

HOUSE BILL NO. 852

INTRODUCED BY N. NICOL, J. TREBAS, B. USHER, B. BEARD, B. LER, S. MANESS, T. MILLETT

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO BAIL; REVISING SURETY BAIL BOND LAWS; PROVIDING LEGISLATIVE FINDINGS; PROVIDING THAT SURETY BAIL BOND INSURANCE PRODUCERS MUST BE INCLUDED IN CERTAIN LEGAL ACTIONS; PROVIDING A STATUTE OF LIMITATIONS FOR SURETY BAIL BONDS; PROVIDING TRAINING AND CERTIFICATION OF JUDGES; PROVIDING FOR ARREST AUTHORITY FOR SURETY BAIL BOND INSURANCE PRODUCERS; PROVIDING FOR INMATE PHONE CALLS TO ATTORNEYS; PROVIDING GENERAL AUTHORITY FOR RELEASE AND DETENTION; ~~REVISING LAWS RELATING TO THE DETERMINATION OF BAIL;~~ PROVIDING PROCEDURES FOR REDETERMINING BAIL; PROVIDING FOR A VIOLATION OF RELEASE AND FORFEITURE; REVISING LAWS RELATING TO THE ISSUANCE OF ARREST WARRANTS AND REDETERMINING BAIL; REVISING LAWS RELATING TO THE SURRENDER OF A DEFENDANT; PROVIDING FOR OUT-OF-JURISDICTION WARRANTS; PROVIDING FOR AUTOMATIC BOND DISCHARGE; PROVIDING FOR JUDICIAL INTERFERENCE WITH BAIL BOND ACCEPTANCE; ~~PROVIDING FOR SURETY BAIL BOND INSURANCE PRODUCER ACCESS TO COURT RECORDS;~~ PROVIDING A FEE; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS 3-1-1502, 3-10-302, 7-32-2255, 46-6-508, 46-9-105, 46-9-301, 46-9-311, 46-9-502, 46-9-503, 46-9-505, 46-9-510, AND 46-9-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Legislative findings -- purpose.** The purpose and legislative intent of this chapter, 46-4-508, and Title 46, chapter 9, are outlined in this section.

(1) The legislature finds that the purpose is to protect a surety bail bond agent's liability by allowing preemptive action to secure the principal when necessary. The legislature finds that a court-issued forfeiture or warrant is not a prerequisite to achieve this goal.

(2) The legislature adopts the doctrine established in Taylor v. Taintor, 83 U.S. 366 (1872), which

1 stands for the following principles relating to surety bail bond insurance:

2 (a) When bail is given, the principal is regarded as delivered to the custody of the surety bail bond
3 insurance producer.

4 ~~(b) — The producer's dominion is a continuance of the original imprisonment. Whenever the producer~~
5 ~~chooses, the producer may seize and deliver the principal in the producer's discharge or their surety~~
6 ~~obligations.~~

7 ~~(c) — If a producer cannot deliver the principal at once, the producer may imprison the principal until~~
8 ~~this can be done.~~

9 ~~(d)~~(b) A producer may exercise their rights in person or, if necessary, the producer may delegate the
10 authority to apprehend the principal to a recovery agent who is licensed in the state in accordance with
11 applicable laws and administrative rules.

12 ~~(e) — The producer may pursue the principal into another state and may arrest the principal on any~~
13 ~~day of the week.~~

14 ~~(f)~~(c) If necessary, the producer is permitted to enter the principal's residence, ~~including by force, if~~
15 ~~necessary,~~ to fulfill the producer's responsibilities as a surety bail bond insurance producer.

16 ~~(g)~~(d) A producer need not apply to a court for a lengthy process in order to discharge the producer's
17 duties. A producer's actions are equated to the rearrest by a sheriff of an escaping prisoner.

18 (3) The legislature finds that the purpose of this chapter is to:

19 (a) prevent defendants from evading judicial review after surrender;

20 (b) prohibit judges from arbitrarily continuing bonds without the agreement of the surety bail bond
21 agent;

22 (c) declare that judicial continuance of a bond will be considered arbitrary if it occurs without
23 providing notice to the surety as it fails to articulate the necessity for continuance in the case record; and

24 (d) ensure detention centers and law enforcement comply with lawful surrender procedures to
25 maintain public safety.

26 (4) The legislature finds that the purpose of [section 2] is to:

27 (a) recognize the surety bail bond agent's critical role in ensuring the defendant's appearance in
28 court and protecting public safety; and

(b) ensure the surety bail bond agent has sufficient ~~access to judicial processes~~ abilities to fulfill their obligations and address challenges in apprehending defendants.

(5) The legislature finds that the forfeiture provisions of this chapter are to:

(a) avoid disputes over notification timing by clearly defining the start and end points of the forfeiture period;

(b) ensure courts follow transparent and fair processes in collecting forfeitures; and

(c) encourage the continued engagement of surety bail bond agents in apprehending defendants even after forfeiture payments are made, improving overall compliance with court orders.

(6) The legislature finds that for the purposes of this chapter the term "arrest", as it pertains to actions by a surety bail bond insurance producer, means the physical seizure or custody of the principal for the purpose of returning the principal to the jurisdiction of the court, and the principal is in the surety bail bond insurance producer's custody. This type of arrest:

(a) is authorized under the contractual obligations of the bail agreement and applicable laws;

(b) does not constitute the initiation of criminal charges or enforcement of a penalty; and

(c) is distinct from an arrest conducted by law enforcement officers as it is limited to ensuring the defendant's compliance with court orders.

NEW SECTION. Section 2. Surety bail bond insurance producer party to action -- notice. (1) In

a legal proceeding under this chapter involving a surety bail bond insurance producer, the producer is a party to the action and has the right to participate in court proceedings related to the bond and the defendant's obligations. This includes but is not limited to the following:

(a) the court providing documented notice to the producer of any changes in a defendant's court dates and the reason for the changes;

(b) the location of the appearance;

(c) whether a forfeiture has been quashed or set aside;

(d) whether a warrant for the defendant's arrest has been quashed or withdrawn; and

(e) notifications sent in a format requested by the producer.

(2) The surety bail bond insurance producer may file motions or petitions solely related to the

1 enforcement, modification, or discharge of the surety appearance bond or to challenge a forfeiture order. A
2 court shall provide timely hearings with 24 hours' notice of changes in orders or any other decision relevant to
3 the proceeding and rulings on motions or petitions submitted by producers. A court shall maintain and produce
4 on request documentation of all documents relevant to a legal proceeding under this chapter.

5
6 **NEW SECTION. Section 3. Regulation of teletypes -- purpose -- administrative messaging --**

7 **rulemaking.** (1) The use of teletypes facilitates communication between jails and detention centers, serving as
8 a tool to assist with bonding defendants held in remote or distant detention locations when physical presence is
9 impractical. This system was established to address logistical challenges, such as large bond transmittals or
10 situations in which local surety bail bond agents are temporarily unavailable. However, teletypes may not be
11 misused as a substitute for maintaining a meaningful and sufficient local presence. This section governs the
12 permitted use of teletypes to ensure efficiency, prevent system abuse, and protect the operational integrity of
13 jails and detention centers.

14 (2) To manage communication system demands effectively, detention centers are authorized to
15 establish and implement their own reasonable limits on the number of teletypes consistent with constitutional
16 rights, operational capacity, and institutional needs.

17 (3) Surety bail bond insurance producer agencies advertising as statewide providers shall maintain
18 enough licensed surety bail bond agents geographically distributed to reasonably support their claimed service
19 area. The ratio must be at least one licensed surety bail bond agent for each geographic area as determined by
20 the attorney general to qualify as a statewide provider. The agencies shall register licensed surety bail bond
21 agents in assigned regions with the attorney general, and the attorney general shall review compliance with this
22 subsection during license applications and renewals. The license application for agencies may include a fee
23 that is commensurate with the costs of administering this section.

24 (4) Jails must log and monitor teletype request from agencies and agents and report excessive or
25 abusive teletype activity to the attorney general. Jails are authorized to limit the number of simultaneous
26 teletypes that they will process from any single agency or agent to a reasonable amount, based on the jail's
27 capacity. The jail must provide a clear escalation process for urgent cases, ensuring teletypes are not unduly
28 delayed for defendants requiring immediate release.

(5) (a) To ensure compliance with this section, agencies or individuals who misuse the teletype system may be subject to the penalties described in this subsection (5).

(i) The attorney general may impose the following fines on an agency or agent engaging in excessive or abusive teletype activity, with penalties escalating for repeated offenses:

(A) for a first offense, a fine of up to \$500 for each violation; and

(B) for subsequent offenses, a fine of up to \$2,000 for each violation.

(ii) Agencies engaging in misuse of teletype activity may face temporary or permanent restrictions, including:

(A) suspension or revocation of statewide operating claims until compliance is demonstrated; and

(B) limitations on the number of teletypes an agency or agent may submit within a specified timeframe.

(b) Jails and detention centers must log and report violations to the attorney general for investigation. Verified complaints of misuse may result in immediate suspension of an agency's or agent's teletype privileges pending a compliance review.

(c) The attorney general may promulgate rules for identifying and addressing patterns of teletype abuse.

NEW SECTION. Section 4. Statute of limitations for surety bonds. (1) On an action relating to a surety appearance bond, the period to commence an action is 2 years. The 2-year period begins on the date the bond is executed.

(2) The surety appearance bond must be exonerated and discharged after 2 years, regardless of the status of the court case, unless otherwise agreed on by the surety bail bond agent.

(3) Courts may require a defendant to:

(a) post a new bond if the case continues beyond 2 years and the court determines that continued bond security is necessary; and

(b) ensure the terms and conditions of the new bond are consistent with the original order unless circumstances require adjustment.

(4) Courts must notify the surety bail bond agent, the defendant, and other relevant parties at least

30 days before the expiration of the 2-year term to allow sufficient time for renewal or other arrangements. If the court fails to issue a new order or notify the parties within the specified timeframe, the bond must be considered exonerated by operation of law. Notification must be delivered through certified mail, electronic notification systems, or other verifiable methods.

(5) The intent of this section is to limit the surety's liability to a reasonable timeframe, ensure fairness for all parties, and provide clear timelines for action.

Section 5. Section 3-1-1502, MCA, is amended to read:

"3-1-1502. Training and certification of judges. (1) Except as provided in 3-1-1503, a judge selected for a term of office may not assume the functions of the office unless the judge has filed with the county clerk and recorder in the jurisdiction a certificate of completion of a course of education and training prescribed by the commission.

(2) The training and education must include annual instruction on the statutory framework governing surety appearance bonds, including legislative intent outlined in this chapter, proper procedures for handling bond surrenders, forfeitures, and discharges, and the rights and responsibilities of licensed surety bail bond agents in managing principals. Courts shall receive education in surety bail bond insurance producer's participation in court actions as provided in [section 2]. The supreme court shall collaborate with the attorney general in developing training and education as provided in 33-17-1602."

Section 6. Section 3-10-302, MCA, is amended to read:

"3-10-302. Jurisdiction over forcible entry, unlawful detainer, rent deposit, and residential and residential mobile home landlord-tenant disputes -- bail. (1) The justices' courts have concurrent jurisdiction with the district courts within their respective counties in actions of forcible entry, unlawful detainer, and rent deposits and in actions brought under Title 70, chapters 24, 25, and 33.

(2) A justice of the peace shall:

(a) exonerate an existing bond if a defendant is released on their own recognizance for new charges or warrants, whether requested by the surety or not;

(b) notify the surety bail bond insurance producer in writing of an exoneration within 5 business

1 days; and

2 (c) ensure compliance with 46-9-502 and 46-9-511."

3

4 **Section 7.** Section 7-32-2255, MCA, is amended to read:

5 **"7-32-2255. Inmate phone calls to attorney.** (1) As needed and subject to policies adopted by the
6 local government that operates or contracts for the lease or operation of a detention center, the detention
7 center administrator shall allow an inmate to speak on the telephone with the inmate's attorney without charge.

8 (2) Inmates must be permitted to speak on the telephone with their attorney or a licensed surety
9 bail bond insurance producer as often as reasonably necessary to prepare their legal defense, arrange for bail,
10 or address ongoing legal matters.

11 (3) Calls to attorneys and licensed surety bail bond agents must be provided without charge. The
12 term "without charge" includes all connection, usage, and administrative fees associated with the call.

13 (4) Calls to attorneys may not be recorded under any circumstances. Calls to licensed surety bail
14 bond agents may be recorded for security purposes.

15 (5) Local policies adopted by the governing authority of a detention center may not impose undue
16 restrictions on the frequency or duration of these calls or otherwise hinder an inmate's access to legal counsel
17 or bail arrangements.

18 (6) Detention center administrators shall maintain a log of attorney and surety bail bond agent calls
19 and provide a means for inmates to report a denial of access. Verified complaints of noncompliance must be
20 addressed by the local governing authority within 14 days."

21

22 **Section 8.** Section 46-6-508, MCA, is amended to read:

23 **"46-6-508. Arrest by surety bail bond insurance producer.** (1) A surety bail bond insurance
24 producer who has probable cause to believe that a principal insured by the surety insurer to which the producer
25 is appointed will fail to appear in court, in violation of 46-9-503(2), or has violated a condition of their release,
26 may use reasonable force to arrest and detain the principal at any time prior to the forfeiture of the bond and
27 without a court-issued forfeiture or warrant consistent with [section 1] only or as described in 46-9-510 and this
28 section. The producer shall:

(a) except under exigent circumstances, prior to and no more than 6 hours before attempting to apprehend the principal, notify the local police department or sheriff's office of the intent to apprehend the principal in that jurisdiction by telephoning nonemergency dispatch and provide:

(i) the name and producer license number of the individual who will be effecting the arrest; and

(ii) the name and approximate location of the principal; and

(b) immediately after the arrest of the principal, notify the local police department or sheriff's office by telephoning nonemergency dispatch and provide:

(i) the name and producer license number of the individual who effected the arrest;

(ii) the name of the principal arrested and the description of the location of the arrest; and

(iii) if no notification was given under subsection (1)(a), a detailed explanation of the reasons a notification could not be given under subsection (1)(a).

(2) A surety bail bond insurance producer:

(a) has the authority to apprehend, detain, and surrender principals without additional judicial processes;

(b) may pursue principals across state lines if the producer complies with state laws in the jurisdiction where the apprehension occurs; and

(c) has contractual and statutory rights of sureties to act independently to mitigate liability on a bond.

(3) A court shall provide remedies for surety bail bond insurance producers when the producer is restricted or prohibited from apprehending and returning defendants to Montana or there are other legal or practical barriers that impede timely apprehension.

~~(2)~~⁽⁴⁾⁽³⁾ As used in this section, the following definitions apply:

(a) "Arrest", as it pertains to a surety bail bond insurance producer, means the physical seizure or custody of the principal for the purpose of returning the principal to the jurisdiction of the court. This type of arrest:

(i) is authorized under the contractual obligations of the bail agreement and applicable laws;

(ii) does not constitute the initiation of criminal charges or enforcement of a penalty; and

(iii) is distinct from an arrest conducted by law enforcement officers, as it is limited to ensuring the

1 defendant's compliance with court orders.

2 ~~(a)~~(b) "Principal" means a defendant or a witness who has been admitted to bail and who is obligated
3 to appear in court as required on penalty of forfeiting bail under a commercial bail bond.

4 ~~(b)~~(c) "Surety bail bond insurance producer" or "producer" means an insurance producer who is
5 licensed to sell, solicit, or negotiate commercial bail bonds pursuant to Title 33, chapters 17 and 26."

6
7 **Section 9.** Section 46-9-105, MCA, is amended to read:
8 **"46-9-105. General authority for release and detention.** (1) An arrested person must be released or
9 detained pending judicial proceedings pursuant to Title 46, chapter 9.

10 ~~(2)~~ A jail or detention center may not charge any fees relating to the processing or payment of bail
11 bonds, including credit card fees, which the jail or detention center must pay for.

12 ~~(2)~~(3) If a person is released, that person shall appear to answer the charge for the alleged
13 commission of the offense, as ordered, in the court having jurisdiction."

14
15 **Section 10.** Section 46-9-301, MCA, is amended to read:

16 **"46-9-301. Determining amount of bail.** (1) In all cases in which bail is determined to be necessary,
17 bail must be reasonable in amount and the amount must be:

18 ~~(1)~~(a) sufficient to ensure the presence of the defendant in a pending criminal proceeding;

19 ~~(2)~~(b) sufficient to ensure compliance with the conditions set forth in the bail;

20 ~~(3)~~(c) sufficient to protect any person from bodily injury;

21 ~~(4)~~(d) not oppressive;

22 ~~(5)~~(e) commensurate with the nature of the offense charged;

23 ~~(6)~~(f) considerate of the financial ability of the accused;

24 ~~(7)~~(g) considerate of the defendant's prior record;

25 ~~(8)~~(h) considerate of the length of time the defendant has resided in the community and of the
26 defendant's ties to the community;

27 ~~(9)~~(i) considerate of the defendant's family relationships and ties;

28 ~~(10)~~(j) considerate of the defendant's mental health status and of the defendant's participation in a

1 mental health treatment program;

2 (11)(k) considerate of the defendant's employment status; and

3 (12)(l) sufficient to include the charge imposed in 46-18-236.

4 ~~(2) Courts shall prescribe a single, uniform bond amount, regardless of the bond type. Courts are~~
5 ~~prohibited from setting disparate financial obligations based on bond type. Cash and surety bonds must be~~
6 ~~treated equally, with no incentives or terms favoring one bond type over another.~~

7 ~~(3)(2) For cases involving multiple charges within a single case, the court shall issue a single~~
8 ~~aggregate bond that reflects the combined risk and conditions of release. Stacking separate bonds for~~
9 ~~individual charges is prohibited.~~

10 ~~(4)(3) Courts and jails may not act as de facto sureties. Courts and jails are prohibited from accepting~~
11 ~~or processing cash bonds under terms that do not apply equally to surety bonds. In the event of a defendant's~~
12 ~~failure to appear, the same financial consequences must apply equally to cash bonds and surety bonds.~~

13 ~~(5)(4) The purpose of this section is to maintain the impartiality of the judiciary and protect the~~
14 ~~integrity of the bail system. Courts shall avoid actions that may create the appearance of impropriety or~~
15 ~~favoritism. Equal treatment of all bond types is essential to uphold public confidence in the bail process."~~

16

17 **Section 11.** Section 46-9-311, MCA, is amended to read:

18 **"46-9-311. Reduction, increase, revocation, or substitution of bail.** (1) ~~Upon~~On application by the
19 state or the defendant, the court before which the proceeding is pending may increase or reduce the amount of
20 bail, substitute one bail for another, alter the conditions of the bail, or revoke bail.

21 (2) Reasonable notice of ~~such~~the application must be given to the opposing parties, the surety
22 bail bond insurance producer, or their~~the opposing parties'~~ attorneys by the applicant.

23 (3) If the court increases the bail amount and a new bond is required:

24 (a) the surety bail bond insurance producer responsible for the existing bond may rewrite the bond
25 to reflect the increased amount;

26 (b) on receipt and acceptance of the rewritten bond, the court shall immediately exonerate and
27 discharge the original bond, releasing the producer from all liability associated with the prior bond; and

28 (c) multiple surety appearance bonds may not be stacked for the same defendant in any single

case. When a new bond is issued, the prior bond must be exonerated and discharged;

(4) On a defendant's surrender, the following procedures apply:

(a) the defendant must be brought before a judge for a redetermination of bond prior to release;

(b) the judge may only continue the existing bond if the surety bail bond insurance producer provides documented agreement to continue the bond liability; and

(c) if the producer declines to continue liability, the judge shall either:

(i) modify the bond terms to address the reasons for surrender or forfeiture; or

(ii) set a new bond with terms consistent with the original conditions unless circumstances warrant adjustment.

(5) If a defendant is rearrested on the same charges after bond exoneration:

(a) a new bond must be executed for the defendant's release;

(b) previously exonerated bonds may not be reactivated under any circumstances;

(c) the new bond must be issued in accordance with the terms and conditions set by the court for the rearrested defendant.

(6) For a hearing under this section, the surety bail bond insurance producer must have the right to:

(a) appear ~~and participate~~ in the redetermination hearing;

~~(b) request full exoneration of liability or continuation of the bond; and~~

~~(c) decline further liability for the bond without judicial imposition of the existing bond terms.~~

(7) For the purposes of this section, the following definitions apply:

(a) "Revocation" means the termination of liability on a surety appearance bond initiated by the surety bail bond insurance producer. Revocation requires proper notification as outlined in 46-9-503 and may include the issuance of a new bond agreement if necessary.

(b) "Surrender" means the act of a surety bail bond insurance producer delivering a defendant into the custody of a law enforcement officer, detention center, or court. A surrender may involve simultaneous revocation of the surety appearance bond to protect the surety's liability."

Section 12. Section 46-9-502, MCA, is amended to read:

1 **"46-9-502. Conditions performed -- bail discharged.** (1) When the conditions of bail have been
2 performed and the accused has been discharged from the accused's obligations in the cause, the court shall
3 return to the accused or the accused's sureties the deposit of any cash, stocks, or bonds. If the bail is real
4 estate, the court shall notify in writing the county clerk and recorder and the lien of the bail bond on the real
5 estate must be discharged. If the bail is a written undertaking or a commercial surety bond, it must be
6 discharged and the sureties exonerated.

7 (2) On adjudication of the case and sentencing of the defendant, a surety appearance bond must
8 be discharged and may not be extended or converted into a performance bond to ensure compliance with fines,
9 fees, or other conditions of sentencing.

10 ~~(3) Courts are prohibited from scheduling ongoing status hearings for the purpose of monitoring~~
11 ~~the payment of fines and fees as a condition of maintaining a secured surety appearance bond. If a defendant~~
12 ~~fails to comply with the terms of sentencing, the court may:~~

13 ~~(a) hold a contempt hearing, which allows for the issuance of a warrant; and~~

14 ~~(b) set a new bond on the warrant to ensure the defendant's appearance at the contempt hearing.~~

15 (4)(3) When a defendant appears for a contempt hearing and satisfies the appearance and the
16 hearing is adjudicated, a surety bond issued for the defendant must be discharged and may not be used to
17 ensure continued compliance with fines, fees, or other sentencing conditions.

18 (5)(4) The intent of this section is to maintain the distinction between surety appearance bonds and
19 performance bonds and to ensure fairness to the sureties and defendants by limiting the bond's scope to
20 securing appearances as originally intended."

21
22 **Section 13.** Section 46-9-503, MCA, is amended to read:

23 **"46-9-503. Violation of release condition -- forfeiture.** (1) If a defendant violates a condition of
24 release, including failure to appear, the prosecutor may make a written motion to the court for revocation of the
25 order of release. A judge may issue a warrant for the arrest of a defendant charged with violating a condition of
26 release. Upon arrest, the defendant must be brought before a judge in accordance with 46-7-101.

27 (2) (a) If a defendant fails to appear before a court as required and bail has been posted, the judge
28 may declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant and the

defendant's sureties at their last-known address within 10 working days after the defendant fails to appear or the bond becomes void and must be released and returned to the surety within 5 working days. If a court fails to issue a forfeiture within 10 days of the failure to appear, the bond must be automatically exonerated and discharged back to the surety bail bond agent. Failure of a court to send notice within 10 days of the failure to appear renders the forfeiture invalid and the bond must be discharged.

(b) On issuing a forfeiture, the court shall issue notice of:

~~(i) a warrant for the arrest of the defendant; and~~

~~(ii) deliver a copy of the warrant along with notice of forfeiture to the agent.~~

~~(c) Failure of a court to comply with subsection (2)(b) invalidates the forfeiture, and the bond must be discharged.~~

~~(d) A court shall maintain proof of compliance with the requirements of this subsection (2), which must include documentation showing:~~

~~(i) the date of the defendant's failure to appear;~~

~~(ii) the date the forfeiture was issued; and~~

~~(iii) the date the notice of forfeiture ~~and warrant were~~ was sent to the agent.~~

(3) A court shall notify all parties responsible for ensuring the defendant's appearance, including the surety bail bond insurance producer who has the right to appear at any court hearing under [section 2].

~~(3)(4)~~ If at any time within 90 days after the forfeiture the defendant's sureties surrender the defendant pursuant to 46-9-510 or appear and satisfactorily excuse the defendant's failure to appear, the judge shall direct the forfeiture to be discharged without penalty. This 90-day period begins on the date the forfeiture order is signed by the judge. Courts shall send notification of forfeiture to the surety bail bond agent within 10 calendar days of the failure to appear. If the notification is issued within the timeframe, the 90-day clock begins regardless of when the notice is received by the surety, provided the court can document compliance with the 10-day notification rule. If at any time within 90 days after the forfeiture the defendant appears and satisfactorily excuses the defendant's failure to appear, the judge shall direct the forfeiture to be discharged upon terms as may be just. A court must notify the agent within 10 days after the 90-day forfeiture period expires if the forfeiture remains unpaid. Notification under this section must:

(a) be served in the same manner as a notice in a civil action;

(b) include details of the amount owed, the court order enforcing the forfeiture, and instructions for payment or further legal proceedings; and

(c) clearly state that the forfeiture action is now considered a civil action between the court, the surety bail bond insurance producer, and the surety, with the producer recognized as a direct party to the case.

(5) In addition to the timeframes in subsection (4), the surety bail bond insurance producer may recover forfeiture payments after payment. ~~After payment of the forfeiture, the producer retains arrest authority over the defendant for up to 1 year.~~ If the defendant is apprehended and returned to the court's custody within this period, the producer may:

~~(a) file a motion with the court to request a refund of the paid forfeiture amount; and~~

~~(b) provide documentation providing the surrender and custody of the defendant to support the refund request.~~

~~(4)(6)~~ The surety bail bond must be exonerated ~~upon~~ on proof of the defendant's death or incarceration or subjection to court-ordered treatment in a foreign jurisdiction for a period exceeding the time limits under subsection ~~(3)~~ (4).

(7) If the defendant is incarcerated in a jurisdiction outside the state or in a tribal jail, the following procedures apply:

(a) the surety bail bond insurance producer may petition the court for:

(i) issuance of a warrant that is enforceable in the jurisdiction where the defendant is located; or

(ii) discharge of the forfeiture until the defendant completes their obligations in the incarcerating jurisdiction; and

~~(b) lower jurisdictional courts must have explicit authority to facilitate the issuance of nationwide warrants in cases involving surety appearance bonds, ensuring recovery of the defendant in jurisdictions requiring warrants for apprehension; and~~

~~(c)(b)~~ the cost of returning the defendant to the court's jurisdiction as a result of an out-of-state warrant or recovery efforts initiated by the producer in a foreign or out-of-state jurisdiction falls solely on the producer and not the court.

~~(5)(8)~~ A surety bail bond is an appearance bond only. It cannot be held or forfeited for fines, restitution, or violations of release conditions other than failure to appear. The original bond is in effect pursuant

1 to 46-9-121 and is due and payable only if the surety fails, after 90 days from forfeiture, to surrender the
2 defendant or if the defendant fails to appear on the defendant's own within the same time period."

3
4 **Section 14.** Section 46-9-505, MCA, is amended to read:

5 **"46-9-505. Issuance of arrest warrant -- redetermining bail -- definition.** (1) ~~Upon~~On failure to
6 comply with any condition of a bail or recognizance, the court having jurisdiction at the time of the failure may,
7 in addition to any other action provided by law, issue a warrant for the arrest of the person. The court shall
8 comply with the notice requirements of 46-9-503.

9 (2) On verified application by the prosecutor setting forth facts or circumstances constituting a
10 breach or threatened breach of any of the conditions of the bail or a threat or an attempt to influence the
11 pending proceeding, the court may issue a warrant for the arrest of the defendant.

12 ~~(3) If the defendant has been released under the supervision of a pretrial services agency, referred~~
13 ~~to in 46-9-108 (1)(f), an officer of that agency may arrest the defendant without a warrant or may deputize any~~
14 ~~other officer with power of arrest to arrest the defendant by giving the officer oral authorization and within 12~~
15 ~~hours delivering to the place of detention a verified written statement setting forth that the defendant has, in the~~
16 ~~judgment of the officer, violated the conditions of the defendant's release. An oral authorization delivered with~~
17 ~~the defendant by the arresting officer to the official in charge of a county detention center or other place of~~
18 ~~detention is a sufficient warrant for detention of the defendant if the pretrial officer delivers a verified written~~
19 ~~statement within 12 hours of the defendant's arrest.~~

20 (3) (a) If the defendant has been released under the supervision of a pretrial services agency, the
21 pretrial services agency is a supervisory entity and shall comply with the following:

22 (i) a pretrial services agency is a nonsworn government agency or civilian contractor and does not
23 have the authority to arrest a defendant without a warrant; and

24 (ii) if a violation of conditions is suspected, the pretrial services agency shall:

25 (A) apply to the court for a warrant, supported by verified facts or circumstances; and

26 (B) request a sworn law enforcement officer to serve the warrant on their behalf.

27 (b) The pretrial services agency may not deputize law enforcement officers or rely on oral
28 authorization for arrests or detentions.

(4) ~~Upon~~On the arrest, the defendant must be brought before the court without unnecessary delay and the court shall conduct a hearing and determine bail in accordance with 46-9-311.

~~(5) As used in this section, "pretrial services agency" means a government agency or a private entity under contract with a local government whose employees have the minimum training required in 46-23-1003 and that is designated by a district court, justice's court, municipal court, or city court to provide services pending a trial.~~

(5) As used in this section, the term "pretrial services agency" means a government agency or a private entity under contract with a local government that is designated by a district court, justice's court, municipal court, or city court to provide supervisory services pending a trial. A pretrial services agency:

(a) is limited to monitoring compliance with conditions of release and reporting violations to the court;

(b) does not have the authority to arrest a defendant or deputize law enforcement officers for enforcement purposes;

(c) shall comply with the requirement to apply for a warrant through proper judicial procedures and request that a sworn law enforcement officer serve the warrant on its behalf; and

(d) shall ensure all personnel meet the minimum training requirements outlined in 46-23-1003."

Section 15. Section 46-9-510, MCA, is amended to read:

"46-9-510. Surrender of defendant. (1) At any time before the forfeiture of bail or within 90 days after forfeiture:

(a) the defendant may surrender to the court or any peace officer of this state; or

(b) a surety bail bond insurance producer licensed to sell, solicit, or negotiate commercial bail bonds pursuant to Title 33, chapter 17, may arrest the defendant pursuant to 46-6-508 and surrender the defendant to the court, any peace officer, or any detention center facility of this state. Any arrest or surrender pursuant to this subsection (1) must be reported to the commissioner of insurance on a form and in a manner to be determined by the commissioner.

1

2

3 (2) On surrender of the defendant, the following procedures apply.

4 (a) The peace officer or detention center facility shall detain the defendant in custody as on
5 commitment and file a certificate acknowledging the surrender. This acknowledgment must:

6 (i) include confirmation of custody acceptance;

7 (ii) be provided to the surety bail bond insurance producer within 24 hours; and

8 (iii) be filed with the court of jurisdiction within 24 hours to inform the court that the defendant is in
9 custody.

10 (b) All law enforcement officers and detention centers within the state shall accept custody of a
11 defendant surrendered by a licensed producer, provided the surrender complies with legal requirements.

12 (c) The court, on receiving confirmation of the defendant's custody, shall order the bail exonerated
13 immediately.

14 (3) If a defendant is apprehended by a surety bail bond insurance producer within 1 year after
15 forfeiture and returned to the court's jurisdiction, the surety may:

16 (a) file a motion with the court to request a refund of the forfeited bond amount; and

17 (b) provide documentation proving the apprehension and surrender of the defendant to the court or
18 law enforcement.

19 (2) — ~~The peace officer or detention center facility shall detain the defendant in custody as upon~~
20 ~~commitment and shall file a certificate, acknowledging the surrender, in the court having jurisdiction of the~~
21 ~~defendant. The court shall then order the bail exonerated.~~

22 (4) For the purposes of this section, the term "arrest", as it pertains to actions by a surety bail bond
23 insurance producer, means the physical seizure or custody of the principal for the purpose of returning the
24 principal to the jurisdiction of the court. This type of arrest:

25 (a) is authorized under the contractual obligations of the bail agreement and applicable laws;

26 (b) does not constitute the initiation of criminal charges or enforcement of a penalty; and

27 (c) is distinct from an arrest conducted by law enforcement officers, as it is limited to ensuring the
28 defendant's compliance with court orders."

1

2 NEW SECTION. **Section 16. Out-of-jurisdiction warrants -- prohibition on own recognizance**

3 **release.** (1) Justices of the peace or judicial officers outside the jurisdiction where a warrant was issued are
4 prohibited from granting an own recognizance or release for a defendant arrested on that warrant.

5 (2) Defendants arrested on an out-of-jurisdiction warrant shall remain in custody or post bond as
6 specified in the warrant until the jurisdictional court is notified and involved.

7 (3) A defendant arrested on an out-of-jurisdiction warrant must be brought before a justice of the
8 peace or a court in the county of arrest without unnecessary delay.

9 (a) At the hearing, the court or justice of the peace must:

10 (i) inform the defendant of the charges and conditions outlined in the warrant;

11 (ii) confirm the identity of the defendant as the individual named in the warrant; and

12 (iii) notify the defendant of their right to post bond as specified in the warrant or await transfer to
13 the jurisdictional court.

14 (b) This notification process does not grant the justice of the peace or court in the arresting county
15 the authority to alter or override the conditions of release set by the issuing jurisdiction.

16 (4) A defendant arrested in a separate jurisdiction may post the bond amount specified in the
17 warrant without requiring an additional hearing. The arresting jurisdiction shall:

18 (a) accept the bond amount specified in the warrant; and

19 (b) notify the court of jurisdiction immediately on receipt of the bond payment and forward all
20 related documentation.

21 (5) The arresting county or jurisdiction shall notify the court of jurisdiction immediately on the
22 defendant's arrest or any bond posting. The notification must include details of the defendant's arrest, charges,
23 and bond payment to ensure the jurisdictional court can confirm the conditions of the release.

24 (6) Defendants who do not post bond must be held by the arresting county until the jurisdictional
25 county arranges for their transfer or provides alternative instructions. The arresting county may not release the
26 defendant without consent from the court of jurisdiction.

27 (7) Penalties apply to:

28 (a) nonjurisdictional courts or officers that improperly grant releases or fail to notify the

1 jurisdictional court of bond posting; and

2 (b) arresting counties that release defendants without following proper notification and transfer
3 procedures.

4 (8) The legislature intends that these provisions:

5 (a) preserve the authority of the issuing court in setting release conditions;

6 (b) ensure consistency and prevent conflicting judicial decisions from undermining warrant
7 enforcement; and

8 (c) protect public safety by maintaining proper communication and custody protocols.

9 (9) The department of justice shall provide training for justices of the peace, law enforcement, and
10 detention center personnel on:

11 (a) handling out-of-jurisdiction warrants;

12 (b) accepting bond payments for warrants issued by another jurisdiction; and

13 (c) proper procedures for notifying and transferring cases to the jurisdictional court.

14 (10) The court of jurisdiction may:

15 (a) invalidate any improperly granted releases or bond conditions imposed by nonjurisdictional
16 courts; and

17 (b) require the rearrest or transfer of a defendant if necessary to enforce the original warrant terms.

18

19 **NEW SECTION. Section 17. Automatic bond discharge -- exoneration for defendants released**

20 **to own recognizance.** (1) An existing bond for a defendant in the same jurisdiction must be automatically
21 discharged and exonerated if:

22 (a) the defendant is arrested on new charges or a separate warrant unrelated to the charges
23 covered by the existing bond; and

24 (b) the court orders the defendant's release on their own recognizance or for the new charges or
25 warrant.

26 (2) Courts may not:

27 (a) hold a surety bail bond agent liable for a secured bond when the defendant is considered
28 appropriate for release on their own recognizance; or

(b) use an existing bond to justify liability for unrelated charges while simultaneously granting own-recognizance release on new charges.

(3) The legislature intends for these provisions to:

(a) prevent inequities in which courts grant own-recognizance releases for some charges but retain secured bond liability for unrelated charges; and

(b) align the court's determination of the defendant's risk with the financial liability of the surety bail bond agent.

(4) Courts shall:

(a) exonerate any existing bond for a defendant in the same jurisdiction when an own-recognizance release is granted, whether explicitly requested by the surety or not; and

(b) provide written notice to the surety bail bond agent confirming the exoneration and discharge of liability.

(5) A surety bail bond agent may agree to continue liability on an existing bond if they explicitly consent to do so. Courts shall notify the agent before continuing any bond under these circumstances.

(6) A surety bail bond agent may petition the court for exoneration of a bond if the court fails to discharge the bond as required under these provisions. Agents may file complaints with the judicial standards commission or seek judicial review in cases of noncompliance.

(7) Judges and court staff shall receive training on:

(a) the financial and procedural implications of holding surety bail bond agents liable for defendants who are considered appropriate for release on their own recognizance; and

(b) compliance with automatic exoneration requirements.

NEW SECTION. Section 18. Judicial interference with bail bond acceptance prohibited. (1) A

judge may not require a licensed surety bail bond agent to appear in court after a bond has been executed and the defendant has been lawfully released. A judge may not order the rearrest of a defendant solely for the purpose of reviewing or reevaluating a bond that has already been accepted and executed in compliance with the law.

(2) When a bond has been lawfully issued and the defendant released, a judge may not:

(a) reject or invalidate the bond unless there is evidence of fraud or procedural error in the bond's execution; or

(b) alter the contractual obligations between the surety bail bond agent and the defendant, including earned premium or liability terms.

(3) Judges may not issue secondary warrants for a defendant already released on a valid bond, except in cases in which:

(a) the defendant has failed to appear or violated the terms of the bond; or

(b) new criminal charges have been filed against the defendant.

(4) The bond agreement between the surety bail bond agent and the defendant is a private contract governed by state law. Judges may not interfere with its terms. Defendants are not entitled to refunds of bond premiums when the bond is executed and the defendant is released, regardless of subsequent judicial actions.

(5) The legislature intends for these provisions to:

(a) protect the integrity of the bail process and prevent unnecessary judicial interference; and

(b) ensure that judges respect the legal and financial obligations of licensed surety bail bond agents and defendants.

(6) Surety bail bond agents may file complaints with the state's judicial oversight body against judges who violate these provisions. Agents may seek legal recourse for damages if a judge unlawfully alters or nullifies a bond agreement or interferes with earned premiums or liability.

(7) Judges and court personnel shall receive training on:

(a) the limits of judicial authority regarding bail bonds; and

(b) the rights and obligations of surety bail bond agents under Montana law.

NEW SECTION. Section 19. — Surety bail bond insurance producer access to court records. (1)

~~To facilitate the effective monitoring of defendants and ensure compliance with court orders, a surety bail bond insurance producer licensed pursuant to Title 33, chapter 17, may apply for access to court records across jurisdictions within the state. On approval, the producer must be granted the same access to court records as clerks or title companies, consistent with applicable state rules and statutes.~~

~~(2) — Surety bail bond insurance producers seeking access shall:~~

~~(a) — submit a single application to the office of the clerk of the supreme court, specifying whether access is requested for statewide courts or limited to local jurisdictions; and~~

~~(b) — comply with all reasonable security measures and protocols established by the clerk of the supreme court to protect sensitive or confidential information.~~

~~(3) — The clerk of the supreme court shall develop rules for processing and approving applications for court access, ensuring:~~

~~(a) — consistency with state and federal privacy laws;~~

~~(b) — expedited processing for surety bail bond insurance producers operating on a statewide basis; and~~

~~(c) — that approved producers may access records electronically or through other efficient means as determined by the court.~~

~~(4) — Surety bail bond insurance producers with approved access shall use court records solely for purposes related to the management and monitoring of defendants under their surety obligations and may not disclose or use the information for an unauthorized purpose.~~

~~(5) — Access granted under this section must remain in effect for the duration of the surety bail bond insurance producer's valid license or until otherwise revoked by the clerk of the supreme court for cause.~~

Section 19. Section 46-9-511, MCA, is amended to read:

"46-9-511. Forfeiture procedure. (1) When an order of forfeiture is not discharged, the court having jurisdiction shall proceed with the forfeiture of bail as follows:

(a) if money has been posted as bail in a misdemeanor case, as defined in 45-2-101, the court shall pay the money to the treasury of the city or county where the money was posted;

(b) if money has been posted as bail in a felony case, as defined in 45-2-101, the court shall pay the money to the department of revenue for deposit in the state general fund; or

(c) if other property is posted as a condition of release, the property must be sold in the same manner as property sold in civil actions. The proceeds of the sale must be used to satisfy all court costs and prior encumbrances, if any, and from the balance, a sufficient sum to satisfy the judgment or forfeiture must be

Amendment - 1st Reading-white - Requested by: Nelly Nicol - (H) Business and Labor

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Drafter: Jameson Walker,

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1 paid as provided under subsection (1)(a) in a misdemeanor case or under subsection (1)(b) in a felony case.

2 (2) ~~If a surety bond has been posted as bail, execution may be issued against the sureties or the~~
3 ~~surety company in the same manner as executions in civil actions~~ If the defendant is surrendered within 1 year
4 of forfeiture, the court may discharge the execution and refund the proceeds to the surety."

5
6 NEW SECTION. Section 20. Codification instruction. [Sections 1 through 4 and 16 through ~~19~~18]
7 are intended to be codified as an integral part of Title 46, chapter 9, and the provisions of Title 46, chapter 9,
8 apply to [sections 1 through 4 and 16 through ~~19~~18].

9
10 NEW SECTION. Section 21. Effective date. [This act] is effective on passage and approval.

11 - END -