

1-1 By: Hinojosa S.B. No. 877
1-2 (In the Senate - Filed February 23, 2011; March 1, 2011,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 April 18, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 18, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 877 By: Hinojosa

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to a verification of the incarceration of an accused
1-11 person in a criminal case for the purpose of discharging a surety's
1-12 liability on a bail bond.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Article 17.16, Code of Criminal Procedure, is
1-15 amended to read as follows:

1-16 Art. 17.16. DISCHARGE OF LIABILITY; SURRENDER OR
1-17 INCARCERATION OF PRINCIPAL BEFORE FORFEITURE; VERIFICATION OF
1-18 INCARCERATION. (a) A surety may before forfeiture relieve the
1-19 surety [~~himself~~] of the surety's [~~his~~] undertaking by:

1-20 (1) surrendering the accused into the custody of the
1-21 sheriff of the county where the prosecution is pending; or

1-22 (2) delivering to the sheriff of the county in which
1-23 [~~where~~] the prosecution is pending an affidavit stating that the
1-24 accused is incarcerated in federal custody, in the custody of any
1-25 state, or in any county of this state.

1-26 (b) On receipt of an affidavit described by Subsection
1-27 (a)(2), the sheriff of the county in which the prosecution is
1-28 pending shall verify whether the accused is incarcerated as stated
1-29 in the affidavit. If the sheriff verifies the statement in the
1-30 affidavit, the sheriff shall notify the magistrate before which the
1-31 prosecution is pending of the verification.

1-32 (c) On a verification described by this article, the sheriff
1-33 shall place a detainer against the accused with the appropriate
1-34 officials in the jurisdiction in which the accused is incarcerated.
1-35 On receipt of notice of a verification described by this article,
1-36 the magistrate before which the prosecution is pending shall direct
1-37 the clerk of the court to issue a capias for the arrest of the
1-38 accused, except as provided by Subsection (d).

1-39 (d) A capias for the arrest of the accused is not required
1-40 if:

1-41 (1) a warrant has been issued for the accused's arrest
1-42 and remains outstanding; or

1-43 (2) the issuance of a capias would otherwise be
1-44 unnecessary for the purpose of taking the accused into custody.

1-45 (e) For the purposes of Subsection (a)(2) of this article,
1-46 the bond is discharged and the surety is absolved of liability on
1-47 the bond on the [~~sheriff's~~] verification of the incarceration of
1-48 the accused.

1-49 (f) An affidavit described by Subsection (a)(2) and the
1-50 documentation of any verification obtained under Subsection (b)
1-51 must be:

1-52 (1) filed in the court record of the underlying
1-53 criminal case in the court in which the prosecution is pending or,
1-54 if the court record does not exist, in a general file maintained by
1-55 the clerk of the court; and

1-56 (2) delivered to the office of the prosecuting
1-57 attorney.

1-58 (g) A surety is liable for all reasonable and necessary
1-59 expenses incurred in returning the accused into the custody of the
1-60 sheriff of the county in which the prosecution is pending.

1-61 SECTION 2. The change in law made by this Act to Article
1-62 17.16, Code of Criminal Procedure, applies only to a bail bond that
1-63 is executed on or after the effective date of this Act. A bail bond

2-1 executed before the effective date of this Act is governed by the
2-2 law in effect when the bail bond was executed, and the former law is
2-3 continued in effect for that purpose.

2-4 SECTION 3. This Act takes effect immediately if it receives
2-5 a vote of two-thirds of all the members elected to each house, as
2-6 provided by Section 39, Article III, Texas Constitution. If this
2-7 Act does not receive the vote necessary for immediate effect, this
2-8 Act takes effect September 1, 2011.

2-9

* * * * *