

SENATE BILL No. 157

By Committee on Judiciary

2-3

1 AN ACT concerning criminal procedure; relating to release prior to trial;
2 forfeiture of appearance bonds; requiring warrants for failure to appear
3 to be given to sureties; allowing bond forfeiture to be set aside if surety
4 can show ***that the*** defendant ~~left the country~~ ***was deported from the***
5 ***United States***; requiring remission in certain circumstances; amending
6 K.S.A. 22-2807 and repealing the existing section.
7

8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 22-2807 is hereby amended to read as follows: 22-
10 2807. (a) If a defendant fails to appear as directed by the court and
11 guaranteed by an appearance bond, the court in which the bond is
12 deposited shall declare a forfeiture of the bail and issue a warrant for the
13 defendant's arrest. If the defendant is charged with a felony offense, the
14 sheriff shall enter such warrant into the national crime information center's
15 index ***and the court shall make a copy of the warrant available to a***
16 ***compensated surety who deposited the bond on behalf of the defendant***
17 ***within 14 days of issuance of the warrant.*** ~~If such warrant is not entered~~
18 ~~into such index, the sheriff shall notify the court thereof.~~

19 (b) An appearance bond may only be forfeited by the court upon a
20 failure to appear. If a defendant violates any other condition of bond, the
21 bond may be revoked and the defendant remanded to custody. An
22 appearance bond is revoked by the execution of a warrant for a defendant's
23 arrest for a violation of a bond condition. The magistrate shall promptly set
24 a new bond pursuant to requirements of K.S.A. 22-2802, and amendments
25 thereto.

26 (c) (1) The court may direct that a forfeiture be set aside, upon such
27 conditions as the court may impose, if it appears that justice does not
28 require the enforcement of the forfeiture.

29 (2) The court shall direct that a forfeiture be set aside, ~~upon such~~
30 ~~conditions as the court may impose~~, if:

31 (A) The surety can prove that the defendant ~~has left the country~~ ***been***
32 ***deported from the United States*** or is incarcerated somewhere within the
33 United States prior to judgment of default by providing to the court a
34 written statement, signed by the surety under penalty of perjury, setting
35 forth ~~details of the facts substantiating such incarceration claim;~~

36 (B) the warrant required to be issued by subsection (a) was not issued

1 within 14 days of the forfeiture;

2 (C) a warrant that is required to be entered into the national crime
3 information center's index *or provided to a compensated surety* pursuant to
4 subsection (a) was not entered *or provided* within 14 days of issuance,
5 unless there is good cause shown for the failure to enter such warrant into
6 the index *or provide such warrant to the compensated surety*; or

7 ~~(D) the defendant has been arrested outside of this state and the~~
8 ~~prosecuting attorney has declined to proceed with extradition.~~

9 (3) Upon the defendant's return, the surety may be ordered to pay the
10 costs of such return.

11 (d) When a forfeiture has not been set aside, the court shall on motion
12 enter a judgment of default and execution may issue thereon. If the
13 forfeiture has been decreed by a district magistrate judge and the amount
14 of the bond exceeds the limits of the civil jurisdiction prescribed by law
15 for a district magistrate judge, the judge shall notify the chief judge in
16 writing of the forfeiture and the matter shall be assigned to a district judge
17 who, on motion, shall enter a judgment of default. By entering into a bond
18 the obligors submit to the jurisdiction of any court having power to enter
19 judgment upon default and irrevocably appoint the clerk of that court as
20 their agent upon whom any papers affecting their liability may be served.
21 Their liability may be enforced on motion without the necessity of an
22 independent action. The motion and notice thereof may be served on the
23 clerk of the court, who shall ~~forthwith~~ *promptly* mail copies to the obligors
24 to their last known addresses. No judgment may be entered against the
25 obligor in an appearance bond until more than 60 days after notice is
26 served as provided ~~herein in this section~~. No judgment may be entered
27 against the obligor in an appearance bond more than two years after a
28 defendant's failure to appear.

29 (e) After entry of judgment pursuant to subsection (d), the court:

30 (1) May remit such judgment in whole or in part under the conditions
31 applying to the setting aside of forfeiture in subsection (c); *and*

32 (2) *shall remit 95% of the amount of the appearance bond to the*
33 *obligor if the defendant is returned to custody within 180 days after*
34 *judgment is entered.*

35 Sec. 2. K.S.A. 22-2807 is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after its
37 publication in the statute book.