

Effective 11/16/2021

**Part 5
Bail Surety**

77-20-501 Liability on a bail bond -- Failure to appear -- Notice to surety.

- (1)
 - (a) Unless exonerated under Subsection 77-20-504(5), the principal and the surety on a bail bond are liable on the bail bond during all proceedings and for all court appearances required of the defendant up to and including the surrender of the defendant for sentencing, regardless of any contrary provision in the bail bond agreement.
 - (b) Any failure of the defendant to appear when required is a breach of the conditions of the bail bond and subjects the bail bond to forfeiture regardless of whether notice of the required appearance was given to the surety.
- (2)
 - (a) If a defendant, who has posted monetary bail by a bail bond, fails to appear before the appropriate court as required, the court shall:
 - (i) within 28 days after the day on which the defendant fails to appear, issue a bench warrant that includes the original case number; and
 - (ii) direct the clerk of the court to notify the surety of the defendant's failure to appear.
 - (b) The clerk of the court shall:
 - (i) email notice of the defendant's failure to appear to the surety at the email address provided on the bond;
 - (ii) notify the surety as listed on the bail bond of the name, address, and telephone number of the prosecuting attorney;
 - (iii) email a copy of the notice sent under Subsection (2)(b)(i) to the prosecuting attorney's office at the same time notice is sent under Subsection (2)(b)(i); and
 - (iv) ensure that the name, address, business email address, and telephone number of the surety or the surety's agent as listed on the bail bond is stated on the bench warrant.
- (3) The prosecuting attorney may email notice of the defendant's failure to appear to the address of the surety as listed on the bail bond within 35 days after the day on which the defendant fails to appear.
- (4)
 - (a)
 - (i) If a defendant appears in court within seven days after a missed, scheduled court appearance, the court may reinstate the bail bond without further notice to the surety.
 - (ii) If the defendant, while in custody, appears on the case for which the bail bond was posted, the court may not reinstate the bail bond without the consent of the bail bond company.
 - (b) If a defendant fails to appear within seven days after a scheduled court appearance, the court may not reinstate the bail bond without the consent of the surety.

Renumbered and Amended by Chapter 4, 2021 Special Session 2

77-20-502 Time for bringing defendant to court -- Defendant in custody in another jurisdiction -- Notice to prosecuting attorney.

- (1)
 - (a) If notice of a defendant's failure to appear is emailed to a surety under Section 77-20-501, the surety may bring the defendant before the court, or surrender the defendant into the custody

of a county sheriff within the state, within 180 days after the day on which the defendant failed to appear in court as required.

- (b) A forfeiture action may not be brought during the 180-day time period described in Subsection (1)(a).
- (2) A surety may request an extension of the 180-day time period in Subsection (1) if the surety within that time:
 - (a) files a motion for extension with the court; and
 - (b) mails the motion for extension and a notice of hearing on the motion to the prosecuting attorney.
- (3) The court may extend the 180-day time period in Subsection (1) for no more than 30 days if:
 - (a) the surety has complied with Subsection (2); and
 - (b) the court finds good cause.
- (4) If a surety is unable to bring a defendant to the court because the defendant is and will be in the custody of authorities of another jurisdiction, the surety shall:
 - (a) notify the court and the prosecuting attorney; and
 - (b) provide the name, address, and telephone number of the custodial authority.

Renumbered and Amended by Chapter 4, 2021 Special Session 2

77-20-503 Surrender of defendant by surety -- Arrest of defendant.

- (1)
 - (a)
 - (i) A surety may at any time prior to a defendant's failure to appear, surrender the defendant and obtain an exoneration of the bail bond by notifying the clerk of the court in which the bail bond was posted of the defendant's surrender and requesting exoneration.
 - (ii) Notification shall be made immediately following the surrender by mail, email, or fax.
 - (b) To effect surrender of the defendant, a certified copy of the surety's bail bond from the court in which the bail bond was posted or a copy of the bail bond agreement with the defendant shall be delivered to the on-duty jailer, who shall:
 - (i) detain the defendant in the on-duty jailer's custody as upon a commitment; and
 - (ii) in writing acknowledge the surrender upon the copy of the bail bond or bail bond agreement.
 - (c) The certified copy of the bail bond or copy of the bail bond agreement upon which the acknowledgment of surrender is endorsed shall be filed with the court.
 - (d) Upon a filing described in Subsection (1)(c), the court, upon proper application, may:
 - (i) exonerate the bail bond; and
 - (ii) order a refund of any paid premium, or part of a premium, as the court finds just.
- (2) For the purpose of surrendering the defendant, the surety may:
 - (a) arrest the defendant:
 - (i) at any time before the defendant is finally exonerated; and
 - (ii) at any place within the state; and
 - (b) surrender the defendant to any county jail booking facility in Utah.
- (3) An arrest under this section is not a basis for exoneration of the bail bond under Section 77-20-504.
- (4) A surety acting under this section is subject to Title 53, Chapter 11, Bail Bond Recovery Act.

Renumbered and Amended by Chapter 4, 2021 Special Session 2

77-20-504 Exoneration of a bail bond.

- (1) The court shall exonerate a bail bond if:
 - (a)
 - (i) a defendant, who has posted monetary bail by a bail bond, fails to appear before the appropriate court as required;
 - (ii) notice of the defendant's failure to appear is not emailed to the surety as listed on the bail bond as described in Subsection 77-20-501(2) or (3); and
 - (iii) the surety's current name and email address, or the bail bond agency's current name and email address, are listed on the bail bond in the court's file;
 - (b) the defendant is arrested and booked into a county jail booking facility pursuant to a warrant for failure to appear on the original charges for which the bail bond was issued and the surety provides written proof of the arrest and booking to the court and the prosecuting attorney;
 - (c) the court recalls a warrant for failure to appear due to the defendant's having paid the fine and before entry of a judgment of forfeiture of the bail bond;
 - (d) the surety provides written proof to the court and the prosecuting attorney that the defendant is in custody and the surety has served the defendant's bail bond revocation on the custodial authority; or
 - (e) unless the court makes a finding of good cause why the bail bond should not be exonerated:
 - (i) the surety has delivered the defendant to the county jail booking facility in the county where the original charge or charges are pending;
 - (ii) the defendant has been released on a bail bond secured from a subsequent surety for the original charge and the failure to appear;
 - (iii) after an arrest, the defendant has escaped from jail or has been released on the defendant's own recognizance under a court order regulating jail capacity or by a sheriff's release under Section 17-22-5.5;
 - (iv) the surety has transported or agreed to pay for the transportation of the defendant from a location outside of the county back to the county where the original charge is pending and the payment is in an amount equal to the cost of government transportation under Section 76-3-201; or
 - (v) the surety demonstrates, by a preponderance of the evidence, that:
 - (A) at the time the surety issued the bail bond, the surety made reasonable efforts to determine that the defendant was legally present in the United States;
 - (B) a reasonable person would have concluded, based on the surety's determination, that the defendant was legally present in the United States; and
 - (C) the surety has failed to bring the defendant before the court because the defendant is in federal custody or has been deported.
- (2) Under circumstances not otherwise provided for in Subsection (1), the court may exonerate the bail bond if the court finds:
 - (a) that the prosecuting attorney has been given reasonable notice of a surety's motion to exonerate the bail bond; and
 - (b) there is good cause for the bail bond to be exonerated.
- (3) If a surety's bail bond has been exonerated under Subsection (1) or (2) and the surety remains liable for the cost of transportation of the defendant, the surety may take custody of the defendant for the purpose of transporting the defendant to the jurisdiction where the charge is pending.
- (4) If the defendant is subject to extradition or other means by which the state can return the defendant to law enforcement custody within the court's jurisdiction, and the surety gives notice under Subsection 77-20-502(4)(a), the surety's bail bond shall be exonerated:
 - (a) if the prosecuting attorney elects in writing not to extradite the defendant immediately; and

- (b) if the prosecuting attorney elects in writing to extradite the defendant, to the extent the bail bond exceeds the reasonable, actual, or estimated costs to extradite and return the defendant to law enforcement custody within the court's jurisdiction, upon the occurrence of the earlier of:
 - (i) the prosecuting attorney's lodging a detainer on the defendant; or
 - (ii) 60 days after the day on which the surety gives notice to the prosecuting attorney under Subsection 77-20-502(4)(a) if the defendant remains in custody of the same authority during that 60-day time period.
- (5)
 - (a) Except as provided in Subsection (6), the court shall exonerate the bail bond, without motion, upon sentencing the defendant.
 - (b) If the defendant's sentence includes commitment to a jail or prison, the court shall exonerate the bail bond when the defendant appears at the appropriate jail or prison, unless the judge does not require the defendant to begin the commitment within seven days, in which case the bail bond is exonerated upon sentencing.
 - (c) For purposes of this Subsection (5), an order of the court accepting a plea in abeyance agreement and holding that plea in abeyance in accordance with Title 77, Chapter 2a, Pleas in Abeyance, is considered to be the same as a sentencing upon a guilty plea.
 - (d) Any suspended or deferred sentencing is not the responsibility of the surety and the bail bond is exonerated without any motion, upon acceptance of the court and the defendant of a plea in abeyance, probation, fine payments, post sentencing reviews, or any other deferred sentencing reviews or any other deferred sentencing agreement.
- (6) If a surety issues a bail bond after sentencing, the surety is liable on the bail bond during all proceedings and for all court appearances required of the defendant up to and including the defendant's appearance to commence serving the sentence imposed under Subsection (5).

Enacted by Chapter 4, 2021 Special Session 2

77-20-505 Forfeiture of a bail bond.

- (1) If a surety fails to bring the defendant before the court within the time period described in Section 77-20-502, the prosecuting attorney may request the forfeiture of the bail bond by:
 - (a) filing a motion for bail bond forfeiture with the court, supported by proof of notice to the surety of the defendant's failure to appear; and
 - (b) emailing a copy of the motion to the surety.
- (2) A court shall enter judgment of bail bond forfeiture without further notice if the court finds, by a preponderance of the evidence:
 - (a) the defendant failed to appear as required;
 - (b) the surety was given notice of the defendant's failure to appear in accordance with Section 77-20-501;
 - (c) the surety failed to bring the defendant to the court within the 180-day time period under Section 77-20-502; and
 - (d) the prosecuting attorney has complied with the notice requirements under Subsection (1).
- (3) If the surety shows, by a preponderance of the evidence, that the surety has failed to bring the defendant before the court because the defendant is deceased through no act of the surety, the court may not enter judgment of bail bond forfeiture and the bail bond is exonerated.
- (4)
 - (a) The amount of bail forfeited is the face amount of the bail bond, but if the defendant is in the custody of another jurisdiction and the state extradites or intends to extradite the defendant,

the court may reduce the amount forfeited to the actual or estimated costs of returning the defendant to the court's jurisdiction.

(b) A judgment under Subsection (5) shall:

- (i) identify the surety against whom judgment is granted;
- (ii) specify the amount of monetary bail forfeited;
- (iii) grant the forfeiture of the bail bond; and
- (iv) be docketed by the clerk of the court in the civil judgment docket.

(5) A prosecuting attorney may immediately commence collection proceedings to execute a judgment of bail bond forfeiture against the assets of the surety.

Renumbered and Amended by Chapter 4, 2021 Special Session 2