

By: Gallego

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 of the county where the  
15 prosecution is pending an affidavit stating that the accused is  
16 incarcerated in federal custody, in the custody of any state, or in  
17 any county of this state.

18 (b) On receipt of an affidavit described by Subsection  
19 (a)(2), the sheriff of the county where the prosecution is pending  
20 shall verify whether the accused is incarcerated as stated in the  
21 affidavit. If the sheriff verifies the statement in the affidavit,  
22 the sheriff shall:

23 (1) place a detainer against the accused with the  
24 appropriate officials in the jurisdiction in which the accused is

1 incarcerated; and

2 (2) notify the court or magistrate before which the  
3 prosecution is pending of the sheriff's verification of the  
4 incarceration of the accused.

5 (c) On receipt of the sheriff's notification under  
6 Subsection (b)(2), the court or magistrate before which the  
7 prosecution is pending shall direct the clerk of the court to issue  
8 a capias for the arrest of the accused unless:

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

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

13 (d) For the purposes of Subsection (a)(2) of this article,  
14 the bond is discharged and the surety is absolved of liability on  
15 the bond on the sheriff's verification of the incarceration of the  
16 accused.

17 SECTION 2. The change in law made by this Act to Article  
18 17.16, Code of Criminal Procedure, applies only to a bail bond that  
19 is executed on or after the effective date of this Act. A bail bond  
20 executed before the effective date of this Act is governed by the  
21 law in effect when the bail bond was executed, and the former law is  
22 continued in effect for that purpose.

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