

Defendants not appearing

Options when a criminal
defendant doesn't show
up

Judge Derek Lawless

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Resources

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Resources for Defendants Not Appearing

- Criminal Deskbook (January 2025) at www.tjctc.org > legal resources > deskbooks
- Forms and Flowcharts at www.tjctc.org > legal resources > forms or > charts and checklists
 - Failure to Enter Plea Flowchart
 - Failure to Appear for Criminal Trial Flowchart
- Legal Board Q&As
- Code of Criminal Procedure
 - (as cited on slides)

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Failure to Appear Flowchart



Agenda

- Courtesy Letter
- Arrest Warrant or Capias
- VTPA and FTA
- Omni
- Pretrial Collections
- Scofflaw Program
- Non-Resident Violators Compact
- Bond Forfeiture

Discussion Question 1

Which option have you found to work the best for your court?

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Option A – Courtesy Letter

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What is a courtesy letter?

- A courtesy letter is just what it sounds like. It's a letter to the defendant reminding them that they have a pending case that needs to be addressed.
- There are no specific requirements for what should go in a courtesy letter.
- A courtesy letter is never required.

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Life happens

Sometimes people don't understand that they need to appear for court, they just forget about their court date, or they have some type of emergency that keeps them from attending court. Sending a courtesy letter gives them the opportunity to come to court without the severity of a capias or warrant.

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Can the courtesy turn into a threat of a warrant?

- Note that there is a specific notice (discussed later) that the court must send out before issuing a warrant. This means that the court may not just send a basic courtesy letter that does not meet those requirements, and then issue a warrant.

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Behavioral nudges reduce failure to appear in court

In two studies, redesigning the summons form and providing text message reminders in New York City reduced failures to appear by 13-21% and lead to 30,000 fewer arrest warrants over a three-year period.

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Class discussion

What are ways a court or clerk can encourage people to show up?

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What do you think about phone calls from defendants?

- How do you handle them?
- Does your court consider that to be an “appearance?”
- How do you make sure that you’re talking to the right person?

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Option B – Arrest Warrant or Capias

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What's the Difference Between an Arrest Warrant and a Capias?

- For cases filed in justice court, practically speaking, there isn't a difference between an arrest warrant and a capias. Additionally, the Court of Criminal Appeals has ruled "that for purposes of constitutional scrutiny, there is no substantive difference between an arrest warrant and a capias..." *Sharp v. State*, 677 S.W. 2d 513, 517-18 (Tex. Crim. App. 1984).
- Therefore, TJCTC recommends following all rules for issuance of a warrant when issuing a capias as well.

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What's an arrest warrant?

- Generally, an arrest warrant results in a defendant being taken to jail and brought before a magistrate. However, whenever a warrant is issued on a case filed in a justice court, the warrant should direct the officer executing the warrant to bring the defendant directly to the court.
- *Code of Criminal Procedure Art. 45.014(b)(3).*

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What is a capias?

A capias is an order to a peace officer to bring a defendant directly before the court issuing the capias.

Code of Criminal Procedure Art. 23.01.

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Requirements for an arrest warrant

- a) Notice to the defendant (by phone or mail), including
1. A new appearance date and time within 30 days;
 2. The name and address of the court;
 3. Information about the consequences if the defendant fails to appear before the judge.
 4. A statement that the defendant may be entitled to a credit toward any fine or costs owed by the defendant if the defendant was confined in jail after commission of the offense for which the notice is given; and
 5. An explanation of the consequences if the defendant fails to appear before the judge; and

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Can't issue an arrest warrant without a sworn complaint

The citation is not enough.

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There's a form for this notice.

TJCTC has a form that will ensure that your office complies with the requirements of this notice prior to issuing a warrant.

DEFENDANT § _____ COUNTY, TEXAS

NOTICE OF FAILURE TO APPEAR PRIOR TO ISSUANCE OF WARRANT

The court **FINDS** that Defendant failed to appear as required on _____, 20____. Defendant is **ORDERED** to appear at _____ County, Texas, at _____m, on _____, 20____. Failure to appear may result in non-renewal of Defendant's driver's license and/or a warrant being issued for Defendant's arrest.

NOTICE OF ALTERNATIVES TO PAYMENT OF FINE AND COSTS: A defendant who is convicted of a criminal offense punishable by fine only is entitled to alternative methods of satisfying the judgment against them if they are unable to pay the fine or costs, in whole or in part, including:

- A payment plan, allowing the defendant to make payments toward the fine and costs in designated intervals. (Note that payment more than 30 days after the fine or costs are assessed will result a \$15 time payment reimbursement fee being charged.)
- Disposition of the amount assessed by performing community service. There are many options that meet the requirements of the law for community service, see Code of Criminal Procedure Art. 45.049 for full details. A defendant is entitled to a minimum of \$100 credit for every 8 hours of community service performed.
- If performing community service imposes an undue hardship, a defendant who is unable to pay may be entitled to a waiver of the fine and costs, in whole or in part.
- A defendant may be entitled to jail credit in certain circumstances if the defendant served a jail or prison sentence for another offense after committing this offense.

Defendant was notified of this information by:

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Contents of a warrant (1/2)

- It is issued in the name of "The State of Texas;"
- it is directed to the proper peace officer, or some other person specifically named in the warrant;
- it includes a command that the body of the accused be taken, and brought before the authority issuing the warrant, at the time and place stated in the warrant;

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Contents of a warrant (2/2)

- it states the name of the person whose arrest is ordered, if known, or if not known, it describes the person as in the complaint;
- it states that the person is accused of some offense against the laws of this state, naming the offense; and
- it is signed by the justice or judge, naming the office of the justice or judge in the body of the warrant or in connection with the signature of the justice or judge.

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Remember, the point of the warrant is to get the defendant to come to court.

The court must voluntarily recall the warrant if the "defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed."

CCP Art. 45A.104(g)

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Discussion

- Defendant gets a ticket. No complaint is filed. She received a written letter providing notice stating a warrant will be issued. The notice has all of the necessary requirements. Can we issue a warrant? Why or why not?

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Option C – VTPA and FTA

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Time for a Poll

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Poll Question 1

Doug the Defendant fails to show up for a first hearing on his speeding ticket. Can the court find him guilty and sign a judgment, assessing a fine and court costs?

A. Yes

B. No.

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FTA and VPTA are separate offenses



There must be a sworn complaint alleging the offense (preferably signed by law enforcement or a prosecutor)



The defendant must enter a plea, and is entitled to a jury trial like any other criminal charge.

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Violation of Promise to Appear

Only applies to Rules of the Road Offenses, Chapters 540-600 of the Transportation Code.

A person commits an offense if they willfully violate their promise to appear in court, which they made to be released from custody.

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Fine amount for VPTA

Not less than \$1 nor more than \$200. Transportation Code section 542.401.

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Failure to appear

This would apply to all other offenses, like possession of drug paraphernalia.

A person commits an offense if they were released from custody on the condition that they subsequently appear but then they intentionally or knowingly fail to appear in accordance with the terms of release.

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Fine amount for FTA

An FTA is a class C misdemeanor with a fine up to \$500.
Transportation Code section 38.10(e)

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Time for a Poll

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Poll Question 2

Doug is charged with a Rules-of-the Road offense. He does not appear. Can the prosecutor charge him with an FTA instead of a VPTA, since FTA has a higher fine amount?

- A. Yes
- B. No.

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Charging VTPA or FTA

- The practice in most Texas counties is that the clerk will generate a sworn complaint when the defendant commits the offense of VPTA or FTA. The clerk does have personal knowledge of the offense, and the complaint is legally sufficient.
- However, the court filing criminal charges against the defendant, and then hearing the charges, raises at least the appearance of impropriety, and is best avoided. The best practice is for either law enforcement or a prosecutor to file the complaint for VPTA or FTA.
- If the clerk of the court does file the complaint, best practice is for the judge to either recuse or exchange benches on any matters regarding the VPTA or FTA.

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Discussion question

Doug is accused of speeding and causing an accident. He is sent to the hospital by ambulance. Law enforcement mails Doug his ticket. He fails to show up. Can Doug be charged with VPTA or FTA?

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Common situations where VTPA and FTA are not applicable

- The defendant was charged Via Complaint and never appears
- The defendant does not appear for a pretrial hearing
- The defendant pleads not guilty and doesn't appear on the trial date
- A defendant on DSC/Deferred does not appear for a show cause hearing
- The defendant is on a payment plan and misses a payment

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Option D – Reporting to OMNI for Failure to Appear

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What is OMNI?

- OMNI is a program that you can report a criminal defendant to if they fail to appear or if they fail to satisfy a criminal judgment. Then, once they are reported, they will not be able to renew their driver's license until they have complied in their criminal case. In most of these situations, the criminal defendant will also need to pay a \$10.00 fee.
- Also note that OMNI applies to all criminal cases, not just those under the Transportation Code.

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Two reasons for reporting a defendant to OMNI

Pre-trial: the defendant failed to appear pursuant to a citation or complaint; or

Post-trial: the defendant failed to satisfy a judgment that has been rendered against them.

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OMNI vs. FTA or VPTA

Omni is completely independent from new charges of FTA or VPTA. It is not required that a defendant first be charged with VPTA or FTA to be reported to Omni. Omni may be appropriate in many situations where new criminal charges of FTA or VPTA are not appropriate. Also, it is permissible for a defendant to be reported to Omni and for new criminal charges of FTA or VPTA to be filed at the same time.

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When OMNI is not available

Defendant does not have a driver's license.

Defendant does not appear at a show cause hearing on deferred disposition/DSC

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Removing acquitted defendant from OMNI

If a defendant is acquitted of the offense, they must be removed without paying a fee.

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Removal from OMNI with \$10 reimbursement fee

A defendant can be removed from Omni if they pay a \$10 reimbursement fee and:

- Perfect an appeal of the case;
- Obtain dismissal of the charge;
- Post an appearance bond;

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Removal from OMNI by paying or starting to pay fees

- Pay or discharge the fine and costs on an outstanding judgment; or
- Make suitable arrangements to pay the fine and costs within the court's discretion (like an installment plan)

Transportation Code section 706.005(a).

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Waiver of \$10 reimbursement fee

The \$10 Omni reimbursement fee **must** be waived if the court finds that the defendant is indigent. Although a court has discretion regarding a finding of indigence, a defendant is presumed indigent for the purposes of Omni if the person:

- Is required to attend school full time under Section 25.085, Education Code;
- Is a member of a household with a total annual income that is below 125 percent of the applicable income level established by the federal poverty guidelines; or
- Receives assistance from certain governmental assistance programs.

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Time for a Poll

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Poll Question 3

When is it ok to report a defendant to OMNI?

- A. Defendant failed to appear at a show cause hearing, deferred disposition, or driving safety course.
- B. Defendant doesn't have current driver's license.
- C. There is no sworn complaint for VTPA or FTA filed.

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Option E: Pretrial Collections

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Art. 103.0031 of the Code of Criminal Procedure authorizes a commissioners court to enter into a contract with an entity to collect money due to the county in criminal cases.

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Pretrial collections

- A case is eligible for pretrial collections in any situation where the defendant has failed to appear after having lawfully been directed to appear.
- The Defendant can be referred to collections once the case is 60 days past due, which for purposes of cases where the defendant hasn't appeared is the 61st day after the date on which the defendant was to appear.
- Collection fee of 30% may be added on to any amount that is more than 60 days past due and has been referred to the attorney/collection agency for collection. CCP Art. 103.0031(b)

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Collection scenario

What if

- The Defendant did not appear;
- Case referred to collections;
- The Defendant was later found guilty;
- And the case is dismissed.

How much money does the Defendant owe the collections agency?

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Communication is key

- Defendant does not owe money so cannot say money is due (not due without judgment).
- Cannot say failure to pay will result in warrant.
- Inform defendant that payment will result in criminal conviction.
- Inform defendant that they have a right to plead not guilty and have trial.
- Tell them they have alternative ways to satisfy fines and costs

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Class Discussion

- How does your court use or work with collections when the defendant fails to appear?

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Option F – Scofflaw Program

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The Scofflaw program is a mechanism by which a defendant will not be allowed to renew registration of their motor vehicle until their outstanding criminal case is resolved.

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When can you use the Scofflaw Program?

Defendant owes the county money for a fine, fee, or tax that is past due; or

Defendant failed to appear in connection with a complaint, citation, information, or indictment in a court in the county in which a criminal proceeding is pending.

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How do you initiate the Scofflaw Program?

The court refers the case to DPS or the county assessor-collector.

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Administering the Scofflaw Program

- The referral to the scofflaw program expires two years after the referral, and the defendant may not be referred on new failures to appear or satisfy judgment unless the case prompting the original referral has been resolved.
- This means that courts should remain active in pursuing compliance after referring a case to the scofflaw program, rather than passively sitting back and waiting for the matter to be resolved.

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How do they get Scofflaw Removal?

Resolve the issue; and
Pay \$20 or get it waived.

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Waiver of removal fee

Unable to pay; or
There is good cause
not to impose the
fee.

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Class discussion

- Have you used the Scofflaw Program? How has it worked for you?

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Option G – Non-Resident Violators Compact (NRVC)

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- The Non-Resident Violators Compact (NRVC), found in Chapter 703 of the Transportation Code, is an agreement among 43 states to suspend the driver's license of individuals who receive citations while out-of-state, and then fail to appear to resolve the case.

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When does the NRVC Apply?

The NRVC only applies to traffic violations, which are not defined under the compact. Some offenses are explicitly excluded, including:

- Equipment Violations
- Inspection Violations
- Parking or Standing Violations
- Size and Weight Limit Violations
- Violations of Law Governing the Transportation of Hazardous Materials
- Motor Carrier Violations
- Lease Law Violations
- Registration Law Violations

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NRVC

- If a defendant with an out-of-state license fails to appear by their appearance date on a traffic violation in justice court, the court MUST report that failure to DPS within six months of the date of the citation.
- DPS then reports the failure to the defendant's home jurisdiction. That jurisdiction then suspends the defendant's license until they receive a report that the defendant has complied with the terms of the citation.
- Additionally, the defendant will have to pay a reinstatement fee, which in Texas is \$100.

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States not part of the compact

Alaska

California

Michigan

Montana

Wisconsin

Virginia

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NRVC Restrictions

- Only applies to “traffic violations,” similar to “Rules of the Road.”
- However, “traffic violations” is not defined by the NRVC

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Not “Traffic Violations”

- Equipment violations
- Inspection violations
- Parking or standing violations
- Size or weight violations
- Hazardous materials violation
- Motor carrier violations
- Lease law violations
- Registration violations

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NRVC Time Limit

Failing to appear must be reported within 6 months from citation

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Option H – Driver’s License Nonrenewal for Failure to Appear on Chapter 521 Offenses

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Driver's License Offenses

- A justice court MUST report to the Department of Public Safety (DPS) a person charged with a traffic offense under Chapter 521 of the Transportation Code of the person does not appear before the court as required by law.

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What offenses are Driver's License Offenses?

- No Driver's License
- Expired
- Violation of License restriction
- Violation of Occupational License Requirements
- Fake License
- Driving While License is Invalid

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- DPS may not renew the person's driver's license, or may not issue them one if they don't currently have one until the matter is resolved. The court SHALL report the final disposition of the case to DPS.

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Option I – Bond Forfeiture

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What is bond forfeiture?

- Bond forfeiture is a procedure where a defendant suffers a financial penalty for failing to appear under the terms of their bond.
- A bond may have been set for the defendant's appearance in one of two situations:
- By a magistrate while performing the Art. 15.17 hearing, where the magistrate informs the defendant of their rights, or
- By the judge after the defendant enters a plea of not guilty to a criminal offense.

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Statute of Limitations

- An action by the state to forfeit a bail under this chapter must be brought not later than the fourth anniversary of the date the principal fails to appear.

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- The amount of money forfeited is a penalty paid by the defendant, and does not result in a criminal conviction, and does not substitute for the fine and costs that will be due in the event that the defendant gets convicted of the criminal offense.
- Cash bonds posted as a condition of deferred disposition may be used to pay the fine and costs under certain circumstances.

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Enforcing the bond forfeiture

- The procedure for enforcing the bond forfeiture is different depending on whether the bond is a personal bond, a cash bond, or a surety bond. For a full discussion of the various types of bonds, see Chapter 2 of the Magistration Deskbook.

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Judgment NISI Process

- The first judgment entered forfeiting a bail bond is not a final judgment. It is temporary (interlocutory) and is referred to as a judgment nisi. Nisi is Latin for “unless”, so this is literally a judgment that will be made final “unless” the defendant/surety can show good cause why they should not be bound for the forfeiture.
- The judgment should state how much of the amount is owed by the defendant (called the principal on a surety bond), and how much is owed by any sureties. The judgment must state that it will be made final unless good cause is shown why the defendant did not appear.

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Issuance and service of citation

- After rendering the judgment nisi, the court must issue a citation, in the same form as in civil cases, to the sureties, if any, notifying them of the judgment nisi and requiring them to appear and show cause why the judgment should not be made final. Code of Criminal Procedure Art. 22.03.
- A citation must be served upon the defendant if the defendant posted a cash bond. Code of Criminal Procedure Art. 22.035.
- The citation must have a copy of the bond and a copy of the judgment nisi attached. Code of Criminal Procedure Art 22.04.

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Capias for the Defendant

- If a forfeiture of bond is ordered, a capias shall be issued immediately for the re-arrest of the defendant. When the defendant is arrested, the court may require the defendant to make a cash bond in the amount set by the court.
- However, if the forfeiture is set aside due to sickness of the principal or "uncontrollable circumstance", the defendant and the sureties shall remain bound under the original bond. Code of Criminal Procedure Art. 23.05.