

SUBSTITUTE FOR
HOUSE BILL NO. 5846

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 28 of chapter V (MCL 765.28), as amended by
2002 PA 659.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER V

2 Sec. 28. (1) If default is made in any recognizance in a
3 court of record, the default shall be entered on the record by
4 the clerk of the court. After the default is entered, the court
5 ~~, upon the motion of the attorney general, prosecuting attorney,~~
6 ~~or the attorney for the local unit of government,~~ shall give
7 each surety immediate notice not to exceed 7 days after the date
8 of the failure to appear. The notice shall be served upon each
9 surety in person or left at the surety's last known business
10 address. Each surety shall be given an opportunity to appear

House Bill No. 5846 as amended August 4, 2004

1 before the court on a day certain and show cause why judgment
2 should not be entered against the surety for the full amount of
3 the ~~<<recognizance bail or surety bond>>~~. If good cause is not shown
4 ~~<<for the defendant's failure to appear>>~~, the court shall
5 enter judgment against the surety on the recognizance for an
6 amount determined appropriate by the court but not more than the
7 full amount of the ~~<<recognizance bail, or if a surety bond has been
8 posted the full amount of the surety bond. If the amount of a forfeited
9 surety bond is less than the full amount of the bail, the defendant shall
10 continue to be liable to the court for the difference, unless otherwise
11 ordered by the court>>~~. Execution shall be awarded and
12 executed upon the judgment in the manner provided for in personal
13 actions.

14 (2) Except as provided in subsection (3), the court shall set
15 aside the forfeiture and discharge the bail or surety bond within
16 1 year from the date of forfeiture judgment if the defendant has
17 been apprehended, the ends of justice have not been thwarted, and
18 the county has been repaid its costs for apprehending the
19 person. If the bond or bail is discharged, the court shall enter
20 an order to that effect with a statement of the amount to be
returned to the surety.

(3) Subsection (2) does not apply if the defendant was
apprehended more than 56 days after the bail or bond was ordered
forfeited and judgment entered and the surety did not fully pay
the forfeiture judgment within that 56-day period.