

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

***** 765.28.amended THIS AMENDED SECTION IS EFFECTIVE FEBRUARY 19, 2018 *****

765.28.amended Failure to appear; notice to surety; service; judgment; execution; set aside of forfeiture order; discharge of bail or surety bond; conditions.

Sec. 28. (1) If a defendant fails to appear, within 7 days after the date of the failure to appear the court shall serve each surety notice of the failure to appear. The notice must be served upon each surety in person, left at the surety's last known business address, electronically mailed to an electronic mail address provided to the court by the surety, or mailed by first-class mail to the surety's last known business address. However, if the notice is served by first-class mail, it must be mailed separately from the notice of intent to enter judgment. Each surety must be given an opportunity to appear before the court on a day certain and show cause why judgment should not be entered against the surety for the full amount of the bail or surety bond. If good cause is not shown for the defendant's failure to appear, the court shall enter judgment against the surety on the recognizance for an amount determined appropriate by the court but not more than the full amount of the bail, or if a surety bond has been posted the full amount of the surety bond. If the amount of a forfeited surety bond is less than the full amount of the bail, the defendant shall continue to be liable to the court for the difference, unless otherwise ordered by the court. Execution must be awarded and executed upon the judgment in the manner provided for in personal actions.

(2) Except as provided in subsection (3), the court shall set aside the forfeiture and discharge the bail or surety bond within year from the date of forfeiture judgment if the defendant has been apprehended, the ends of justice have not been thwarted, and the county has been repaid its costs for apprehending the person. If the bond or bail is discharged, the court shall enter 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.

History: 1927, Act 175, Eff. Sept. 5, 1927;—CL 1929, 17190;—CL 1948, 765.28;—Am. 2002, Act 659, Eff. Apr. 1, 2003;—Am. 2004, Act 332, Imd. Eff. Sept. 23, 2004;—Am. 2017, Act 174, Eff. Feb. 19, 2018.

Compiler's note: In subsection (2), the words "within year from the date of forfeiture judgment" evidently should read "within 1 year from the date of forfeiture judgment."