

Regular Session, 2014

HOUSE BILL NO. 363

BY REPRESENTATIVE LOPINTO

CRIMINAL/PROCEDURE: Provides with respect to the surrender of defendant

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AN ACT

To amend and reenact Code of Criminal Procedure Article 345(G) and (I)(introductory paragraph), relative to the surrender of a defendant; to provide with respect to the obligations of a surety; to provide relative to extradition; to provide relative to the National Crime Information Center registry; to provide with respect to an extension of time to surrender a defendant; to provide for a set aside of a judgment of bond forfeiture; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Article 345(G) and (I)(introductory paragraph) are hereby amended and reenacted to read as follows:

Art. 345. Surrender of defendant

* * *

G. During the period provided for surrendering the defendant, the surety may request that the officer originally charged with the detention of a felony defendant place the name of the felony defendant into the National Crime Information Center registry. The surety shall pay to that officer a fee of twenty-five dollars for processing the placement. If, after payment of the twenty-five dollar fee, the defendant's extradition is refused by the office of the district attorney, or the name of the defendant is either not entered into or is removed from the National Crime Information Center registry without cause during the period provided for surrendering the defendant, the surety shall be relieved of all obligations under the bond.

* * *

1 I. In addition to and notwithstanding any other provision of law, a surety
 2 may seek an extension of time to surrender a defendant, or have the judgment of
 3 bond forfeiture set aside by filing a motion in the criminal court of record and after
 4 contradictory hearing with the district attorney and with proof satisfactory to the
 5 court that such an extension of time or set aside is justified under the facts of the
 6 case, ~~a fortuitous event has occurred and that the event has made it impossible to~~
 7 ~~perform as required under the contract. A motion seeking relief pursuant to this~~
 8 ~~Paragraph must be filed within three hundred sixty-six days from the date of the~~
 9 ~~fortuitous event, excluding legal delays.~~ The court in its discretion may do any of
 10 the following:

11 * * *

12 Section 2. This Act shall become effective upon signature by the governor or, if not
 13 signed by the governor, upon expiration of the time for bills to become law without signature
 14 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 15 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 16 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Lopinto

HB No. 363

Abstract: Provides with respect to the surrender of a defendant and provides for obligations of the surety.

Present law provides that during the period provided for surrendering the defendant, the surety may request that the officer originally charged with the detention of a felony defendant place the name of the defendant into the National Crime Information Center (NCIC) registry.

Present law requires the surety to pay a fee of \$25 for processing the placement. If, after payment of the \$25 fee, the name of the defendant is removed from the NCIC registry without cause during the period provided for surrendering the defendant, the surety shall be relieved of all obligations under the bond.

Proposed law retains present law and provides that if the defendant's extradition is refused by the office of the district attorney or the name of the defendant is not entered into the NCIC registry without cause during the period provided for surrendering the defendant, the surety shall be relieved of all obligations under the bond.

Present law authorizes a surety to seek an extension of time to surrender a defendant, or have the judgment of bond forfeiture set aside by filing a motion in the criminal court of record and after contradictory hearing with the district attorney and with proof satisfactory to the court that a fortuitous event has occurred and that the event has made it impossible to perform as required under the contract. Provides that a motion seeking relief pursuant to present law must be filed within 366 days from the date of the fortuitous event, excluding legal delays.

Present law provides that the court in its discretion may do any of the following:

- (1) Set aside the forfeiture or grant the nullity.
- (2) Grant an extension of up to 366 days from the expiration of the initial time period allowed for the surrender of the defendant from the date of the mailing of proper notice of bond forfeiture. If the court grants that extension, judicial interest shall be suspended during that additional time period.
- (3) Deny the relief.

Proposed law removes the requirement of proving a fortuitous event has occurred and deletes the requirement that the motion be filed within 366 days. Provides that a surety must prove to the court that such an extension of time or set aside is justified under the facts of the case.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends C.Cr.P. Art. 345(G) and (I)(intro. para.))