

MANAGING BONDING COMPANIES

72nd Annual
Tennessee Judicial Conference
June 11, 2025

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PRESENTATION PANEL

Honorable Sandra N.C. Donaghy, Criminal Court Judge, 10th Judicial District
Honorable Steven R. Dozier, Criminal Court Judge, 20th Judicial District
Joseph L. Morrissey, Jr., Esq., Attorney at Law, Nashville, Tennessee

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AGENDA

- Scope of trial court's authority to oversee bonding companies
- Responsibilities and activities of bonding companies
- Disciplinary actions
- Scenarios / best practices
- Legislative update

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RIGHT TO BAIL

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Constitution, 8th Amendment

That all prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident, or the presumption great.

Tenn. Constitution, Article 1, Section 15

Before trial, all defendants shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great.

Tenn. Code Ann. § 40-11-102

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METHODS OF RELEASE

Release on **personal recognizance** or **unsecured appearance bond** in an amount specified by the magistrate.

Tenn. Code Ann. § 40-11-115

If a defendant does not qualify for release upon recognizance, the magistrate may impose one or more of the following conditions:

1. Release to the **care of a qualified person or organization** responsible for supervising and assisting the defendant's appearance in court;
2. Impose **reasonable restrictions** on activities, movements, associations, and residences of the defendant; and/or
3. Impose any other reasonable restriction, including the **deposit of bail**.

Tenn. Code Ann. § 40-11-116

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BAIL BOND SECURED BY SURETIES

A defendant for whom bail has been set may execute a bail bond, which may be secured by, inter alia, "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."

Tenn. Code Ann. § 40-11-122.

Key Takeaway: Statutes impose an affirmative obligation on trial courts to ensure professional bail bondsmen are qualified and to regulate their activities.

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BONDSMAN DEFINITION

TENN. CODE ANN. § 40-11-301(4)(A)

Professional Bondsman – any person, firm, partnership or corporation, **engaged for profit** in the business of furnishing bail, making bonds or entering into undertakings, **as surety**, in criminal proceedings, or **for the appearance of persons charged with any criminal offense or violation of law or ordinance** punishable by fine, imprisonment or death, before any of the courts of this state, including municipal courts or securing the payment of fines, judgments or damages imposed and of costs assessed by those courts upon preliminary or final disposition thereof.

- Includes the agents, representatives or employees of a professional bondsman, or those acting for the bondsman, whether with or without compensation or salary.
- The business of a professional bondsman shall be limited to the acts, transactions and undertakings enumerated in subsection (4)(A) and to no others.

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THOSE PROHIBITED FROM BEING BONDSMEN

- It is unlawful for a person serving as a constitutionally elected peace officer, or as such officer's deputy, or any duly elected or appointed county official to act as a professional bondsman. Tenn. Code Ann. § 40-11-313.

This section shall not apply to any duly elected member of the county legislative body.

- The following are disqualified: jailers, attorneys, police officers, convicted felons, committing magistrates, municipal or magistrate court judges, clerks or deputy clerks, sheriffs, deputy sheriffs, and any person with arrest power. Tenn. Code Ann. § 40-11-128.

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BONDSMAN QUALIFICATIONS

TENN. CODE ANN. § 40- 11-317

The petition or license application for a person seeking to become a professional bondsman shall have attached to it an affidavit setting forth the criminal history, if any, of the petitioner or applicant. If the affidavit is found to be *inaccurate*, the petitioner or *applicant shall be immediately disqualified*.

The applicant shall submit to a criminal history background check by the Tennessee bureau of investigation as provided for under § 38-6-109 and shall be responsible for any fees for the criminal history background check.

Any owner applicant shall have had *two (2) years' experience* writing bail in this state as a full-time qualified agent for a Tennessee professional bonding company in good standing.

If a court finds that a bondsman has individually or as a corporation owner been discharged in a bankruptcy proceeding *leaving unsatisfied outstanding forfeitures* with any court, then the court may order that the bondsman be prohibited from executing bonds, bail or other undertakings as surety in the court.

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APPROVAL OF BONDING COMPANY AGENTS TENN. CODE ANN. § 40- 11-125

Approval of a professional bondsman or other surety may be withheld, withdrawn, or suspended by any court if, after investigation, it appears that a bondsman:

- Has been guilty of violating any of the laws of this state relating to bail bonds;
- Has a final judgment of forfeiture entered against the bondsman which remains unsatisfied;
- Is guilty of professional misconduct as described in Tenn. Code Ann. § 40-11-126; or
- Has been convicted of any two (2) or more A or B misdemeanors within five (5) years of the application.

Tenn. Code Ann. § 40-11-125(b) outlines procedure, including notice and the right to a hearing.

Right of appeal to the next highest court having criminal jurisdiction.

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LIST OF BONDING COMPANY AGENTS TENN. CODE ANN. § 40- 11-124

Clerk, sheriff, municipal court or other inferior courts shall have available a list of professional bondsmen or other sureties approved and qualified as solvent by the courts of record with criminal jurisdiction within the county.

Bondsman must be on the approved list to write bonds in the jurisdiction.

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PANEL DISCUSSION

What is the process for applying for and obtaining approval as a bonding company in your jurisdiction?

What specific criteria and qualifications do you require for a bonding company to be approved to post bonds in your court?

How do you evaluate the financial solvency and stability of bonding companies to ensure they can cover potential bond forfeitures?

How are your court clerks involved in maintaining a list of approved bonding companies and notifying them of rule changes or updates?

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SUPERVISION OF A BONDING COMPANY

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POWERS AND DUTIES OF THE COURTS

The trial courts are given wide discretion in the regulation of bail bondsmen, and its actions will not be overturned absent a showing that they were arbitrary, capricious, or illegal.

Memphis Bonding Co., Inc. v. Crim. Ct. of Tennessee 30th Dist., 490 S.W.3d 458, 463 (Tenn. Ct. App. 2015).



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LOCAL RULES

Local rules are authorized under Tennessee Supreme Court Rule 18, and the Legislature's enactment of statutes addressing bonding does not remove the trial court's inherent powers of regulation.

In re Hitt, 910 S.W.2d 900, 904 (Tenn. Crim. App. 1995)

However, local rules may not be inconsistent with rules promulgated by a higher court. *See* Tenn. Code Ann. § 16-3-407.



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RESPONSIBILITIES OF BONDSMEN
TENN. CODE ANN. § 40-11-303

Every professional bondsman must file an annual report of the bondsman's assets and liabilities with the clerk of court. This report shall show in detail:

1. Real estate owned, the value thereof, and the amount of mortgages, liens, taxes and all other encumbrances and by whom held;
2. All personal property held to secure payment of any debt owing to the bondsman;
3. The full amount of the bondsman's liability as surety on bonds, bail, secured costs and fines, and the names and addresses of the bondsman's principals, and the case or suit in which filed, in all incompleted transactions or undertakings;

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REPORTING CONTENTS (CONT)
TENN. CODE ANN. § 40-11-303

4. The full amount of the bondsman's liabilities on forfeitures of bonds or bail, in which either conditional or final judgments have been entered against the bondsman in any court and which remain unsatisfied;

5. All bills, notes and accounts payable; endorsements and other debts, obligations and liabilities;

6. The name and address of each agent, representative or employee of the bondsman authorized to bind the bondsman on bail contracts; and

7. The name and address of each person having an interest in the bondsman's business, or, in case the bondsman is a corporation, the name and address of each officer and the office held, director and stockholder thereof and the capital paid in and the capital stock issued and outstanding.

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CONTINUING EDUCATION

* Each professional bail bondsman or bonding agent individually, including partners, officers and directors of a corporation engaged for profit who are qualified as professional bail bondsmen or bonding agents, making bonds or entering into undertakings as surety in criminal proceedings as defined in § 40-11-301:

* Shall obtain eight (8) hours of continuing education credits during each twelve-month period

* Each agent shall file annually, along with the first semiannual report as described in § 40-11-303, a certificate of compliance of continuing education with the clerk of the criminal or civil court of each county in which the agent is furnishing bail or bonds securing costs and fines.

* This certificate shall show in detail the names, locations, dates and hours of each course attended, along with the signature of the agent attesting that all continuing educational requirements have been completed.¹

¹ Tenn. Code Ann. § 40-11-401

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CONTINUING EDUCATION (CONT.)

- * If an agent does not obtain the required eight (8) continuing education hour credits within each twelve-month period as described in § 40-11-401, and have the necessary certificate of compliance filed with the clerk of the court by January 15th of each year, the clerk shall:
 - * Notify, by certified mail, the agent that the agent is not in compliance with the continuing education requirements of this part and the number of hours the agent lacks to be in compliance.
 - * If the agent has not furnished the clerk with a certificate of compliance with continuing education requirements within sixty (60) days of receiving the notice of noncompliance:
 - * The clerk shall notify the judge of the court who shall then suspend the agent from furnishing bail or bonds securing costs and fines, and
 - * Remove the agent's name from the list of qualified and approved professional bondsmen until the agent completes the continuing education credits and properly files the required certificate with the court.²

² Tenn. Code Ann. § 40-11-403

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JUDICIAL OVERSIGHT TENN. CODE ANN. § 40- 11-305

- * The judge of any court of this state in which any professional bondsman executes criminal bonds, furnishes bail or secures costs and fines as surety, is empowered:
 - * To inquire at any time into the solvency of any bondsman; and
 - * To investigate and determine the value of the bondsman's assets and extent of the bondsman's liabilities,
 - * Judge may appoint as many as three (3) investigators and/or appraisers to assist the court and who shall be empowered, when appointed, to investigate, appraise and report upon the value and extent of the bondsman's assets and liabilities.
 - * Each investigator and/or appraiser so appointed shall be entitled to receive reasonable compensation, not to exceed ten dollars (\$10.00) a day, out of the general funds of the county, whenever their accounts for services are approved for payment by the judge ordering the investigation.

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PANEL DISCUSSION

Does your jurisdiction have local rules governing professional bonding companies? How often are they reviewed/updated?

What oversight measures are in place regarding the regulations of bonding companies, including oversight processes by court clerks?

What measures do you take to ensure bonding companies are complying with court rules and regulations?

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ACTIVITIES OF A BONDING COMPANY

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DURATION OF BOND OR RECOGNIZANCE

(b)(1) A bail bondsman . . . 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 other wise negatively impact the surety. Tenn. Code Ann. § 40-11-138.

(b)(1) If the defendant is placed on pretrial, post-plea or judicial diversion, community correction, fined or if the defendant's sentence is suspended and probation granted, any such action shall constitute a disposition pursuant to Tenn. Code Ann. § 40-11-138(b), the bond or recognizance is terminated, and the bondsman or other surety shall be released from the bondsman's or surety's obligations. Tenn. Code Ann. § 40-11-130.

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EXONERATION OF BAIL BONDSMAN OR SURETY BY SURRENDER OF DEFENDANT TENN. CODE ANN. § 40 - 11 - 132

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.

Surrender shall be made to the sheriff of the county where defendant charged. Tenn. Code Ann. § 40-11-136.

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SURRENDER TO THE SHERIFF

TENN. CODE ANN. § 40-11- 137

- (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.

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FORFEITURE OF BAIL SECURITY

TENN. CODE ANN. § 40 - 11 -139

- (a) If the defendant . . . 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 certified mail, restricted delivery, return receipt requested, 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.

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EXONERATION

TENN. CODE ANN. § 40- 11-203

- (a) After the liability of the bail bondsman or surety has become fixed by forfeiture, and before payment, the bail bondsman or surety may be exonerated from the liability by the surrender of the defendant and the payment of all costs; but may be exonerated from costs also if, in the opinion of the court, the bail bondsman or surety has been in no fault.
- (b) It is left to the sound discretion of the court whether the bail bondsman or surety shall be relieved from the liability of bail to any and to what extent.

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JUDICIAL OVERSIGHT OF FORFEITURES TENN. CODE ANN. § 40- 11-204

- (a)(1) Except as provided in subsection (b), the judges of the general sessions, circuit, criminal and supreme courts may receive, hear and determine the petition of any person who claims relief is merited on any recognizances forfeited, and so lessen or absolutely remit the same, less a clerk's commission of five percent (5%) of the original paid final forfeiture or one thousand dollars (\$1,000), whichever is less, and do all and everything therein as they shall deem just and right, and consistent with the welfare of the state, as well as the person praying for relief. This power shall extend to the relief of those against whom final judgment has been entered whether or not the judgment has been paid, as well as to the relief of those against whom proceedings are in progress.
- (2) Cities, which have adopted home rule, may elect to authorize their city court judges to lessen or remit forfeitures in accordance with this section if those judges have jurisdiction to hear state misdemeanor cases.
- (b) In counties having a population of more than seven hundred thousand (700,000), according to the 1990 federal census or any subsequent federal census, the clerk's commission authorized by this section shall be ten percent (10%) of the forfeiture or one thousand dollars (\$1,000), whichever is less.

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ARREST OF THE DEFENDANT TENN. CODE ANN. § 40-11- 133

- (a) For the purposes of §§ 40-11-132, 40-11-203, and 40-11-204, the bail bondsman or surety may arrest the defendant on a certified copy of the undertaking, at any place either in or out of the state, or may, by written authority endorsed on the certified copy, authorize another person to make the arrest. . . .
- (b) After the payment of the forfeiture, the bail bondsman or surety may arrest the defendant on a certified copy of the capias, or may, by a written authority endorsed on the certified copy, authorize another person to make the arrest.
- (c) Any capias issued pursuant to a forfeit, whether the forfeit is conditional or final, shall remain in full force and effect until the defendant is apprehended and returned to the criminal justice system, and a disposition is entered in the defendant's case.
- (d) Any approved bail bondsman in good standing is authorized to return the defendant to the jurisdiction for which the bail bond is obligated for the defendant's appearance; provided, the bail bondsman is liable for the expenses of returning the defendant and the defendant is located within this state.
- (e) A professional bondsman or the agent of a professional bondsman who is arresting a defendant pursuant to this section is prohibited from:
- (1) Making a representation that the professional bondsman or the agent of the professional bondsman is a member of a law enforcement organization;
 - (2) Wearing clothing or a uniform intended to give the impression that the professional bondsman or the professional bondsman's agent is employed by, affiliated with, or acting in the capacity of a law enforcement organization; or
 - (3) Wearing clothing bearing an identifying title other than "Bail Bondsman".

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PANEL DISCUSSION

Under what circumstances might you consider granting a remission of bail forfeiture?

How have recent activities by federal authorities regarding immigration violation enforcement influenced your approach to bond amounts and/or forfeitures?

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BRICEN RIVERS

- December 11, 2023 – Officers responded to reports of a domestic disturbance. They found Lauren Johansen in a car with her boyfriend, Bricen Rivers. Ms. Johansen was badly beaten. Rivers was charged with especially aggravated kidnapping and interference with a 911 call.
- December 18, 2023 – Ms. Johansen testified at the preliminary hearing that Mr. Rivers did not hit her and that she did not know she obtained her injuries.
- March 13, 2024 – The Criminal Court held a hearing on the Defendant's Motion to Reduce Bond.
- April 3, 2024 – The Court reduced the bond from \$250,000 to \$150,000. The Court ordered the Defendant to be placed on an electronic monitor, have no contact with the victim, and remain in Davidson County.
- May 15, 2024 – The Court heard the Defendant's Motion to Approve Bond Source. The Defendant's mother and the owner of Elite Bonding testified and were made aware of the bond conditions.



Mr. Rivers after his arrest on December 11, 2023.

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BRICEN RIVERS

- June 4, 2024 – The Court approved the bond source. The Defendant listed a Davidson County address as his residence and was to be on GPS monitoring with Tracking Solutions. The conditions of the bond were listed on the order. Later in the day, the Defendant's mother paid \$4,000 to Brooke's Bail Bonding (Brooke's). She paid an additional \$500 a few weeks later. On Time Bonding (On Time) received only \$3,000 of \$6,000 due.
- June 5, 2024 – The Court entered an amended source order substituting Brooke's and On Time for Elite. The bond agents signed the back page of the order without seeing the first page that contained the bond conditions. The bonding companies agreed to each take \$6,000 each, an 8% premium.

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BRICEN RIVERS

- June 24, 2024 – The Defendant's bond was posted at the State Warrant and Bond Office. The agents did not receive the sheet showing the Defendant's bond conditions. The Defendant was released around 4:30 p.m. and was picked up by Alisha Ridley of Brooke's. They returned to Brooke's office. Tracking Solutions was closed, so they used Freedom Monitoring to place the monitor. The Defendant left the office and returned to Mississippi.
- June 27, 2024 – The Defendant was scheduled to appear in Court, but the date was changed. Ms. Ridley spoke with the Defendant's attorney and learned at that time that the Defendant was to remain in Davidson County. She tried to get the Defendant to return to Nashville.

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BRICEN RIVERS

JUNE 28, 2024

- The Court was notified that the Defendant was not on a GPS monitor with Tracking Solutions and set a hearing July 2nd to remedy the issue.
- Ms. Ridley received a copy of the Defendant's bond conditions and sent them to Nakeda Wilhoite, agent at Brooke's and owner of Freedom Monitoring.
- Later that evening, Ms. Wilhoite lost contact with the Defendant's GPS monitor.

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BRICEN RIVERS

JUNE 29, 2024

- Mr. Rivers returned to Nashville to replace his faulty monitor. Ms. Wilhoite set up exclusion zones for the victim's home but did not set any for Davidson County.
- Ms. Wilhoite informed the Mr. Rivers of the bond conditions and new court date and told him to stay in Davidson County. He said that he would stay with friends until his court date.
- Ms. Wilhoite testified that she did not take action regarding the prior violation because she felt that it would be a conflict of interest to serve in her capacity as a bail bond agent and as a monitoring company. She also felt that she did not have the authority to surrender him pursuant to Tenn. Code Ann. § 40-11-132.
- Two hours after the new monitor was installed, Mr. Rivers left Davidson County. He told Ms. Ridley that he was having vehicle issues but would be back for his court date.

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BRICEN RIVERS

- July 1, 2024 – Around 7:00 a.m., Ms. Wilhoite received a low battery alert from the GPS monitor. Later that night, he told Ms. Ridley that he would not make it to his court appearance due to transportation issues.
- July 2, 2024 – Mr. Rivers failed to appear, and a capias was entered. It was not ready until the following day.
- July 3, 2024 – Ms. Johansen's father contacted Brooke's and reported that his daughter had been missing for twenty-four hours. Brooke's relayed this information to Mississippi authorities, and they worked with police to find Mr. Rivers' vehicle. Lauren Johansen was found dead in her car later that day.

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PANEL DISCUSSION

Perfect storm of bond violations and every trial judge's nightmare scenario.

Two panelists directly participated in aftermath: How has this case changed the way you approach circumstances like this?

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DISCIPLINE

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PROHIBITED ACTIVITIES

TENN. CODE ANN. § 40-11- 307

It is unlawful for any professional bondsman, while acting on the bondsman's own behalf, or for any third person or persons, or in concert with them, in any negotiation, transaction or dealing with a person charged with a criminal offense or other violation of law, or with any person or persons purporting to represent or act for the one so charged, to charge, demand, contract for, accept, collect or receive any sum of money, fee, compensation, premium or other consideration, return, or favor of any character, directly or indirectly, upon any promise, offer, representation or holding out the inducement that the professional bondsman:

- (1) Can or will attempt to effect, procure, bring about, arrange or "fix" the disposition, dismissal or compromise of any criminal action or prosecution;
- (2) Can or will attempt to arrange, bargain for or "fix" the amount of fine or costs, and/or term of imprisonment to be imposed, or any particular action of a court, in any criminal case, contempt proceeding or other penal action in any court; or
- (3) Can or will attempt to stop, prevent, obstruct, impede, interfere with, retard or delay the prosecution of any criminal charge against an accused, or the process of the law in respect thereof, or that the bondsman will cause to be done any of the things enumerated in this subdivision (3).

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UNPROFESSIONAL BEHAVIOR OF BONDSMEN

TENN. CODE ANN. § 40- 11-126

- (1) Suggest or advise the employment of or name for employment any particular attorney to represent the bondsman's principal;
- (2) Pay a fee or rebate or give or promise anything of value to any clerk of court, jailer, police officer, peace officer, committing magistrate or any other person who has power to arrest or hold in custody, or to any public official or public employee in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond or the forfeiture of the bail bond;
- (3) Pay a fee or rebate or give anything of value to an attorney in bail bond matters except in defense of any action on a bond;
- (4) Pay a fee or rebate or give or promise anything of value to the principal or anyone in the principal's behalf;
- (5) Participate in the capacity of an attorney at a trial or hearing of one on whose bond the person is a surety;
- (6) Solicit business directly or indirectly, by active or passive means, or engage in any other conduct which may reasonably be construed as intended for the purpose of solicitation of business in any place where prisoners are confined or in any place immediately surrounding where prisoners are confined;

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UNPROFESSIONAL BEHAVIOR OF BONDSMEN TENN. CODE ANN. § 40-11-126 (CONT.)

- (1) Surrender a principal or ask any court to be relieved from a bail bond arbitrarily or without good cause;
- (2) Accept anything of value from a principal except the premium; provided, that the bondsman shall be permitted to accept collateral security or other indemnity from the principal which shall be returned upon final termination of liability on the bond. The collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond. When a bail bondsman accepts collateral, the bondsman shall give a written receipt for the collateral, and this receipt shall give in detail a full description of the collateral received and the terms of redemption; or
- (3) Engage in the business of a professional bondsman or surety without maintaining a permanent business office, business telephone and appropriate signage indicating that the office is a professional bail bond business.

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UNLAWFUL INDUCEMENT TENN. CODE ANN. § 40- 11-308

- It is unlawful for any professional bondsman, while acting on the bondsman's own behalf, or while acting for or through any third person or persons, or in concert with them, to solicit, demand, procure, exact, receive or collect any money or other thing of value or any other consideration, promise, favor or return of any character, directly or indirectly, from any person or persons, upon the agreement, promise, offer, representation, pretense or holding out the inducement, that the bondsman can or will:
- (1) Provide, furnish or guarantee to the person or persons, or to any person, persons or group of persons, immunity or protection from prosecution, arrest, investigation or indictment for any criminal offense or violation of law; or
 - (2) Influence, persuade, "fix," order or direct any public official defined under §§ 38-3-102 and 38-3-103 as a "conservator of the peace," or any member of a grand or petit jury, or district attorney general or prosecuting officer, to provide or furnish any immunity or protection referred to in this section, or to fail, neglect or omit to do or perform any act or official duty whatsoever toward the prosecution, suppression or prevention of criminal offenses or violations of law, and it is also unlawful for any professional bondsman to cause or procure any of these acts or things to be done.

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UNLAWFUL ACTS TENN. CODE ANN. § 40- 11-309

- (a) It is unlawful for any professional bondsman to do or perform any act, engage in any negotiations, enter into any agreement or transaction, pay or give any money or other thing of value or offer or attempt to do so directly or indirectly, whether alone, or by or through others acting for the bondsman, or in the bondsman's behalf or in concert with others, or at the bondsman's instance or request, or whether with or without consideration, as surety or otherwise, with the intent, purpose or design of:
 - (1) Effecting, procuring, bringing about, arranging for or "fixing" the disposition, dismissal or compromise of any criminal action or prosecution or of arranging, bargaining for, or "fixing" the amount of fine or costs, and/or term of imprisonment or for any particular action of a court, judge, grand or petit jury or prosecuting attorney, in any criminal case, contempt proceeding or other penal action or offense before any court;
 - (2) Stopping, preventing, obstructing, impeding, interfering with, retarding or delaying the prosecution of any criminal charge against an accused, or the processes of law in respect thereof;
 - (3) Procuring sheriffs or their deputies, constables, police officers or other peace officers or any prosecutor of criminal offenses or violations to abandon or withdraw from the prosecution of the offenses or violations;
 - (4) Procuring witnesses to disappear or be concealed;
 - (5) Arranging for the loss or disappearance of bonds, court papers, exhibits or other evidence in criminal cases; or
 - (6) Doing or performing any other act to accomplish the disposition and dismissal of any charge against an accused person by any other means whatever than through the processes and agencies established by law.

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UNLAWFUL ACTS

TENN. CODE ANN. § 40- 11-310

- * It is unlawful for any professional bondsman to aid, counsel or advise any person accused of a criminal offense or violation of law, or those purporting to act for or represent the accused in respect of any matter relating or pertaining to the charge pending against the accused or to the disposition or dismissal thereof, except as to matters relating to the contract of suretyship on the bond, bail or similar undertaking, or to the contract relating to the securing and payment of any fine or costs, being negotiated for or posted in the pending case;
- * Any professional bondsman, directly or indirectly, shall not retain, hire or employ, or pay for the services of an attorney at law to aid, counsel, advise or represent any person accused of criminal offense or violation of law, or those purporting to act for or represent the accused, in any case, suit or matter, in which the professional bondsman is surety for those persons, nor divide with or pay to any attorney any part of the compensation received by the bondsman for services as surety of an accused.

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ARREST OF A BONDSMAN

TENN. CODE ANN. § 40-11- 319

1. A professional bondsman who is arrested in this state for a felony, or is arrested in another state or by the federal government for the equivalent of a felony in this state, shall notify, in writing, within seventy-two (72) hours of the arrest, the court or courts in which the professional bondsman is qualified.

- * The written notice shall contain the following information:
 1. Date of the arrest;
 2. Location of the arrest;
 3. Offense for which the bondsman was arrested;
 4. The name and address of the law enforcement agency making the arrest;
 5. The court before which the professional bondsman is to appear;
 6. The date of the initial court appearance; and
 7. Any other information the professional bondsman may want to include.
- 2. Upon receipt of the notice, if the court believes it is warranted, the court shall proceed under § 40-11-125
- 3. Failure to comply with this section shall result in an automatic suspension of the professional bondsman until the court conducts a hearing pursuant to § 40-11-125(b), or until the criminal charges against the professional bondsman are resolved.

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SUSPENDING A BONDSMAN

TENN. CODE ANN. § 40- 11-125(b)

- (b) Any court withholding, withdrawing or suspending a bondsman or other surety under this section shall notify the bondsman in writing of the action taken, accompanied by a copy of the charges resulting in the court's action.
- * If, within twenty (20) days after notice, the bail bondsman or surety files a written answer denying the charges or setting forth extenuating circumstances, the court shall call a hearing within a reasonable time for the purpose of taking testimony and evidence on any issues of fact made by the charges and answer.
- * The court shall give notice to the bail bondsman, or to the insurer represented by the bondsman, of the time and place of the hearing.
- * The parties shall have the right to produce witnesses, and to appear personally with or without representation by counsel. If, upon a hearing, the court determines that the bail bondsman is guilty as alleged in the charges, the court shall thereupon withhold, withdraw or suspend the bondsman from the approved list, or suspend the bondsman for a definite period of time to be fixed in the order of suspension.
- (b) The clerk of the court and the sheriff of the county shall be notified of the action of the court and the offending bondsman stricken from the approved list.
- (c) Any applicant for approval whose application has been denied, withheld, suspended or revoked shall have the right of appeal to the next highest court having criminal jurisdiction, and the appeal shall be heard de novo.

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OUTCOMES

TENN. CODE ANN. § 40-11-306

- If, after its investigation, the court finds that the bondsman:
 - (1) Is insolvent;
 - (2) Is not financially able to discharge the obligations of the bondsman's liabilities as surety;
 - (3) Has failed, refused or neglected to make the semiannual reports of assets and liabilities as required in § 40-11-303;
 - (4) Has made and filed false semiannual reports; or
 - (5) Has failed to furnish the court with information touching upon solvency, when called for.
- The court may order that the bondsman be prohibited from executing bonds, bail or other undertakings as surety in the court until the court becomes satisfied that the bondsman has complied with this part or the orders of the court, or that the bondsman is again financially solvent, the court shall impose any other reasonable limitation on the total liability of the bondsman's undertakings in the court.

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PANEL DISCUSSION

What is your approach when a bonding company fails to follow up on bond conditions, especially those designed to ensure public safety?

Could you discuss your experiences with cases where a bonding company failed to meet expectations or violated a court order?

What lessons have you learned from specific cases that have influenced your approach to managing bonding companies?

What strategies do you believe are most effective in fostering a collaborative working relationship between the judiciary and bonding companies?

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LEGISLATIVE UPDATE

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LEGISLATIVE UPDATE¹

TENN. CODE ANN. § 40-11-316

(a) Professional bondsmen and agents of insurance companies making appearance bonds of a criminal nature shall ~~and assess more than ten percent (10%)~~ assess ten percent (10%) of the amount of the face value of the bond for premium fee and related charge or charges, and the premium fee and related charge or charges shall not be assessed but one (1) time during the first twelve (12) months of the pendency of the charge or charges and indictment or indictments in either the trial court or any lower court. If a premium renewal fee and any related charge or charges are assessed after the first twelve (12) months of the bond, the renewal fee and charge shall not exceed twenty percent (20%) of the original fee and charges. In the event the case is appealed to the court of criminal appeals or the supreme court of Tennessee, there may be charged only one (1) additional premium fee which also shall not exceed ten percent (10%) of the face value of the appearance bond for that court or courts . . .

(c) Notwithstanding subsection (a), if a professional bondsman, or agent of an insurance company, is making a criminal appearance bond for a defendant who is not a resident of Tennessee, the bondsman or agent may assess ~~up to fifteen percent (15%) of the amount of the face value of the bond~~ no less than ten percent (10%) and no more than fifteen percent (15%) of the amount of the face value of the bond for premium fee and related charges but only one (1) time during the first twelve (12) months of the bond. If a premium renewal fee and any related charges are assessed after the first twelve (12) months of the bond, the premium renewal fee and charges shall not exceed twenty percent (20%) of the original premium fee and charges. If the case is appealed to the court of criminal appeals or the supreme court of Tennessee, there may be charged only one (1) additional premium fee, which shall not exceed ten percent (10%) of the face value of the appearance bond for that court or courts . . .

~~<< Subsection (d) is deleted, and the following is substituted >>~~

(d) A professional bondsman or an agent of an insurance company making appearance bonds of a criminal nature may agree to accept the premiums and initiation fees, set forth in subsections (a), (b), and (c), in equal installments if:

- (1) Interest or other fees, with the exception of transaction fees paid to third parties as costs for processing payments, are not charged for the installment payments;
- (2) The professional bondsman collects no less than fifty percent (50%) of the premium due at the time the bond is signed; and
- (3) The full amount of the premium is to be paid during the first twelve (12) months of the bond.

¹ TN LEGIS 318 (2025), 2025 Tennessee Laws Pub. Ch. 318 (S.B. 464), eff. July 1, 2025

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TENN. CODE ANN. § 40-11-118

(b) In determining the amount of bail necessary to reasonably assure the appearance of the defendant while at the same time protecting the safety of the public, the magistrate shall consider the following:

~~(7) The defendant's prior criminal record and the likelihood that because of that record the defendant will pose a risk of danger to the community;~~

(7) The defendant's prior juvenile court record, as authorized by § 37-1-133(b)(1), and prior criminal record and the likelihood that because of the records the defendant will pose a risk of danger to the community;¹

(h) In determining the amount of bail necessary to reasonably assure the appearance of the defendant while at the same time protecting the safety of the public, the magistrate may consider hearsay evidence when the magistrate finds that the evidence is reliable if the defendant is accorded a fair opportunity to rebut any reliable hearsay evidence considered by the magistrate.²

(i) Before accepting a bail deposit from a bondsman, the clerk must require the bondsman to initial each page of the bond order, indicating that the bondsman has read and is aware of any conditions of bond imposed on the defendant. The clerk must provide a copy of the initialed bond order to the bondsman and maintain a copy in the defendant's file.³

¹ TN LEGIS 414 (2025), 2025 Tennessee Laws Pub. Ch. 414 (S.B. 221), eff. May 9, 2025.
² TN LEGIS 262 (2025), 2025 Tennessee Laws Pub. Ch. 262 (S.B. 856), eff. April 24, 2025.
³ TN LEGIS 395 (2025), 2025 Tennessee Laws Pub. Ch. 395 (S.B. 1202), eff. July 1, 2025.

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QUALIFIED ELECTRONIC MONITORING PROVIDER PUBLIC CHAPTER 253

- Creates Tenn. Code Ann. § 40-11-155 to govern electronic monitoring providers
- "Qualified Electronic Monitoring Provider" – a private entity that has been qualified and approved by the local government entity where the provider seeks to operate and enters into a written contract or agreement with the local government to supply, maintain, or monitor electronic monitoring devices for defendants under a court order, and includes manufacturers and contracted third-party vendors with employees who provide monitoring services in this state.
- Must submit a petition to the local government entity which must include:
 - Proof of general liability insurance,
 - Completed background checks on each director and employee,
 - A list of all devices offered and proof that those devices are certified by the federal communications commission, and
 - Proof of certain educational and experience requirements.
- If a petition meets these requirements, the local government entity may approve the provider and enter into a written agreement.
 - The local government entity shall submit to the AOC a list of qualified and approved providers. The AOC shall keep a list of qualified and approved providers on their website.
- This written agreement shall include:
 - A clear delineation of responsibilities and services provided;
 - Staffing requirements;
 - Written protocols for alert responses and emergencies;
 - Default and contract termination procedures; and
 - A detailed list of fees.

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QUALIFIED ELECTRONIC MONITORING PROVIDER PUBLIC CHAPTER 253

- Responsibilities of providers:
 - Providing continuous electronic monitoring to their assigned defendants;
 - Immediately reporting violations, breaches, and irregularities, including, but not limited to, unauthorized departure and device tampering;
 - Training all employees to maintain confidentiality and, for those employees having contact with defendants, to provide accurate information on the defendant's responsibilities and device instruction;
 - Maintaining a personnel file for each employee;
 - Executing all court orders pertaining to electronic monitoring;
 - Prohibiting employees from soliciting defendants for products or services that would create a conflict of interest;
 - Notifying the government entity in writing within ten (10) days if an owner, director, or employee is charged or convicted of a misdemeanor involving moral turpitude or a felony;
 - Employing a person as a director who is responsible for the direct supervision of employees; and
 - Maintaining accurate, up-to-date, and comprehensive records for each defendant, including details of the court order, monitoring terms and conditions, time-stamped proof of activation, time-stamped location data, tracking logs, violation reports, device maintenance histories, and communication with the court system.

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QUALIFIED ELECTRONIC MONITORING PROVIDER PUBLIC CHAPTER 253

- Each director of a qualified electronic monitoring services provider must:
 - Have a bachelor's degree and two years of experience in criminal justice or social work or a high school diploma and four years of professional administrative experience with an organization providing services in the field of criminal justice or social work;
 - Sign a confidentiality statement agreeing to hold defendant records confidential;
 - Be of good moral character and not have been convicted of a misdemeanor offense involving moral turpitude or a felony within the last ten years;
 - Submit to a criminal background check; and
 - Complete forty hours of orientation training and fifteen hours of annual in-service training.
- An employee must meet these qualifications and sign a statement that is cosigned by the director indicating that the employee has received an orientation on the policies, procedures, and guidelines.
- The following persons shall not own, operate, direct, or serve as an employee or agent of a qualified electronic monitoring provider:
 - A person whose involvement with the qualified electronic monitoring provider would create a conflict of interest that could lead to undue influence, exploitation, or breach of confidentiality;
 - A judge, probation or parole officer, court employee, detention or correctional provider employee, or a law enforcement officer, or any spouse thereof, if the qualified electronic monitoring provider operates within the same jurisdiction; or
 - An owner, operator, or employee of a professional bondsman.

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FAILURE TO PAY COSTS OF MONITORING
TENN. CODE ANN. § 40 - 11 - 152
PUBLIC CHAPTER 253

- Provider shall notify the Court and the defendant within five days of the arrearage;
- The Court shall, within ten days of the provider's notice, set a show cause hearing to be held within thirty days;
- The clerk of the court shall notify the provider, the defendant, and the victim of the date and time of the show cause hearing;
 - The victim must also be notified of his or her right to be present and to present testimony at the hearing.
 - The provider shall not discontinue monitoring or victim alerts before the show cause hearing.
- At the show cause hearing, the Court may:
 - Schedule a bond hearing to determine whether the bond should be revoked;
 - Allow the defendant to immediately bring the payments current and continue pretrial release; or
 - Determine whether alternative funding sources are available to pay the costs associated with operating the GPS device
 - If alternative funding sources are available, order the alternative funding sources to pay the arrearages and future costs.
 - Alternative funding sources do not include the local sheriff's department or other local government entities
- After a show cause hearing or if a show cause hearing has not been held within thirty days, a provider is not required to continue to provide services.

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NEW SECTION
TENN. CODE ANN. § 40 - 11 - 204
PUBLIC CHAPTER 395

- (c)(1) In the event of forfeiture by the principal, the surety may petition the court for release from their obligations as surety. The petition must be accompanied by a sworn affidavit detailing what good faith efforts were made to locate and assure the appearance of the principal.
- (2) Upon the filing of a petition, the court shall hold a hearing during which the bondsman may state the good faith efforts made to locate and assure the appearance of the principal. The court shall include any such statement by the bondsman in its written order following the hearing.
- (3) Upon a finding, by a preponderance of the evidence, that the bondsman has complied with the good faith effort requirements of this subsection (c), the court may release or exonerate the bondsman of the bondsman's obligations in the case.
- (4) In considering whether good faith efforts were made by the bondsman to locate and assure the appearance of the principal, the court may inquire as to the following factors:
- (A) Records retained by the surety as to the principal's contact information, place of residence, place of employment, known associations, or any other such record;
- (B) Actions and steps taken by the surety to keep track of the principal's location;
- (C) Actions and steps taken by the surety to locate the principal;
- (D) Information obtained by the surety as to where the principal may be, even if that information is not conclusive with respect to the principal's location; and
- (E) Any other information that the court would find useful in determining whether the surety acted in good faith to assure the appearance of the principal.

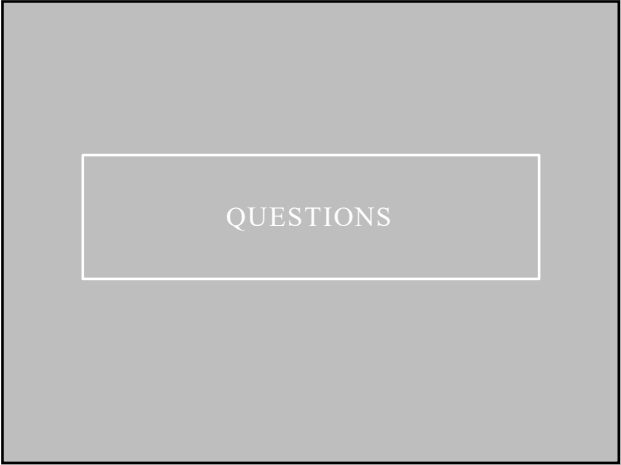
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PANEL DISCUSSION

How might the new legislation impact a trial court's decision to use of GPS monitoring as a bond condition?

What do you envision as the practical implications of the new legislation regarding GPS monitoring companies?

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