

## **Delaware Bail Laws**

### **Applicable Statutes.**

\*\*\* Delaware's statutes currently do not contain comprehensive regulations for bail bond recovery or bail enforcement agents, though some provisions exist regarding forfeiture. The most comprehensive regulations are contained in the proposed House Bill No. 226. The applicable provisions in this bill are, therefore, given for information purposes on what will likely become Delaware law regarding bail enforcement agents. It should be remembered, however, that this bill is not current law and may not become such. A summary of the bill and the bill's status are given below. \*\*\*

- A. Family Court Rules of Criminal Procedure, Rule 46 MICHIE'S DELAWARE CODE ANNOTATED RULES COURT RULES for the FAMILY COURT of the STATE OF DELAWARE Rules of Criminal Procedure X. GENERAL PROVISIONS RULE 46. BAIL.
- B. 1999 Delaware House Bill No. 226, Delaware 140th General Assembly Introduced Version Date May 12, 1999.
  - SUMMARY: Requires bail enforcement agents, commonly known as bounty hunters, to be licensed by the Department of Public Safety; requires bail agents searching for a person to notify the State Police and a municipality's chief law enforcement officer prior to searching or apprehending a person within the municipality's jurisdiction.

### **2. Licensing Requirements for Agents.**

- A. 1999 Delaware House Bill No. 226, Delaware 140th General Assembly Introduced Version Date May 12, 1999 Section 5402. Definitions.
  - "Bounty hunter" or "bail enforcement agent" as used within this chapter shall mean any person, or cooperative of persons, whose services or actions are performed for the purpose of capturing a fugitive, and including, but not limited to, any person who engages in the apprehension and return of persons who are released on bail and who have failed to appear at any stage of the proceedings to answer the charge before the court in which they may be prosecuted.
- B. Section 5404. Licensing.
  - The Secretary of the Department of Public Safety is authorized to adopt regulations regarding the licensure and registration of bounty hunters and bail enforcement agents, which may include the term of a license or registration, and may charge a fee not to exceed \$500 for each application and each renewal of an existing license. At a minimum, an applicant for a license to serve as a bail enforcement agent or bounty hunter must affirmatively show that:

- The applicant is at least 21 years of age and is of good moral character;
- The applicant has never been convicted in this State or elsewhere of a felony or a crime of violence involving physical injury to another, whether or not armed with or having in possession any weapon during the commission of such felony or crime of violence;
- The applicant has never been committed for a mental disorder to any hospital, mental institution or sanitarium, unless the person possesses a certificate of a medical doctor or psychiatrist licensed in this State that the person is no longer suffering from a mental disorder which interferes or handicaps the person from handling deadly weapons;
- The applicant has never been convicted for the unlawful use, possession or sale of a narcotic, dangerous drug or central nervous system depressant or stimulant as those terms were defined prior to the effective date of the Uniform Controlled Substances Act in June, 1973, or of any narcotic, drug or controlled substance as defined in Chapter 47 of Title 16.

### **3. Notice of Forfeiture**

- A. DELAWARE CODE ANNOTATED RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE PART III. APPEALS -- SPECIAL PROVISIONS RULE 32. STAYS AND INJUNCTIONS PENDING APPEAL; SUPERSEDEAS AND COST BONDS (d) Bond in a Criminal Case.
- (ii) Forfeiture. If there is a breach of condition of a bond, this Court or the trial court may declare a forfeiture of the bail.
  - (iv) Enforcement. When a forfeiture has not been set aside, the trial court shall on motion enter a judgment of default and execution may issue thereon. By entering into a bond, the obligors submit to the jurisdiction of the trial court and irrevocably appoint the clerk of that court as their agent upon whom any papers affecting their liability may be served. The liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail a copy to each obligor at the obligor's last known address.
- B. (See also – DELAWARE CODE ANNOTATED RULES, RULES OF CRIMINAL PROCEDURE FOR THE SUPERIOR COURT OF THE STATE OF DELAWARE X. GENERAL PROVISIONS RULE 46. RELEASE FROM CUSTODY – for similar provisions)

### **4. Allotted Time between Forfeiture Declaration and Payment Due Date.**

- A. DELAWARE CODE ANNOTATED TITLE 10. COURTS AND JUDICIAL PROCEDURE PART III. PROCEDURE CHAPTER 39. PLEADING AND PRACTICE § 3903 Bail bonds, recognizances, peace bonds or appearance bonds; actions on. Allegheny Casualty - International Fidelity - Associated Bond

- Whenever any court orders and adjudges a bail bond forfeited, then in any action on such forfeited bail bond for the appearance of a defendant or of a witness, if a copy of such bail bond has been filed with the complaint,
- The Attorney General, or any other attorney, on behalf of the State, or plaintiff, shall be at liberty to move for judgment after the defendant's time for filing his or her answer has expired,
- Unless the defendant or one of the defendants, if there be more than one, or some one for such defendant or defendants, has filed an affidavit of defense in the action, stating therein the nature and character of the same.

## 5. Forfeiture Defenses.

### A. DELAWARE CODE ANNOTATED RULES RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE PART III. APPEALS -- SPECIAL PROVISIONS RULE 32. STAYS AND INJUNCTIONS PENDING APPEAL; SUPERSEDEAS AND COST BONDS (d) Bond in a Criminal Case.

- (iii) Setting Aside. This Court or the trial court may direct that a forfeiture be set aside, upon such conditions as the Court may impose, if it appears that justice does not require enforcement of the forfeiture.
- (vi) Exoneration. When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of defendant into custody.

### B. DELAWARE CODE ANNOTATED RULES, RULES OF CRIMINAL PROCEDURE FOR THE SUPERIOR COURT OF THE STATE OF DELAWARE X. GENERAL PROVISIONS RULE 46. RELEASE FROM CUSTODY

- (f) Exoneration. When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody

## 6. Remission.

### A. DELAWARE CODE ANNOTATED RULES RULES OF THE SUPREME COURT OF THE STATE OF DELAWARE PART III. APPEALS -- SPECIAL PROVISIONS RULE 32. STAYS AND INJUNCTIONS PENDING APPEAL; SUPERSEDEAS AND COST BONDS (d) Bond in a Criminal Case.

- (v) Remission. After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in subparagraph (iii) of this paragraph.

- B. (See also – DELAWARE CODE ANNOTATED RULES, RULES OF CRIMINAL PROCEDURE FOR THE SUPERIOR COURT OF THE STATE OF DELAWARE X. GENERAL PROVISIONS RULE 46. RELEASE FROM CUSTODY – for similar provisions)

## **7. Bail Agent's Arrest Authority.**

- A. DELAWARE CODE ANNOTATED TITLE 11. CRIMES AND CRIMINAL PROCEDURE PART II. CRIMINAL PROCEDURE GENERALLY CHAPTER 25. EXTRADITION AND DETAINERS SUBCHAPTER I. EXTRADITION; UNIFORM CRIMINAL EXTRADITION LAW § 2518 Forfeiture of bail.

- If the prisoner is admitted to bail, and fails to appear and surrender according to the conditions of the bond, the judge or justice of the peace by proper order shall declare the bond forfeited and order the accused's immediate arrest, without warrant if the accused is within this State. Recovery may be had on such bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings within this State.

- B. 1999 Delaware House Bill No. 226, Delaware 140<sup>th</sup> General Assembly (FULL TEXT- STATE NET) VERSION: Introduced Version Date May 12, 1999

- "Definitions" under Section 5402 of (see #2, Licensing Requirements) implies that Bail Enforcement Agents and Bounty Hunters have the authority to arrest.

## **8. Other Noteworthy Provisions.**

- A. 1999 Delaware House Bill No. 226, Delaware 140<sup>th</sup> General Assembly Introduced Version Date May 12, 1999 Section 5403. Prohibited conduct.

- No person, other than a certified law enforcement officer, shall apprehend, detain, or arrest a suspected fugitive on behalf of another person, including a principal on a bond, wherever issued, unless that person is licensed by the Secretary of the Department of Public Safety.

- B. Section 5405. Police Notification.

- Every bail enforcement agent or bounty hunter who enters this State or any political subdivision thereof in pursuit of, and for the purpose of, capturing a fugitive shall, prior to taking any action in his or her capacity as a bail agent or bounty hunter in this State or any political subdivision thereof, notify the Superintendent of the State Police and the Chief of Police of the political subdivision in which the surveillance and/or apprehension is to take place. Notification shall be by registration on a form provided by the Superintendent of the State Police and by the local police department. A bounty hunter or bail enforcement agent must also present proof that he or she possesses a valid license issued by the Department of Public Safety pursuant to this chapter.

C. Section 5406. Penalties.

- Any person who violates this chapter shall be guilty of a Class F felony."

D. MICHIE'S DELAWARE CODE ANNOTATED RULES, RULES OF CIVIL PROCEDURE FOR THE SUPERIOR COURT OF THE STATE OF DELAWARE XIII. MISCELLANEOUS PROVISIONS Current with amendments received through 10-15-1995.

- RULE 108. SURETIES
- (a) Surety Companies. Each surety company shall, in the month of January in each year, file with the Prothonotary of the Superior Court, in each county in which such surety company is engaged in business, a power of attorney authorizing the execution of bonds by the attorney in fact designated in said power of attorney, before the Courts shall accept or approve such company as surety. Nothing herein contained shall prohibit the execution by a surety company of any bond within this State by its proper officers as required by law.
- (b) Attorneys and Other Officers. No attorney, or other officer of this Court, shall be taken, directly or indirectly, as special bail or surety in any case pending in, or appealed to, this Court. This prohibition shall also apply to any agent, employee, member of the immediate family of any such attorney or court officer, or any corporation in which such attorney or court officer owns a controlling interest. This prohibition shall not apply to any bond in which the attorney, court officer, agent, employee or family member, as above defined, may be the principal. The phrase "member of the immediate family" shall include the spouse, father, mother, father-in-law, mother-in-law, son, daughter, brother, sister, brother-in-law or sister-in-law or any such attorney or court officer.

**9. Noteworthy State Appellate Decisions.**

A. U. S. v. Hudson  
313 F.Supp. 422  
D.C.Del. 1970.  
June 9, 1970.

- Proceeding on application by sureties on bail bond to set aside forfeiture of bond, remit default judgment entered and exonerate petitioners.
- The District Court, Latchum, J., held that where defendant was notified by his counsel of contents of order setting dates for pretrial conference and trial, and defendant's waiver of attendance at pretrial conference contained certification by his attorneys that defendant had been advised of right to be present at every stage of trial, order was sufficient notice of trial time and date and defendant's obligation to be present at trial, and forfeiture of defendant's bail upon his nonappearance for trial was lawful. Application denied.

Allegheny Casualty - International Fidelity - Associated Bond

B. State v. Edwards  
1995 WL 44267  
Del. Superior Court  
Jan 31, 1995

- On August 26, 1994, Fred Frank Bail Bondsman, Inc. ("FFBBI") filed a motion requesting that this Court rehear a bail forfeiture motion it had granted on June 17, 1994. An evidentiary hearing was held on September 20, 1994 on the Motion for Rehearing. This is the Court's decision on that motion.
- Because the specific language used by International Fidelity on the faces of its powers of attorney specifically prohibits attaching multiple powers of attorney to any one bond, the court finds that the movants have sufficiently established pursuant to Rule 46(e)(3) that justice does not require forfeiture for the total amount of the bonds in question.

C. Golla v. State  
11 Terry 497, 50 Del. 497, 135 A.2d 137  
Del. Supreme Court  
Oct 03, 1957

- The Supreme Court, Wolcott, J., held that where prisoner was taken into custody in Pennsylvania by Delaware policemen who were acting as agents for the bondsman under authority of a bail piece, extradition proceedings in Pennsylvania were not required prior to prisoner's removal to Delaware.  
Affirmed.

#### **10. Bounty Hunter Provisions.**

- At this time, there appear to be no specific regulations for "Bounty Hunters" in the Delaware statutes in addition to those in the proposed House Bill No. 226.