

BOND FORFEITURES

CHAPTER 9	BOND FORFEITURES
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CHAPTER 9 BOND FORFEITURES

Municipal judges are empowered to admit persons to bail and to forfeit bail in the same manner as provided for county courts. The failure to perform the condition on the bond causes the court to declare forfeiture of the bail. Therefore, a defendant’s failure to appear in court after posting bail and the judicial declaration of the forfeiture initiates bond forfeiture procedures.

Generally, Chapter 22, C.C.P., governs bond forfeiture proceedings. The exception to using the bond forfeiture procedures in Chapter 22 is found in Article 45.044, C.C.P. This statute provides an additional method of forfeiting a cash bond in certain instances.

1. Cash Bond Forfeitures in Satisfaction of Fine Under Article 45.044, C.C.P.

Checklist 9-1	Script/Notes
<p><input type="checkbox"/> 1. Ask the defendant to acknowledge his or her presence when the defendant’s name is called.</p> <p><input type="checkbox"/> 2. When the defendant fails to answer, order the bailiff or another to call the defendant’s name distinctly at the courthouse door.</p> <p><input type="checkbox"/> 3. If the defendant has posted a cash bond and has signed a conditional plea of nolo contendere and waiver of jury trial, the judge may forfeit the bond for fine and court costs when the defendant fails to appear. Otherwise, skip remaining steps and proceed to judgment.</p> <p><input type="checkbox"/> 4. Notify the defendant immediately by regular mail of the court action and the right to request a new trial.</p> <p><input type="checkbox"/> 5. If the defendant makes a request for a new trial within 10 days after the forfeiture, the court shall grant the motion and allow the defendant to withdraw his or her conditional plea of nolo contendere and waiver of jury trial. The bond is reinstated and the case is set for trial.</p> <p>To count, start the day after the forfeiture and count 10 calendar days. If the 10th day falls on a weekend or holiday, go to the next working day of the court for the 10th day.</p> <p><input type="checkbox"/> a. Amount of time increased by the “Mailbox Rule.”</p> <p>If the request for new trial is mailed first class</p>	<p>Art. 22.02, C.C.P. Calling name in hallway on sixth floor is sufficient. <i>Burns v. State</i>, 814 S.W.2d 768 (Tex. App.—Houston [14th Dist.] 1991, rev’d on other grounds). See <i>TMCEC Forms Book</i>: Bailiff/Clerk’s Affidavit of Defendant’s Failure to Appear.</p> <p>Art. 45.044, C.C.P.</p> <p>Sec. 311.014, G.C.</p> <p>Art. 45.013, C.C.P. Defendants filing documents by mail have additional time (10 days) in which to present the document</p>

mail on or before the due date of filing of the request for new trial and received by the clerk not later than 10 days after the due date, the motion is properly filed. ("Day" does not include Saturday, Sunday, or legal holiday.) Make sure the clerk keeps the envelope showing the postmark.

- 6. If the defendant does not make a timely motion for a new trial, the judgment and forfeiture becomes final. Court costs are paid to the State and the fine is placed in the general revenue fund. If the offense is a traffic offense, the court reports the conviction to the Department of Public Safety:
 - a. If the defendant has been in jail, jail time credit is required to be given at a rate of not less than \$50 for a period of time specified in the judgment. The court should determine the period of time between eight and 24 hours.
 - b. Depending on the credit and amount of fine imposed, the court may have to refund all or part of the bond.

to the court. This rule, commonly called the "Mail Box Rule," increases the time for filing documents.

Arts. 42.03, Sec. 2, 45.041, and 45.048, C.C.P.

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2. Cash, Surety, or Personal Bond Forfeiture Procedures Under Chapter 22, C.C.P.

Before a judgment nisi is issued initiating a bond forfeiture, a surety can be released from the responsibility on the bond by filing an affidavit of intention to surrender the defendant. The affidavit must include a statement that notice to the principal’s attorney has been given as required by Article. 17.19, C.C.P. See Arts. 17.16-17.19, C.C.P., for rules regarding discharge of liability on bond.

An action by the State to forfeit a bail bond must be brought not later than the fourth anniversary of the date the principal fails to appear in court. Art. 22.18, C.C.P.

Checklist 9-2	Script/Notes
<p>Definitions:</p> <p>“Agreed judgment” is a judgment entered on agreement of the parties, which receives the sanction of the court. When the court gives the agreement its sanction, it becomes the judgment of the court.</p> <p>An “answer” is the formal written statement made by a defendant setting forth grounds for his or her defense. In some instances may need to be verified (sworn to).</p> <p>A “citation” is a writ (written order) issued by the clerk of the court. The citation notifies a person of a lawsuit filed against him or her and directs the person to file an answer to the suit within a certain number of days.</p> <p>“Defendant” is a term used to describe the surety.</p> <p>“Forfeiture” means the signing of the judgment nisi.</p> <p>“Judgment nisi” is a temporary order which will become final unless the defendant in the criminal case and/or the surety show good cause why the judgment should be set aside.</p> <p>“Judicial notice” is an act by which a court, in conducting a trial, will, without the production of evidence, recognize the existence and truth of certain facts or documents because the court already is aware of the facts or documents.</p> <p>A “movant” is one who makes a motion before a court.</p> <p>“Pleadings” are formal allegations by parties of their respective claims and defenses.</p> <p>A “principal” is the defendant in the criminal case.</p> <p>“<i>Scire Facias</i>” is a special docket required by law to handle all cases and proceedings involved in the forfeiture of bail bonds.</p>	<p>Art. 22.10, C.C.P.</p>

This docket may also be called the civil docket.

“Summary proceeding” is any proceeding by which a controversy (lawsuit) is settled, case disposed of, or trial conducted in a prompt and simple manner, without a jury. The court may grant a summary judgment when it believes that there is no genuine issue of material fact and that the party is entitled to prevail as a matter of law. Any party to a civil action may move for a summary judgment.

“Surrender” means that a surety may relieve himself or herself of liability before forfeiture by surrendering the accused into custody or by filing an affidavit stating that the accused is in federal, state, or county custody.

A “waiver” is a sworn statement that intentionally and voluntarily relinquishes the right of being served by citation.

- 1. Ask the defendant to acknowledge his or her presence when the defendant’s name is called.
- 2. When the defendant fails to answer, order the bailiff or another to call the name distinctly at the courthouse door.
- 3. Note the time the call was made and who made the call.
- 4. If the defendant does not appear within a reasonable time after such call, enter judgment nisi against the defendant and his or her sureties. (The judgment nisi is usually prepared by the clerk for the judge’s signature.)
- 5. Issue a capias for the defendant’s arrest.
- 6. Set the new bond. (May require a cash bond.)

Art. 17.16 *et. seq.*, C.C.P.

Art. 22.02, C.C.P.
Burns v. State, 814 S.W.2d 768 (Tex. App.—Houston [14th Dist.] 1991, rev’d in part on other grounds). Court held that calling name in hallway on sixth floor is sufficient.
 See *TMCEC Forms Book: Bailiff/Clerk’s Affidavit of Defendant’s Failure to Appear.*

Arts. 22.02 and 23.05, C.C.P.
 State’s Motion for Bond Forfeiture of (*Defendant’s name*)’s bond is granted. A capias for the defendant’s arrest is hereby issued with a new bond set at \$_____.
 See *TMCEC Forms Book: Judgment Nisi Declaring Forfeiture.*

Art. 23.05, C.C.P.
 See *TMCEC Forms Book: Capias: After Forfeiture or Upon Surrender of Principal.*

Art. 23.05, C.C.P.

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| <ul style="list-style-type: none"> <input type="checkbox"/> 7. Set the forfeiture case on the <i>scire facias</i> or civil docket. <ul style="list-style-type: none"> <input type="checkbox"/> a. List “The State of Texas” as plaintiff. <input type="checkbox"/> b. List the principal and any sureties as defendants. <input type="checkbox"/> 8. On request of the prosecutor, order clerk to issue citation(s) to surety, if any, and principal. <ul style="list-style-type: none"> <input type="checkbox"/> a. Citation shall be in the form provided for citations in civil cases. Prosecutor may request multiple citations be issued. <input type="checkbox"/> b. If prosecutor presents a motion supported by an affidavit showing specific facts why personal service or service by mail has not been successful, grant substitute service (someone over 16 years of age at location specified in affidavit may accept service). <input type="checkbox"/> c. If substitute service is unsuccessful and prosecutor under oath states the residence of surety is unknown and, though diligence has been used to serve the citation, the defendant surety cannot be located, grant publication. <input type="checkbox"/> 9. The defendant/principal’s citation is served by regular mail if the address appears on the bond. If no address, court not required to notify principal of bond forfeiture. <input type="checkbox"/> 10. Answers are due as in civil cases. <ul style="list-style-type: none"> <input type="checkbox"/> a. Maximum of 27 days after proper service of citation to answer. <input type="checkbox"/> b. Amount of time increased—10 additional days are allowed if the answer is mailed by first class mail, properly addressed and mailed on or before the last day for filing an answer. (Make sure the court clerk keeps the envelope in which answer is received.) <input type="checkbox"/> 11. If the surety and principal fail to answer within the time limit, the court shall enter a judgment by default. <ul style="list-style-type: none"> <input type="checkbox"/> a. Before entering default judgment, determine if service was proper; court should have evidence of properly signed return of service or verified waiver. Proof of service includes: | <p>Art. 22.10, C.C.P.
See <i>TMCEC Forms Book: Scire Facias Docket</i>.</p> <p>Art. 22.03, C.C.P.
See <i>TMCEC Forms Book: Citation</i>.
Art. 22.04, C.C.P.; Tex. R. Civ. P. 99.</p> <p>Tex. R. Civ. P. 106(b).</p> <p>Tex. R. Civ. P. 109.</p> <p>Art. 22.05, C.C.P.</p> <p>Art 22.11, C.C.P.
Tex. R. Civ. P. 92.</p> <p>Tex. R. Civ. P. 5.</p> <p>Art. 22.15, C.C.P.
Tex. R. Civ. P. 239.</p> <p>Tex. R. Civ. P. 107.</p> |
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| <ul style="list-style-type: none"> <input type="checkbox"/> (1) Verified waiver; <input type="checkbox"/> (2) Certified mail; green card signed by: <ul style="list-style-type: none"> <input type="checkbox"/> (a) Defendant/surety; <input type="checkbox"/> (b) State Board of Insurance (surety is corporation); <input type="checkbox"/> (c) Registered agent (surety is a corporation); or <input type="checkbox"/> (d) Executor, administrator, or heirs (surety is deceased). <input type="checkbox"/> (3) If the prosecutor files a motion supported by an affidavit showing specific facts why personal service or service by mail has not been successful, grant an order of substitute service (someone over 16 years of age at location specified in affidavit) and officer's return on citation completed; <input type="checkbox"/> (4) Personal service—officer's return on citation is completed; or <input type="checkbox"/> (5) If substitute service is unsuccessful, prosecutor's affidavit that states the residence of surety was unknown and, though diligence has been used to serve the citation, the defendant surety could not be located, order granting publication and copy of publication attached to return. | <p>Tex. R. Civ. P. 107.
Clerk is required to complete return on citation after receiving properly signed green card.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> b. Court must inquire into the sufficiency of the diligence exercised in attempting to ascertain the residence or whereabouts of the defendant before granting default judgment on service. | <p>Tex. R. Civ. P. 106(b).</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> c. Proof of service on file at least 10 days, exclusive of the date of filing and the date of judgment, for every defendant. | <p>Tex. R. Civ. P. 107.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> d. Time expired for answers. | <p>Tex. R. Civ. P. 109.</p> <p>Tex. R. Civ. P. 239.
Art. 22.15, C.C.P.</p> <p>Tex. R. Civ. P. 107.</p> <p>Defendant(s) may have been served on different days and therefore may have different deadlines to answer.</p> |

prior to hearing to file and serve opposing affidavits.

- e. Fact issues include:
 - (1) Whether surety executed bond;
 - (2) Whether principal's name called at courthouse door;
 - (3) Whether principal failed to appear; or
 - (4) Whether principal had a valid reason for not appearing.
 - f. Summary judgment hearing:
 - (1) No oral testimony;
 - (2) Judge reviews pleadings; and,
 - (3) State asks judge to take judicial notice of bond and judgment nisi, then rests.
 - g. Defense must set forth affidavits. Affidavit must include:
 - (1) Information based on personal knowledge; and
 - (2) How affiant became personally familiar with facts.
 - h. If no genuine issue, grant movant's (usually State's) motion for summary judgment.
 - i. If there is a genuine issue, deny and set for bond forfeiture trial.
13. Procedure at bond forfeiture trial
- a. At least 45 days notice of the first trial setting required.
 - b. If service of citation is by publication and there was no answer, appoint an attorney to represent the surety.

Alvarez v. State, 861 S.W.2d 878 (Tex. Crim. App. 1992).

Villarreal v. State, 826 S.W.2d 621 (Tex. App.— Houston [14th Dist.] 1992).

Tex. R. Civ. P. 245.
In the case of continuance, the court may reset to a later date on any reasonable notice to the parties or by agreement of the parties.

Tex. R. Civ. P. 244.

- c. Defendant may request a jury trial.
 - d. Written request for a jury trial is required.
 - e. Must be received not less than 30 days in advance of the first trial setting for trial before the judge.
 - f. Defendant must pay jury trial fee of \$5. (Fee might be \$5, which is paid to county court, or \$10, which is paid to district court. Court will have to determine which fee is applicable.)
 - g. If fee is not paid, deny jury trial and proceed with bench trial.
14. Call case.
15. State presents case.
- a. Bond
 - b. Docket entry and indication of forfeiture
 - c. Certificate, affidavit, or testimony of bailiff or person who called name
 - d. Judgment nisi
16. State may ask court to take judicial notice of bond and judgment nisi.
17. Judge may take judicial notice of bond and judgment nisi unless defendant and/or surety have filed a sworn answer challenging bond's validity. If sworn answer, State must establish required predicate (present the court facts that the bond is valid) to introduce the bond.
18. When validity of the bond is challenged, the judge cannot take judicial notice of bond. State presents evidence that bond is:

Tex. R. Civ. P. 216.

Tex. R. Civ. P. 216.

“What says the State in cause number ____?”

State answers. If defense does not appear, State can move for default judgment.

“What says Defendant?”

Defense answers.

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| <ul style="list-style-type: none"> <input type="checkbox"/> a. The one submitted by the defendant; <input type="checkbox"/> b. Received by the court; <input type="checkbox"/> c. Court has taken proper care of bond; and <input type="checkbox"/> d. Not more burdensome than required by law. | |
| <input type="checkbox"/> 19. State rests. | |
| <input type="checkbox"/> 20. Defendant, principal, or surety presents evidence on one of the following defenses: | Art. 22.13, C.C.P. |
| <ul style="list-style-type: none"> <input type="checkbox"/> a. Bond is not valid because: <ul style="list-style-type: none"> <input type="checkbox"/> (1) Not valid as to principal or surety; <input type="checkbox"/> (2) Defendant did not execute bond (must be verified by affidavit); or <input type="checkbox"/> (3) Bond more burdensome than statute requirement. <input type="checkbox"/> b. Defendant or principal died before forfeiture taken. <input type="checkbox"/> c. Defendant or principal was sick or some uncontrollable circumstance prevented the defendant's appearance. Defendant shows that the principal's failure to appear arose from no fault on the principal's part. <input type="checkbox"/> d. Incarceration of the principal in any jurisdiction in the United States at the time of or not later than the 180th day after the date of the principal's failure to appear in court. <input type="checkbox"/> e. Defendant's name was not called at courthouse door. <input type="checkbox"/> f. Surety had requested to be relieved from the bond and the court had: <ul style="list-style-type: none"> <input type="checkbox"/> (1) Refused to issue a warrant of arrest for principal after the affidavit for surrender of the principal filed with the court; and <input type="checkbox"/> (2) After refusal to issue warrant, principal failed to appear. <input type="checkbox"/> g. The following defenses must be verified by | <p>Art. 22.13, C.C.P.</p> <p>Art. 22.13, C.C.P.</p> <p><i>Browne v. State</i>, 268 S.W.2d 131 (Tex. Crim. App. 1954).</p> <p>Art. 22.13, C.C.P.</p> <p>Art. 22.13, C.C.P.</p> <p>Art. 22.13, C.C.P.
<i>James v. State</i>, 413 S.W.2d 111 (Tex. Crim. App. 1967).</p> <p>Arts. 17.16 and 17.19, C.C.P.</p> <p>Tex. R. Civ. P. 93.</p> |

affidavit:	
<input type="checkbox"/> (1) Defendant did not execute bond;	Tex. R. Civ. P. 93(7).
<input type="checkbox"/> (2) Defendant is not liable in the capacity sued;	Tex. R. Civ. P. 93(2).
<input type="checkbox"/> (3) Defendant does not have legal capacity to be sued;	Tex. R. Civ. P. 93(1).
<input type="checkbox"/> (4) There is a defect of parties; or	Tex. R. Civ. P. 93(4).
<input type="checkbox"/> (5) Defendant alleged to be a corporation is not incorporated as alleged.	Tex. R. Civ. P. 93(6).
<input type="checkbox"/> 21. After a judicial declaration of forfeiture is entered the court has the power to do any of the following:	Art. 22.125, C.C.P.
<input type="checkbox"/> a. Exonerate the defendant and any sureties for cause;	Art. 22.13, C.C.P. If the principal is not liable, everyone is exonerated. If the principal is liable and one or more sureties, if any, is liable on bond, then only non-liable sureties are exonerated.
<input type="checkbox"/> b. Remit forfeiture;	Art. 22.125, C.C.P.
<input type="checkbox"/> c. Set aside forfeiture only as expressly provided for in Chapter 22, C.C.P.; or	
<input type="checkbox"/> d. The court may approve any proposed settlement of the liability on the forfeiture that is agreed to by the State and by the defendant or the defendant's sureties, if any.	See <i>TMCEC Forms Book</i> : Dismissal and Reinstatement of Bond; Motion and Order of Dismissal with Costs; Motion and Order of Dismissal without Costs; and Agreed Final Judgment.
<input type="checkbox"/> 22. If no exoneration, enter judgment against each for the amount in which sureties, if any, are respectively bound.	Art. 22.14, C.C.P. See <i>TMCEC Forms Book</i> : Final Judgment.
<input type="checkbox"/> 23. Enter dismissal of forfeiture if exoneration is found.	"The court finds that the principal and/or surety has/have shown grounds for exoneration and the court enters an order of dismissal in this matter."
<input type="checkbox"/> 24. Remittitur	Art. 22.16, C.C.P.
<input type="checkbox"/> a. If the defendant or surety is entitled to remittitur, before entry of final judgment and	

written motion submitted, deduct from the amount of the bond, court costs, interest, and any reasonable costs to the city for the return of the defendant.

- b. Interest accrues on the bond amount from the date of forfeiture in the same manner and at the same rate as provided for in the accrual of prejudgment interest in civil cases.
- c. Interest on the bond amount after forfeiture begins to accrue on the face amount of the bond if no specified rate of interest is agreed upon by the defendant (surety) or State (prosecutor). Interest on the bond forfeiture begins to accrue from the date of the judgment nisi.
- d. Remittitur is required if the defendant or sureties show:
 - (1) Defendant (principal) is released on new bail; or
 - (2) The case for which the bond was given is dismissed.
- e. The court may remit the bond or any part of the bond for any other good cause shown the court.
- 25. Agreed Judgment. If the county population is more than 110,000 or a bail bond board created within the county:
 - a. State and defense may agree to an amount less than bond and recommendation is submitted to court.
 - b. Court accepts the recommendation and enters a final judgment.
- 26. Motion for New Trial

Sec. 302.002, Fin. C.

Arts. 22.16(c) and 22.17(a), C.C.P.
Dees v. State, 865 S.W.2d 461
 (Tex. Crim. App. 1993).

Art. 22.125, C.C.P.
 Sec. 1704.205, O.C.

The court accepts the State's recommendation of the agreed judgment and finds that the judgment nisi is now final. The defendant and sureties are jointly and severally bound in the amount of \$_____ and costs of court to (City), Texas and order judgment be entered and execution issue. (Note: If sureties are a corporation, they are not in default until the 11th day after judgment. Sec. 1704.212, O.C. See *TMCEC Forms Book: Agreed Final Judgment*.

Tex. R. Civ. P. 329(b).

- a. Defendant and/or surety requests within 30 days after final judgment has been signed.
 - b. Request (motion) is made in writing.
27. Non-Contested Cases
- a. Proper answer is filed; and
 - b. Defendant is not contesting forfeiture.
28. Appeal
- a. Defendant(s) have the right to appeal a final forfeiture.
29. Bill of Review
- a. Defense presents not later than two years after the date of final judgment.
 - b. Includes request, on equitable grounds, that the final judgment be reformed and that all or part of the bond be remitted to the surety.
 - c. The court grants a bill in part or in whole. For bill of review, interest accrues on the bond amount from the date of:
 - (1) Forfeiture to the date of final judgment in the same manner and at the same rate as provided for the accrual of prejudgment interest in civil cases; and
 - (2) Final judgment to the date of the order for remittitur at the same rate as provided for the accrual of post-judgment interest in civil cases.
 - d. The court denies the bill.

Motion extends time for issuance of execution up to 105 days. If the judge never signs the motion for new trial, it will be deemed overruled 75 days after the original judgment was signed. The same rule applies whenever a final judgment is signed.

Tex. R. Civ. P. 245.
The case may be tried or disposed of at any time, whether set or not, and may be set at any time for any other time.

Art. 45.042, C.C.P.

Art. 22.17, C.C.P.

The court grants the bill of review (*in part / in whole*) and orders that judgment be reformed and the amount of \$____ be returned to the defendant.

The State should review and respond to the bill. If granting the bill, costs of court, any reasonable expenses in re-arresting the defendant, and interest accrued on the bond from the date of the

forfeiture should be deducted.