarantees the right to bail for people charged with noncapital crimes, and this right has been interpreted as the right to a judicial determination of either personal recognizance release or reasonable bail.

Bail is fulfilled by the posting of a bond. The defendant may post cash, securities, or other liquid assets to satisfy the amount of the bond. Alternatively, the defendant may seek a professional bail bondsperson, also referred to as a surety or bail bond agent, to post the bond in return for payment of a premium based on a percentage of the bond amount. The surety agrees to account for the appearance of the defendant at required times or else forfeit the bond. If a defendant has been released on bail and he or she willfully fails to appear in court, then the court may order a forfeiture of the bond and issue an arrest warrant for the defendant.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

After a forfeiture is ordered, the surety can still obtain a return of the bond from the court if the defendant is returned to custody or produced in court within 12 months. In such cases, the surety is entitled to the full amount of the bond, less any and all costs incurred by law enforcement in transporting, locating, apprehending, or processing the return of the defendant, if he or she was directly responsible for apprehending the defendant or producing the defendant in court.

Summary of Bill:

If a defendant is in custody outside of the jurisdiction of the court which ordered the forfeiture, the court must vacate the forfeiture of the bail and return the bond to the surety when:

- the prosecuting attorney has been notified of the location of the defendant; and
- the prosecuting attorney elects not to seek extradition of the defendant in a signed affidavit.

If a defendant is not in custody and is beyond the jurisdiction of the state, the court must vacate the forfeiture of the bail and return the bond to the surety when:

- the defendant is temporarily detained by the surety in the presence of a local law enforcement officer of the jurisdiction where the defendant is located;
- the defendant is positively identified by that law enforcement officer as the wanted defendant in a affidavit signed under penalty of perjury;
- the prosecuting attorney has been informed of the location of the defendant; and
- the prosecuting attorney elects not to seek extradition of the defendant.

The bond must be returned to the surety on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.