

JAN 20 2010

A BILL FOR AN ACT

RELATING TO BAIL BONDS.

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

1 SECTION 1. Chapter 804, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§804- Remission or mitigation of bail forfeiture. (1)

5 Upon a motion filed within one hundred eighty days after an
6 order of forfeiture, the court that has forfeited bail shall
7 direct that the forfeiture be set aside, in whole or in part, if
8 the defendant has been surrendered and it appears that justice
9 does not require enforcement of the forfeiture.

10 (2) In ruling upon a motion made pursuant to subsection
11 (1), the court shall consider all relevant factors, which may
12 include but are not limited to the following:

13 (a) The willfulness of the defendant's violation of the
14 obligation to appear;

15 (b) The participation of the person posting bail in
16 locating and apprehending the defendant;



- 1 (c) The costs, inconvenience, and prejudice suffered by
- 2 the State as a result of the defendant's violation of
- 3 the obligation to appear;
- 4 (d) Any intangible costs;
- 5 (e) The public's interest in ensuring a defendant's
- 6 appearance;
- 7 (f) Any mitigating factors;
- 8 (g) Whether the State exhibited any actual interest in
- 9 regaining custody of the defendant through prompt
- 10 efforts to apprehend or extradite the defendant;
- 11 (h) Whether the bonding company has attempted to assist or
- 12 persuade the defendant to expedite the defendant's
- 13 return by exercising the defendant's rights under the
- 14 Agreement on Detainers, section 834-1; and
- 15 (i) The need to deter the defendant and others from future
- 16 violations.
- 17 (2) If the court sets aside the forfeiture, it may remit
- 18 the bond in full or mitigate the bond in the amount of the
- 19 court's costs and the costs of extraditing the defendant, if
- 20 any."

21 SECTION 2. Section 804-14, Hawaii Revised Statutes, is

22 amended to read as follows:



1 "§804-14 Discharge of sureties. Those who may have become
2 bail for [~~anyone,~~] any person, may at any time discharge
3 themselves, by surrendering [~~him~~] the person to the custody of
4 any sheriff or chief of police or [~~his~~] authorized
5 subordinate[~~-~~] or to a state correctional facility that shall
6 take custody of the person."

7 SECTION 3. Section 804-41, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§804-41 Discharge of surety. At any time before the
10 breach of the condition of the bond, the surety may discharge
11 oneself by surrendering the principal into the hands of any
12 sheriff or the chief of police or the sheriff's or chief's
13 authorized subordinate[~~-~~] or to a state correctional facility
14 that shall take custody of the person."

15 SECTION 4. Section 804-51, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§804-51 Procedure. Whenever the court, in any criminal
18 cause, forfeits any bond or recognizance given in a criminal
19 cause, the court shall immediately enter up judgment in favor of
20 the State and against the principal or principals and surety or
21 sureties on the bond, jointly and severally, for the full amount
22 of the penalty thereof, and shall cause execution to issue



1 thereon immediately after the expiration of [~~thirty~~] one hundred
2 eighty days from the date that notice is given via personal
3 service or certified mail, return receipt requested, to the
4 surety or sureties on the bond, of the entry of the judgment in
5 favor of the State, unless before the expiration of [~~thirty~~] one
6 hundred eighty days from the date that notice is given to the
7 surety or sureties on the bond of the entry of the judgment in
8 favor of the State, a motion or application of the principal or
9 principals, surety or sureties, or any of them, showing good
10 cause why execution should not issue upon the judgment, is filed
11 with the court. If the motion or application, after a hearing
12 held thereon, is sustained, the court shall vacate the judgment
13 of forfeiture and, if the principal surrenders or is surrendered
14 pursuant to section 804-14 or section 804-41, return the bond or
15 recognizance to the principal or surety, whoever shall have
16 given it, less the amount of any cost[~~7~~] up to \$250, as
17 established at the hearing, incurred by the State as a result of
18 the nonappearance of the principal or other event on the basis
19 of which the court forfeited the bond or recognizance. If the
20 motion or application, after a hearing held thereon, is
21 overruled, execution shall forthwith issue and shall not be



1 stayed unless the order overruling the motion or application is
2 appealed from as in the case of a final judgment.

3 This section shall be considered to be set forth in full in
4 words and figures in, and to form a part of, and to be included
5 in, each and every bond or recognizance given in a criminal
6 cause, whether actually set forth in the bond or recognizance,
7 or not."

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect upon its approval;
11 provided that this Act shall be retroactive and apply to all
12 proceedings in which an order forfeiting bail was enacted less
13 than one hundred eighty days prior to its effective date.
14

INTRODUCED BY: R. O. O'Neil
by request

Report Title:

Bail Bonds

Description:

Extends the deadline for execution of judgment of forfeiture of a bail bond from 30 days to 180 days. Authorizes remission or mitigation of forfeiture on motion made within 180 days of forfeiture order. Limits the amount of costs that a court may charge against a bond. Applies retroactively to certain proceedings.

