

Bonds, Forfeitures and Bonding Companies



Mike Forbess, Tipton County Circuit Court Clerk
Sarah Bradberry, Carroll County Circuit Court Clerk

1

Bonds

Types:
Cash/Surety
Property

2

Bail by Clerk Basics 40-11-105

- (a) (1) When the defendant has been arrested or held to answer for any bailable offense, the defendant is entitled to be admitted to bail by the committing magistrate, by any judge of the circuit or criminal court, or by the clerk of any circuit or criminal court; provided, that if admitted to bail by the clerk of any circuit or criminal court, the defendant has a right to petition the judge of the circuit or criminal court if the defendant feels that the bail set is excessive, and shall be given notice of this fact by the clerk.
- (2) The clerk of any circuit or criminal court may only admit the defendant to bail when the judge is not present in the court and the clerk reasonably believes that the judge will not be present within three (3) hours after the defendant has been committed to the county or city jail, following arrest.
- (b) Except as provided in subsection (c), in no event may a clerk set the amount of bail in excess of: (1) One thousand dollars (\$1,000) if the defendant is charged with a misdemeanor;
- (2) Ten thousand dollars (\$10,000) if the defendant is charged with a felony that does not involve a crime committed against a person;
- (3) Fifty thousand dollars (\$50,000) if the defendant is charged with a felony that involves a crime committed against a person; or
- (4) One hundred thousand dollars (\$100,000) if the defendant is charged with some form of homicide.
- (c) A clerk may set the amount of bail in excess of the listed amounts in subsection (b) if the defendant is deemed a risk of flight pursuant to § 40-11-118.

3

Areas to consider with bail-40-11-118

- Swear the officer to the facts of the warrant.
- Questions:
 - Does the defendant have a criminal history?
 - Length of residence in the community
 - Defendant reputation, character and mental condition
 - The nature of the offense
 - What county does the defendant live in?
 - Is the defendant a flight risk?
 - Are they on probation?
- What other question do you ask?

4

- **40-11-153. Release within twelve hours of the time of arrest prohibited for certain offenses — Exceptions — Requirements.**
- (a) Any defendant arrested for the offense of unauthorized camping on state property, as defined in § 39-14-414; **vandalism**, as described in § 39-14-408(b)(1); **rioting**, as defined in § 39-17-302; **aggravated rioting**, as defined in § 39-17-303; **inciting to riot**, as defined in § 39-17-304; **disrupting a meeting or procession**, as described in § 39-17-306; or **obstructing a highway**, as described in § 39-17-307(a)(1) shall not be released within twelve (12) hours of the time of arrest. The magistrate or other official duly authorized to release the defendant may, however, release the defendant in less than twelve (12) hours if the official finds that the defendant is not likely to immediately resume the criminal behavior based on the circumstances of the arrest and the defendant's prior criminal history, if any.
- (b) The findings of the magistrate or other official duly authorized to release the defendant must be reduced to writing. The written findings must be attached to the warrant and shall be preserved as a permanent part of the record. The arresting officer shall make official note of the time of the arrest in order to establish the beginning of the twelve-hour period required by this section.

5

40-11-122 -Property

- In lieu of the bail deposit provided for in § 40-11-118, any defendant for whom bail has been set may execute a bail bond which may be secured as provided in this section. The bail bond may be secured by: (1) Real estate situated in this state with nonexempt unencumbered equity owned by the defendant or the defendant's surety worth one and one-half (1½) times the amount of bail set. If the bail bond is secured by real estate, the defendant or the defendant's surety shall execute a deed of trust conveying the real estate in trust to the clerk who shall immediately file the deed of trust in the office of the register of the county in which the real estate is situated. The costs of preparation of the deed of trust and recordation shall be paid by the defendant;
- (2) A written undertaking signed by the defendant and at least two (2) sufficient sureties, and approved by the magistrate or officer. Sureties under this section shall not be professional bondsmen or attorneys; or
- (3) A solvent corporate surety or sureties or a professional bail bondsman as approved, qualified or regulated by §§ 40-11-101 — 40-11-144 and part 3 of this chapter. No bond shall be approved unless the surety on the bond appears to be qualified.

6

Property Bond Basics:

- Property is located in the State of Tennessee
- Attorney's Certificate of Title of the property
- Property is worth one and one-half times the amount of bail set
- Deed of Trust executed
- Appearance Bond filed
- After the conclusion of the case, a release of Lien of the Deed of Trust

7

Conditions of Bail

Order Granting Bail/Global Monitoring
County Standard Conditions

8

Global Positioning Monitoring System Basics TCA §40-11-152

- System that electronically determines and reports the location of an individual through use of a transmitter.
- Must be worn, cannot be a carried device.
- Must be 24/7 monitoring and capable of immediate notification to law enforcement and the appropriate emergency communications dispatch center of violations by call, text message, or electronic mail.
- Must have a written agreement with the issuing court that designates specific persons to receive notifications and alerts as required by 40-11-152(i)

9

GPS Monitoring May Be Ordered

- Domestic Assault (Simple Assault)
- Stalking
- Aggravated Stalking
- Especially Aggravated Stalking
- Violation of Order of Protection

☒ THE VICTIM MUST BE A DOMESTIC VIOLENCE VICTIM AS DEFINED IN TCA §36-3-601(5)

10

ORDER GRANTING BAIL – Practical Guide

- GPS shall be ordered in Aggravated Domestic Related Assaults
- GPS may be ordered for Domestic Abuse Victims of
 - Domestic Assault
 - Stalking
 - Violations of Order of Protection

❖ Court will consider:

- ❖ Likelihood of future assaults (criminal history of domestic assault)
- ❖ Victim's request for GPS
- ❖ Unless there is a good reason not to order GPS probably going to order
- ❖ Bond will have to be adjusted accordingly

11

STANDARD CONDITIONS OF BAIL BONDS FOR ALL CASES AND DEFENDANTS IN THE TWENTY-FOURTH JUDICIAL DISTRICT

1. Before release, a defendant shall provide accurate contact information to the Sheriff's Dept including address, phone number, next of kin address and phone number, best alternate contact person, address and phone number, etc.
2. A defendant shall notify their bail bond company in writing of any change in residence, phone number, or alternate contact person, as well as any change of employment within 72 hours after any said change.
3. A defendant shall not commit any violations of federal, state or municipal laws or ordinances while released on bail.
4. A defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substance, except as prescribed by a physician.
5. A defendant shall not knowingly associate with any persons engaged in criminal activity.

DEFENDANT'S SIGNATURE _____

CASE NO. _____

DATE _____

12

Forfeitures- 40-11-120

If the defendant released upon recognizance under § 40-11-115 or posting bail bond under § 40-11-118 does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of the order or forfeiture shall be mailed forthwith by the clerk to the defendant at the defendant's last known address. If the defendant does not appear and surrender to the court having jurisdiction within thirty (30) days from the date of the forfeiture or, within that period, satisfy the court that appearance and surrender by the defendant are impossible and not the defendant's fault, the court shall enter judgment for the state against the defendant for the amount of the bail and costs of the court proceedings. The deposit made in accordance with § 40-11-118 shall be applied to payment of the judgment and costs. Any balance of the judgment and costs may be enforced and collected in the same manner as a judgment entered in a civil action.

13

40-11-201. Conditional judgment on failure to appear.

(a) If the defendant who gives bail or makes a cash deposit as provided in part 1 of this chapter does not appear according to the undertaking, a conditional judgment may be entered against the defendant and the defendant's sureties, or against the defendant alone, in case of a deposit, or the court may grant an extension.

(b) No forfeiture or conditional forfeiture of any appearance or bail bond shall be rendered in any case where a statement of a licensed physician is furnished to the court showing that the principal in the bond is prevented from attending by some mental or physical disability, or where evidence of the defendant's incarceration is furnished to the court.

(c) The appearance or bail bond shall remain in full force and effect until the principal is physically or mentally able to appear, or until a detainer against the principal is filed with the detaining authority. On the filing of a detainer, the bondsman and sureties shall remain liable for the expenses of returning the principal to this jurisdiction for trial when the principal is released by the detaining authority. If the detainer request is refused or if the detaining authority releases the principal notwithstanding the filing of the detainer, the surety shall not be liable in the undertaking. It shall be the duty of the bondsman or surety to present to the presiding court, in a timely manner, all appropriate documentation evidencing that the detainer was properly filed or refused, or that the detaining authority released the principal notwithstanding the filing of the detainer. The liability of any bondsman or surety shall not exceed the amount of the bail bond. After trial, however, if it is necessary to return the principal to the detaining authority in another jurisdiction, all expenses incurred in the return shall be paid by the state of Tennessee. As used in this subsection (c), "detainer" includes any means of requesting a defendant be returned to this jurisdiction, including, but not limited to, a detainer, habeas corpus, or extradition.

14

Conditional Forfeiture Basics

- Defendant fails to appear
- Defendants sureties be notified by Order and Scire Facias
- Capias issue for the arrest of the Defendant and be held without bond.
- Sureties shall appear in the Court no later than 9:00am _____
- Sureties are placed on notice this judgment shall become final after the expiration of 180 days
- Capias issue for the arrest of the Defendant and be held without bond.
- Order of Final Forfeiture filed.

15

• **40-11-140. Execution on judgment.**

- (a) (1) If judgment is entered in favor of the state on any bail bond, the district attorney general shall have execution issued on the judgment and delivered immediately to the sheriff to be executed by levy on the cash deposited with the clerk of the court or on the real estate described in the deed of trust.
- (2) The cash shall be used to satisfy the judgment and costs.
- (3) The real estate shall be sold in the same manner as in execution sales in civil actions and the proceeds of the sale shall be used to satisfy the judgment, all court costs and prior encumbrances, if any.
- (4) The balance shall be returned to the grantor of the deed of trust.
- (b) The real estate so sold may be redeemed in the same manner as real estate may be redeemed after judicial or execution sales in civil actions.
- (c) A bond forfeiture shall be collected within the earlier of either five (5) years from the date the defendant failed to appear or the date of last activity in the case, after which time collection from the surety shall be forever barred.

16

Bonding Companies

17

• **40-11-132. Exoneration of bail bondsman or surety by surrender of defendant.**

- At any time, the bail bondsman or surety may surrender the defendant in their exoneration or the defendant may personally surrender to the officer. Surrender by a bail bondsman or surety shall be for good cause including, but not limited to, the following: (1) The defendant has violated the contractual provisions between the defendant and the bondsman;
- (2) The bondsman or surety has good cause to believe the defendant will not appear as ordered by the court having jurisdiction;
- (3) A forfeit, conditional or final, has been rendered against the defendant;
- (4) The defendant has failed to appear in court either as ordered by the court or as commanded by any legal process; or
- (5) The defendant has been arrested while on bond.

18

- **40-11-137. Duty of bail bondsman or surety upon surrendering defendant — Hearing.**
- (a) Upon surrendering the defendant, the bail bondsman or surety shall, as soon as is reasonably practicable, go before any court having jurisdiction authorized to admit to bail, and notify the officer of the surrender.
- (b) (1) Any court having jurisdiction so notified shall have the defendant brought before it as soon as practicable, and within seventy-two (72) hours, and determine whether or not the surrender was for good cause.
- (2) (A) If the court having jurisdiction finds that the surrender was arbitrary or not for good cause, it may order the defendant rereleased upon the same undertaking or impose other conditions as provided by law.
- (B) If the surrender is found to be for good cause, the court having jurisdiction shall approve the surrender by endorsement upon the bail bond or by other writing, and it shall be the duty of the surrendering bail bondsman to deliver the written approval or copy of the approval to the sheriff.
- (3) This subsection (b) shall not apply where a surrender is based on a conditional or final judgment of forfeiture issued by the court having jurisdiction over the defendant.
- (c) The court shall fix the amount of premium to be refunded, if any.

19

- **40-11-138. Release of bail bondsmen or sureties from obligations.**
- (a) If the conditions of the bail bond have been performed and the defendant has been discharged from the defendant's obligations in the cause, the clerk of the court shall return to the bondsman the deposit of any cash. If the bail has been secured by real estate, the clerk of the court shall immediately prepare and forward to the register a written release of the deed of trust on the real estate. The costs of the release shall be paid by the defendant.
- (b) (1) A bail bondsman or surety shall be released from an obligation under a bail bond if the charge against the surety's principal is disposed of by acquittal, agreement with the state, whether diversion or otherwise, or retirement.
- (2) (A) If the charge is disposed of by conviction or a plea of guilty, the bond shall remain in effect until the court renders the defendant's sentence.
- (B) After conviction or a plea of guilty, and before the court renders the defendant's sentence, the bond shall not be forfeited against a surety, shall not be included in the calculation of a professional bondsman's capacity or solvency, or otherwise negatively impact the surety.
- (c) If after the bond has been active and in effect for three (3) years and the state has failed to seek an original indictment before a grand jury against the defendant covered by the bond, the bond shall not be forfeited against the surety and shall not be included in the calculation of a professional bondsman's capacity, solvency, or otherwise negatively impact the surety involved.

20

- **40-11-139. Forfeiture of bail security — Notice to defendant and sureties — List or database of fugitives.**
- (a) If the defendant whose release is secured under § 40-11-122 does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of the order of forfeiture shall be immediately sent by regular mail by the clerk of the court to the defendant at the defendant's last known address. The defendant's surety will be served with scire facias upon the forfeiture entered and a capias shall be issued for the defendant. When the defendant, who failed to appear pursuant to conditions of a bail bond, is arrested on a capias, the surety on the defendant's forfeited bond is released.
- (b) After the expiration of one hundred eighty (180) days from the date surety is served with scire facias or scire facias is returned to the clerk unserved or undelivered, the court may enter judgment for the state against the defendant and the defendant's sureties for the amount of the bail and costs of the proceedings.
- (c) No execution shall issue upon a final forfeit, nor shall proceedings be taken for its enforcement until the expiration of thirty (30) days after its entry.
- (d) If a court issues a bench warrant due to a defendant's failure to appear on a felony or on a Class A or Class B misdemeanor that is violent or sexual in nature as determined by the court, or if a defendant is charged with a failure to appear, then the defendant shall be placed on any available state or federal list or database as a fugitive from justice, without limitation, within ten (10) business days of the defendant's failure to appear. A surety is not liable for any undertaking if the defendant has not been placed on such a database within the time required by law.
- (e) The surety is only responsible for costs in accordance with § 40-11-201.

21

- **40-11-151. Notice to person employing bail bondsman.**
- Any person utilizing the services of a professional bail bondsman or bonding agent shall receive a copy of the following notice with the person's bail bond. No changes may be made in the substance of the notice; but minor printing adjustments may be made. The notice may be printed on the face, back or as a separate attachment to the bond. NOTICE IF YOU USE A PROFESSIONAL BONDSMAN: Amount of Charges to You. The premium fee for your bond should not be more than ten percent (10%) of the face amount of your bond. For example, if your bond is \$2,500, the premium on the bond should not be more than \$250. In addition to this amount, the law also permits a one-time \$25 initiation fee. (T.C.A. § 40-11-316).
- Insist on a Receipt. The law, (T.C.A. § 40-11-304), requires a bail bondsman to keep a duplicate receipt. The receipt must show the name of the person paying money or pledging property, the name of the person for whom it was paid, the account or purpose for which it is received, and the suit, action or matter in which the money is paid.
- Collateral That Can Be Required. If a bondsman insists on collateral in addition to the ten percent (10%) premium fee, you may wish to talk to another bondsman. However, a bondsman may accept collateral, and if the bondsman accepts collateral, the bondsman must give you a written receipt for the collateral, and the receipt shall give in detail a full description of the collateral received and the terms of redemption as required by T.C.A. § 40-11-26(b).
- A BONDSMAN MAY NOT LOCK YOU BACK UP OR SURRENDER YOU ARBITRARILY OR WITHOUT GOOD CAUSE. GOOD CAUSE MAY INCLUDE YOUR FAILURE TO PERFORM YOUR OBLIGATIONS UNDER THE CONTRACT YOU HAVE WITH YOUR BONDSMAN (T.C.A. § 40-11-126(7) & § 40-11-132).
