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HOUSE BILL NO. 278

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 23, 2012)

(Patron Prior to Substitute—Delegate Iaquinto)

A BILL to amend and reenact §§ 19.2-136 and 19.2-143 of the Code of Virginia, relating to how bonds in recognizances are payable.

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-136 and 19.2-143 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-136. How bonds in recognizances payable; penalty.

Bonds in recognizances in criminal or juvenile cases shall be payable to the ~~county, city or town~~ wherein the recognizance was taken ~~county or city in which the case is prosecuted~~. The treasurer or director of finance of such ~~county, city or town~~ locality may engage in collection activity regarding the judgment of default rendered pursuant to § 19.2-143. Any responses to the judgment of default rendered pursuant to § 19.2-143 shall be filed with the court, with notice given to the ~~county, city or town~~ wherein the recognizance was taken ~~such locality~~. Every bond under this title shall be in such sum as the court or officer requiring it may direct.

§ 19.2-143. Where default recorded; process on recognizance; forfeiture on recognizance; when copy may be used; cash bond.

When a person, under recognizance in a case, either as party or witness, fails to perform the condition of appearance thereof, if it is to appear before a court of record, or a district court, a hearing shall be held upon reasonable notice to all parties affording them opportunity to show cause why the recognizance or any part thereof should not be forfeited. The show cause notice shall be issued within 45 days of the breach of the condition of appearance.

If the court finds the recognizance or any part thereof should be forfeited, the default shall be recorded therein, unless the defendant or juvenile is brought before the court within 150 days of the findings of default. After 150 days of the finding of default, his default shall be recorded therein, and if it is to appear before a district court, his default shall be entered by the judge of such court, on the case papers unless the defendant or juvenile has been delivered or appeared before the court. The process on any such forfeited recognizance shall be issued from the court before which the appearance was to be, and wherein such forfeiture was recorded or entered. Any such process issued by a judge shall be made returnable before, and tried by, such judge, who shall promptly transmit to the clerk of the circuit court of his county or city wherein deeds are recorded an abstract of such judgment as he may render thereon, which shall be forthwith docketed by the clerk of such court.

If the defendant or juvenile appears before or is delivered to the court within 24 months of the findings of default, the court shall remit any bond previously ordered forfeited by the courts, less such costs as the court may direct.

If it is brought to the attention of the court that the defendant or juvenile is incarcerated in another state or country within 48 months of the finding of default, thereby preventing his delivery or appearance within that period, the court shall remit any bond previously ordered forfeited. If the defendant or juvenile left the Commonwealth with the permission of the court, the bond shall be remitted without deduction of costs; otherwise, the cost of returning him to the Commonwealth shall be deducted from the bond.

Evidence that the defendant or juvenile is incarcerated or subject to court process in another jurisdiction on the day his appearance is required or a medical certificate from a duly licensed physician that the defendant was physically unable to so appear shall be considered evidence of good cause why the recognizance should not be forfeited.

If such recognizance so forfeited is not for such appearance, process thereon shall be issued from the court in which it was taken, or the court to which it was made returnable, and in a proceeding in one court on a recognizance entered in another a copy thereof shall be evidence in like manner as the original would be if it had been entered in the court wherein the proceeding is being had thereon.

However, when any defendant or juvenile who posted a cash bond and failed to appear is tried in his absence and is convicted, the court or judge trying the case shall first apply the cash bond, or so much thereof as may be necessary, to the payment of any fines or costs, or both, adjudged against the defendant or juvenile or imposed by law. Any remaining funds shall be forfeited without further notice. However, if a rehearing is granted, the court may remit part or all of such cash bond not applied ultimately to fines or costs, and order a refund of the same by the State Treasurer, or by the treasurer or director of finance of the ~~county, city or town~~ locality, if the bond was collected by a ~~county, city or town~~ locality pursuant to § 19.2-136, but only if good cause is shown.

60 If the defendant or juvenile posted a cash bond and failed to appear, but is not tried in his absence,
61 the bond shall be forfeited promptly without further notice. However, if the defendant or juvenile
62 appears in court within 60 days after the bond is forfeited, the judge may remit part or all of any bond
63 previously forfeited and order a refund of the same by the State Treasurer, or by the treasurer or director
64 of finance of the ~~county, city or town~~ *locality*, if the bond was collected by a ~~county, city or town~~
65 *locality* pursuant to § 19.2-136.