

By: Gallego

H.B. No. 3077

Substitute the following for H.B. No. 3077:

By: Aliseda

C.S.H.B. No. 3077

A BILL TO BE ENTITLED

1 AN ACT
2 relating to a verification of the incarceration of an accused
3 person in a criminal case for the purpose of discharging a surety's
4 liability on a bail bond.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Article 17.16, Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 17.16. DISCHARGE OF LIABILITY; SURRENDER OR
9 INCARCERATION OF PRINCIPAL BEFORE FORFEITURE; VERIFICATION OF
10 INCARCERATION. (a) A surety may before forfeiture relieve the
11 surety [~~himself~~] of the surety's [~~his~~] undertaking by:

12 (1) surrendering the accused into the custody of the
13 sheriff of the county where the prosecution is pending; or

14 (2) delivering to the sheriff, prosecuting attorney,
15 or clerk of the court of the county in which [~~where~~] the prosecution
16 is pending an affidavit stating that the accused is incarcerated in
17 federal custody, in the custody of any state, or in any county of
18 this state.

19 (b) On receipt of an affidavit described by Subsection
20 (a)(2), the sheriff, prosecuting attorney, or clerk of the court of
21 the county in which the prosecution is pending shall verify whether
22 the accused is incarcerated as stated in the affidavit. If the
23 sheriff, attorney, or clerk verifies the statement in the
24 affidavit, the sheriff, attorney, or clerk, as applicable, shall:

1 (1) if the verification was made by the sheriff or
2 attorney, notify the magistrate before which the prosecution is
3 pending of the verification; or

4 (2) if the verification was made by the clerk or
5 attorney, notify the sheriff of the verification.

6 (c) On a verification or the receipt of notice of a
7 verification as described by this article:

8 (1) the sheriff shall place a detainer against the
9 accused with the appropriate officials in the jurisdiction in which
10 the accused is incarcerated; and

11 (2) except as provided by Subsection (d), the
12 magistrate before which the prosecution is pending shall direct the
13 clerk of the court to issue a capias for the arrest of the accused.

14 (d) A capias for the arrest of the accused is not required
15 if:

16 (1) a warrant has been issued for the accused's arrest
17 and remains outstanding; or

18 (2) the issuance of a capias would otherwise be
19 unnecessary for the purpose of taking the accused into custody.

20 (e) For the purposes of Subsection (a)(2) of this article,
21 the bond is discharged and the surety is absolved of liability on
22 the bond on the [~~sheriff's~~] verification of the incarceration of
23 the accused.

24 (f) An affidavit described by Subsection (a)(2) and the
25 documentation of any verification obtained under Subsection (b)
26 must be filed:

27 (1) in the court record of the underlying criminal

1 case in the court in which the prosecution is pending; or
2 (2) if the court record described by Subdivision (1)
3 does not exist, in a general file maintained by the clerk of the
4 court.

5 (g) A surety is liable for all reasonable and necessary
6 expenses incurred in returning the accused into the custody of the
7 sheriff of the county in which the prosecution is pending.

8 SECTION 2. The change in law made by this Act to Article
9 17.16, Code of Criminal Procedure, applies only to a bail bond that
10 is executed on or after the effective date of this Act. A bail bond
11 executed before the effective date of this Act is governed by the
12 law in effect when the bail bond was executed, and the former law is
13 continued in effect for that purpose.

14 SECTION 3. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2011.