

By: Hinojosa
(Gallego)

S.B. No. 877

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

(2) delivering to the sheriff of the county in which [~~where~~] the prosecution is pending and to the office of the prosecuting attorney an affidavit stating that the accused is incarcerated in federal custody, in the custody of any state, or in any county of this state.

(b) On receipt of an affidavit described by Subsection (a)(2), the sheriff of the county in which the prosecution is pending shall verify whether the accused is incarcerated as stated in the affidavit. If the sheriff verifies the statement in the affidavit, the sheriff shall notify the magistrate before which the prosecution is pending of the verification.

1 (c) On a verification described by this article, the sheriff
2 shall place a detainer against the accused with the appropriate
3 officials in the jurisdiction in which the accused is incarcerated.
4 On receipt of notice of a verification described by this article,
5 the magistrate before which the prosecution is pending shall direct
6 the clerk of the court to issue a capias for the arrest of the
7 accused, except as provided by Subsection (d).

8 (d) A capias for the arrest of the accused is not required
9 if:

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

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

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

18 (f) An affidavit described by Subsection (a)(2) and the
19 documentation of any verification obtained under Subsection (b)
20 must be:

21 (1) filed in the court record of the underlying
22 criminal case in the court in which the prosecution is pending or,
23 if the court record does not exist, in a general file maintained by
24 the clerk of the court; and

25 (2) delivered to the office of the prosecuting
26 attorney.

27 (g) A surety is liable for all reasonable and necessary

1 expenses incurred in returning the accused into the custody of the
2 sheriff of the county in which the prosecution is pending.

3 SECTION 2. The change in law made by this Act to Article
4 17.16, Code of Criminal Procedure, applies only to a bail bond that
5 is executed on or after the effective date of this Act. A bail bond
6 executed before the effective date of this Act is governed by the
7 law in effect when the bail bond was executed, and the former law is
8 continued in effect for that purpose.

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