RULES & LAWS:
What Bail Agents Must Know

As a Licensed Surety Bail Bond Agent you are placed in a position to help defendants and their families. By your fair treatment of their "emergency" situation and your willingness to help, it enables them to continue "out in the world" in their employments, to share love and concern with their loved ones, to have means to properly prepare for their defense in court and to demonstrate their Constitutional guarantee that they indeed are *"innocent until proven guilty!"*

However, as with any business, there are Laws, the *standards for the profession* – being licensed and regulated by the Ohio Department of Insurance, the Administrative Rules and Ohio Revised Code govern your acts as a License Surety Bail Bond Agent and there is no excuse to be ignorant of the laws you MUST know and follow.

THE HOUSE BILLS WERE CREATED TO REGULATE THE BAIL BOND PROFESSION IN THE STATE OF OHIO

In June of 2000, the General Assembly passed House Bill 730 which provided for the regulation of surety bail bond agents by the Department of Insurance: establishing standards for licensing, pre-licensing and continuing education testing for bail agents; limiting the authority for the apprehension or arrest of a principal on bond to persons meeting specified criteria; prohibiting the use of the title "bail enforcement agent" or "bounty hunter" and setting numerous protections for consumers relative to the operation of Surety Bail Bond Agents in Ohio. House Bill 730 also affirmed that Surety Bail Bond Agents are "Officers of the Court."

In 2010 the statute was strengthened and improved with amended House Bill 300 which made changes to insurance agent and surety bail bond agent licensure requirements, including examination requirements, filing a change of address, application requirements, criminal records checks, and continuing education; requiring biennial renewal for insurance agents and making changes to the license renewal requirements for surety bail bond agents; revising and expanding the reasons for which the Superintendent of Insurance may suspend, revoke, or refuse to issue or renew a license of an agent or impose other specified sanctions; adding to the list of certain persons and classes of persons that are prohibited from acting as surety bail bond agents or employees of a surety bail bond agent or business, specifically (1) prisoners incarcerated in any jail, prison, or any other place used for the incarceration of persons, (2) any person employed at an attorney's office, and (3) judges; prohibiting the posting of anything without using a bail instrument representing an insurer to have a defendant released on bail on all types of set court bail with certain exceptions and making changes, with regard to surety bail bond agents, to former law's requirements for appointments by insurers and for registering with a court.

We begin our course study with an analysis of these Bills as promulgated by the Ohio General Assembly. Where the Ohio Revised Code has been amended, revised or repealed, we look at how these *specifically* apply to the business of Surety Bail Bond in the State of Ohio.

BAIL BOND ACT
HB 730

Overview of the House Bill:

The bill enacted several provisions in the Insurance Agents Law (Chapter 3905. of the Revised Code) to provide for the regulation of surety bail bond agents by the Department of Insurance, including the licensing of such agents, the appointment of agents by insurers, agent registration, continuing education requirements, build-up funds and collateral security, prohibited activities, and grounds for disciplinary action. The bill also enacted provisions in the Criminal Code (Title 29) to limit authority for the apprehension or arrest of a principal on bond to those persons meeting the criteria set forth in the bill and to prohibit the use of the title "bail enforcement agent" or "bounty hunter" in Ohio.

Who May Apprehend:

Apprehension of a principal on bond

Limitation on authority; use of certain titles

Under the bill, no person (other than a law enforcement officer) is authorized to apprehend, detain, or arrest a principal on bond, wherever issued, *unless* the person meets certain criteria.

§ 2927.27 Illegal Bail Bond Practices

(A) No person, other than a law enforcement officer, shall apprehend, detain, or arrest a principal on bond, wherever issued, unless that person meets all of the following criteria:

(1) The person is any of the following:

(a) Qualified, licensed, and appointed as a surety bail bond agent under sections 3905.83 to 3905.95 of the Revised Code;

(b) Licensed as a surety bail bond agent by the state where the bond was written;

(c) Licensed as a private investigator under Chapter 4749. of the Revised Code;

(d) Licensed as a private investigator by the state where the bond was written;

(e) An off-duty peace officer, as defined in section 2921.51 of the Revised Code.

(2921.51) “Peace officer” means a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is employed by a political subdivision of this state; a member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code; a member of a police force employed by a regional transit authority under division (Y) of section

306.35 of the Revised Code; a state university law enforcement officer appointed under section 3345.04 of the Revised Code; a veterans' home police officer appointed under section 5907.02 of the Revised Code; a special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code; an officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within limits of that statutory duty and authority; or a state highway patrol trooper whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws, ordinances, or rules of the state or any of its political subdivisions.

(2) The person, prior to apprehending, detaining, or arresting the principal, has entered into a written contract with the surety or with a licensed surety bail bond agent appointed by the surety, which contract sets forth the name of the principal who is to be apprehended, detained, or arrested.

For purposes of division (A)(2) of this section, "surety" has the same meaning as in section 3905.83 of the Revised Code.

3905.83(C) "Surety" means an insurer that agrees to be responsible for the fulfillment of the obligation of a principal if the principal fails to fulfill that obligation.

(3) The person, prior to apprehending, detaining, or arresting the principal, has notified the local law enforcement agency having jurisdiction over the area in which such activities will be performed and has provided any form of identification or other information requested by the law enforcement agency.

(B) No person shall represent the person's self to be a bail enforcement agent or bounty hunter, or claim any similar title, in this state.

Violations

(C)(1) Whoever violates this section is guilty of illegal bail bond agent practices.

(2) A violation of division (A) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to two or more violations of division (A) of this section, a felony of the third degree.

(3) A violation of division (B) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to two or more violations of division (B) of this section, a felony of the third degree.

Necessity of Licensure:

Regulation of surety bail bond agents

Licensing of agents

§ 3905.85 Surety bail bond agent license

(A) (1) An individual who applies for a license as a surety bail bond agent shall submit an application for the license in a manner prescribed by the superintendent of insurance. The application shall be accompanied by a one hundred fifty dollar fee and a statement that gives the applicant's name, age, residence, present occupation, occupation for the five years next preceding the date of the application, and such other information as the superintendent may require.

(2) An applicant for an individual resident license shall also submit to a criminal records check pursuant to section 3905.051 of the Revised Code.

(B)(1) The superintendent shall issue to an applicant an individual resident license that states in substance that the person is authorized to do the business of a surety bail bond agent, if the superintendent is satisfied that all of the following apply:

(a) The applicant is eighteen years of age or older.

(b) The applicant's home state is Ohio.

(c) The applicant is a person of high character and integrity.

(d) The applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license under section 3905.14 of the Revised Code.

(e) The applicant is a United States citizen or has provided proof of having legal authorization to work in the United States.

(f) The applicant has successfully completed the educational requirements set forth in section 3905.04 of the Revised Code and passed the examination required by that section.

(2) The superintendent shall issue to an applicant an individual nonresident license that states in substance that the person is authorized to do the business of a surety bail bond agent, if the superintendent is satisfied that all of the following apply:

(a) The applicant is eighteen years of age or older.

(b) The applicant is currently licensed as a resident in another state and is in good standing in the applicant's home state for surety bail bond or is qualified for the same authority.

(c) The applicant is a person of high character and integrity.

(d) The applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license under section 3905.14 of the Revised Code.

(3) The superintendent shall issue an applicant a resident business entity license that states in substance that the person is authorized to do the business of a surety bail bond agent if the superintendent is satisfied that all of the following apply:

(a) The applicant has submitted an application for the license in a manner prescribed by the superintendent and the one-hundred-fifty-dollar application fee.

(b) The applicant either is domiciled in this state or maintains its principal place of business in this state.

(c) The applicant has designated an individual licensed surety bail bond agent who will be responsible for the applicant's compliance with the insurance laws of this state.

(d) The applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license under section 3905.14 of the Revised Code.

(e) The applicant is authorized to do business in this state by the secretary of state if so required under the applicable provisions of Title XVII of the Revised Code.

(f) The applicant has submitted any other documents requested by the superintendent.

(4) The superintendent shall issue an applicant a nonresident business entity license that states in substance that the person is authorized to do the business of a surety bail bond agent if the superintendent is satisfied that all of the following apply:

(a) The applicant has submitted an application for the license in a manner prescribed by the superintendent and the one-hundred-fifty-dollar application fee.

(b) The applicant is currently licensed and is in good standing in the applicant's home state with surety bail bond authority.

(c) The applicant has designated an individual licensed surety bail bond agent who will be responsible for the applicant's compliance with the insurance laws of this state.

(d) The applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license under section 3905.14 of the Revised Code.

(e) The applicant has submitted any other documents requested by the superintendent.

(C) A resident and nonresident surety bail bond agent license issued pursuant to this section authorizes the holder, when appointed by an insurer, to execute or countersign bail bonds in connection with judicial proceedings and to receive money or other things of value for those services. However, the holder shall not execute or deliver a bond during the first one hundred eighty days after the license is initially issued. This restriction does not apply with respect to license renewals or any license issued under divisions (B)(3) and (4) of this section.

(D) The superintendent may refuse to renew a surety bail bond agent's license as provided in division (B) of section 3905.88 of the Revised Code, and may suspend, revoke, or refuse to issue or renew such a license as provided in section 3905.14 of the Revised Code.
If the superintendent refuses to issue such a license based in whole or in part upon the written response to a criminal records check completed pursuant to division (A) of this section, the superintendent shall send a copy of the response that was transmitted to the superintendent to the applicant at the applicant's home address upon the applicant's submission of a written request to the superintendent.

(E) Any person licensed as a surety bail bond agent may surrender the person's license in accordance with section 3905.16 of the Revised Code.

(F) (1) A person seeking to renew a surety bail bond agent license shall apply annually for a renewal of the license on or before the last day of February. Applications shall be submitted to the superintendent on forms prescribed by the superintendent. Each application shall be accompanied by a one-hundred-fifty-dollar renewal fee.

(2) To be eligible for renewal, an individual applicant shall complete the continuing education requirements pursuant to section 3905.88 of the Revised Code prior to the renewal date.

(3) If an applicant submits a completed renewal application, qualifies for renewal pursuant to divisions (F)(1) and (2) of this section, and has not committed any act that is a ground for the refusal to issue, suspension of, or revocation of a license under section 3905.14 or sections 3905.83 to 3905.99 of the Revised Code, the superintendent shall renew the applicant's surety bail bond insurance agent license.

(4) If an individual or business entity does not apply for the renewal of the individual or business entity's license on or before the license renewal date specified in division (F)(1) of this section, the individual or business entity may submit a late renewal application along with all applicable fees required under this chapter prior to the last day of March following the renewal date. The superintendent shall renew the license of an applicant that submits a late renewal application if the applicant satisfies all of the following conditions:

(a) The applicant submits a completed renewal application.

(b) The applicant pays the one-hundred-fifty-dollar renewal fee.

(c) The applicant pays the late renewal fee established by the superintendent.

(d) The applicant provides proof of compliance with the continuing education requirements pursuant to section 3905.88 of the Revised Code.

(e) The applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license under section 3905.14 or sections 3905.83 to 3905.99 of the Revised Code.

(5) A license issued under this section that is not renewed on or before its late renewal date specified in division (F)(4) of this section is automatically suspended for nonrenewal effective the first day of April.

(6) If a license is suspended for nonrenewal pursuant to division (F)(5) of this section, the individual or business entity is eligible to apply for reinstatement of the license within the twelve-month period following the date by which the license should have been renewed by complying with the reinstatement procedure established by the superintendent and paying all applicable fees required under this chapter.

(7) A license that is suspended for nonrenewal that is not reinstated pursuant to division (F)(6) of this section automatically is canceled unless the superintendent is investigating any allegations of wrongdoing by the agent or has initiated proceedings under Chapter 119. of the Revised Code. In that case, the license automatically is canceled after the completion of the investigation or proceedings unless the superintendent revokes the license.

(G) The superintendent may prescribe the forms to be used as evidence of the issuance of a license under this section. The superintendent shall require each licensee to acquire, from a source designated by the superintendent, a wallet identification card that includes the licensee's photograph and any other information required by the superintendent. The licensee shall keep the wallet identification card on the licensee's person while engaging in the bail bond business.

(H)(1) The superintendent of insurance shall not issue or renew the license of a business entity organized under the laws of this or any other state unless the business entity is qualified to do business in this state under the applicable provisions of Title XVII of the Revised Code.

(2) The failure of a business entity to be in good standing with the secretary of state or to maintain a valid appointment of statutory agent is grounds for suspending, revoking, or refusing to renew its license.

(3) By applying for a surety bail bond agent license under this section, an individual or business entity consents to the jurisdiction of the courts of this state.

(I) A surety bail bond agent licensed pursuant to this section is an officer of the court.

(J) Any fee collected under this section shall be paid into the state treasury to the credit of the department of insurance operating fund created by section 3901.021 of the Revised Code.

For purposes of the bill, "**insurer**" means any domestic, foreign, or alien insurance company that has been issued a certificate of authority by the Superintendent of Insurance to transact surety business in Ohio (3905.83(A)).

Surrendering of License:

§ 3905.16 Surrender of license

(A)(1) Except as provided in division (A)(2) of this section, any person licensed as an agent under this chapter may at any time surrender any or all licenses held by the person.

(2) No agent shall surrender the agent's licenses if the superintendent of insurance is investigating any allegation of wrongdoing by the agent or has initiated proceedings under Chapter 119. of the Revised Code and notice of an opportunity for a hearing has been issued to the agent, and any attempt to so surrender is invalid.

(B)(1) If an agent's license is surrendered, revoked, suspended, canceled, or inactivated by request, all appointments held by the agent are void. If a new license is issued to that person or if that person's previous license is reinstated or renewed, any appointment of the person to represent an insurer must be made in accordance with the requirements of this chapter.

(2) If an agent's license is surrendered, revoked, or canceled and the person wishes to apply for a new license, the person shall apply as a new agent and shall satisfy all requirements for a new agent license including, if applicable, submitting to a criminal records check under section 3905.051 of the Revised Code.

(C)(1) Any agent, other than a business entity, who is no longer engaged in the business of insurance in any capacity for which an agent's license is required may apply to the superintendent for inactive status. The superintendent may grant such status only if the superintendent is satisfied that the person is not engaged in and does not intend to engage in any of the activities set forth in section 3905.02 of the Revised Code that requires an agent's license.

(2) A person who has been granted inactive status is exempt from any continuing education requirements imposed under this chapter.

(3) The superintendent may adopt rules in accordance with Chapter 119 of the Revised Code to establish procedures for applying for inactive status, criteria used to determine eligibility for such status, and standards and procedures for transferring from inactive to active status.

(D) The superintendent may suspend or revoke a license, or take any other disciplinary action authorized by this chapter, regardless of whether the person is appointed or otherwise authorized to represent an insurer or agent.

Reasons for Suspensions or Revocation:

§ 3905.14 Disciplinary actions

(A) As used in sections 3905.14 to 3905.16 of the Revised Code:

(1) "Insurance agent" includes a limited lines insurance agent, surety bail bond agent, and surplus line broker.

(2) "Refusal to issue or renew" means the decision of the superintendent of insurance not to process either the initial application for a license as an agent or the renewal of such a license.

(3) “Revocation” means the permanent termination of all authority to hold any license as an agent in this state.

(4) “Surrender for cause” means the voluntary termination of all authority to hold any license as an agent in this state, in lieu of a revocation or suspension order.

(5) “Suspension” means the termination of all authority to hold any license as an agent in this state, for either a specified period of time or an indefinite period of time and under any terms or conditions determined by the superintendent.

(B) The superintendent may suspend, revoke, or refuse to issue or renew any license of an insurance agent, assess a civil penalty, or impose any other sanction or sanctions authorized under this chapter, for one or more of the following reasons:

(1) Providing incorrect, misleading, incomplete, or materially untrue information in a license or appointment application;

(2) Violating or failing to comply with any insurance law, rule, subpoena, consent agreement, or order of the superintendent or of the insurance authority of another state;

(3) Obtaining, maintaining, or attempting to obtain or maintain a license through misrepresentation or fraud;

(4) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms, benefits, value, cost, or effective dates of any actual or proposed insurance contract or application for insurance;

(6) Having been convicted of or pleaded guilty or no contest to a felony regardless of whether a judgment of conviction has been entered by the court;

(7) Having been convicted of or pleaded guilty or no contest to a misdemeanor that involves the misuse or theft of money or property belonging to another, fraud, forgery, dishonest acts, or breach of a fiduciary duty, that is based on any act or omission relating to the business of insurance, securities, or financial services, or that involves moral turpitude regardless of whether a judgment has been entered by the court;

(8) Having admitted to committing, or having been found to have committed, any insurance unfair trade act or practice or insurance fraud;

(9) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility, in the conduct of business in this state or elsewhere;

(10) Having an insurance agent license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(11) Forging or causing the forgery of an application for insurance or any document related to or used in an insurance transaction;

(12) Improperly using notes, any other reference material, equipment, or devices of any kind to complete an examination for an insurance agent license;

(13) Knowingly accepting insurance business from an individual who is not licensed;

(14) Failing to comply with any official invoice, notice, assessment, or order directing payment of federal, state, or local income tax, state or local sales tax, or workers' compensation premiums;

(15) Failing to timely submit an application for insurance. For purposes of division (B)(15) of this section, a submission is considered timely if it occurs within the time period expressly provided for by the insurer, or within seven days after the insurance agent accepts a premium or an order to bind coverage from a policyholder or applicant for insurance, whichever is later.

(16) Failing to disclose to an applicant for insurance or policyholder upon accepting a premium or an order to bind coverage from the applicant or policyholder, that the person has not been appointed by the insurer;

(17) Having any professional license or financial industry regulatory authority registration suspended or revoked or having been barred from participation in any industry;

(18) Having been subject to a cease and desist order or permanent injunction related to mishandling of funds or breach of fiduciary responsibilities or for unlicensed or unregistered activities;

(19) Causing or permitting a policyholder or applicant for insurance to designate the insurance agent or the insurance agent's spouse, parent, child, or sibling as the beneficiary of a policy or annuity sold by the insurance agent or of a policy or annuity for which the agent, at any time, was designated as the agent of record, unless the insurance agent or a relative of the insurance agent is the insured or applicant;

(20) Causing or permitting a policyholder or applicant for insurance to designate the insurance agent or the insurance agent's spouse, parent, child, or sibling as the owner or beneficiary of a trust funded, in whole or in part, by a policy or annuity sold by the insurance agent or by a policy or annuity for which the agent, at any time, was designated as the agent of record, unless the insurance agent or a relative of the insurance agent is the insured or applicant;

(21) Failing to provide a written response to the department of insurance within twenty-one calendar days after receipt of any written inquiry from the department, unless a reasonable

extension of time has been requested of, and granted by, the superintendent or the superintendent's designee;

(22) Failing to appear to answer questions before the superintendent after being notified in writing by the superintendent of a scheduled interview, unless a reasonable extension of time has been requested of, and granted by, the superintendent or the superintendent's designee;

(23) Transferring or placing insurance with an insurer other than the insurer expressly chosen by the applicant for insurance or policyholder without the consent of the applicant or policyholder or absent extenuating circumstances;

(24) Failing to inform a policyholder or applicant for insurance of the identity of the insurer or insurers, or the identity of any other insurance agent or licensee known to be involved in procuring, placing, or continuing the insurance for the policyholder or applicant, upon the binding of the coverage;

(25) In the case of an agent that is a business entity, failing to report an individual licensee's violation to the department when the violation was known or should have been known by one or more of the partners, officers, managers, or members of the business entity;

(26) Submitting or using a document in the conduct of the business of insurance when the person knew or should have known that the document contained a writing that was forged as defined in section 2913.01 of the Revised Code;

(27) Misrepresenting the person's qualifications, status or relationship to another person, agency, or entity, or using in any way a professional designation that has not been conferred upon the person by the appropriate accrediting organization;

(28) Obtaining a premium loan or policy surrender or causing a premium loan or policy surrender to be made to or in the name of an insured or policyholder without that person's knowledge and written authorization;

(29) Using paper, software, or any other materials of or provided by an insurer after the insurer has terminated the authority of the licensee, if the use of such materials would cause a reasonable person to believe that the licensee was acting on behalf of or otherwise representing the insurer;

(30) Soliciting, procuring an application for, or placing, either directly or indirectly, any insurance policy when the person is not authorized under this chapter to engage in such activity;

(31) Soliciting, selling, or negotiating any product or service that offers benefits similar to insurance but is not regulated by the superintendent, without fully disclosing, orally and in writing, to the prospective purchaser that the product or service is not insurance and is not regulated by the superintendent;

(32) Failing to fulfill a refund obligation to a policyholder or applicant in a timely manner. For purposes of division (B)(32) of this section, a rebuttable presumption exists that a refund

obligation is not fulfilled in a timely manner unless it is fulfilled within one of the following time periods:

(a) Thirty days after the date the policyholder, applicant, or insurer takes or requests action resulting in a refund;

(b) Thirty days after the date of the insurer's refund check, if the agent is expected to issue a portion of the total refund;

(c) Forty-five days after the date of the agent's statement of account on which the refund first appears.

The presumption may be rebutted by proof that the policyholder or applicant consented to the delay or agreed to permit the agent to apply the refund to amounts due for other coverages.

(33) With respect to a surety bail bond agent license, rebating or offering to rebate, or unlawfully dividing or offering to divide, any commission, premium, or fee;

(34) Using a license for the principal purpose of procuring, receiving, or forwarding applications for insurance of any kind, other than life, or soliciting, placing, or effecting such insurance directly or indirectly upon or in connection with the property of the licensee or that of relatives, employers, employees, or that for which they or the licensee is an agent, custodian, vendor, bailee, trustee, or payee;

(35) In the case of an insurance agent that is a business entity, using a life license for the principal purpose of soliciting or placing insurance on the lives of the business entity's officers, employees, or shareholders, or on the lives of relatives of such officers, employees, or shareholders, or on the lives of persons for whom they, their relatives, or the business entity is agent, custodian, vendor, bailee, trustee, or payee;

(36) Offering, selling, soliciting, or negotiating policies, contracts, agreements, or applications for insurance, or annuities providing fixed, variable, or fixed and variable benefits, or contractual payments, for or on behalf of any insurer or multiple employer welfare arrangement not authorized to transact business in this state, or for or on behalf of any spurious, fictitious, nonexistent, dissolved, inactive, liquidated or liquidating, or bankrupt insurer or multiple employer welfare arrangement;

(37) In the case of a resident business entity, failing to be qualified to do business in this state under Title XVII of the Revised Code, failing to be in good standing with the secretary of state, or failing to maintain a valid appointment of statutory agent with the secretary of state;

(38) In the case of a nonresident agent, failing to maintain licensure as an insurance agent in the agent's home state for the lines of authority held in this state;

(39) Knowingly aiding and abetting another person or entity in the violation of any insurance law of this state or the rules adopted under it.

(C) Before denying, revoking, suspending, or refusing to issue any license or imposing any penalty under this section, the superintendent shall provide the licensee or applicant with notice and an opportunity for hearing as provided in Chapter 119. of the Revised Code, except as follows:

(1)(a) Any notice of opportunity for hearing, the hearing officer's findings and recommendations, or the superintendent's order shall be served by certified mail at the last known address of the licensee or applicant. Service shall be evidenced by return receipt signed by any person.

For purposes of this section, the "last known address" is the residential address of a licensee or applicant, or the principal-place-of-business address of a business entity, that is contained in the licensing records of the department.

(b) If the certified mail envelope is returned with an endorsement showing that service was refused, or that the envelope was unclaimed, the notice and all subsequent notices required by Chapter 119 of the Revised Code may be served by ordinary mail to the last known address of the licensee or applicant. The mailing shall be evidenced by a certificate of mailing. Service is deemed complete as of the date of such certificate provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery. The time period in which to request a hearing, as provided in Chapter 119 of the Revised Code, begins to run on the date of mailing.

(c) If service by ordinary mail fails, the superintendent may cause a summary of the substantive provisions of the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known place of residence or business of the party is located. The notice is considered served on the date of the third publication.

(d) Any notice required to be served under Chapter 119. of the Revised Code shall also be served upon the party's attorney by ordinary mail if the attorney has entered an appearance in the matter.

(e) The superintendent may, at any time, perfect service on a party by personal delivery of the notice by an employee of the department.

(f) Notices regarding the scheduling of hearings and all other matters not described in division (C)(1)(a) of this section shall be sent by ordinary mail to the party and to the party's attorney.

(2) Any subpoena for the appearance of a witness or the production of documents or other evidence at a hearing, or for the purpose of taking testimony for use at a hearing, shall be served by certified mail, return receipt requested, by an attorney or by an employee of the department designated by the superintendent. Such subpoenas shall be enforced in the manner provided in section 119.09 of the Revised Code. Nothing in this section shall be construed as limiting the superintendent's other statutory powers to issue subpoenas.

(D) If the superintendent determines that a violation described in this section has occurred, the superintendent may take one or more of the following actions:

(1) Assess a civil penalty in an amount not exceeding twenty-five thousand dollars per violation;

(2) Assess administrative costs to cover the expenses incurred by the department in the administrative action, including costs incurred in the investigation and hearing processes. Any costs collected shall be paid into the state treasury to the credit of the department of insurance operating fund created in section 3901.021 of the Revised Code.

(3) Suspend all of the person's licenses for all lines of insurance for either a specified period of time or an indefinite period of time and under such terms and conditions as the superintendent may determine;

(4) Permanently revoke all of the person's licenses for all lines of insurance;

(5) Refuse to issue a license;

(6) Refuse to renew a license;

(7) Prohibit the person from being employed in any capacity in the business of insurance and from having any financial interest in any insurance agency, company, surety bail bond business, or third-party administrator in this state. The superintendent may, in the superintendent's discretion, determine the nature, conditions, and duration of such restrictions.

(8) Order corrective actions in lieu of or in addition to the other penalties listed in division (D) of this section. Such an order may provide for the suspension of civil penalties, license revocation, license suspension, or refusal to issue or renew a license if the licensee complies with the terms and conditions of the corrective action order.

(9) Accept a surrender for cause offered by the licensee, which shall be for at least five years and shall prohibit the licensee from seeking any license authorized under this chapter during that time period. A surrender for cause shall be in lieu of revocation or suspension and may include a corrective action order as provided in division (D)(8) of this section.

(E) The superintendent may consider the following factors in denying a license, imposing suspensions, revocations, fines, or other penalties, and issuing orders under this section:

(1) Whether the person acted in good faith;

(2) Whether the person made restitution for any pecuniary losses suffered by other persons as a result of the person's actions;

(3) The actual harm or potential for harm to others;

(4) The degree of trust placed in the person by, and the vulnerability of, persons who were or could have been adversely affected by the person's actions;

(5) Whether the person was the subject of any previous administrative actions by the superintendent;

(6) The number of individuals adversely affected by the person's acts or omissions;

(7) Whether the person voluntarily reported the violation, and the extent of the person's cooperation and acceptance of responsibility;

(8) Whether the person obstructed or impeded, or attempted to obstruct or impede, the superintendent's investigation;

(9) The person's efforts to conceal the misconduct;

(10) Remedial efforts to prevent future violations;

(11) If the person was convicted of a criminal offense, the nature of the offense, whether the conviction was based on acts or omissions taken under any professional license, whether the offense involved the breach of a fiduciary duty, the amount of time that has passed, and the person's activities subsequent to the conviction;

(12) Such other factors as the superintendent determines to be appropriate under the circumstances.

(F)(1) A violation described in division (B)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (16), (17), (18), (19), (20), (22), (23), (24), (25), (26), (27), (28), (29), (30), (31), (32), (33), (34), (35), and (36) of this section is a class A offense for which the superintendent may impose any penalty set forth in division (D) of this section.

(2) A violation described in division (B)(15) or (21) of this section, or a failure to comply with section 3905.061, 3905.071, or 3905.22 of the Revised Code, is a class B offense for which the superintendent may impose any penalty set forth in division (D)(1), (2), (8), or (9) of this section.

(3) If the superintendent determines that a violation described in division (B)(36) of this section has occurred, the superintendent shall impose a minimum of a two-year suspension on all of the person's licenses for all lines of insurance.

(G) If a violation described in this section has caused, is causing, or is about to cause substantial and material harm, the superintendent may issue an order requiring that person to cease and desist from engaging in the violation. Notice of the order shall be mailed by certified mail, return receipt requested, or served in any other manner provided for in this section, immediately after its issuance to the person subject to the order and to all persons known to be involved in the violation. The superintendent may thereafter publicize or otherwise make known to all interested parties that the order has been issued.

The notice shall specify the particular act, omission, practice, or transaction that is subject to the cease-and-desist order and shall set a date, not more than fifteen days after the date of the order, for a hearing on the continuation or revocation of the order. The person shall comply with the order immediately upon receipt of notice of the order.

The superintendent may, upon the application of a party and for good cause shown, continue the hearing. Chapter 119 of the Revised Code applies to such hearings to the extent that that chapter does not conflict with the procedures set forth in this section. The superintendent shall, within fifteen days after objections are submitted to the hearing officer's report and recommendation, issue a final order either confirming or revoking the cease-and-desist order. The final order may be appealed as provided under section 119.12 of the Revised Code.

The remedy under this division is cumulative and concurrent with the other remedies available under this section.

(H) If the superintendent has reasonable cause to believe that an order issued under this section has been violated in whole or in part, the superintendent may request the attorney general to commence and prosecute any appropriate action or proceeding in the name of the state against such person.

The court may, in an action brought pursuant to this division, impose any of the following:

(1) For each violation, a civil penalty of not more than twenty-five thousand dollars;

(2) Injunctive relief;

(3) Restitution;

(4) Any other appropriate relief.

(I) With respect to a surety bail bond agent license:

(1) Upon the suspension or revocation of a license, or the eligibility of a surety bail bond agent to hold a license, the superintendent likewise may suspend or revoke the license or eligibility of any surety bail bond agent who is employed by or associated with that agent and who knowingly was a party to the act that resulted in the suspension or revocation.

(2) The superintendent may revoke a license as a surety bail bond agent if the licensee is adjudged bankrupt.

(J) Nothing in this section shall be construed to create or imply a private cause of action against an agent or insurer.

Agents and Consumer Fees:

§ 3905.55 Agent fees

(A) Except as provided in division (B) of this section, an agent may charge a consumer a fee if all of the following conditions are met:

(1) The fee is disclosed to the consumer in a manner that separately identifies the fee and the premium.

(2) The fee is not calculated as a percentage of the premium.

(3) The fee is not refunded, forgiven, waived, offset, or reduced by any commission earned or received for any policy or coverage sold.

(4) The amount of the fee, and the consumer's obligation to pay the fee, are not conditioned upon the occurrence of a future event or condition, such as the purchase, cancellation, lapse, declination, or nonrenewal of insurance.

(5) The agent discloses to the consumer that the fee is being charged by the agent and not by the insurance company, that neither state law nor the insurance company requires the agent to charge the fee, and that the fee is not refundable.

(6) The consumer consents to the fee.

(7) The agent, in charging the fee, does not discriminate on the basis of race, sex, national origin, religion, disability, health status, age, marital status, military status as defined in section 4112.01 of the Revised Code, or geographic location, and does not unfairly discriminate between persons of essentially the same class and of essentially the same hazard or expectation of life.

(B) A fee may not be charged for taking or submitting an initial application for coverage with any one insurer or different programs with the same insurer, or processing a change to an existing policy, a cancellation, a claim, or a renewal, in connection with any of the following personal lines policies:

(1) Private passenger automobile;

(2) Homeowners, including coverage for tenants or condominium owners, owner-occupied fire or dwelling property coverage, personal umbrella liability, or any other personal lines-related coverage whether sold as a separate policy or as an endorsement to another personal lines policy;

(3) Individual life insurance;

(4) Individual sickness or accident insurance;

(5) Disability income policies;

(6) Credit insurance products.

(C) Notwithstanding any other provision of this section, an agent may charge a fee for agent services in connection with a policy issued on a no-commission basis, if the agent provides the consumer with prior disclosure of the fee and of the services to be provided.

(D) In the event of a dispute between an agent and a consumer regarding any disclosure required by this section, the agent has the burden of proving that the disclosure was made.

(E)(1) No person shall fail to comply with this section.

(2) Whoever violates division (E)(1) of this section is deemed to have engaged in an unfair and deceptive act or practice in the business of insurance under sections 3901.19 to 3901.26 of the Revised Code.

(F) This section does not apply with respect to any expense fee charged by a surety bail bond agent to cover the costs incurred by the surety bail bond agent in executing the bail bond.

§ 3905.851 No imposition of local licensing fees

A surety bail bond agent qualified, licensed, and appointed in accordance with sections 3905.83 to 3905.95 of the Revised Code shall not be required to pay any licensing fee imposed by a political subdivision of this state to perform any of the functions, duties, or powers prescribed for surety bail bond agents under those sections

Qualifications of Surety Bond Agent:

License required; persons not qualified to act as agents.

§ 3905.84 Surety bail bond agent to be qualified, licensed, and appointed

No person shall act in the capacity of a surety bail bond agent, or perform any of the functions, duties, or powers prescribed for surety bail bond agents under sections 3905.83 to 3905.95 of the Revised Code, unless that person is qualified, licensed, and appointed as provided in those sections.

§ 3905.841 Persons or classes of persons not to act as agents

The following persons or classes of persons shall not act as surety bail bond agents or employees of a surety bail bond agent or bail bond business and shall not directly or indirectly receive any benefits from the execution of a bail bond, except as a principal:

(A) Jailers or other persons employed in a detention facility, as defined in section 2921.01 of the Revised Code;

(B) Prisoners incarcerated in any jail, prison, or any other place used for the incarceration of persons;

(C) Peace officers as defined in section 2921.51 of the Revised Code, including volunteer or honorary peace officers, or other employees of a law enforcement agency;

(D) Committing magistrates, judges, employees of a court, or employees of the clerk of any court;

(E) Attorneys or any person employed at an attorney's office;

(F) Any other persons having the power to arrest, or persons who have authority over or control of, federal, state, county, or municipal corporation prisoners.

The bill also clarified that the current prohibition against soliciting or effecting insurance policies without being licensed by the Superintendent *includes* soliciting or effecting fidelity, surety, or guaranty bonds.

Definitions of Terms:

(A) "INSURER" MEANS ANY DOMESTIC, FOREIGN, OR ALIEN INSURANCE COMPANY THAT HAS BEEN ISSUED A CERTIFICATE OF AUTHORITY BY THE SUPERINTENDENT OF INSURANCE TO TRANSACT SURETY BUSINESS IN THIS STATE.

(B) "MANAGING GENERAL AGENT" MEANS ANY PERSON THAT IS APPOINTED OR EMPLOYED BY AN INSURER TO SUPERVISE OR OTHERWISE MANAGE THE BAIL BOND BUSINESS WRITTEN IN THIS STATE BY SURETY BAIL BOND AGENTS APPOINTED BY THE INSURER.

(C) "SURETY" MEANS AN INSURER THAT AGREES TO BE RESPONSIBLE FOR THE FULFILLMENT OF THE OBLIGATION OF A PRINCIPAL IF THE PRINCIPAL FAILS TO FULFILL THAT OBLIGATION.

License renewals; surrender

Any person licensed as a surety bail bond agent may surrender the person's license in accordance with section 3905.16 of the Revised Code.

A person seeking to renew a surety bail bond agent license shall apply annually for a renewal of the license on or before the last day of February. Applications shall be submitted to the superintendent on forms prescribed by the superintendent. Each application shall be accompanied by a one-hundred-fifty-dollar renewal fee.

To be eligible for renewal, an individual applicant shall complete the continuing education requirements consisting of seven (7) hours of approved study to include one (1) hour of ethics.

If an applicant submits a completed renewal application, qualifies for renewal and has not committed any act that is a ground for the refusal to issue, suspension of, or revocation of a

license under section 3905.14 or sections 3905.83 to 3905.99 of the Revised Code, the superintendent shall renew the applicant's surety bail bond insurance agent license.

Appointment of agents by insurers

§ 3905.86 Appointment of agent by insurer

(A) Any person licensed as a surety bail bond agent may be appointed by an insurer in accordance with this section.

(B) To appoint a surety bail bond agent as its agent, an insurer shall file a notice of appointment with the superintendent of insurance in the manner prescribed by the superintendent. All insurers shall pay to the superintendent a fee pursuant to division (A)(8) of section 3905.40 of the Revised Code for each such appointment when issued and for each continuance thereafter. Such an appointment, unless canceled by the insurer, may be continued in force past the thirtieth day of June next after its issue and after the thirtieth day of June of each succeeding year provided that the appointee is licensed and is eligible for the appointment.

Any fee collected under this division shall be paid into the state treasury to the credit of the department of insurance operating fund created by section 3901.021 of the Revised Code.

(C)(1) By appointing a surety bail bond agent, an insurer certifies to the superintendent that the person is competent, financially responsible, and suitable to represent the insurer.

(2) An insurer shall be bound by the acts of the person named in the appointment within that person's actual or apparent authority as its agent.

(D) A surety bail bond agent shall not represent to the public that the agent has authority to represent a particular insurer until the insurer has acknowledged that authority by appointment of the agent in accordance with this section.

Agent Registration and Filing Requirements:

Agent registration

§ 3905.87 Registration of agent with court clerks; list of court-registered surety bail bond agents

(A) A surety bail bond agent shall not file a bond in any court of this state unless the agent is licensed and appointed under sections 3905.83 to 3905.95 of the Revised Code and has registered with the clerk of that court pursuant to division (B) of this section, if registration is required by the court.

(B) To register with a court, a surety bail bond agent shall file, with the clerk of the court, a copy of the agent's surety bail bond license, a copy of the agent's driver's license or state identification card, and a certified copy of the surety bail bond agent's appointment by power of

attorney from each insurer that the surety bail bond agent represents. An agent shall renew the agent's registration biennially by the first day of August of each odd-numbered year.

(C) The clerk of the court shall make available a list of court-registered surety bail bond agents to the appropriate holding facility, jail, correction facility, or other similar entity within the court's jurisdiction annually not later than the first day of September. If an agent registers with a court after the last day of August, the court shall add that agent to the list and make the updated list available to the appropriate holding facility, jail, correction facility, or other similar entity within the court's jurisdiction within twenty-four hours of the court's approval of that registration.

Required Study:

§ 3905.88 Continuing education

(A) Each individual who is issued a license as a resident surety bail bond agent shall complete at least seven (7) hours of continuing education in each license renewal period. The continuing education shall be offered in a course or program of study related to the bail bond business that is approved by the superintendent of insurance in consultation with the insurance agent education advisory council and shall include at least one (1) hour of approved ethics training.

(B) The superintendent shall not renew the license of any surety bail bond agent who fails to meet the requirements of division (A) of this section or whose application for renewal does not meet the requirements of section 3905.85 of the Revised Code.

§ 3905.95 Rules

The superintendent of insurance shall adopt, in accordance with Chapter 119. of the Revised Code, any rules necessary to implement sections 3905.83 to 3905.95 of the Revised Code.

License Changes and Maintaining Records:

Records; notification requirements

§ 3905.90 Records of surety bonds to be maintained - furnishing of information

Each surety bail bond agent shall maintain all records of surety bonds executed or countersigned by the surety bail bond agent for at least three years after the liability of the surety has been terminated. Those records shall be open, at all times, to examination, inspection, and photographic reproduction by any employee or agent of the department of insurance, or by any authorized representative of the insurer or Managing General Agent. The superintendent of insurance at any time may require the licensee to furnish to the department, in the manner and form that the superintendent requires, any information concerning the surety bond business of the licensee.

§ 3905.89 Notice of change of principal business address or telephone number

Each person licensed under sections 3905.83 to 3905.95 of the Revised Code shall notify in writing the appropriate insurer or Managing General Agent, and the clerk of the court of common pleas of the county in which the licensee is registered, within thirty days after a change in the licensee's principal business address or telephone number.

This notification requirement is in addition to the notification requirements set forth in other provisions of this chapter.

As used in the bill, "**surety**" means an insurer that agrees to be responsible for the fulfillment of the obligation of a principal if the principal fails to fulfill that obligation.

As defined in *Black's Law Dictionary* (Fifth Edition), "principal" is the person primarily liable, for whose performance of an obligation the guarantor or surety has become bound

"**Managing General Agent (MGA)**" is defined as any person that is appointed or employed by an insurer to supervise or otherwise manage the bail bond business written in Ohio by surety bail bond agents appointed by the insurer. (3905.83(B) and (C).)

Build-up Fund Accounts:

Build-up funds

§ 3905.91 Build-up funds

(A) All build-up funds posted by a surety bail bond agent or Managing General Agent, either with an insurer or Managing General Agent representing an insurer, shall be maintained in an individual build-up trust account for the surety bail bond agent by the insurer or the Managing General Agent. The insurer or Managing General Agent shall establish the account in a federally insured bank or savings and loan association in this state jointly in the name of the surety bail bond agent and the insurer or Managing General Agent, or in trust for the surety bail bond agent by the insurer or Managing General Agent. The account shall be open to inspection and examination by the department of insurance at all times. The insurer or Managing General Agent shall maintain an accounting of all of those funds, which accounting designates the amounts collected on each bond written.

(B) Build-up funds shall not exceed forty per cent of the premium as established by the surety bail bond agent's contract agreement with the insurer or Managing General Agent. Build-up funds received shall be immediately deposited to the build-up trust account. Interest earned on build-up trust accounts shall accrue to the surety bail bond agent.

(C) Build-up funds are due upon termination of the surety bail bond agent's contract and discharge of liabilities on the bonds for which the build-up funds were posted. The insurer or Managing General Agent shall pay the funds to the surety bail bond agent not later than six months after the funds are due.

Rules for Accepting Collateral:

Collateral security

General requirements

§ 3905.92 Requirements for acceptance of collateral security or other indemnity

(A) A surety bail bond agent that accepts collateral security or other indemnity shall comply with all of the following requirements:

(1) The collateral security or other indemnity shall be reasonable in relation to the amount of the bond.

(2) The collateral security or other indemnity shall not be used by the surety bail bond agent for personal benefit or gain and shall be returned in the same condition as received.

(3) Acceptable forms of collateral security or indemnity include cash or its equivalent, a promissory note, an indemnity agreement, a real property mortgage in the name of the surety, and any filing under Chapter 1309. of the Revised Code. If the surety bail bond agent accepts on a bond collateral security in excess of fifty thousand dollars in cash, the cash amount shall be made payable to the surety in the form of a cashier's check, United States postal money order, certificate of deposit, or wire transfer.

(4) The surety bail bond agent shall provide to the person giving the collateral security or other indemnity, a written, numbered receipt that describes in a detailed manner the collateral security or other indemnity received, along with copies of any documents rendered.

(5) The collateral security or other indemnity shall be received and held in the surety's name by the surety bail bond agent in a fiduciary capacity and, prior to any forfeiture of bail, shall be kept separate and apart from any other funds or assets of the surety bail bond agent. However, when collateral security in excess of fifty thousand dollars in cash or its equivalent is received on a bond, the surety bail bond agent promptly shall forward the entire amount to the surety or Managing General Agent.

(B) Collateral security may be placed in an interest-bearing account in a federally insured bank or savings and loan association in this state, to accrue to the benefit of the person giving the collateral security. The surety bail bond agent, surety, or Managing General Agent shall not make any pecuniary gain on the collateral security deposited.

Rules Governing Return of Collateral:

Liability of the surety.

(C)(1) The surety is liable for all collateral security or other indemnity accepted by a surety bail bond agent. If, upon final termination of liability on a bond, the surety bail bond agent or

Managing General Agent fails to return the collateral security to the person that gave it, the surety shall return the actual collateral to that person or, in the event that the surety cannot locate the collateral, shall pay the person in accordance with this section.

(2) A surety's liability as described in division (C)(1) of this section survives the termination of the surety bail bond agent's appointment, with respect to those bonds that were executed by the surety bail bond agent prior to the termination of the appointment.

Forfeiture of a Bond:

Forfeiture.

(D) If a forfeiture occurs, the surety bail bond agent or surety shall give the principal and the person that gave the collateral security ten days' written notice of intent to convert the collateral deposit into cash to satisfy the forfeiture. The notice shall be sent by certified mail, return receipt requested, to the last known address of the principal and the person that gave the collateral. The surety bail bond agent or surety shall convert the collateral deposit into cash within a reasonable period of time and return that which is in excess of the face value of the bond minus the actual and reasonable expenses of converting the collateral into cash. In no event shall these expenses exceed ten per cent of the face value of the bond. However, upon motion and proof that the actual and reasonable expenses exceed ten per cent, the court may allow recovery of the full amount of the actual and reasonable expenses. If there is a remission of forfeiture that required the surety to pay the bond to the court, the surety shall pay to the person that gave the collateral the value of any collateral received for the bond minus the actual and reasonable expenses permitted to be recovered under this division.

Waiver of provisions; penalty for failure to comply.

(E) A surety bail bond agent or surety shall not solicit or accept a waiver of any of the provisions of this section, or enter into any agreement as to the value of the collateral.(F) No person shall fail to comply with this section.

Requirements to Execute a Bond:

Sec. 3905.93. A SURETY BAIL BOND AGENT SHALL NOT EXECUTE A BAIL BOND WITHOUT DOING BOTH OF THE FOLLOWING:

(A) CHARGING THE PREMIUM RATE (10%) FILED WITH AND APPROVED BY THE SUPERINTENDENT OF INSURANCE;

(B) DISCLOSING THE EXPENSE FEE THAT WILL BE CHARGED TO COVER THE COSTS INCURRED BY THE AGENT IN EXECUTING THE BOND.

Discharge of the Bond:

Discharge of the bond; failure to return collateral.

§ 3905.921 Discharge of bond where collateral security or other indemnity accepted

(A) If collateral security or other indemnity is accepted on a bond, the surety bail bond agent, Managing General Agent, or surety shall make, upon demand, a written request to the court for a discharge of the bond to be delivered to the surety or the surety's agent.
If the obligation of the surety on the bond is released in writing by the court and a discharge is provided to the surety or the surety's agent, the collateral security or other indemnity, except a promissory note or an indemnity agreement, shall be returned, within twenty-one days after the discharge is provided, to the person that gave the collateral security or other indemnity, unless another disposition is provided for by legal assignment of the right to receive the collateral to another person. If, despite diligent inquiry by the surety or the surety's agent to determine that the bond has been discharged, the court fails to provide a written discharge within thirty days after the written request was made to the court, the bond shall be considered canceled by operation of law, and the collateral security or other indemnity, except a promissory note or an indemnity agreement, shall be returned, within twenty-one days after the written request for discharge was made to the court, to the person that gave the collateral security or other indemnity.

(B) No fee or other charge, other than those authorized by sections 3905.83 to 3905.95 of the Revised Code or by rule of the superintendent of insurance, shall be deducted from the collateral due. However, allowable expenses incurred in the apprehension of a defendant because of a forfeiture of bond or judgment may be deducted if those expenses are accounted for.

(C)(1) No person shall fail to return collateral security in accordance with this section.

(2) A violation of division (C)(1) of this section shall be punishable as follows:

Value of the Collateral	Penalty
Less than $500	First degree misdemeanor
At least $500 but less than $5,000	Fifth degree felony
At least $5,000 but less than $10,000	Fourth degree felony
At least $10,000	Third degree felony

What Cannot Be Done:

Prohibited activities

Surety bail bond agents

§ 3905.93 Bail bond - charges and fees

A surety bail bond agent shall not execute a bail bond without doing both of the following:

(A) Charging the premium rate (10%) filed with and approved by the superintendent of insurance;

(B) Disclosing the expense fee that will be charged to cover the costs incurred by the agent in executing the bond.

§ 3905.933 Signing or countersigning agent's name to a bond

(A) A surety bail bond agent shall not sign or countersign in blank any bond, or give a power of attorney to, or otherwise authorize, anyone to countersign the surety bail bond agent's name to a bond unless the person so authorized is a licensed and appointed surety bail bond agent directly employed by the surety bail bond agent giving that authority.

(B) A surety bail bond agent shall not divide with any other person, or share in, any commissions payable on account of a bail bond, except as between other surety bail bond agents that are licensed or otherwise qualified to engage in the bail bond business in their state of domicile.

Surety bail bond agents and insurers.

§ 3905.932 Prohibited acts

A surety bail bond agent or insurer shall not do any of the following:

(A) Suggest or advise the employment of, or name for employment, any particular attorney to represent its principal;

(B) Solicit business in, or on the property or grounds of, a detention facility, as defined in section 2921.01 of the Revised Code, or in, or on the property or grounds of, any court. For purposes of this division, "solicit" includes, but is not limited to, the distribution of business cards, print advertising, or any other written information directed to prisoners or potential indemnitors, unless a request is initiated by the prisoner or potential indemnitor. Permissible print advertising in a detention facility is strictly limited to a listing in a telephone directory and the posting of the surety bail bond agent's name, address, and telephone number in a designated location within the detention facility.

(C) Wear or otherwise display any identification, other than the wallet identification card required under division (G) of section 3905.85 of the Revised Code, in or on the property or grounds of a detention facility, as defined in section 2921.01 of the Revised Code, or in or on the property or grounds of any court;

(D) Pay a fee or rebate or give or promise anything of value to a jailer, law enforcement officer, committing magistrate, or other person who has power to arrest or to hold in custody, or to any public official or public employee, in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or estreatment of bail;

(E) Pay a fee or rebate or give or promise anything of value to an attorney in a bail bond matter, except in defense of any action on a bond;

(F) Pay a fee or rebate or give or promise anything of value to the principal or to anyone in the principal's behalf;

(G) Post anything without using a bail instrument representing an insurer, to have a defendant released on bail on all types of set court bail, except for the following:

(1) Cash court fees or cash reparation fees;

(2) Ten per cent assignments;

(3) Other nonsurety court bonds, if the agent provides full written disclosure and receipts and retains copies of all documents and receipts for not less than three years.

(H) Participate in the capacity of an attorney at a trial or hearing of a principal;

(I) Accept anything of value from a principal for providing a bail bond, other than the premium filed with and approved by the superintendent of insurance and an expense fee, except that the surety bail bond agent may, in accordance with section 3905.92 of the Revised Code, accept collateral security or other indemnity from a principal or other person together with documentary stamp taxes if applicable. No fees, expenses, or charges of any kind shall be deducted from the collateral held or any return premium due, except as authorized by sections 3905.83 to 3905.95 of the Revised Code or by rule of the superintendent. A surety bail bond agent, upon written agreement with another party, may receive a fee or other compensation for returning to custody an individual who has fled the jurisdiction of the court or caused the forfeiture of a bond.

(J) Execute a bond in this state on the person's own behalf;

(K) Execute a bond in this state if a judgment has been entered on a bond executed by the surety bail bond agent, which judgment has remained unpaid for at least sixty days after all appeals have been exhausted, unless the full amount of the judgment is deposited with the clerk of the court.

As used in this section, "instrument" means a fiduciary form showing a dollar amount for a surety bail bond.

Misleading or False Advertising:

§ 3905.934 Advertising requirements

(A) A surety bail bond agent shall not make, publish, or otherwise disseminate, directly or indirectly, any misleading or false advertisement, or engage in any other deceptive trade practice.

(B) All advertising by a surety bail bond agent shall include the address of record of the agent on file with the department of insurance.

Surety bail bond agents, insurers, and MGAs

§ 3905.931 Furnishing of forms and other supplies

(A) No insurer, Managing General Agent, or surety bail bond agent shall furnish to any person any blank form, application, stationery, business card, or other supplies to be used in soliciting, negotiating, or effecting bail bonds unless the person is licensed to act as a surety bail bond agent and is appointed by an insurer. This division does not prohibit an unlicensed employee, under the direct supervision and control of a licensed and appointed surety bail bond agent, from possessing or executing in the surety bond office, any form, other than a power of attorney, bond form, or collateral receipt, while acting within the scope of the employee's employment.

(B) An insurer that furnishes any of the supplies mentioned in division (A) of this section to any surety bail bond agent or other person not appointed by an insurer and that accepts any bail bond business from or writes any bail bond business for that surety bail bond agent or other person is liable on the bond to the same extent and in the same manner as if the surety bail bond agent or other person had been appointed or authorized by an insurer to act in its behalf.

Revocation of License and Restrictions:

Grounds for disciplinary action; procedures

Under the bill, the grounds for disciplinary action and procedures currently applicable to insurance agents is extended to apply to surety bail bond agents. Consequently, the Superintendent of Insurance may suspend, revoke, or refuse to issue or renew a surety bail bond agent license, or impose any other sanction authorized under the Insurance Agents Law, for the reasons specified in, and in accordance with the procedures provided by, current law. The bill makes conforming changes where necessary, and adds "engaging in any dishonest practice in connection with the business of insurance" as an additional reason for disciplinary action. It also adds, with respect to a surety bail bond agent license, "rebating or offering to rebate, or unlawfully dividing or offering to divide, any commission." The Superintendent is also permitted to revoke a license as a surety bail bond agent if the licensee is adjudged bankrupt.

Upon the suspension or revocation of a surety bail bond agent license, or the eligibility of a surety bail bond agent to hold a license, the Superintendent likewise may suspend or revoke the license or eligibility of any surety bail bond agent who is employed by or associated with that agent *and* who knowingly was a party to the act that resulted in the suspension or revocation.

§ 3905.94 License suspension or revocation

If the superintendent of insurance, in accordance with section 3905.14 of the Revised Code, suspends or revokes a person's license as a surety bail bond agent, the person, during the period of suspension or revocation, shall not be employed by any surety bail bond agent, have any ownership interest in any business involving bail bonds, or have any financial interest of any type in any bail bond business.

Regarding Previously Written Bonds:

§ 3905.941 Designation of successor agent

Upon the surrender, suspension, or revocation of a surety bail bond agent's license, the appointing insurer or Managing General Agent immediately shall designate a licensed and appointed surety bail bond agent to administer all bail bonds previously written by the licensee.

Adoption of Rules by Superintendent:

Rule-making authority of the Superintendent

§ 3905.95 Rules.

The superintendent of insurance shall adopt, in accordance with Chapter 119. of the Revised Code, any rules necessary to implement sections 3905.83 to 3905.95 of the Revised Code.

Violations and Fines:

§ 3905.99 Penalty

(A) Whoever violates section 3905.182 of the Revised Code shall be fined not less than twenty-five nor more than five hundred dollars or imprisoned not more than six months, or both.

(B) Whoever violates section 3905.31 or 3905.33 of the Revised Code shall be fined not less than twenty-five nor more than five hundred dollars or imprisoned not more than one year, or both.

(C) Whoever violates section 3905.37 or 3905.43 of the Revised Code shall be fined not less than one hundred nor more than five hundred dollars.

(D) Whoever violates section 3905.02, division (F) of section 3905.92, or division (A) of section 3905.931 of the Revised Code is guilty of a misdemeanor of the first degree.

(E) Whoever violates section 3905.84 of the Revised Code is guilty of a misdemeanor of the first degree on a first or second offense and of a felony of the third degree on each subsequent offense.

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Other Provisions of the House Bill:

Disposition of fees

All license application and renewal fees and agent appointment fees collected under the bill are to be paid into the state treasury to the credit of the Department of Insurance Operating Fund

HB 300 – SPECIFIC TO SURETY BAIL
REITERATION & STRENGTHENING HB 730

Resident Agent License Examination:

Under continuing law, a resident of Ohio who applies for an insurance agent license with any of the following lines of authority must take a written examination prior to licensure: life, accident and health, property, casualty, personal lines, title, surety bail bonds, and any other line of authority designated by the Superintendent of Insurance. Additionally, the act requires that an individual pass the written examination before applying for licensure and requires the individual to pay only an examination fee, rather than an application fee, before admission to the examination (3905.04(A)).

Unless an individual is applying for a title insurance line of authority or any other line of authority exempted by the Superintendent, under continuing law, an individual is not permitted to take the examination until the individual has either earned a bachelor's or associate's degree in insurance from an accredited institution or completed, as in the case of Surety Bail Bond Agents, 20 hours of "pre-licensing" study in a program of insurance education approved by the Superintendent for which the individual has applied.

Surety Bail Bond Agents:

Under continuing law, the Superintendent must issue to an applicant a license that states in substance that the person is authorized to do the business of a surety bail bond agent, if the Superintendent is satisfied that all of the following apply:

(1) The applicant is 18 years of age or older.

(2) The applicant is a person of high character and integrity.

(3) The applicant has successfully completed the educational requirements and passed the required examination.

The act differentiates four types of surety bail bond licenses: individual resident and nonresident surety bail bond licenses and business entity resident and nonresident surety bail bond licenses. In order to receive the individual resident surety bail bond license, the person must satisfy the above requirements and must not have committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license. Additionally, the applicant's home state must be Ohio and the applicant must be a United States citizen or have provided proof of having legal authorization to work in the United States.

In order to receive the individual nonresident surety bail bond license, the person must be 18 years of age or older, currently licensed as a resident in another state and in good standing in the applicant's home state for surety bail bond or qualified for the same authority. Additionally, the person must be a person of high character and integrity and must not have committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license. (3905.85(B).)

To receive the business entity resident or nonresident surety bail bond license, all of the following must be true of the applicant:

(1) the applicant has submitted an application for the license in a manner prescribed by the Superintendent and the $150 application fee

(2) the applicant has designated an individual licensed surety bail bond agent who will be responsible for the applicant's compliance with the insurance laws of Ohio

(3) the applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license, and (4) the applicant has submitted any other documents requested by the Superintendent. In order to receive the resident business entity license, the applicant additionally must either be domiciled in Ohio or maintain its principal place of business in Ohio, and the applicant must be authorized to do business in Ohio by the Secretary of State if required under current law. In order to receive the nonresident business entity license, the applicant additionally must be currently licensed and be in good standing in the applicant's home state with surety bail bond authority. (3905.85(B).)

Under law retained in part by the act, a person that holds a surety bail bond license cannot execute or deliver a bond during the first 180 days after the initial issuance of the person's license. Under the act, however, this prohibition does not apply to resident or nonresident business entity licenses. (3905.85(C).)

License Renewal for Surety Bail Bond Agents:

Under former law, a surety bail bond agent license could be renewed, at the discretion of the Superintendent and the payment of a $150 fee, effective the first day of March next after its issue and after the first day of March in each succeeding year unless the license was revoked or suspended by the Superintendent or surrendered by the surety bail bond agent.

Under the act, a person seeking to renew a surety bail bond agent license must apply annually for a renewal of the license on or before the last day of February. Applications must be submitted to the Superintendent on forms prescribed by the Superintendent. Each application must be accompanied by a $150 renewal fee.

To be eligible for renewal, an individual applicant must complete the applicable continuing education requirements (7 hours of CE to include 1 hour of approved ethics) prior to the renewal date. If an applicant submits a completed renewal application, qualifies for renewal pursuant to the above requirements, and has not committed any act that is a ground for the refusal to issue, suspension of, or revocation of a license, the Superintendent must renew the applicant's surety bail bond insurance agent license. (3905.85(F)(1) to (3).)

If an individual or business entity does not apply for the renewal of the individual or business entity's license on or before the last day of February, the act allows the individual or business entity to submit a late renewal application along with all applicable fees prior to the last day of March following the renewal date.

The Superintendent must renew the license of an applicant that submits a late renewal application if the applicant satisfies all of the following conditions:

(1) the applicant submits a completed renewal application

(2) the applicant pays the $150 renewal fee

(3) the applicant pays the late renewal fee established by the Superintendent

(4) the applicant provides proof of compliance with the continuing education requirements

(5) the applicant has not committed any act that is grounds for the refusal to issue, suspension of, or revocation of a license. (3905.85(F)(4).)

A surety bail bond agent license that is not renewed on or before the last day of March is automatically suspended for nonrenewal effective the first day of April. If a license is suspended for nonrenewal, the individual or business entity is eligible to apply for reinstatement of the license within the 12-month period following the date by which the license should have been renewed by complying with the reinstatement procedure established by the Superintendent and paying all applicable fees. (3905.85(F)(5) and (6).)

A license that is suspended for nonrenewal that is not reinstated as discussed above automatically is canceled unless the Superintendent is investigating any allegations of wrongdoing by the agent or has initiated proceedings under the Administrative Procedure Act (Chapter 119). In that case, the license automatically is canceled after the completion of the investigation or proceedings unless the Superintendent revokes the license. (3905.85(F)(7).)

Change of Address:

Under former law, if a person licensed as a resident insurance agent changed the person's address within Ohio, or if a nonresident agent changed the person's address within that other state, the person was required to, within 30 days after making that change, file a change of address with the Superintendent. Under the act, the person must file that change of address with either the Superintendent or the Superintendent's designee. (3905.061(A) and 3905.071(A)(1).)

Under law retained in part by the act, if a resident insurance agent changes the person's state of residence, or if a nonresident agent changes the person's state of residence or the state in which the person's principal place of business is located, the person must, within 30 days after making that change, file a change of address with the Superintendent and provide the Superintendent with certification from the new state of residence or, in the case of a nonresident insurance agent, the new state in which the principal place of business is located. As a result, the resident agent's license becomes a nonresident license. No fee or license application can be required in either situation.

The act requires a resident or nonresident insurance agent to file a change of address when the person's home state changes, not necessarily when the state of residence or the state in which the

person's principal place of business is located changes (3905.061(B) and 3905.071(A)(2)). "Home state" is defined to mean the state or territory of the United States, including the District of Columbia, in which an insurance agent maintains the insurance agent's principal place of residence or principal place of business and is licensed to act as an insurance agent (3905.01(B), not in the act). Additionally, the agent submitting a change of address must be in good standing with the Superintendent.

Under law retained in part by the act, each person licensed as a Surety Bail Bond Agent must notify in writing the appropriate insurer or Managing General Agent, and the clerk of the court of common pleas of the county in which the licensee resides, within 30 days after a change in the licensee's principal business address or telephone number.

Rather than the clerk of the court of common pleas of the county in which the licensee resides, the act requires the agent to notify the clerk of the court of common pleas of the county in which the licensee is registered. (3905.89.)

Criminal Records Checks:

Under former law, an applicant for licensure was required to request a criminal records check conducted by the Superintendent of the Bureau of Criminal Identification and Investigation (BCII), other governmental agencies, or other sources, as required and designated by the Superintendent of Insurance. The applicant was required to direct that the responses to the request be transmitted to the Superintendent of Insurance, or to the Superintendent's designee. If the Superintendent of Insurance or the Superintendent's designee failed to receive a response to a requested criminal records check, or if the applicant failed to request the criminal records check, the Superintendent could refuse to issue a license. (3905.05(A) and 3905.85(A).)

Under the act, each applicant must consent to a criminal records check and submit a full set of fingerprints to the Superintendent for that purpose. The Superintendent, then, rather than the applicant, must request the Superintendent of BCII to conduct a criminal records check based on the applicant's fingerprints. The Superintendent also must request that criminal record information from the Federal Bureau of Investigation (FBI) be obtained as part of the criminal records check. The act allows the Superintendent to receive criminal record information directly in lieu of the BCII that submitted the fingerprints to the FBI. (3905.051(C), (D), and (F) and 3905.85(A)(2).)

Under the act, the Superintendent may contract for the collection and transmission of fingerprints, may agree to a reasonable fingerprinting fee to be charged by the contractor, and may order the fee for collecting and transmitting fingerprints to be payable directly to the contractor by the applicant. Under continuing law, any fee required in relation to the criminal records check must be paid by the applicant. (3905.051(E).)

The act requires the Superintendent to treat and maintain an applicant's fingerprints and any criminal record information obtained by the required criminal records checks as confidential. The Superintendent must apply security measures consistent with the criminal justice information services division of the FBI standards for the electronic storage of fingerprints and

necessary identifying information and limit the use of records solely to the purpose of criminal records checks. The fingerprints and any criminal record information are not subject to subpoena other than one issued pursuant to a criminal investigation, are confidential by law and privileged, are not subject to discovery, and are not admissible in any private civil action. (3905.051(G).)

Under the act, only individuals applying for a resident license as an insurance agent or Surety Bail Bond Agent or applying for an additional line of authority under an existing resident insurance agent license if a criminal records check has not been obtained within the last 12 months for insurance license purposes must consent to a criminal records check. Agents applying for renewal of an existing resident or nonresident license in Ohio are not required by the act to consent to a criminal records check. (3905.08, 3905.051(H), and 3905.85.)

For purposes of criminal records checks, the act defines "fingerprint" as an impression of the lines on the finger taken for the purpose of identification. The impression may be electronic or converted to an electronic format. (3905.051(B).)

Continuing Education for Surety Bail Bond Agents:

Under former law, each individual who was issued a license as a surety bail bond agent was required to complete at least 14 hours of continuing education offered in a course or program of study related to the bail bond business that was approved by the Superintendent in consultation with the Insurance Agent Education Advisory Council.

The act requires only resident surety bail bond agent licensees to comply with the continuing education requirements and instead of tying those requirements to the general agent CE requirements of every two years, the act requires that the resident surety bail bond agents complete the continuing education requirements every year in each license renewal period.

The act also decreases the number of required hours to seven (7) and requires that the course or program of study include at least one (1) hour of approved ethics training.

Former law generally required the Superintendent to suspend or revoke the license of any surety bail bond agent who failed to complete the required continuing education. The act, instead, requires the Superintendent to not renew the license of such a licensee and removes an allowance for an extension of time in which to complete those requirements. (3905.482(B), 3905.85(D), and 3905.88.)

Prohibitions - Generally Prohibited Acts:

Law retained in part by the act lists reasons for which the Superintendent may suspend, revoke, or refuse to issue or renew the license of an insurance agent, assess a civil penalty, or impose any other sanction or sanctions authorized under the Insurance Agent Licensing Law. The act revises several of those reasons and adds five more. Below is given an overview of those revisions and additions. The list is not exhaustive and does not list the reasons unchanged by the act. (3905.14(B).)

Former law Under the act: Obtaining or attempting to obtain a license through misrepresentation or fraud
Adds…maintaining or attempting to maintain a license through misrepresentation or fraud*

Former law Under the act: Having been convicted of a felony
Adds…having pleaded guilty or no contest to a felony and adds that this expanded reason exists regardless of whether a judgment of conviction has been entered by the court*

Former law Under the act: Having been convicted of a misdemeanor that involves the misuse or theft of money or property belonging to another, fraud, forgery, dishonest acts, or breach of a fiduciary duty, that is based on any act or omission relating to the business of insurance, securities, or financial services, or that involves moral turpitude
Adds…having pleaded guilty or no contest to such a misdemeanor and adds that this expanded reason exists regardless of whether a judgment of conviction has been entered by the court*

Former law Under the act: Improperly using notes or any other reference material to complete an examination for an
insurance agent license
Adds…improperly using equipment or devices of any kind*

Former law Under the act: Failing to comply with any administrative or court order directing payment of state income tax
Revision…Failing to comply with any official invoice, notice, assessment, or order directing payment of federal, state, or local income tax, state or local sales tax, or workers' compensation premiums*

Former law Under the act: Having any professional license suspended or revoked as a result of a mishandling of funds or breach of fiduciary responsibilities or having been subject to a cease and desist order or permanent injunction for unlicensed activities
Breaks into the following two reasons…Having any professional license or financial industry regulatory authority registration suspended or revoked or having been barred
from participation in any industry* Having been subject to a cease and desist order or permanent injunction related to mishandling of funds or breach of fiduciary responsibilities or for unlicensed or unregistered activities*

Former law Under the act: Causing or permitting a policyholder or applicant for insurance to designate the insurance agent or the insurance agent's spouse, parent, child, or sibling as the beneficiary of a policy or annuity sold by the insurance agent, unless the insurance agent or a relative of the insurance agent is the insured or applicant
Expands this reason to include…policies and annuities for which the agent, at any time, was designated as the agent of record*

Adds New law Under the act:
Causing or permitting a policyholder or applicant for insurance to designate the insurance agent or the insurance agent's spouse, parent, child, or sibling as the owner or beneficiary of a trust funded, in whole or in part, by a policy or annuity sold by the insurance agent or by a policy or

annuity for which the agent, at any time, was designated as the agent of record, unless the insurance agent or a relative of the insurance agent is the insured or applicant*

Former law Under the act: Failing to provide a written response to the Department of Insurance within 21 calendar days after receipt of any written inquiry from the Department, unless a reasonable extension of time has been requested of, and granted by, the Superintendent
Adds…that the extension may be requested of and granted by the Superintendent's designee*

Adds New law Under the act:
Failing to appear to answer questions before the Superintendent after being notified in writing by the Superintendent of a scheduled interview, unless a reasonable extension of time has been requested of, and granted by, the Superintendent or the Superintendent's designee*

Former law Under the act:
Submitting or using a document in the conduct of the business of insurance when the person knew or should have known that the document contained the forged signature of another person
Rather …than referring to a forged signature, refers to a "writing that was forged" as defined under Ohio's Theft and Fraud Statute (R.C. 2913.01), which includes any computer software, document, letter, memorandum, note, paper, plate, data, film, or other thing having in or upon it any written, typewritten, or printed matter, and any token, stamp, seal, credit card, badge, trademark, label, or other symbol of value, right, privilege, license, or identification*

Former law Under the act: Misrepresenting the person's qualifications or using in any way a professional designation that has not been conferred upon the person by the appropriate accrediting organization
Adds...misrepresenting the person's status or relationship to another person, agency, or entity*

Former law Under the act: Obtaining a premium loan or causing a premium loan to be made to or in the name of an insured without that person's knowledge and written authorization
Adds:...obtaining a policy surrender or causing a policy surrender to be made to or in the name of an insured or policy holder without the person's knowledge and written authorization*
Former law Under the act: Soliciting, marketing, or selling any product or service that offers benefits similar to insurance but is not regulated by the Superintendent, without fully disclosing to the prospective purchaser that the product or service is not insurance and is not regulated by the Superintendent
Removes..."marketing" and adds "negotiating" any such product or service and specifies that the disclosure must be orally and in writing*

Former law Under the act: With respect to a surety bail bond agent license, rebating or offering to rebate, or unlawfully dividing or offering to divide, any commission
Expands:...this reason to also include rebating or offering to rebate, or unlawfully dividing or offering to divide, any premium or fee*

Adds New law Under the act:
In the case of a resident business entity, failing to be qualified to do business in Ohio, failing to

be in good standing with the Secretary of State, or failing to maintain a valid appointment of statutory agent with the Secretary of State

Additional New laws Under the act:

In the case of a nonresident agent, failing to maintain licensure as an insurance agent in the agent's home state for the lines of authority held in Ohio

Knowingly aiding and abetting another person or entity in the violation of any insurance law of Ohio or the rules adopted under it

* This violation is a class A offense. Continuing law details the actions that the Superintendent may take based upon which of the reasons was violated. The actions include a civil penalty, assessment of administrative costs, suspension of the license, permanent revocation of the license, refusal to issue or renew the license, a prohibition against being employed in any capacity in the business of insurance and from having any financial interest in any insurance agency, ordering corrective action, and accepting a surrender of license. Under continuing law, certain violations are class A offenses, and the Superintendent may impose any of the penalties listed. (3905.14(D) and (F).)

Under continuing law, if an agent's license is surrendered, revoked, or suspended, all appointments held by the agent are void. Under the act, all appointments held by the agent also are void if the license is canceled or inactivated by request. If a new license is issued to that person or if that person's previous license is reinstated (the act adds renewed), any appointment of the person to represent an insurer must be made in accordance with the requirements of the law regulating insurance agents. Additionally, under the act, if an agent's license is surrendered, revoked, or canceled and the person wishes to apply for a new license, the person must apply as a new agent and must satisfy all requirements for a new agent license including, if applicable, submitting to a criminal records check. (3905.16.)

Prohibitions for Surety Bail Bond Agents:

Under continuing law, certain persons and classes of persons are prohibited from acting as surety bail bond agents or employees of a surety bail bond agent or business including jailers, peace officers, court employees, and attorneys. Those persons or classes of persons are also prohibited from receiving any benefits from the execution of a bail bond, except as a principal. The act adds to that list: prisoners incarcerated in any jail, prison, or any other place used for the incarceration of persons; any person employed at an attorney's office; and judges. The act also clarifies that "peace officers" includes volunteer and honorary peace officers. (3905.841.)

Additionally, the act prohibits surety bail bond agents and insurers from posting anything without using a bail instrument representing an insurer, to have a defendant released on bail on all types of set court bail, except for the following:

(1) Cash court fees or cash reparation fees;

(2) Ten per cent assignments;

(3) Other nonsurety court bonds, if the agent provides full written disclosure and receipts and retains copies of all documents and receipts for not less than three years.

The act defines "instrument" as a fiduciary form showing a dollar amount for a surety bail bond. (3905.932.)

Appointments by Insurers:

Former law allowed insurers to appoint a person that was licensed as a surety bail bond agent by certifying to the Superintendent before the 30th day of June each year the names and addresses of the agents.

Under the act, the insurer must file a notice of appointment with the Superintendent in the manner prescribed by the Superintendent. The act does not specify a date for that filing. (3905.86.) In addition to continuing law's $20 fee for each agent and surety bail bond agent appointment by an insurer and each annual renewal of an agent or surety bail bond agent appointment by insurer, the act requires a fee of $5 for each termination or expiration of an agent or surety bail bond agent appointment (3905.20(B)(1), 3905.40(A)(8) and (9), 3905.86(B), and 3905.862).

Registering with a Court:

Law retained in part by the act prohibits a surety bail bond agent from filing a bond in a court of Ohio unless the agent has registered with the clerk of that court, if registration is required by the court, and the agent has registered with the clerk of the court of common pleas of the county in which the agent resides.

The act removes the requirement that the agent be registered with the clerk of the court of common pleas of the county in which the agent resides. In addition to the copy of the agent's appointment required for registration with a court under continuing law, the act requires the agent to submit a copy of the agent's surety bail bond license and driver's license or state identification card. Rather than registering and filing a certified copy of a renewed power of attorney, the act requires each agent to renew the agent's registration with the court biennially by the first day of August of each odd-numbered year. (3905.87.)

Additionally, the act requires the clerk of the court to make available a list of court-registered surety bail bond agents to the appropriate holding facility, jail, correction facility, or other similar entity within the court's jurisdiction annually not later than the first day of September. If an agent registers with a court after the last day of August, the court must add that agent to the list and make the updated list available to the appropriate holding facility, jail, correction facility, or other similar entity within the court's jurisdiction within 24 hours of the court's approval of that registration. (3905.87.)

Rules Adopted by the Superintendent:

Continuing law allows the Superintendent to adopt rules in accordance with the Administrative Procedure Act (Chapter 119.) to establish procedures for the issuance and renewal of insurance agent licenses.

The act also allows the Superintendent to adopt rules to establish procedures for late renewal, extension, reactivation, and reinstatement. Continuing law also allows the Superintendent to adopt rules in accordance with the Administrative Procedure Act to provide for the issuance of limited authority licenses, and establish any prelicensing education, examination, or continuing education requirements the Superintendent considers appropriate for such licenses. The act expands these rules to apply to the renewal of those licenses. (3905.12.)

RULES BY THE SUPERINTENDENT OF INSURANCE SPECIFIC TO SURETY BAIL BOND AGENTS OHIO ADMINISTRATIVE CODE

§ 3901-1-66 Surety bail bond agent conduct

(A) Purpose. The purpose of this rule is to establish criteria for surety bail bond agent conduct.

(B) Authority. This rule is promulgated pursuant to the authority vested in the superintendent under sections 3901.041 and 3905.95 of the Revised Code.

(C) Definitions. As used in this rule:

(1) “Cash bond” means the full amount of the bail required to be paid in cash to release a defendant from jail.

(2) “Power of attorney” means a legal instrument that is used by a authorized surety company to delegate authority to a licensed general agent or surety bail bond agent for the posting of surety bail bonds with a court of law up to a specified monetary amount.

(3) “Surety bail bond” means a court accepted bond instrument from a licensed insurance company issued for or on behalf of an incarcerated person held under criminal charges in any Ohio mayor, municipal, county, or federal court.

(4) “Immigration bond” means a federally accepted bond instrument from a surety company approved by the United States department of treasury issued for and on behalf of alien detainees held by United States immigration and customs enforcement, within the department of homeland security pending a hearing or court appearance; or to guarantee that an alien will be financially independent during a lawful visit or prolonged stay to the United States.

(D) Stacking bonds prohibited

A surety bail bond agent shall not submit more than one power of attorney for any single bond, charge or charges, as is assigned a number by a court of proper jurisdiction.

(E) Submitting powers and bonds

(1) All surety bail bonds submitted to the court or the custodian of an arrested person must be accompanied by a current, non-expired, legal power of attorney.

(2) Only one power of attorney shall be submitted per bond. The face value of the power shall be equal to or greater than the amount of the bond set by the court in the single charge or charges for which the bond and power are being submitted.

(3) No power of attorney that has been altered or erased shall be submitted to a court or insurance company.

(4) No expired power of attorney shall be submitted to a court or insurance company.

(5) No power of attorney shall be used or submitted to a court or insurance company more than once.

(F) Immigration bonds

Immigration bonds may be solicited, sold, or negotiated only by:

(1) A person holding an Ohio insurance license with a casualty line of authority conferred pursuant to Title 39 of the Revised Code.

(2) A person holding an Ohio surety bail bond line of authority conferred pursuant to Title 39 of the Revised Code, who has been given a bond power that expressly allows for the writing of an immigration bond.

(G) Bond money from loan companies

No surety bail bond agent shall be employed by, contracted with, or act as an agent for, or own an ownership interest in any person or business entity that loans money for, or takes collateral for the loan of money for, the purpose of posting a cash bond or surety bail bond on behalf of a defendant.

(H) Real property as collateral

When accepting real property as collateral for a bond,

(1) A surety bail bond agent shall not require the transfer of title of any real property as a condition of issuing the bail bond.

(2) A surety bail bond agent may require a defendant, or anyone agreeing to provide real property as collateral on a defendant's behalf, to establish title and unencumbered value, at the defendants expense, together with mortgage security or other documents necessary to establish the surety bail bond agent's lien interest in the real property by the bail agent.

(3) A surety bail bond agent shall not provide title, notary, or lien filing services directly or indirectly to the client or defendant for a fee. A surety bail bond agent shall not receive any valuable consideration for referring a person for title, notary, or lien filing services.

(4) Return of security document collateral:

(a) If the security document has not been filed with the state or a division of the state to perfect the lien, and the bond has not been called or otherwise needed or used, the original mortgage or other security document must be stamped cancelled and returned to the client or defendant within twenty-one days from the end of the bond.

(b) If the security document has been filed with the state or a division of the state to perfect the lien, and the bond has not been called or otherwise needed or used, a release of the mortgage or release of the other security document must be completed within twenty-one days after the end of the bond. A copy of the release containing an official date/time stamp must be provided to the client within twenty-six days after the end of the bond.

(I) Solicitation

(1) The following activities shall constitute prohibited solicitation by a surety bail bond agent on the grounds of a courthouse or detention facility:

(a) Approaching a person not currently a client and in any way initiating communication concerning bail bond services.

(b) Writing bonds for an individual without their direct knowledge and consent.

(c) Communicating as, or holding oneself out to be, a court appointed surety bail bond agent or suggesting in any manner that one has been appointed by a court or other public agency to write a bond for a particular defendant, or on a particular case.

(d) Wearing clothing that indicates a person is in the bail bond industry unless otherwise directed by the court or detention facility, except the wearing of the issued department of insurance ID card.

(e) Conducting business in a loud and conspicuous manner.

(f) Distributing a business card, pen, or any other item, that identifies an individual or business entity as providing surety bail bond services.

(g) Physically impeding, blocking, or hindering the public from viewing or obtaining the docket or other information needed to ascertain the status or procedure of any court process including all court bonding processes.

(h) Engaging or hiring any person, directly or indirectly, to perform any acts listed in paragraphs

(I)(1)(a) to (I)(1)(g) of this rule.

(i) Any other activity that may be construed as the sale or solicitation of surety bail bonds.

(2) The following activities shall not constitute prohibited solicitation by a surety bail bond agent on the grounds of a courthouse or detention facility subject to the limitations of paragraph (I)(1) of this rule:

(a) Having personal business matters before a court or detention facility;

(b) Attending a scheduled hearing or meeting with any person(s) regarding surety bail bonds as long as the meeting is arranged with the person(s) prior to the arrival at the courthouse or detention facility;

(c) Being retained by a person to write and post a surety bail bond;

(d) Gathering court and docket information for business purposes;

(e) Writing a bond and posting a bond with the court;

(f) Returning a fugitive from justice pursuant to section 2927.27 of the Revised Code;

(g) Notifying a court, or detention facility of professional activities being conducted by the surety bail bond agent, other than solicitation; or

(h) Filing required paperwork with the court or detention facility regarding bonds, prisoners, bail bond license status, or fugitives.

(J) Severability

If any section, term or provision of this rule is adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term or provision of this rule, but the remaining sections, terms and provisions shall be and continue in full force and effect.

DIRECTOR OF THE OHIO DEPARTMENT OF INSURANCE

Position and powers by Law:

The Superintendent of insurance shall be the Chief Executive Officer and Director of the Ohio Department of Insurance, the Director shall have all the powers and perform all of the duties vested in and imposed upon the Dept. of Insurance.

The Director, including every member of his/her staff, cannot have any official or financial interest in an insurance company, except as a policyholder.

The Director and Insurance Rates:

The Director of the Ohio Department of Insurance has widespread power and authority; but, DOES NOT set insurance rates!

Authority and Duties of Director & Staff:

1) The Director of the Ohio Dept. of Insurance issues Certificates of Authority to transact the business of insurance to companies that have complied with all laws of the State of Ohio.

2) The Director of the Ohio Dept. of Insurance files and keeps all papers and books as required by law.

3) The Director of the Ohio Dept. of Insurance regulates the internal affairs of the Dept. of Insurance.

4) The Director of the Ohio Dept. of Insurance may issue, refuse to issue, revoke or suspend any insurance license or Certificate of Authority in accordance with the laws of the State of Ohio.

5) The Director of the Ohio Dept. of Insurance makes certain that insurance rates being charged by companies are adequate and not excessive to the consumer or unfairly discriminatory.

6) When requested, the Director of the Ohio Dept. of Insurance helps to interpret State of Ohio Insurance Law.

7) The Director of the Ohio Dept. of Insurance structures and controls insolvency procedures.

8) The Director of the Ohio Dept. of Insurance investigates all violations of insurance law in the State of Ohio, including complaints that have been filed by consumers.

9) The Director of the Ohio Dept. of Insurance levies specific fees and administrative fines to help cover costs and expenses,

10) The Director of the Ohio Dept. of Insurance may subpoena documents and witnesses for testimony before him, or his/her duly appointed staff, on any insurance related matter or hearing.

Examinations -- books, records & types of insurers:

At least once every three years or whenever the Director deems it necessary, he/she may make, or direct to be made, a thorough examination of the business affairs and financial condition of any insurance company.

The examination may be with 1) a company already transacting business in the State of Ohio, 2) with a new company that is organizing, or 3) with an existing company applying for admission to transact business in the State of Ohio.

An insurer (i.e. an insurance company) who is being examined, must provide the Director, or the Director's appointed examiner, unrestricted and free access to all books and papers that relate to the business…this includes all books and papers under the custody and/or control of the insurance company's agents.

An insurer's officers, directors, general and/or marketing agents, agents and any other employee may be examined under oath.

The insurer shall cover all expenses and fees of an examination.

If an insurer refuses to submit to an examination, it is grounds for suspension, refusal or no renewal of any insurance license or Certificate of Authority held by the insurer.

The examiner will issue a report of his/her examination. The insurer has thirty (30) days from the postmark on the envelope, to file with the Director of the Ohio Dept. of Insurance any written objections to the findings as found in the report.

Appointment and Certification of Insurers:

Insurers incorporated in the State of Ohio, whether admitted or not admitted, are Domestic Insurers.

1) The Director of the Ohio Dept. of Insurance must examine every Domestic Insurer before he/she issues a Certificate of Authority to transact business in the State of Ohio. This does not apply to license renewals.

2) The Director of the Ohio Dept. of Insurance, no less than once every three years, must examine a Domestic Insurer. He may also order an examination whenever deemed necessary.

Insurers incorporated in another state, are Foreign Insurers.

1) The Director of the Ohio Dept. of Insurance may examine the business and affairs of a Foreign Insurer who is applying for admission to transact insurance in the State of Ohio.

Insurers organized outside the United States whether or not admitted, are Alien Insurers.

1) The Director of the Ohio Dept. of Insurance may examine Alien Insurers at his/her discretion.

General Provisions and Statutory Definitions:

Admitted Insurer:

An insurance company authorized to transact insurance in the State of Ohio by the Ohio Dept. of Insurance, which has been issued a Certificate of Authority to transact surety business.

Admitted Insurers may be Domestic, Foreign or Alien.

Non-admitted Insurer:

An insurance company not authorized to transact insurance in the State of Ohio. They either have not requested admission or have failed to comply with State of Ohio requirements.

Insurance Agent:

One who has been appointed and authorized by an insurer to act as the company's representative in the transaction of certain lines or insurance including, but not limited to, the business of surety bail.

Resident Surety Bail Agent:

One who is licensed to represent an insurance company, which is authorized to transact the business of surety bail in the State of Ohio…the agent must live in the State of Ohio.

Non-resident Surety Bail Agent:

One who is licensed to represent an insurance company, which is authorized to transact the business of surety bail in the State of Ohio…the agent lives in a state other than Ohio.

If a non-resident agent becomes a resident of Ohio, he/she must cancel the nonresident license and obtain a resident license by passing the Ohio Dept. of Insurance's license examination.

Insurers, Certificate of Authority, Authorized:

Insurers must submit to the Ohio Dept. of Insurance a notice of appointment of the surety bail agent or agency certifying that a thorough investigation has been accomplished:

1) That the appointee is of high character and integrity.

2) That the appointee is competent, financially responsible and suitable to represent the insurer.

3) That the insurer will be bound by the acts of the appointee within that person's actual or apparent authority as its agent.

4) That the appointee will not represent to the public that the agent has the authority to represent the insurer until the appointment is approved by the Ohio Dept. of Insurance.

5) That the appointee knows insurance and insurance laws.

A fee must be submitted by the insurer with the notice of appointment. The Ohio Dept. of Insurance will keep a permanent record for ten (10) years of all agent licenses issued and the insurance companies that they certified to represent under their licenses. The insurer and/or its Managing General Agent may require the surety bail bond agent or agency to initially post a build-up fund. The account shall be open at all times to inspection and examination by the Ohio

Dept. of Insurance. Upon cancellation or expiration of a bail agent's appointment, the agent shall not engage or attempt to engage in any activity requiring such an appointment. An agent's license is considered inactive when the fees for the license are paid but no appointment is in effect for that license.

ACTIONS OF THE OHIO DEPT. OF INSURANCE

Violations of Unfair Trade Practices:

If the Director of the Dept. of Insurance believes that an agent or an agency has engaged in any unfair method of competition or any unfair or deceptive act or practice, the Director shall serve a statement of charges and a notice of hearing.

If, after the hearing, it is determined that the agent or agency has engaged in an unfair practice, any costs incurred for conducting the hearing will be assessed against the agent or company. If, at the hearing, it is determined that the agent or agency has engaged in an unfair practice, the Director may:

a) issue a "cease and desist" order

b) command the insurer or agency not to employ the person until the problem is resolved

c) order the agent to return any payments received from the violation and to pay interest on those payment

d) order the insurer, agent or agency to reimburse the Dept. of Insurance Operating Fund for half of the expenses incurred by the department to employ outside attorneys, accountants and actuaries; a maximum of $100,000 can be charged)

e) request the Attorney General to prosecute and have the court issue a penalty of not more that $3,500 for each act, not to exceed $35,000 in any 6 month period, and/or

f) revoke or suspend the license of an agent, agency or insurer.

Any agent or company subject to an order from the Director may obtain a review of the order by filing in court for a judicial review.

Charges, Refunds and Rebates:

In order to execute a bail bond, a Surety Bail Bond Agent must do both of the following things:

1) Charge the premium rate (10%) filed with and approved by the Superintendent of Insurance.

2) Disclose the expense fee that will be charged to cover the costs incurred by the agent executing the bond; this can be called an "expense fee" for itemization of charges.

Federal Regulation:

It is a crime in the State of Ohio to engage in any fraudulent, dishonest or coercive practice in connection with the business of insurance.

Interstate violations are prosecuted in Federal Court under the Interstate Insurance Fraud Act.

SURETY BONDS AND LEGALITIES

Types of Contracts – Agreement, Consideration and Competent Parties:

A contract includes the following elements:

1) Agreement:

a) Offer – the applicant applies for a surety bail bond by completing the application

b) Acceptance – the surety bail bond agent accepts the application and agrees to execute the bail bond.

2) Consideration:

a) Consideration usually means money; however, it also means the giving of anything of value, e.g. the promise to indemnify against the losses is a consideration.

b) The client's fee, application and statements within the application are all part of the "consideration."

3) Competent Parties:

a) Parties must have the legal capacity to enter into a contract

b) There are "restricted persons" such as:

1) Minors – the surety may be required to uphold the terms of the contract; but, minors, as a matter of law, may void contracts and contracts cannot be enforced against them.

2) Insane People or mentally deficient individuals.

3) People under the influence of alcohol or drugs.

4) People who are illiterate or handicapped and who do not positively demonstrate their ability to understand the conditions of the contract, e.g. an illiterate person must be read to; a person who does not read or write English must have the contract interpreted for them. If these positive

measures are not taken, the contract cannot be enforced against them while the surety may be required to uphold the contract.

4) Legal Purpose:

a) Surety Bail Bond Contracts must not be issued for illegal activity or immoral purposes.

Types of Authority:

There are 3 types of "authority" in a contract:

1) Express – The power that is expressed or written in the agent's contract.

2) Implied – Unwritten authority to perform incidental acts…this is the power that the public assumes the agent to have.

3) Apparent – The authority created when the agent exceeds the authority expressed in the agent's contract, and the insurer does nothing to counter the public impression that such authority exists.

Classification of Contracts:

Contracts can be classified as follows:

1) Formal – a written agreement setting forth the duties and responsibilities of each party.

2) Informal – a verbal or written agreement that generally sets for the conditions of the agreement without being specific.

3) Unilateral – Any one party is legally bound to contractual obligations after the premium or fee is paid.

4) Bilateral – Both parties are legally bound to the contractual obligations. This is what a surety bail bond is!

5) Multi-lateral – All or multiple parties are legally bound to the contractual obligations.

6) Executory – Written agreement requiring signatures, but not yet executed.

7) Executed Contract – Written agreement signed by all parties.

8) Conditional Contract – Parties to a contract must perform certain duties and follow rules of conduct to make the contract enforceable.

9) Contract of Indemnity – The surety is restored to the same financial condition as prior to the loss with no intent, loss or gain.

10) Contract of Utmost Good Faith – All parties bargain in good faith in forming the contract.

11) Contract of Adhesion – One party prepares a contract and submits it to the other party on a "take it or leave it" basis without any negotiation. Any doubt or ambiguity found in the document is construed against the party who drew up the contract, that is, the surety. Surety Bail Bonds are these!

Fraud and Concealment:

Fraud is the intentional misrepresentation, deceit or concealment of a material fact known to a person with the intention of causing injury to the other party.

Concealment is the withholding of known facts, which are so important that the disclosure of them would change the decision of the surety or its surety bail bond agent to post a bail bond.

Useful Legal Terminology:

Acquit – to release from an obligation or accusation. To legally certify the innocence of one charged with a crime.

Adjudicate – to settle in the exercise of judicial authority; to finally determine; to try a criminal matter.

Capitol Offense – an offense of such severity that should the accused be convicted, the death penalty may be imposed.

Conviction – the result of a criminal trial which ends in a judgment or sentence that the accused is guilty as charged. It DOES NOT include judgments which have been expunged by pardon, reversed, set aside or otherwise rendered negatory.

Custody – the care or control of a thing or person, the detaining of a man's person by virtue of lawful process or authority.

Defendant – the party against whom relief or recovery is sought in an action or suit, the accused in a criminal case.

Disposition – the sentencing or settlement of a criminal case.

Extradition – the surrender by one state or country to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, wanting to try and punish him, demands the surrender.

Felony – a crime of a serious or grave nature which would usually require imprisonment rather than jail (in addition to any other penalty imposed) should the accused be found guilty.

Fugitive – one who flees; a flight, evasion or escape from arrest, prosecution or imprisonment.

Hearing – a proceeding in which definite issues of fact or law are tried, witnesses and the accused have a right to be heard; much the same as a trial and may end in a final disposition.

Incarceration – imprisonment in a jail or penitentiary.

Indictment – a formal written accusation originating with a prosecutor and issued by a grand jury against a party charged with a crime. Also called a "true bill." NOTE: grand juries base decisions on probable cause, trial juries base decisions on evidence beyond a reasonable doubt!

Misdemeanor – offenses lower than felonies, usually punishable by fine or custody in jail…not imprisonment in a penitentiary.

Recognizance – an obligation entered into before the court whereby the defendant acknowledges that he will do some act required by law or pay a specific amount if he fails to perform the required act.

Revoke – to annul or make void, to cancel, rescind or reverse.

Suspend – to postpone or stay with purpose of resumption.

Warrant – a written order to arrest and bring before a judicial officer, which is made on behalf of the state and based upon a complaint issued pursuant to statute or court rule.

Writ – an order issued from a court requiring the performance of a specific act, giving authority to have it done.

PARTICULARS OF BAIL BOND AGENTS AND THEIR OBLIGATIONS

Principal, Obligee and Surety:

The Contracted Parties to the Agreement are as follows:

1) Principal – the defendant or person whose performance is being guaranteed. Also know as the Obligator.

a) Indemnity for Principal – the Indemnitor or cosigner that guarantees the surety against financial loss and restores it to the prior financial condition should the Principal violate or fail to comply with the conditions or provisions of the bail bond.

b) Indemnity Agreement—written contract where the parties agree to restore the surety to the same financial conditions as existed before the loss.

2) Obligee – the person or entity that the Obligator or Principal (the defendant) is obligated to; the person or entity that the penal amount of the bond is paid to in the case of a forfeiture.

THE STATE OF OHIO IS ALWAYS THE OBLIGEE ON A SURETY BAIL BOND IN STATE COURT.

3) Surety – An insurer that agrees to be responsible for the fulfillment of the obligation of a Principal if the Principal fails to fulfill that obligation. The person or entity that guarantees the performance of the Obligator, Principal or defendant to the Obligee and is subject to the penal amount of the bond.

THE SURETY ON A BAIL BOND IN OHIO MUST BE AN INSURANCE AGENT LICENSED TO TRANSACT THE BUSINESS OF SURETY BAIL.

Trust Obligations and Collateral:

Legal and trust obligations for acceptance and maintenance of collateral, to secure the indemnification of the surety, is set forth in the Ohio Revised Code for Surety Bail Bond Agents:

1) A Surety Bail Bond Agent must comply with the following requirements to accept collateral security or other indemnity:

a) collateral security or other indemnity must be reasonable in relation to the amount of the bond,

b) collateral security or other indemnity must not be used by the Surety Bail Bond Agent for personal benefit or gain and must be returned in the same condition as it was received,

c) cash or its equivalent, a promissory note, an indemnity agreement or real property mortgage in the name of the surety are acceptable forms of collateral security or indemnity. If the agent accepts collateral security in excess of $50,000 in cash, the cash amount must be made payable to the surety in the form of a cashier's check, US Postal Money Order, certificate of deposit or wire transfer,

d) a written, numbered receipt describing in detail the collateral security or other indemnity received and copies of any documents rendered, must be provided to the person giving the collateral security or indemnity by the Surety Bail Bond Agent.

e) the collateral security or other indemnity shall be received and held in the surety's name by the Surety Bail Bond Agent in a fiduciary capacity, and, prior to any forfeiture of bail, shall be kept separate and apart from any other funds or assets of the Surety Bail Bond Agent; if collateral security in excess of $50,000 in cash or its equivalent is received, the Surety Bail Bond Agent must promptly forward the entire amount to the surety (insurance company) or Managing General Agent.

2) Collateral Security may be placed in an interest-bearing account in a Federally Insured Bank or Savings and Loan Association in this state, to accrue to the benefit of the person giving the collateral security. The Surety Bail Bond Agent, surety or Managing General Agent can make no pecuniary gain on the collateral security deposited.

3) The surety is liable for all collateral security or other indemnity accepted by a Surety Bail Bond Agent. If, upon final termination of liability on a bond, the agent or Managing General Agent fails to return the collateral security to the person that gave it, the surety must return the actual collateral to that person or, in the event that the surety cannot locate the collateral, shall pay the person in accordance with the law.

The surety's liability survives the termination of the Surety Bail Bond Agent's appointment, with respect to those bonds that were executed by the Surety Bail Bond Agent prior to the termination of the appointment.

4) If a forfeiture occurs, the Surety Bail Bond Agent or surety must give the principal and the person that gave the collateral security 10 days written notice of intent to convert the collateral deposit into cash to satisfy the forfeiture. The notice must be sent by certified mail, return receipt requested, to the last known address of the principal and the person that gave the collateral.

The Surety Bail Bond Agent or surety shall convert the collateral deposit into cash within a reasonable period of time and return that which is in excess of the face value of the bond minus the actual and reasonable expenses of converting the collateral into cash. These expenses must not exceed 10% of the face value of the bond unless, upon actual expenses are greater than 10% and the court has allowed recovery of the full amount of the actual and reasonable expenses.

If there is a remission of forfeiture that required the surety to pay the bond to the court, the surety shall pay to the person that gave the collateral the value of any collateral received for the bond minus the actual and reasonable expenses permitted to be received in accordance with the law.

5) A Surety Bail Bond Agent or surety must not solicit or accept a waiver of any of the provisions of the law, or enter into any agreement as to the value of the collateral.

Build Up Funds and Legal Requirements:

This is a trust account wherein the Surety Bail Bond Agent deposits a percentage of the premium or fee charged for the execution of a bail bond to further secure the surety and/or its Managing General Agent against any loss. The buildup fund procedure is regulated by the Ohio Revised Code.

1) All build-up funds posted by a Surety Bail Bond Agent or Managing General Agent, either with an insurer or Managing General Agent representing an insurer, must be maintained in an individual build-up trust account for the Surety Bail Bond Agent by the insurer or the Managing General Agent.

The insurer or Managing General Agent must establish the account in a federally insured bank or savings and loan association in this state jointly in the name of the agent and the insurer or Managing General Agent. The account shall be open to inspection and examination by the Dept. of Insurance at all times and a complete accounting of all funds, i.e. the amounts collected on each bond written, must be maintained by the insurer or Managing General Agent.

2) Build-up funds must not exceed 40% of the premium as established by the Surety Bail Bond Agent's contract agreement with the insurer or Managing General Agent. Build-up funds received shall be immediately deposited to the build-up trust account. Interest earned on build-up trust accounts shall accrue to the Surety Bail Bond Agent.

3) Build-up funds are due upon termination of the surety bail bond agent's contract and discharge of liabilities on the bonds for which the build-up funds were posted. The insurer or Managing General Agent shall pay the funds to the surety bail bond agent not later than six months after the funds are due.

TYPES OF SURETY BAIL BONDS

Personal Surety Bond:

With a Personal Surety Bond, the individual agrees to be answerable for his own debt, default or miscarriage; and, upon breach of a material condition of the bond, the individual is personally liable for the penal (monetary) amount of said bond.

A Personal Surety Bond is not secured by surety, deposit or lien on property only on the promise of the individual.

Corporate Surety Bond:

With a Corporate Surety Bond, a corporate surety and the individual (principal) agree to be answerable for the principal's debt, default or miscarriage; and, upon breach of a material condition of the bond, both the principal and surety are liable for the penal (monetary) amount of said bond.

A Corporate Surety Bond may be collected directly from the corporate surety.

Criminal Defendant Bonds:

Bail – (Surety, Ten Percent or Appearance)

This is a written undertaking, executed by the defendant or one or more sureties, that the defendant – designated in such instrument – will, while at liberty as a result of an order fixing bail and of the execution of a bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders and process of the court.

It is understood, that in the event he fails to appear, the signers of the bail bond will pay to the court the amount of money specified in the order fixing bail.

Appeal Bond (Criminal Cases) –

This is a written undertaking, executed by the defendant or one or more sureties, that the defendant designated in such instrument, remain free on bond pending review of the judicial action of the inferior court and staying the judgment rendered or action taken in that court by the appellate court.

Appeal Bond (Civil Cases) –

The bond given or taking an appeal by which the appellate and his sureties are bound to pay costs if he fails to prosecute the appeal with effect.

Habeas Corpus –

This is a written undertaking, entered into by the defendant and one or more sureties, that the defendant so designated in such instrument, be released from custody to remain free on bond pending review by the court of the defendant's Writ of Habeas Corpus.

Extradition –

This is a written undertaking entered into by the defendant and one or more sureties, that the defendant so designated in such instrument, be released from custody to remain free on bond pending the court's review of demand for extradition from another state or jurisdiction.

This applies for both intrastate and interstate extradition.

Property Bond –

This is a written undertaking, executed by the defendant or one of more sureties, i.e., private individuals, who own real estate and act without compensation, that the defendant designated in such instrument will, while at liberty as a result of the order fixing bail and of execution of a bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders and process of the court.

In the event that the defendant fails to appear in court, the penal (monetary) amount of the bond shall become a judgment lien against the pledged property and may be executed upon and the property sold to pay the penal amount to the court.

Non-Surety Bond –

This is the same as a "Personal Recognizance Bond" which is, in actuality, pre-trial release based upon the individual's personal promise to appear in court for trial.

This type of bail is where the defendant acknowledges personally, without sureties, his obligation to appear in court at the next hearing or trial date of his case.

Cash Bonds –

Ohio Revised Code says that "Cash Bonds" and "Surety Bonds" are the same thing.

There are two areas surrounding cash bonds:

1) Minor Misdemeanors – When a defendant is charged with a minor traffic violation or a misdemeanor in the Fourth Degree that, as a penalty, carries no jail time, he may post with the jail or at any authorized bonding station (Police Department) a cash deposit equal to the amount set forth in the court's schedule of bond amounts.

If the defendant elects not to appear in court and the cash deposit will be forfeited to pay his fine and costs.

2) Criminal Actions Other Than Minor Misdemeanors – This is a written undertaking, executed by the defendant and further secured by a deposit of cash in the penal (monetary) amount of the bond; that the defendant designated in such instrument will, while at liberty as a result of an order affixing bail, and of the execution of a bail bond in satisfaction thereof, appear at a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders or process of the court.

It the event that the defendant fails to appear in court, the cash deposited in the penal amount of the bond is forfeited and a *capias warrant* will be issued for his arrest.

Forfeiture of the Bond:

The Ohio Revised Code is very clear:

"If a prisoner admitted to bail fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate, by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he 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."

HOW BAIL BONDS ARE OBTAINED IN THE STATE OF OHIO

The Applicant and Contract:

Surety Bail Bond Agents must follow certain required procedures. As an agent writing surety bail bonds, they utilize specific pre-printed forms. While each insurer or surety may modify the specific language or format, these forms are counted as a "standard" of the bail bond industry.

The Application and Bail Bond Contract is a one-page form. The Application is on one side with the contract and its provisions on the reverse side. Both sides of the document are incorporated by specific references to each other.

It must always be remembered that THE APPLICATION IS THE MOST IMPORTANT TOOL THAT THE SURETY BAIL BOND AGENT POSSESSES IN THE UNDERWRITING of the risk and his assessment as to whether the client/defendant will comply with the conditions of release and appear in court as directed.

This form provides for the recording of detailed personal information, employment information, criminal and family information that not only allows the agent to make an informed decision as to whether to execute the surety bail bond, but also, to locate the client/defendant should he or she fail to apprear.

It is very important that the agent asks each and every question that appears on this form and clearly and concisely record the answer. When a question does not apply, for example, when the parents of the client/defendant are deceased, the agent should put a strike through the question to indicate that the question has been asked and answered.

The reverse of the document is the action bail bond contract. The standard contract is an Indemnity and Security Agreement. It is the agent's responsibility to make sure that the parties to the agreement, usually a client/defendant and at least one co-signer/indemnitor, understand the contract liability that they are assuming.

While the parties certainly can take the time to read the contract completely, they usually do not. Therefore, it is very important for the agent to give a brief and exact statement of the nature of the contract, which can easily be understood.

It is also important that you use the same basic statement for each and every transaction. You may well have to testify in a civil action to enforce the conditions of the bail bond contract, sometimes years after the bond was written. If you always use the same warning statement, e.g. "this is a standard bail bond agreement, you are responsible for any and all losses or expenses resulting from this bail bond," then you can testify with confidence as to what you told your clients.

Collateral Security:

It is lawful, accepted and approved practice of insurers who write Surety Bail Bonds to further indemnify themselves against any losses or expenses, resulting from the execution of a bail bond, by requiring collateral security.

In most cases, when the penal (monetary) amount is not large, the only security used is a co-signer/indemnitor. When the amount reaches a certain limit, the Surety requires real or personal property as collateral, from the client/defendant and/or the co-signer/indemnitor.

Some bail bond agents have abused the system of taking collateral. This abuse has caused strict regulatory and statutory controls. It is very important that the Surety Bail Bond Agent knows and understands these statutes. Violation can result in severe penalties. The statutory regulations are as follows:

A) A Surety Bail Bond Agent that accepts collateral security or other indemnity must comply with all the following requirements:

1) The collateral security or other indemnity must be reasonable in relation to the amount of the bond.

2) The collateral security or other indemnity must not be used by the Surety Bail Bond Agent for personal benefit or gain and must be returned in the same condition as received.

3) Acceptable forms of collateral security or indemnity include cash or its equivalent, a promissory note, an indemnity agreement or a real property mortgage in the name of the surety. If the Surety Bail Bond Agent accepts on a bond collateral security in excess of $50,000 in cash, the cash amount must be made payable to the Surety in the form of a cashier's check, US Postal Money Order, Certificate of Deposit or wire transfer.

4) The Surety Bail Bond Agent must provide to the person giving the collateral security or other indemnity, a written, numbered receipt that describes in a detailed manner the collateral security or other indemnity received, along with copies of any documents rendered.

5) The collateral security or other indemnity must be received and held in the Surety's name by the Surety Bail Bond Agent in an fiduciary capacity and, prior to any forfeiture of bail, shall be kept separate and apart from any other funds or assets of the Surety Bail Bond Agent. However, when collateral security in excess of $50,000 is cash or its equivalent is received on a bond, the Surety Bail Bond Agent promptly must forward the entire amount to the surety or Managing General Agent.

B) Collateral Security may be placed in an interest-bearing account in a federally insured bank or savings and loan association in this state, to accrue to the benefit of the person giving the collateral security. The Surety Bail Bond Agent, surety or Managing General Agent must not make any pecuniary gain on the collateral security deposited.

C) 1) The surety is liable for all collateral security or other indemnity accepted by a Surety Bail Bond Agent, if, upon final termination of liability on a bond, the Surety Bail Bond Agent or Managing General Agent fails to return the collateral security to the person that gave it, the surety shall return the actual collateral to that person, or, in the event that the surety cannot locate the collateral, shall pay the person in accordance with the Ohio Revised Code.

2) The surety's liability as described in the above paragraph survives the termination of the Surety Bail Bond Agent's appointment, with respect to those bonds that were executed by the Surety Bail Bond Agent prior to the termination of the appointment.

D) If forfeiture occurs, the Surety Bail Bond Agent or surety must give the principal and the person that gave the collateral security 10 days written notice of intent to convert the collateral deposit into cash to satisfy the forfeiture. The notice shall be sent by certified mail, return receipt requested, to the last known address of the principal and the person that gave the collateral.

The Surety Bail Bond Agent must convert the collateral deposit into cash within a reasonable period of time and return that which is in excess of the face value of the bond minus the actual and reasonable expenses of converting the collateral into cash. In no event must these expenses exceed 10% of the face value of the bond. However, upon motion and proof that the actual and reasonable expenses exceed 10%, the court may allow recovery of the full amount of the actual and reasonable expenses.

If there is a remission of forfeiture that required the surety to pay the bond to the court, the surety must pay to the person that gave the collateral the value of any collateral received for the bond minus the actual and reasonable expenses permitted to be recovered under the Ohio Revised Code.

E) A Surety Bail Bond Agent or surety must not solicit or accept a waiver of any of the provisions of the Ohio Revised Code, or enter into any agreement as to the value of the collateral.

Posting the Bond, Premium Rates and Expense Fees:

Once the necessary paperwork is completed, the agent is ready to post the bail bond. The Ohio Revised Code sets forth certain prerequisites that the agent must perform prior to the actual posting or execution of the bail bond:

A Surety Bail Bond Agent must not execute a bail bond without doing both of the following:

1) Charging the premium rate (10%) filed with and approved by the Superintendent of Insurance;

2) Disclosing the expense fee that will be charged to cover the costs incurred by the agent in executing the bond. (All expense fees collected must be itemized.)

Federal Privacy Notice:

Federal law now requires that certain classes of business, e.g., financial and insurance services, must give to each customer a written Privacy Notice setting forth the policy of the company. Furthermore, on July 1st of each year, you are required to mail a new Privacy Notice to all current customers (bonds that are still pending), even if the Policy Notice has not changed.

PROCEDURES OF THE COURT SYSTEM

Elements of the Legal Process:

There are three main types of court procedures.

The client/defendant may be required to make several appearances before the court. Those appearances may be for the following specific purposes:

Arraignment –

This is a procedure whereby the accused is brought before the court to plead to the criminal charge in the indictment or information.

Trial –

This is a judicial examination, in accordance with the law of the land, of a cause, either civil or criminal, or issues between the parties, whether of law or fact, before a court that has proper jurisdiction.

Appeal –

This is when a defendant resorts to a superior court to review the decision of an inferior court or administrative agency.

Release and its Conditions:

The specific acts required of the defendant or specific restrictions placed against the defendant by the court at the time bail is fixed, and, if not complied with, may result in the arrest of the defendant, revocation of the bail bond and/or forfeiture of the penal (monetary/face value) amount of the bail bond.

1) Prior to Trial – Acts or restrictions that the defendant must comply with to remain free on bond until his trial date.

a) Non-Capital Cases – Having been charged with a Non-Capital Offense, the defendant is not facing the possibility of life or the death penalty.

The acts and restrictions that the defendant must comply with to remain free on bond until his trial date must be strictly complied with in order for him to remain free on bond until his trail date.

b) Capital Cases – Having been charged with a Capital Offense, the defendant is facing the possibility of life or the death penalty. It is very rare that bail is granted in such a case.

When bail is granted, it is usually very restrictive and the acts of restriction placed on the defendant must be strictly complied with in order for him to remain free on bond until his trial date.

2) Pending Appeal – After the conviction of a defendant, the trial court may continue the pre-trial bail bond and release the defendant pending appeal.

The court may require an appeal bond once the formal appeal is filed. The court may amend or continue the same acts or restrictions upon the defendant and he must comply in order for him to remain free on bond pending the filing of his appeal or the adjudication of his appeal.

Failure to Appear:

This is when the defendant fails to present himself and appear at court when his attendance was required by said court. This is a breach of conditions of the bail bond.

Bail Revocation by the Court:

For any just cause and to the satisfaction of the court, the court may at any time, amend, annul, rescind or cancel its order granting bail to the defendant and order his immediate arrest and re-incarceration.

Release of Surety:

When all of the conditions of the bond have been satisfied, the surety is released from all liability.

This occurs when the principal is incarcerated.

This occurs in a misdemeanor case when the principal is found guilty or innocent of the charges.

EXONERATION OF THE BOND

Surrender of the Principal:

This is the action of the Surety Bail Bond Agent returning the principal client/defendant to the jurisdiction of the court where he had been released on bail. Making his appearance at court.

Discharge of the Surety:

Upon surrender of the Principal (client/defendant) by his surety, the condition of the bail bond having been satisfied, the liability of the surety is discharged and released.

Return of Premium:

It must be stressed that the act of the Surety Bail Bond Agent returning the principal client/defendant to the jurisdiction of the court does not, in itself, require a return of fee or premium.

The question as to whether the premium or fee is earned or unearned, is governed by the provisions of the Bail Bond Contract. If, however, a refund is due, it must be made in accordance to the insurance regulations pertaining to refunds as found in the Ohio Revised Code:

1) The Superintendent may suspend, revoke, or refuse to issue or renew any license as an agent, Surety Bail Bond Agent, surplus line broker, or limited insurance representative, or impose any other sanction authorized by law for failing to fulfill a refund obligation in a timely manner.

A refund is not fulfilled in a timely manner unless it is fulfilled within one of the following time periods:

a) 30 days after the date the policyholder, applicant or insurer takes action resulting in a refund.

b) 30 days after the date of the insurer's refund check, if the agent is expected to issue a portion of the total refund.

c) 45 days after the date of the agent's statement of account on which the refund first appears.

Return of Collateral:

According to the Ohio Revised Code:

A) If collateral security or other indemnity is accepted on a bond, the Surety Bail Bond Agent, Managing General Agent or surety must make, upon demand, a written request to the court for a discharge of the bond to be delivered to the surety or the surety's agent.

If the obligation of the surety on the bond is released in writing by the court and a discharge is provided to the surety or the surety's agent, the collateral security or other indemnity, except a promissory note or an indemnity agreement, shall be returned.

It must be returned within 21 days after the discharge is provided, to the person that gave the collateral security or other indemnity, unless another disposition is provided for by legal assignment of the right to receive collateral to another person.

If, despite diligent inquiry by the surety or the surety's agent to determine that the bond has been discharged, the court fails to provide a written discharge within 30 days after the written request was made to the court, the bond shall be considered cancelled by operation of law, and the collateral security or other indemnity, except a promissory note or an indemnity agreement, shall be returned, within 21 days after the written request for discharge was made to the court, to the person that gave the collateral security or other indemnity.

B) No fee or other charge, other than those authorized by the Ohio Revised Code or by rule of the Superintendent of Insurance, shall be deducted from the collateral due. However, allowable expenses incurred in the apprehension of a defendant because of forfeiture of bond or judgment may be deducted if those expenses are accounted for.

Again, collateral MUST BE returned to the person who gave it!

C) 1) No person shall fail to return collateral security in accordance with the Ohio Revised Code.

2) A violation of this shall be punishable as follows:

a) if the collateral is of a value of less than $500, a violation is a misdemeanor of the First Degree;

b) if the collateral is of a value of at least $500 but less than $5,000, a violation is a felony of the Fifth Degree;

c) if the collateral is of a value of at least $5,000 but less than $10,000, a violation is a felony of the Fourth Degree;

d) if the collateral is of value of $10,000 or more, a violation is a felony of the Third Degree.

Declaration of Forfeiture and Proceedings:

The Ohio Revised Code states:

"If a prisoner admitted to bail fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate, by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he 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."

"As to recognizances he shall notify the accused and each surety by ordinary mail at the address shown by them in their affidavits of qualification or on the forfeiture and to require each of them to show cause on or before a date certain to be stated in the notice, why judgment should not be entered against each of them for the penalty stated in the recognizance. If good cause by production of the body of the accused or otherwise is not shown, the court or magistrate shall thereupon enter judgment against the sureties, or either of them, so notified, in such amount, not exceeding the penalty of the bond, as had been set in the adjudication of forfeiture, and shall award execution therefore as in civil cases. The proceeds of sale shall be received by the clerk or magistrate and distributed as on forfeiture of cash bail."

Time Limits for Appeals:

As in all civil cases in the State of Ohio, the surety has 30 days from the date of judgment to file Notice of Appeal. The filing of the Notice of Appeal can, but does not necessarily stay or suspend, the execution of the judgment. The court may require that the surety post an appeal bond in order to stay execution of the judgment.

Ohio Laws on Apprehension:

The Ohio Revised Code states:

"After judgment has been rendered against the surety, the court or magistrate, on the appearance, surrender or re-arrest of the accused on the charge, may remit all or such portion of the penalty as it deems just."

Furthermore….

A) No person, other than a law enforcement officer, shall apprehend, detain or arrest a principal on bond, wherever issued, unless that person meets all of the following criteria:

1) The person is any of the following:

a) Qualified, licensed and appointed as a Surety Bail Bond Agent under the Ohio Revised Code;

b) Licensed as a Surety Bail Bond Agent by the state where the bond was written;

c) Licensed as a private investigator under ORC;

d) Licensed as a private investigator by the state where the bond was written;

e) An off-duty peace officer, as defined by the ORC.

2) The person, prior to apprehending, detaining or arresting the principal, has entered into a written contract with the surety or with a licensed Surety Bail Bond Agent appointed by the surety, which contracts sets forth the name of the principal who is to be apprehended, detained or arrested.

3) The person, prior to apprehending, detaining or arresting the principal, has notified the local law enforcement agency having jurisdiction over the area in which such activities will be performed and has provided any form of identification or other information requested by the law enforcement agency.

B) No person shall represent the person's self to be a "bail enforcement agent" or "bounty hunter" or claim any similar title in this state.

Violation of either section A or B is a misdemeanor of the First Degree, or, it the offender previously as been convicted of or pleaded guilty to 2 or more similar violations in that section, a felony of the Third Degree.

OHIO REVISED CODE
PRELIMINARY EXAMINATION

There are many sections of the "Criminal Code" Title 29 of the Ohio Revised Code that specifically apply to bail, the accused and procedures of Surety Bail Bond Agents. A study and understanding of these sections of Ohio Revised Code is essential in the Bail Bond profession.

§ 2937.02. Announcement of charge and rights of accused by court.

When, after arrest, the accused is taken before a court or magistrate, or when the accused appears pursuant to terms of summons or notice, the affidavit or complaint being first filed, the court or magistrate shall, before proceeding further:

(A) Inform the accused of the nature of the charge against him and the identity of the complainant and permit the accused or his counsel to see and read the affidavit or complaint or a copy thereof;

(B) Inform the accused of his right to have counsel and the right to a continuance in the proceedings to secure counsel;

(C) Inform the accused of the effect of pleas of guilty, not guilty, and no contest, of his right to trial by jury, and the necessity of making written demand therefore;

(D) If the charge be a felony, inform the accused of the nature and extent of possible punishment on conviction and of the right to preliminary hearing. Such information may be given to each accused individually or, if at any time there exists any substantial number of defendants to be arraigned at the same session, the judge or magistrate may, by general announcement or by distribution of printed matter, advise all those accused concerning those rights general in their nature, and informing as to individual matters at arraignment.

§ 2937.03. Arraignment; counsel; bail.

After the announcement, as provided by section 2937.02 of the Revised Code, the accused shall be arraigned by the magistrate, clerk, or prosecutor of the court reading the affidavit or complaint, or reading its substance, omitting purely formal parts, to the accused unless the reading of the affidavit or complaint is waived. The judge or magistrate shall then inquire of the accused whether the accused understands the nature of the charge. If the accused does not indicate understanding, the judge or magistrate shall give explanation in terms of the statute or ordinance claimed violated. If the accused is not represented by counsel and expresses a desire to consult with an attorney at law, the judge or magistrate shall continue the case for a reasonable time to allow the accused to send for or consult with counsel and shall set bail for the later appearance if the offense is bailable. If the accused is not able to make bail, bail is denied, or the offense is not bailable, the court or magistrate shall require the officer having custody of the accused immediately to take a message to any attorney at law within the municipal corporation where the accused is detained, or immediately to make available to the accused use of a telephone for calling to arrange for legal counsel or bail.

§ 2937.04. Motion for dismissal.

If accused does not desire counsel or, having engaged counsel, appears at the end of granted continuance, he may then raise, by motion to dismiss the affidavit or complaint, any exception thereto which could be asserted against an indictment or information by motion to quash, plea in abatement, or demurrer. Such motion may be made orally and ruled upon by the court or

magistrate at the time of presentation, with minute of motion and ruling made in the journal (if a court of record) or on the docket (if a court not of record) or such motion may be presented in writing and set down for argument at later time. Where the motion attacks a defect in the record by facts extrinsic thereto, proof may be offered by testimony or affidavit.

§ 2937.05. Discharge on motion to dismiss; amendment of complaint.

If the motion pursuant to section 2937.04 of the Revised Code be sustained, accused shall be discharged unless the court or magistrate finds that the defect can be corrected without changing the nature of the charge, in which case he may order the complaint amended or a proper affidavit filed forthwith and require the accused to plead thereto. The discharge of accused upon the sustaining of a motion to dismiss shall not be considered a bar to further prosecution either of felony or misdemeanor.

§ 2937.06. Pleas.

(A) After all motions are disposed of or if no motion is presented, the court or magistrate shall require the accused to plead to the charge.

(1) In cases of felony, only a plea of not guilty or a written plea of guilty shall be received and if the defendant declines to plead, a plea of not guilty shall be entered for the defendant and further proceedings had as set forth in sections 2937.09 to 2937.12 of the Revised Code.

(2) In cases of misdemeanor, the following pleas may be received:

(a) Guilty;

(b) Not guilty;

(c) No contest;

(d) Once in jeopardy, which includes the defenses of former conviction or former acquittal.

(B) Prior to accepting a plea of guilty or a plea of no contest under division (A) of this section, the court shall comply with sections 2943.031 [2943.03.1] and 2943.032 [2943.03.2] of the Revised Code.

(C) Entry of any plea pursuant to this section shall constitute a waiver of any objection that could be taken advantage of by motion pursuant to section 2937.04 of the Revised Code.

2937.07 Court action on pleas of "guilty" and "no contest" in misdemeanor cases.

If the offense is a misdemeanor and the accused pleads guilty to the offense, the court or magistrate shall receive and enter the plea unless the court or magistrate believes that it was made through fraud, collusion, or mistake. If the court or magistrate so believes, the court or magistrate shall enter a plea of not guilty and set the matter for trial pursuant to Chapter 2938. of

the Revised Code. Upon receiving a plea of guilty, the court or magistrate shall call for an explanation of the circumstances of the offense from the affiant or complainant or the affiant's or complainant's representatives. After hearing the explanation of circumstances, together with any statement of the accused, the court or magistrate shall proceed to pronounce the sentence or shall continue the matter for the purpose of imposing the sentence .

A plea to a misdemeanor offense of "no contest" or words of similar import shall constitute a stipulation that the judge or magistrate may make a finding of guilty or not guilty from the explanation of the circumstances of the offense. If a finding of guilty is made, the judge or magistrate shall impose the sentence or continue the case for sentencing accordingly. A plea of "no contest" or words of similar import shall not be construed as an admission of any fact at issue in the criminal charge in any subsequent civil or criminal action or proceeding.

§ 2937.08. Action on pleas of "not guilty" or "once in jeopardy" in misdemeanor cases.

Upon a plea of not guilty or a plea of once in jeopardy, if the charge be a misdemeanor in a court of record, the court shall proceed to set the matter for trial at a future time, pursuant to Chapter 2938. of the Revised Code, and shall let accused to bail pending such trial. Or he may, but only if both prosecutor and accused expressly consent, set the matter for trial forthwith.

Upon the entry of such pleas to a charge of misdemeanor in a court not of record, the magistrate shall forthwith set the matter for future trial or, with the consent of both state and defendant may set trial forthwith, both pursuant to Chapter 2938. of the Revised Code, provided that if the nature of the offense is such that right to jury trial exists, such matter shall not be tried before him unless the accused, by writing subscribed by him, waives a jury and consents to be tried by the magistrate.

If the defendant in such event does not waive right to jury trial, then the magistrate shall require the accused to enter into recognizance to appear before court of record in the county, set by such magistrate, and the magistrate shall thereupon certify all papers filed, together with transcript of proceedings and accrued costs to date, and such recognizance if given, to such designated court of record. Such transfer shall not require the filing of indictment or information and trial shall proceed in the transferee court pursuant to Chapter 2938 of the Revised Code.

§ 2937.09. Procedure in felony cases.

If the charge is a felony, the court or magistrate shall, before receiving a plea of guilty, advise the accused that such plea constitutes an admission which may be used against him at a later trial. If the defendant enters a written plea of guilty or, pleading not guilty, affirmatively waives the right to have the court or magistrate take evidence concerning the offense, the court or magistrate forthwith and without taking evidence may find that the crime has been committed and that there is probable and reasonable cause to hold the defendant for trial pursuant to indictment by the grand jury, and, if the offense is bailable, require the accused to enter into recognizance in such amount as it determines to appear before the court of common pleas pursuant to indictment, otherwise to be confined until the grand jury has considered and reported the matter.

§ 2937.10. Hearing set in felony cases.

If the charge be a felony and there be no written plea of guilty or waiver of examination, or the court or magistrate refuses to receive such waiver, the court or magistrate, with the consent of the prosecutor and the accused, may set the matter for hearing forthwith, otherwise he shall set the matter for hearing at a fixed time in the future and shall notify both prosecutor and defendant promptly of such time of hearing.

§ 2937.11. Presentation of state's case.

(A) (1) As used in this section, "victim" includes any person who was a victim of a felony violation identified in division (B) of this section or a felony offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a felony violation identified in division (B) of this section or a felony offense of violence.

(2) At the preliminary hearing set pursuant to section 2937.10 of the Revised Code and the Criminal Rules, the prosecutor may state, but is not required to state, orally the case for the state and shall then proceed to examine witnesses and introduce exhibits for the state. The accused and the magistrate have full right of cross examination, and the accused has the right of inspection of exhibits prior to their introduction. The hearing shall be conducted under the rules of evidence prevailing in criminal trials generally. On motion of either the state or the accused, witnesses shall be separated and not permitted in the hearing room except when called to testify.

(B) In a case involving an alleged felony violation of section 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.21, 2907.24, 2907.31, 2907.32, 2907.321 [2907.32.1], 2907.322 [2907.32.2], 2907.323 [2907.32.3], or 2919.22 of the Revised Code or an alleged felony offense of violence and in which an alleged victim of the alleged violation or offense was less than thirteen years of age when the complaint or information was filed, whichever occurred earlier, upon motion of the prosecution, the testimony of the child victim at the preliminary hearing may be taken in a room other than the room in which the preliminary hearing is being conducted and be televised, by closed circuit equipment, into the room in which the preliminary hearing is being conducted, in accordance with division (C) of section 2945.481 [2945.48.1] of the Revised Code.

(C) In a case involving an alleged felony violation listed in division (B) of this section or an alleged felony offense of violence and in which an alleged victim of the alleged violation or offense was less than thirteen years of age when the complaint or information was filed, whichever occurred earlier, the court, on written motion of the prosecutor in the case filed at least three days prior to the hearing, shall order that all testimony of the child victim be recorded and preserved on videotape, in addition to being recorded for purposes of the transcript of the proceeding. If such an order is issued, it shall specifically identify the child victim concerning whose testimony it pertains, apply only during the testimony of the child victim it specifically identifies, and apply to all testimony of the child victim presented at the hearing, regardless of whether the child victim is called as a witness by the prosecution or by the defense.

§ 2937.12. Motion for discharge; presentation on behalf of accused; finding of court.

(A) At the conclusion of the presentation of the state's case accused may move for discharge for failure of proof or may offer evidence on his own behalf. Prior to the offering of evidence on behalf of the accused, unless accused is then represented by counsel, the court or magistrate shall advise accused:

(1) That any testimony of witnesses offered by him in the proceeding may, if unfavorable in any particular, be used against him at later trial;

(2) That accused himself may make a statement, not under oath, regarding the charge, for the purpose of explaining the facts in evidence;

(3) That he may refuse to make any statement and such refusal may not be used against him at trials [trial];

(4) That any statement he makes may be used against him at trial.

(B) Upon conclusion of all the evidence and the statement, if any, of the accused, the court or magistrate shall either:

(1) Find that the crime alleged has been committed and that there is probable and reasonable cause to hold or recognize defendant to appear before the court of common pleas of the county or any other county in which venue appears, for trial pursuant to indictment by grand jury;

(2) Find that there is probable cause to hold or recognize defendant to appear before the court of common pleas for trial pursuant to indictment or information on such other charge, felony or misdemeanor, as the evidence indicates was committed by accused;

(3) Find that a misdemeanor was committed and there is probable cause to recognize accused to appear before himself or some other court inferior to the court of common pleas for trial upon such charge;

(4) Order the accused discharged from custody.

§ 2937.13. Basis for finding; no appeal; further prosecution.

In entering a finding, pursuant to section 2937.12 of the Revised Code, the court, while weighing credibility of witness, shall not be required to pass on the weight of the evidence and any finding requiring accused to stand trial on any charge shall be based solely on the presence of substantial credible evidence thereof. No appeal shall lie from such decision nor shall the discharge of defendant be a bar to further prosecution by indictment or otherwise.

§ 2937.14. Entry of reason for change in charge.

In any case in which accused is held or recognized to appear for trial on any charge other than the one on which he was arraigned the court or magistrate shall enter the reason for such charge on the journal of the court (if a court of record) or on the docket (if a court not of record) and

shall file with the papers in the case the text of the charge found by him to be sustained by the evidence.

§ 2937.15. Transcript of proceedings.

Upon the conclusion of the hearing and finding, the magistrate, or if a court of record, the clerk of such court, shall complete all notations of appearance, motions, pleas, and findings on the criminal docket of the court, and shall transmit a transcript of the appearance docket entries, together with a copy of the original complaint and affidavits, if any, filed with the complaint, the journal or docket entry of reason for changes in the charge, if any, together with the order setting bail and the bail deposit, if any, filed, and together with the videotaped testimony, if any, prepared in accordance with division (C) of section 2937.11 of the Revised Code, to the clerk of the court in which the accused is to appear. Such transcript shall contain an itemized account of the costs accrued.

§ 2937.16. When witnesses shall be recognized to appear.

When an accused enters into a recognizance or is committed in default thereof, the judge or magistrate shall require such witnesses against the prisoner as he finds necessary, to enter into a recognizance to appear and testify before the proper court at a proper time, and not depart from such court without leave. If the judge or magistrate finds it necessary he may require such witnesses to give sufficient surety to appear at such court.

§ 2937.17. Recognizance for minor.

A person may be liable in a recognizance for a minor to appear as a witness, or the judge or magistrate may take the minor's recognizance, in a sufficient sum, which is valid notwithstanding the disability of minority.

§ 2937.18. Refusal of witness to enter into a recognizance.

If a witness ordered to give recognizance fails to comply with such order, the judge or magistrate shall commit him to such custody or open or close detention as may be appropriate under the circumstances, until he complies with the order or is discharged. Commitment of the witness may be to the custody of any suitable person or public or private agency, or to an appropriate detention facility other than a jail, or to a jail, but the witness shall not be confined in association with prisoners charged with or convicted of crime. The witness, in lieu of the fee ordinarily allowed witnesses, shall be allowed twenty-five dollars for each day of custody or detention under such order, and shall be allowed mileage as provided for other witnesses, calculated on the distance from his home to the place of giving testimony and return. All proceedings in the case or cases in which the witness is held to appear shall be given priority over other cases and had with all due speed.

§ 2937.19. Subpoena of witnesses or documents.

The magistrate or judge or clerk of the court in which proceedings are being had may issue subpoenas or other process to bring witnesses or documents before the magistrate or court in hearings pending before him either under Chapter 2937. or 2938. of the Revised Code.

In complaints to keep the peace a subpoena must be served within the county, or, in cases of misdemeanors and ordinance offenses, it may be served at any place in this state within one hundred miles of the place where the court or magistrate is scheduled to sit; in felony cases it may be served at any place within this state. In cases where such process is to be served outside the county, it may be issued to be served either by the bailiff or constable of the court or by a sheriff or police officer either by the county in which the court or magistrate sits or in which process is to be served.

§ 2937.21. Continuance.

No continuance at any stage of the proceeding, including that for determination of a motion, shall extend for more than ten days unless both the state and the accused consent thereto. Any continuance or delay in ruling contrary to the provisions of this section shall, unless procured by defendant or his counsel, be grounds for discharge of the defendant forthwith.

OHIO REVISED CODE
BAIL AND RECOGNIZANCE

§ 2937.22 Form of bail.

(A) Bail is security for the appearance of an accused to appear and answer to a specific criminal or quasi-criminal charge in any court or before any magistrate at a specific time or at any time to which a case may be continued, and not depart without leave. It may take any of the following forms:

(1) The deposit of cash by the accused or by some other person for the accused;

(2) The deposit by the accused or by some other person for the accused in form of bonds of the United States, this state, or any political subdivision thereof in a face amount equal to the sum set by the court or magistrate. In case of bonds not negotiable by delivery such bonds shall be properly endorsed for transfer.

(3) The written undertaking by one or more persons to forfeit the sum of money set by the court or magistrate, if the accused is in default for appearance, which shall be known as a recognizance.

(B)Whenever a person is charged with any offense other than a traffic offense that is not a moving violation and posts bail, the person shall pay a surcharge of twenty-five dollars. The clerk of the court shall retain the twenty-five dollars until the person is convicted, pleads guilty, forfeits bail, is found not guilty, or has the charges dismissed. If the person is convicted, pleads guilty, or forfeits bail, the clerk shall transmit the twenty-five dollars on or before the twentieth day of the month following the month in which the person was convicted, pleaded guilty, or

forfeited bail to the treasurer of state, and the treasurer of state shall deposit it into the indigent defense support fund created under section 120.08 of the Revised Code. If the person is found not guilty or the charges are dismissed, the clerk shall return the twenty-five dollars to the person.

(C)All bail shall be received by the clerk of the court, deputy clerk of court, or by the magistrate, or by a special referee appointed by the supreme court pursuant to section 2937.46 of the Revised Code, and, except in cases of recognizances, receipt shall be given therefor .

(D)As used in this section, "moving violation" has the same meaning as in section 2743.70 of the Revised Code

§ 2937.221 Deposit of driver's license as bond.

(A) A person arrested without warrant for any violation listed in division (B) of this section, and having a current valid Ohio driver's or commercial driver's license, if the person has been notified of the possible consequences of the person's actions as required by division (C) of this section, may post bond by depositing the license with the arresting officer if the officer and person so choose, or with the local court having jurisdiction if the court and person so choose. The license may be used as bond only during the period for which it is valid.

When an arresting officer accepts the driver's or commercial driver's license as bond, the officer shall note the date, time, and place of the court appearance on "the violator's notice to appear," and the notice shall serve as a valid Ohio driver's or commercial driver's license until the date and time appearing thereon. The arresting officer immediately shall forward the license to the appropriate court.

When a local court accepts the license as bond or continues the case to another date and time, it shall provide the person with a card in a form approved by the registrar of motor vehicles setting forth the license number, name, address, the date and time of the court appearance, and a statement that the license is being held as bond. The card shall serve as a valid license until the date and time contained in the card.

The court may accept other bond at any time and return the license to the person. The court shall return the license to the person when judgment is satisfied, including, but not limited to, compliance with any court orders, unless a suspension or cancellation is part of the penalty imposed.

Neither "the violator's notice to appear" nor a court- granted card shall continue driving privileges beyond the expiration date of the license.

If the person arrested fails to appear in court at the date and time set by the court or fails to satisfy the judgment of the court, including, but not limited to, compliance with all court orders within the time allowed by the court, the court may declare the forfeiture of the person's license . Thirty days after the declaration of the forfeiture, the court shall forward the person's license to the registrar. The court also shall enter information relative to the forfeiture on a form approved

and furnished by the registrar and send the form to the registrar. The registrar shall suspend the person's license and send written notification of the suspension to the person at the person's last known address. No valid driver's or commercial driver's license shall be granted to the person until the court having jurisdiction orders that the forfeiture be terminated. The court shall inform the registrar of the termination of the forfeiture by entering information relative to the termination on a form approved and furnished by the registrar and sending the form to the registrar. Upon the termination , the person shall pay to the bureau of motor vehicles a reinstatement fee of fifteen dollars to cover the costs of the bureau in administering this section. The registrar shall deposit the fees so paid into the state bureau of motor vehicles fund created by section 4501.25 of the Revised Code.

In addition, upon receipt from the court of the copy of the declaration of forfeiture, neither the registrar nor any deputy registrar shall accept any application for the registration or transfer of registration of any motor vehicle owned by or leased in the name of the person named in the declaration of forfeiture until the court having jurisdiction over the offense that led to the suspension issues an order terminating the forfeiture. However, for a motor vehicle leased in the name of a person named in a declaration of forfeiture, the registrar shall not implement the preceding sentence until the registrar adopts procedures for that implementation under section 4503.39 of the Revised Code. Upon receipt by the registrar of such an order , the registrar also shall take the measures necessary to permit the person to register a motor vehicle the person owns or leases or to transfer the registration of a motor vehicle the person owns or leases if the person later makes a proper application and otherwise is eligible to be issued or to transfer a motor vehicle registration.

(B) Division (A) of this section applies to persons arrested for violation of:

(1) Any of the provisions of Chapter 4511. or 4513. of the Revised Code, except sections 4511.19, 4511.20, 4511.251, and 4513.36 of the Revised Code;

(2) Any municipal ordinance substantially similar to a section included in division (B)(1) of this section;

(3) Any bylaw, rule, or regulation of the Ohio turnpike commission substantially similar to a section included in division (B)(1) of this section.

Division (A) of this section does not apply to those persons issued a citation for the commission of a minor misdemeanor under section 2935.26 of the Revised Code.

(C) No license shall be accepted as bond by an arresting officer or by a court under this section until the officer or court has notified the person that, if the person deposits the license with the officer or court and either does not appear on the date and at the time set by the officer or the court, if the court sets a time, or does not satisfy any judgment rendered, including, but not limited to, compliance with all court orders, the license will be suspended, and the person will not be eligible for reissuance of the license or issuance of a new license, or the issuance of a certificate of registration for a motor vehicle owned or leased by the person until the person

appears and complies with any order issued by the court. The person also is subject to any criminal penalties that may apply to the person.

(D) The registrar shall not restore the person's driving or vehicle registration privileges until the person pays the reinstatement fee as provided in this section.

§ 2937.222 Hearing on bail - grounds for denying.

(A) On the motion of the prosecuting attorney or on the judge's own motion, the judge shall hold a hearing to determine whether an accused person charged with aggravated murder when it is not a capital offense, murder, a felony of the first or second degree, a violation of section 2903.06 of the Revised Code, a violation of section 2903.211 of the Revised Code that is a felony, or a felony OVI offense shall be denied bail. The judge shall order that the accused be detained until the conclusion of the hearing. Except for good cause, a continuance on the motion of the state shall not exceed three court days. Except for good cause, a continuance on the motion of the accused shall not exceed five court days unless the motion of the accused waives in writing the five-day limit and states in writing a specific period for which the accused requests a continuance. A continuance granted upon a motion of the accused that waives in writing the five-day limit shall not exceed five court days after the period of continuance requested in the motion.

At the hearing, the accused has the right to be represented by counsel and, if the accused is indigent, to have counsel appointed. The judge shall afford the accused an opportunity to testify, to present witnesses and other information, and to cross-examine witnesses who appear at the hearing. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. Regardless of whether the hearing is being held on the motion of the prosecuting attorney or on the court's own motion, the state has the burden of proving that the proof is evident or the presumption great that the accused committed the offense with which the accused is charged, of proving that the accused poses a substantial risk of serious physical harm to any person or to the community, and of proving that no release conditions will reasonably assure the safety of that person and the community.

The judge may reopen the hearing at any time before trial if the judge finds that information exists that was not known to the movant at the time of the hearing and that that information has a material bearing on whether bail should be denied. If a municipal court or county court enters an order denying bail, a judge of the court of common pleas having jurisdiction over the case may continue that order or may hold a hearing pursuant to this section to determine whether to continue that order.

(B) No accused person shall be denied bail pursuant to this section unless the judge finds by clear and convincing evidence that the proof is evident or the presumption great that the accused committed the offense described in division (A) of this section with which the accused is charged, finds by clear and convincing evidence that the accused poses a substantial risk of serious physical harm to any person or to the community, and finds by clear and convincing evidence that no release conditions will reasonably assure the safety of that person and the community.

(C) The judge, in determining whether the accused person described in division (A) of this section poses a substantial risk of serious physical harm to any person or to the community and whether there are conditions of release that will reasonably assure the safety of that person and the community, shall consider all available information regarding all of the following:

(1) The nature and circumstances of the offense charged, including whether the offense is an offense of violence or involves alcohol or a drug of abuse;

(2) The weight of the evidence against the accused;

(3) The history and characteristics of the accused, including, but not limited to, both of the following:

(a) The character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, and criminal history of the accused;

(b) Whether, at the time of the current alleged offense or at the time of the arrest of the accused, the accused was on probation, parole, post-release control, or other release pending trial, sentencing, appeal, or completion of sentence for the commission of an offense under the laws of this state, another state, or the United States or under a municipal ordinance.

(4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

(D)(1) An order of the court of common pleas denying bail pursuant to this section is a final appealable order. In an appeal pursuant to division (D) of this section, the court of appeals shall do all of the following:

(a) Give the appeal priority on its calendar;

(b) Liberally modify or dispense with formal requirements in the interest of a speedy and just resolution of the appeal;

(c) Decide the appeal expeditiously;

(d) Promptly enter its judgment affirming or reversing the order denying bail.

(2) The pendency of an appeal under this section does not deprive the court of common pleas of jurisdiction to conduct further proceedings in the case or to further consider the order denying bail in accordance with this section. If, during the pendency of an appeal under division (D) of this section, the court of common pleas sets aside or terminates the order denying bail, the court of appeals shall dismiss the appeal.

(E) As used in this section:

(1) “Court day” has the same meaning as in section 5122.01 of the Revised Code.

(2) “Felony OVI offense” means a third degree felony OVI offense and a fourth degree felony OVI offense.

(3) “Fourth degree felony OVI offense” and “third degree felony OVI offense” have the same meanings as in section 2929.01 of the Revised Code.

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§ 2937.23 Bail amount.

(A)(1) In a case involving a felony or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code when the victim of the offense is a peace officer, the judge or magistrate shall fix the amount of bail.

(2) In a case involving a misdemeanor or a violation of a municipal ordinance and not involving a felony or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code when the victim of the offense is a peace officer, the judge, magistrate, or clerk of the court may fix the amount of bail and may do so in accordance with a schedule previously fixed by the judge or magistrate. If the judge, magistrate, or clerk of the court is not readily available, the sheriff, deputy sheriff, marshal, deputy marshal, police officer, or jailer having custody of the person charged may fix the amount of bail in accordance with a schedule previously fixed by the judge or magistrate and shall take the bail only in the county courthouse, the municipal or township building, or the county or municipal jail.

(3) In all cases, the bail shall be fixed with consideration of the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of the defendant appearing at the trial of the case.

(B) In any case involving an alleged violation of section 2903.211 of the Revised Code or of a municipal ordinance that is substantially similar to that section, the court shall determine whether it will order an evaluation of the mental condition of the defendant pursuant to section 2919.271 of the Revised Code and, if it decides to so order, shall issue the order requiring the evaluation before it sets bail for the person charged with the violation. In any case involving an alleged violation of section 2919.27 of the Revised Code or of a municipal ordinance that is substantially similar to that section and in which the court finds that either of the following criteria applies, the court shall determine whether it will order an evaluation of the mental condition of the defendant pursuant to section 2919.271 of the Revised Code and, if it decides to so order, shall issue the order requiring that evaluation before it sets bail for the person charged with the violation:

(1) Regarding an alleged violation of a protection order issued or consent agreement approved pursuant to section 2919.26 or 3113.31 of the Revised Code, that the violation allegedly involves conduct by the defendant that caused physical harm to the person or property of a family or household member covered by the order or agreement or conduct by that defendant that caused a family or household member to believe that the defendant would cause physical harm to that member or that member’s property;

(2) Regarding an alleged violation of a protection order issued pursuant to section 2903.213 or 2903.214 of the Revised Code, or a protection order issued by a court of another state, as defined in section 2919.27 of the Revised Code, that the violation allegedly involves conduct by the defendant that caused physical harm to the person or property of the person covered by the order or conduct by that defendant that caused the person covered by the order to believe that the defendant would cause physical harm to that person or that person's property.

(C) As used in this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code

§ 2937.24. Oath to surety; form of affidavit.

When a recognizance is offered under section 2937.22 of the Revised Code, the surety on which recognizance qualifies as a real property owner, the judge or magistrate shall require such surety to pledge to this state real property owned by the surety and located in this state. Whenever such pledge of real property has been given by any such proposed surety, he shall execute the usual form of recognizance, and in addition thereto there shall be filed his affidavit of justification of suretyship, to be attached to said recognizance as a part thereof. The surety may be required in such affidavit to depose as to whether he is, at the time of executing the same, surety upon any other recognizance and as to whether there are any unsatisfied judgments or executions against him. He may also be required to state any other fact which the court thinks relevant and material to a correct determination of the surety's sufficiency to act as bail. Such surety shall state in such affidavit where notices under section 2937.38 of the Revised Code may be served on himself, and service of notice of summons at such place is sufficient service for all purposes.

Such affidavit shall be executed by the proposed surety under an oath and may be in the following form:

"State of Ohio, County of ....., ss:

..... residing at ..... , who offers himself as surety for ..... being first duly sworn, says that he owns in his own legal right, real property subject to execution, located in the county of ..... , State of Ohio, consisting of ..... and described as follows to wit: ..... ; that the title to the same is in his own name; that the value of the same is not less than ..... dollars, and is subject to no encumbrances whatever except ..... ; that he is not surety upon any unpaid or forfeited recognizance, and that he is not a party to any unsatisfied judgment upon any recognizance; that he is worth not less than ..... dollars over and above all debts, liabilities, and lawful claims against him, and all liens, encumbrances, and lawful claims against his property."

§ 2937.25. Lien; form.

Upon the execution of any recognizance in an amount in excess of two hundred dollars in the usual form, and an affidavit of justification under section 2937.24 of the Revised Code, there shall attach to the real property described in said affidavit of justification, a lien in favor of this state in the penal sum of the recognizance, which lien shall remain in full force and effect during

such time as such recognizance remains effective, or until further order of the court. Upon the acceptance by the judge or magistrate of such recognizance, containing such affidavit of justification, the said recognizance shall be immediately filed with the clerk of said court, if there is a clerk, or with the magistrate. The clerk of the court or the magistrate shall forthwith, upon the filing with him of such recognizance, file with the county recorder of the county in which such real property is located, a notice or lien, in writing, in substance as follows:

From the time of the filing and recording of such notice it is notice to everyone that the real property therein described has been pledged to this state as security for the performance of the conditions of a criminal recognizance in the penal sum set forth in said recognizance and notice. Such lien does not affect the validity of prior liens on said property.

§ 2937.26. Cancellation of lien; form.

Whenever, by the order of a court, a recognizance under sections 2937.24 and 2937.25 of the Revised Code has been canceled, discharged, or set aside, or the cause in which such recognizance is taken has been dismissed or otherwise terminated the clerk of such court shall forthwith file with the county recorder of the county in which the real property is located, a notice of discharge in writing, in substance as follows:

"To whom it may concern:

Take notice that by the order of the court of ..... (naming court) ..... of the county (or city) of ....., the recognizance of ..... as principal, and ..... as surety, given in the cause of the State of Ohio, plaintiff, versus ....., defendant, known and identified as Cause No ..... in said court, is canceled, discharged, and set aside, and the lien of the State of Ohio on the real property therein pledged as security, is hereby waived, discharged, and set aside.

..... Clerk of the court.

Dated ....."

§ 2937.27. Duties of county recorder.

The county recorder of the county in which the property of a surety on a recognizance is located, shall keep and file all notices of lien and notices of discharge which are filed with him pursuant to section 2937.26 of the Revised Code, and shall keep in addition thereto, a book or record in which he shall index notice of liens and notice of discharges, as they are filed with him. When a lien has been released or discharged for a period of one year, the county recorder may destroy all notices of such lien.

§ 2937.28. Transmission of recognizance.

All recognizances shall be returnable to and all deposits shall be held by or subject to the order of the court or magistrate before whom the accused is to appear initially, and upon the transfer of

the case to any other court or magistrate shall be returnable to and transmitted to the transferee court or magistrate.

It is not necessary for the accused to give new recognizance for appearance in common pleas court for arraignment upon indictment or pending appeal after judgment and sentence, unless the magistrate or judge of the trial court or the court to which appeal is taken, shall, for good cause shown, increase or decrease the amount of the recognizance, but such recognizance shall continue and be in full force until trial and appeal there from is finally determined. When two or more charges are filed, or indictments returned, against the same person at or about the same time, the recognizance given may be made to include all offenses charged against the accused.

§ 2937.281. Requirements of recognizance.

In cases of felony, the recognizance shall be signed by the accused and one or more adult residents of the county in which the case is pending, who shall own, in the aggregate, real property double the amount set as bail, over and above all encumbrances and liable to execution in at least that amount; or it may be signed by the accused and a surety company authorized to do business in this state.

In cases of misdemeanor, the recognizance may be signed by the accused and one or more adult residents, qualified as set forth above or as to personal property ownership, by the accused and surety company, or, if authorized by judge or magistrate, by the accused alone. In cases of misdemeanors arising under Chapters 4501., 4503., 4505., 4507., 4509., 4511., 4513., 4517., and 4549. of the Revised Code, and related ordinance offenses (except those of driving under the influence of intoxicating liquor or controlled substances and leaving the scene of an accident) the court or magistrate shall accept guaranteed arrest bond with respect to which a surety company has become surety as provided in section 3929.141 [3929.14.1] of the Revised Code in lieu of cash bail in an amount not to exceed two hundred dollars.

§ 2937.29. Release on own recognizance.

When from all the circumstances the court is of the opinion that the accused will appear as required, either before or after conviction, the accused may be released on his own recognizance. A failure to appear as required by such recognizance shall constitute an offense subject to the penalty provided in section 2937.99 of the Revised Code.

§ 2937.30. Recognizance when accused discharged.

When a defendant is discharged by the trial court otherwise than on a verdict or finding of acquittal, or when the appellate court reverses a conviction and orders the discharge of the defendant and the state or municipality signifies its intention to appeal therefrom, or the record is certified to the supreme court, the defendant shall not be discharged if he is in jail, nor the surety discharged or deposit released if the defendant is on bail, but the trial court, or the court to which appeal is taken may make order for his release on his own recognizance or bail, or recommit him.

§ 2937.31. Recognizance or deposit for appearance of accused.

If an accused is held to answer and offers sufficient bail, a recognizance or deposit shall be taken for his appearance to answer the charge before such magistrate or before such court to which proceedings may be transferred pursuant to Chapter 2937. of the Revised Code, at a date certain, or from day to day, or in case of the common pleas court on the first day of the next term thereof, and not depart without leave.

§ 2937.32. Detention where bail not granted.

If an offense is not bailable, if the court denies bail to the accused, or if the accused does not offer sufficient bail, the court shall order the accused to be detained.

§ 2937.33. Receipt of recognizance.

When a transcript or [of] recognizance is received by the clerk of the court of common pleas, or of any court of record to which proceedings are transferred, he shall enter the same upon the appearance docket of the court, with the date of the filing of such transcript or recognizance, the date and amount of the recognizance, the names of the sureties, and the costs. Such recognizance is then of record in such court, and is proceeded on by process issuing there from, in a like manner as if it had been entered into before such court. When a court having recognizance of an offense takes a recognizance, it is a sufficient record thereof to enter upon the journal of such court the title of the case, the crime charged, the names of the sureties, the amount of the recognizance, and the time therein required for the appearance of the accused. In making the complete record, when required to be made, recognizances whether returned to or taken in such court shall be recorded in full, if required by the prosecutor or the accused.

§ 2937.34. Accused unlawfully detained; examining court to be held.

When a person is committed to jail, charged with an offense for which he has not been indicted, and claims to be unlawfully detained, the sheriff on demand of the accused or his counsel shall forthwith notify the court of common pleas, and the prosecuting attorney, to attend an examining court, the time of which shall be fixed by the judge. The judge shall hear said cause or complaint, examine the witnesses, and make such order as the justice of the case requires, and for such purpose the court may admit to bail, release without bond, or recommit to jail in accordance with the commitment. In the absence of the judge of the court of common pleas, the probate judge shall hold such examining court.

§ 2937.35. Forfeit of bail.

Upon the failure of the accused or witness to appear in accordance with its terms the bail may in open court be adjudged forfeit, in whole or in part by the court or magistrate before whom he is to appear. But such court or magistrate may, in its discretion, continue the cause to a later date certain, giving notice of such date to him and the bail depositor or sureties, and adjudge the bail forfeit upon failure to appear at such later date.

§ 2937.36. Forfeiture proceedings.

Upon declaration of forfeiture, the magistrate or clerk of the court adjudging forfeiture shall proceed as follows:

(A) As to each bail, he shall proceed forthwith to deal with the sum deposited as if the same were imposed as a fine for the offense charged and distribute and account for the same accordingly provided that prior to so doing, he may satisfy accrued costs in the case out of the fund.

(B) As to any securities deposited, he shall proceed to sell the same, either at public sale advertised in the same manner as sale on chattel execution, or through any state or national bank performing such service upon the over the counter securities market and shall apply proceeds of sale, less costs or brokerage thereof as in cases of forfeited cash bail. Prior to such sale, the clerk shall give notices by ordinary mail to the depositor, at his address listed of record, if any, of his intention so to do, and such sale shall not proceed if the depositor, within ten days of mailing of such notice appears, and redeems said securities by either producing the body of the defendant in open court or posting the amount set in the recognizance in cash, to be dealt with as forfeited cash bail.

(C) As to recognizances he shall notify accused and each surety by ordinary mail at the address shown by them in their affidavits of qualification or on the record of the case, of the default of the accused and the adjudication of forfeiture and require each of them to show cause on or before a date certain to be stated in the notice, and which shall be not less than twenty nor more than thirty days from date of mailing notice, why judgment should not be entered against each of them for the penalty stated in the recognizance. If good cause by production of the body of the accused or otherwise is not shown, the court or magistrate shall thereupon enter judgment against the sureties or either of them, so notified, in such amount, not exceeding the penalty of the bond, as has been set in the adjudication of forfeiture, and shall award execution therefor as in civil cases. The proceeds of sale shall be received by the clerk or magistrate and distributed as on forfeiture of cash bail.

§ 2937.37. Levy on property in judgment against surety.

A magistrate or court of record inferior to the court of common pleas may proceed to judgment against a surety on a recognizance, and levy on his personal property, notwithstanding that the bond may exceed the monetary limitations on the jurisdiction of such court in civil cases, and jurisdiction over the person of surety shall attach from the mailing of the notice specified in section 2937.36 of the Revised Code, notwithstanding that such surety may not be within the territorial jurisdiction of the court; but levy on real property shall be made only through issuance, return, and levy made under certificate of judgment issued to the clerk of the court of common pleas pursuant to section 2329.02 of the Revised Code.

§ 2937.38. Minority no defense in forfeiture proceedings.

In any matter in which a minor is admitted to bail pursuant to Chapter 2937 of the Revised Code, the minority of the accused shall not be available as a defense to judgment against principal or surety, or against the sale of securities or transfer of cash bail, upon forfeiture

§ 2937.39. Remission of penalty.

After judgment has been rendered against surety or after securities sold or cash bail applied, the court or magistrate, on the appearance, surrender, or rearrest of the accused on the charge, may remit all or such portion of the penalty as it deems just and in the case of previous application and transfer of cash or proceeds, the magistrate or clerk may deduct an amount equal to the amount so transferred from subsequent payments to the agencies receiving such proceeds of forfeiture until the amount is recouped for the benefit of the person or persons entitled thereto under order or remission.

§ 2937.40. Release of bail and sureties.

(A) Bail of any type that is deposited under sections 2937.22 to 2937.45 of the Revised Code or Criminal Rule 46 by a person other than the accused shall be discharged and released, and sureties on recognizances shall be released, in any of the following ways:

(1) When a surety on a recognizance or the depositor of cash or securities as bail for an accused desires to surrender the accused before the appearance date, the surety is discharged from further responsibility or the deposit is redeemed in either of the following ways:

(a) By delivery of the accused into open court;

(b) When, on the written request of the surety or depositor, the clerk of the court to which recognizance is returnable or in which deposit is made issues to the sheriff a warrant for the arrest of the accused and the sheriff indicates on the return that he holds the accused in his jail.

(2) By appearance of the accused in accordance with the terms of the recognizance or deposit and the entry of judgment by the court or magistrate;

(3) By payment into court, after default, of the sum fixed in the recognizance or the sum fixed in the order of forfeiture, if it is less.

(B) When cash or securities have been deposited as bail by a person other than the accused and the bail is discharged and released pursuant to division (A) of this section, or when property has been pledged by a surety on recognizance and the surety on recognizance has been released pursuant to division (A) of this section, the court shall not deduct any amount from the cash or securities or declare forfeited and levy or execute against pledged property. The court shall not apply any of the deposited cash or securities toward, or declare forfeited and levy or execute against property pledged for a recognizance for, the satisfaction of any penalty or fine, and court costs, assessed against the accused upon his conviction or guilty plea, except upon express approval of the person who deposited the cash or securities or the surety.

(C) Bail of any type that is deposited under sections 2937.22 to 2937.45 of the Revised Code or Criminal Rule 46 by an accused shall be discharged and released to the accused, and property pledged by an accused for a recognizance shall be discharged, upon the appearance of the accused in accordance with the terms of the recognizance or deposit and the entry of judgment by the court or magistrate, except that, if the defendant is not indigent, the court may apply deposited bail toward the satisfaction of a penalty or fine, and court costs, assessed against the accused upon his conviction or guilty plea, and may declare forfeited and levy or execute against pledged property for the satisfaction of a penalty or fine, and court costs, assessed against the accused upon his conviction or guilty plea.

(D) Notwithstanding any other provision of this section, an Ohio driver's or commercial driver's license that is deposited as bond may be forfeited and otherwise handled as provided in section 2937.221 [2937.22.1] of the Revised Code.

§ 2937.41. Return of bail; notice of discharge of recognizance.

On the discharge of bail, the magistrate or clerk of the court shall return, subject to division (B) or (C) of section 2937.40 of the Revised Code, deposited cash or securities to the depositor, but the magistrate or clerk of the court may require presentation of an issued original receipt as a condition to the return. In the case of discharged recognizances, subject to division (B) or (C) of section 2937.40 of the Revised Code, the magistrate or clerk of the court shall endorse the satisfaction on the recognizance and shall forthwith transmit to the county recorder the notice of discharge provided for in section 2937.26 of the Revised Code.

§ 2937.42. Defect in form of recognizance.

Forfeiture of a recognizance shall not be barred or defeated or a judgment thereon reversed by the neglect or omission to note or record the default, or by a defect in the form of such recognizance, if it appears from the tenor thereof at what court the party or witness was bound to appear and that the court or officer before whom it was taken was authorized to require and take such recognizance.

§ 2937.43. Failure to appear; issuance of warrant.

Should the accused fail to appear as required, after having been released pursuant to section 2937.29 of the Revised Code, the court having jurisdiction at the time of such failure may, in addition to any other action provided by law, issue a warrant for the arrest of such accused.

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It is mandatory for the Surety Bail Bond Agent to be knowledgeable and have an understanding of the various laws, terms and options that are available in these determinations.

§ 2929.01 Penalties and sentencing general definitions.

As used in this chapter:

(A)(1) "Alternative residential facility" means, subject to division (A)(2) of this section, any facility other than an offender's home or residence in which an offender is assigned to live and that satisfies all of the following criteria:

(a) It provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation.

(b) It has received the appropriate license or certificate for any specialized education, training, treatment, habilitation, or other service that it provides from the government agency that is responsible for licensing or certifying that type of education, training, treatment, habilitation, or service.

(2) "Alternative residential facility" does not include a community-based correctional facility, jail, halfway house, or prison.

(B) "Basic probation supervision" means a requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court or imposed by the parole board pursuant to section 2967.28 of the Revised Code. "Basic probation supervision" includes basic parole supervision and basic post-release control supervision.

(C) "Cocaine," "crack cocaine," "hashish," "L.S.D.," and "unit dose" have the same meanings as in section 2925.01 of the Revised Code.

(D) "Community-based correctional facility" means a community-based correctional facility and program or district community-based correctional facility and program developed pursuant to sections 2301.51 to 2301.58 of the Revised Code.

(E) "Community control sanction" means a sanction that is not a prison term and that is described in section 2929.15, 2929.16, 2929.17, or 2929.18 of the Revised Code or a sanction that is not a jail term and that is described in section 2929.26, 2929.27, or 2929.28 of the Revised Code. "Community control sanction" includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004.

(F) "Controlled substance," "marihuana," "schedule I," and "schedule II" have the same meanings as in section 3719.01 of the Revised Code.

(G) "Curfew" means a requirement that an offender during a specified period of time be at a designated place.

(H) "Day reporting" means a sanction pursuant to which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.

(I) “Deadly weapon” has the same meaning as in section 2923.11 of the Revised Code.

(J) “Drug and alcohol use monitoring” means a program under which an offender agrees to submit to random chemical analysis of the offender’s blood, breath, or urine to determine whether the offender has ingested any alcohol or other drugs.

(K) “Drug treatment program” means any program under which a person undergoes assessment and treatment designed to reduce or completely eliminate the person’s physical or emotional reliance upon alcohol, another drug, or alcohol and another drug and under which the person may be required to receive assessment and treatment on an outpatient basis or may be required to reside at a facility other than the person’s home or residence while undergoing assessment and treatment.

(L) “Economic loss” means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the offense. “Economic loss” does not include non-economic loss or any punitive or exemplary damages.

(M) “Education or training” includes study at, or in conjunction with a program offered by, a university, college, or technical college or vocational study and also includes the completion of primary school, secondary school, and literacy curricula or their equivalent.

(N) “Firearm” has the same meaning as in section 2923.11 of the Revised Code.

(O) “Halfway house” means a facility licensed by the division of parole and community services of the department of rehabilitation and correction pursuant to section 2967.14 of the Revised Code as a suitable facility for the care and treatment of adult offenders.

(P) “House arrest” means a period of confinement of an offender that is in the offender’s home or in other premises specified by the sentencing court or by the parole board pursuant to section 2967.28 of the Revised Code and during which all of the following apply:

(1) The offender is required to remain in the offender’s home or other specified premises for the specified period of confinement, except for periods of time during which the offender is at the offender’s place of employment or at other premises as authorized by the sentencing court or by the parole board.

(2) The offender is required to report periodically to a person designated by the court or parole board.

(3) The offender is subject to any other restrictions and requirements that may be imposed by the sentencing court or by the parole board.

(Q) “Intensive probation supervision” means a requirement that an offender maintain frequent contact with a person appointed by the court, or by the parole board pursuant to section 2967.28

of the Revised Code, to supervise the offender while the offender is seeking or maintaining necessary employment and participating in training, education, and treatment programs as required in the court's or parole board's order. "Intensive probation supervision" includes intensive parole supervision and intensive post-release control supervision.

(R) "Jail" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of this state.

(S) "Jail term" means the term in a jail that a sentencing court imposes or is authorized to impose pursuant to section 2929.24 or 2929.25 of the Revised Code or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.

(T) "Mandatory jail term" means the term in a jail that a sentencing court is required to impose pursuant to division (G) of section 1547.99 of the Revised Code, division (E) of section 2903.06 or division (D) of section 2903.08 of the Revised Code, division (E) of section 2929.24 of the Revised Code, division (B) of section 4510.14 of the Revised Code, or division (G) of section 4511.19 of the Revised Code or pursuant to any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction.

(U) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(V) "License violation report" means a report that is made by a sentencing court, or by the parole board pursuant to section 2967.28 of the Revised Code, to the regulatory or licensing board or agency that issued an offender a professional license or a license or permit to do business in this state and that specifies that the offender has been convicted of or pleaded guilty to an offense that may violate the conditions under which the offender's professional license or license or permit to do business in this state was granted or an offense for which the offender's professional license or license or permit to do business in this state may be revoked or suspended.

(W) "Major drug offender" means an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least one thousand grams of hashish; at least one hundred grams of crack cocaine; at least one thousand grams of cocaine that is not crack cocaine; at least two thousand five hundred unit doses or two hundred fifty grams of heroin; at least five thousand unit doses of L.S.D. or five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; or at least one hundred times the amount of any other schedule I or II controlled substance other than marihuana that is necessary to commit a felony of the third degree pursuant to section 2925.03, 2925.04, 2925.05, or 2925.11 of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

(X) "Mandatory prison term" means any of the following:

(1) Subject to division (X)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (18) of section 2929.13 and division (D) of section 2929.14 of the Revised Code. Except as provided in sections

2925.02, 2925.03, 2925.04, 2925.05, and 2925.11 of the Revised Code, unless the maximum or another specific term is required under section 2929.14 or 2929.142 of the Revised Code, a mandatory prison term described in this division may be any prison term authorized for the level of offense.

(2) The term of sixty or one hundred twenty days in prison that a sentencing court is required to impose for a third or fourth degree felony OVI offense pursuant to division (G)(2) of section 2929.13 and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to division (G)(2) of section 2929.13 of the Revised Code.

(3) The term in prison imposed pursuant to division (A) of section 2971.03 of the Revised Code for the offenses and in the circumstances described in division (F)(11) of section 2929.13 of the Revised Code or pursuant to division (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code and that term as modified or terminated pursuant to section 2971.05 of the Revised Code.

(Y) "Monitored time" means a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life.

(Z) "Offender" means a person who, in this state, is convicted of or pleads guilty to a felony or a misdemeanor.

(AA) "Prison" means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction but does not include a violation sanction center operated under authority of section 2967.141 of the Revised Code.

(BB) "Prison term" includes either of the following sanctions for an offender:

(1) A stated prison term;

(2) A term in a prison shortened by, or with the approval of, the sentencing court pursuant to section 2929.20, 2967.26, 5120.031, 5120.032, or 5120.073 of the Revised Code.

(CC) "Repeat violent offender" means a person about whom both of the following apply:

(1) The person is being sentenced for committing or for complicity in committing any of the following:

(a) Aggravated murder, murder, any felony of the first or second degree that is an offense of violence, or an attempt to commit any of these offenses if the attempt is a felony of the first or second degree;

(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense described in division (CC)(1)(a) of this section.

(2) The person previously was convicted of or pleaded guilty to an offense described in division (CC)(1)(a) or (b) of this section.

(DD) "Sanction" means any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense. "Sanction" includes any sanction imposed pursuant to any provision of sections 2929.14 to 2929.18 or 2929.24 to 2929.28 of the Revised Code.

(EE) "Sentence" means the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.

(FF) "Stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to section 2929.14, 2929.142, or 2971.03 of the Revised Code or under section 2919.25 of the Revised Code. "Stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits pursuant to section 2967.193 of the Revised Code.

(GG) "Victim-offender mediation" means a reconciliation or mediation program that involves an offender and the victim of the offense committed by the offender and that includes a meeting in which the offender and the victim may discuss the offense, discuss restitution, and consider other sanctions for the offense.

(HH) "Fourth degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the fourth degree.

(II) "Mandatory term of local incarceration" means the term of sixty or one hundred twenty days in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility that a sentencing court may impose upon a person who is convicted of or pleads guilty to a fourth degree felony OVI offense pursuant to division (G)(1) of section 2929.13 of the Revised Code and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code.

(JJ) "Designated homicide, assault, or kidnapping offense," "violent sex offense," "sexual motivation specification," "sexually violent offense," "sexually violent predator," and "sexually violent predator specification" have the same meanings as in section 2971.01 of the Revised Code.

(KK) "Sexually oriented offense," "child-victim oriented offense," and "tier III sex offender/child-victim offender," have the same meanings as in section 2950.01 of the Revised Code.

(LL) An offense is "committed in the vicinity of a child" if the offender commits the offense within thirty feet of or within the same residential unit as a child who is under eighteen years of age, regardless of whether the offender knows the age of the child or whether the offender knows the offense is being committed within thirty feet of or within the same residential unit as the child and regardless of whether the child actually views the commission of the offense.

(MM) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(NN) "Motor vehicle" and "manufactured home" have the same meanings as in section 4501.01 of the Revised Code.

(OO) "Detention" and "detention facility" have the same meanings as in section 2921.01 of the Revised Code.

(PP) "Third degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the third degree.

(QQ) "Random drug testing" has the same meaning as in section 5120.63 of the Revised Code.

(RR) "Felony sex offense" has the same meaning as in section 2967.28 of the Revised Code.

(SS) "Body armor" has the same meaning as in section 2941.1411 of the Revised Code.

(TT) "Electronic monitoring" means monitoring through the use of an electronic monitoring device.

(UU) "Electronic monitoring device" means any of the following:

(1) Any device that can be operated by electrical or battery power and that conforms with all of the following:

(a) The device has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver of the type described in division (UU)(1)(b) of this section if the transmitter is removed from the person, turned off, or altered in any manner without prior court approval in relation to electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with, that can transmit continuously and periodically a signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an appropriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver.

(b) The device has a receiver that can receive continuously the signals transmitted by a transmitter of the type described in division (UU)(1)(a) of this section, can transmit continuously those signals by telephone to a central monitoring computer of the type described in division

(UU)(1)(c) of this section, and can transmit continuously an appropriate signal to that central monitoring computer if the receiver is turned off or altered without prior court approval or otherwise tampered with.

(c) The device has a central monitoring computer that can receive continuously the signals transmitted by telephone by a receiver of the type described in division (UU)(1)(b) of this section and can monitor continuously the person to whom an electronic monitoring device of the type described in division (UU)(1)(a) of this section is attached.

(2) Any device that is not a device of the type described in division (UU)(1) of this section and that conforms with all of the following:

(a) The device includes a transmitter and receiver that can monitor and determine the location of a subject person at any time, or at a designated point in time, through the use of a central monitoring computer or through other electronic means.

(b) The device includes a transmitter and receiver that can determine at any time, or at a designated point in time, through the use of a central monitoring computer or other electronic means the fact that the transmitter is turned off or altered in any manner without prior approval of the court in relation to the electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with.

(3) Any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the director of rehabilitation and correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved.

(VV) "Non-economic loss" means nonpecuniary harm suffered by a victim of an offense as a result of or related to the commission of the offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

(WW) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(XX) "Continuous alcohol monitoring" means the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored.

(YY) A person is "adjudicated a sexually violent predator" if the person is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that violent sex offense or if the person is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were

included in the indictment, count in the indictment, or information charging that designated homicide, assault, or kidnapping offense.

(ZZ) An offense is "committed in proximity to a school" if the offender commits the offense in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises, regardless of whether the offender knows the offense is being committed in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises.

(AAA) "Human trafficking" means a scheme or plan to which all of the following apply:

(1) Its object is to compel a victim or victims to engage in sexual activity for hire, to engage in a performance that is obscene, sexually oriented, or nudity oriented, or to be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented.

(2) It involves at least two felony offenses, whether or not there has been a prior conviction for any of the felony offenses, to which all of the following apply:

(a) Each of the felony offenses is a violation of section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code or is a violation of a law of any state other than this state that is substantially similar to any of the sections or divisions of the Revised Code identified in this division.

(b) At least one of the felony offenses was committed in this state.

(c) The felony offenses are related to the same scheme or plan, are not isolated instances, and are not so closely related to each other and connected in time and place that they constitute a single event or transaction.

(BBB) "Material," "nudity," "obscene," "performance," and "sexual activity" have the same meanings as in section 2907.01 of the Revised Code.

(CCC) "Material that is obscene, sexually oriented, or nudity oriented" means any material that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

(DDD) "Performance that is obscene, sexually oriented, or nudity oriented" means any performance that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

FOUNDATION OF THE LAW
CONSTITUTIONAL CONSIDERATIONS

Declaration of Independence:

When John Hancock and his colleagues signed the Declaration of Independence on July 4, 1776, it included an extensive list of grievances against the tyranny of King George III. The purpose of the document was to declare independence of the Colonies from England and the King's oppression.

The document also included a statement supporting the new nation's secession from the mother country that in effect stated that governments should not be changed for "light and transient causes," but "when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security."

Life, Liberty and Happiness:

The Declaration reflected the philosophy of the men who fashioned the framework for the newly formed independent government: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. – That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed…" Thus, according to the Declaration, the purpose of the Government is to insure all people in the nation that they shall equally enjoy the rights of "Life, Liberty and the pursuit of Happiness." Also pointed out in this document is that the right of the government to govern, comes from the will of the people.

United States Constitution:
The people in the United States of America have the fundamental right to be free and enjoy their liberties but also the right to be secure and have protection against others who would interfere with their rights to "Life, Liberty and the pursuit of Happiness." When the authors of the Constitution met, they obviously had those rights in mind, as reflected in the Preamble:

"We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

Fundamental Rights and Liberties:

By virtue of police power, the nation's hundreds of thousands of local, state and federal criminal justice professionals have the responsibility and the authority to maintain an ordered liberty through the exercise of their respective duties.

They must enforce the Constitution, and they, too, must be governed by its requirements. In their respective duties, the individuals in the justice system should be guided by this statement by Justice Brandeis in *Olmstead v. United States* (277 U.S. 438,485). Frequently referred to in many cases, this has been considered a guiding view in judicial philosophy. Justice Brandeis wrote these words in his dissenting opinion:

"Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizens. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means – to declare that the Government may commit crimes in order to secure the conviction of a private criminal – would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."

Police Power:

This term does not simply denote "uniformed" police officers performing their various duties. Police power is that constitutionally authorized power of government to enact and enforce laws to regulate the conduct of the people who are within the jurisdiction of that government.

Police power rests primarily with the respective states, which are sovereign in the United States' system of government. It is the power of the legislative branch of government to make laws that provide for the public health, welfare, prosperity, morality and safety. Enforcement of the laws is carried out by the executive branch of government through its investigative and enforcement arms.

Adjudication is accomplished in the courts by the prosecution and defense, under supervision and arbitration of the judiciary. Most criminal law is the responsibility of state and local governments, and the federal government reserves for itself only limited police powers.

Police Power, Interpretation and the Bill of Rights:

The first ten amendments to the U.S. Constitution, better known as the Bill of Rights, were added to the original document just a few months after ratification of the Constitution itself. They include some of the inalienable rights that were alluded to in the Declaration of Independence written several years earlier.

These rights must be zealously guarded by everyone, most particularly the local police departments, who have the sworn duty to preserve the public peace and to protect lives and property. One very important fact that should never be overlooked with respect to the Bill of Rights is that along with the "rights" goes a corresponding set of responsibilities to assure liberty to others, as well as to self.

Certain amendments have clear intentions for the police:

Article 1 – The police role involves one of visiting or observing an assemblage of people to ascertain its lawful nature; the police are responsible for the maintenance of peace, and there may be good cause for the officers to remain present or nearby to assure the continued peaceful and lawful nature of the assembly; police are not censors, nor should they be.

Article 2 – When public safety demands it, the police has a duty to search persons known or suspected of having weapons on their person or in their possession, to confiscate the weapon and to arrest the persons for violations of the laws.

Article 3 – This was intended to prohibit the quartering of military troops in private residences, in the manner practiced by the British Army in the American Colonies. It would apply equally to any police agency that would entertain such ideas.

Article 4 – The article was originally designed as a protection against abusive practices that had been the rule rather than the exception for the British Army and from which the framers of the Bill of Rights sought protection. Provisions requiring an affidavit for a search warrant were designed to prevent the practice of police "fishing expeditions."

Articles 5 & 6 – The self-incrimination and "due process" clauses of this article are those that affect the police on a more regular basis than the other clauses. The due process provision is a reference to the normal and legal procedure, which may not be bypassed for any purpose. A series of cases eventually led to adoption of the Miranda Rule in 1966. The speedy trial provision is met by the police officers' taking the suspect before a magistrate without undue delay and filing charges against him.

Article 10 – This article provides for the primary police power to be vested in the individual states, which are sovereign in our system of government in the United States.

Judicial Review and Interpretation of the Law:

The courts have the ultimate authority to interpret laws and their enforcement through their authority to review the actions of both legislature and executive officers – the police – in consideration of the intentions of the Constitution, which is the acknowledged supreme law of the land. Beyond the authority of the courts, of course, lies the ultimate authority of the people to change the Constitution through the voting process.

The effects of judicial review can best be illustrated by a review of some of the "landmark" court decisions that have directly affected the police and other components of the criminal justice system through changes in their procedures necessitated by those decisions. Some "landmark" examples include:

Weeks v. US – Rendered inadmissible in federal court any evidence seized by federal agents in violation of search and seizure rules. (1914)

Powell v. US – A defendant's right to counsel at a trial. (1932)

Nardone v. US – The exclusionary rule extends beyond the unreasonably obtained evidence to the "fruits of the poisoned tree." Thus the evidence obtained is "tainted." (1939)

McNabb v. US – Requires a prompt arraignment. (1943)

Mapp v. Ohio – Prohibited unconstitutional searches. (1961)

Miranda v. Arizona – Established rules for interrogation. (1966)

Terry v. Ohio – Distinguishes between a "stop/arrest" and a "frisk/search." (1968)

Argersinger v. Hamlin – No imprisonment may be imposed unless the accused is represented by counsel. (1972)

Faretta v. California – An accused has a constitutional right to waive counsel and to represent himself in a criminal proceeding. (1975)

SCOPE OF THE CRIME CHALLENGE

Origins of Criminal Law:

Why call crime a *challenge*? More appropriate terms, you might argue, might be *scourge* or *plague* or *blight* or—if nothing else—the *crime problem*. But a *challenge*?

Possibly the most plausible response to your arguments is that crime has been such an intrinsic part of society that no matter what efforts have been exerted to eradicate it, crime is still here—you can find it everywhere. Crime is to everyday life what those little stones are to a bag full of pinto beans; there always seems to be an ample amount of each. For that reason, crime is called a challenge!

Along with the civilizing of man came the rules of society designed to assure the civilization process. It can't be emphasized enough, that the common thread found in all precursors of the modern day legal system, was that written laws prescribed required behavior and specific punishments for violations of those laws, making the individual responsible for his/her own acts.

In Ancient Egypt, the "seat of wisdom," the death penalty was one of the forms of punishment, but for certain crimes it was often commuted to penal servitude. Punishment was mild, compared to the Babylonians punishments, which included death for incest, adultery and theft, and branding the forehead for certain other violations. Egyptian law reflected Egyptian culture at that time. Incest was permitted "because the gods did it!"

Israel and Mosaic laws also incorporated many of the laws already established. Some of the highlights of Mosaic Law were:

1) the laws applied to Israelite and non-Israelite equally

2) polygamy was allowed

3) slavery was practiced, but every seventh year each slave was given a year of freedom

4) most sexual law violations were punishable by death

5) individuals found guilty of crimes of violence were either fined, or they were punished according to the "eye-for-an-eye" philosophy

As laws developed, they reflected the economic, social and religious beliefs held by the people at the time and place the laws existed. Laws evolved from religious tenets; customs, mores and folkways of society; social taboos; prejudices and preconceived attitudes and biases toward people other than those who lobbied for specific laws enforcing their point of view; demands of special interest and pressure groups; and the general needs and wishes of society as perceived by lawmaking bodies of men and women representing their human constituents.

A cursory review of the criminal codes in our own state will reveal a wealth of information about all of the above factors in our modern society. A check of the date when a certain crime was committed may give the criminal law historian an idea as to the social priorities at that time. In other words, laws—including criminal laws—are the "game rules" of society.

England and Common Law:

Since the country's first government was under English rule, the English legal system was adopted by the new nation when it emancipated itself from the grips—but not the customs—of the mother country.

There are vestiges of Spanish influence in California and Florida and French influence in Louisiana, and other influences elsewhere, but the principal foundation of law in the United States is English Common Law.

United States, a Nation of Laws:

Rather than rely upon unwritten laws, and because of their suspicion of a government ridden with tyrants, the leaders of the new nation decided that all laws should be codified, or written. This assured more continuity, more objectivity, and less likelihood that men could change the laws at their whim and fancy as the winds changed the bends of branches in trees.

Specificity is very essential to our legal system. The law must be clearly understood—it must specifically state what is intended. A law that is vague or uncertain as to its meaning or to what circumstances it would apply or that may be so broad that it covers too many different types of misconduct may be ruled unconstitutional because of its vagueness.

We are a nation of laws. The entire system is regulated by laws, all of which must be specifically written. A nation that is not ruled by law is one that is ruled by the whim of fallible men, constantly changing with no rhyme or reason depending on the changing moods of the individuals in charge at that moment.

Although there are individuals who interpret the laws through their own intellectualizing process, and lack of justice does occur, the laws of the nation will prevail and be used as guide-lines for

uniformity and fairness. There is a greater assurance of equal treatment regardless of individual differences, as opposed to chaotic inconsistency.

Law as a Social Force:

Criminal laws are used as a means of controlling human behavior positively—rather than negatively—by publishing the law and the punishments for violations of the law. Hopefully, such publication will cause a general awareness of the law, and many people will make their own private decisions not to participate in conduct that would be in violation of the laws. Individuals have the freedom to decide whether they will break the rules of society, and many do just that, as they have the same freedom to decide not to break the rules.

Mores, customs, taboos, religious codes, moral and ethical standards, habit, traditions and everyday behavior are all social forces. Law is another social force. The difference lies in the control of behavior that is contrary to law, and how the violator is dealt with by the government rather than by private sources.

Peer Pressures and "Criminal Stigma":

Peer pressures work on individuals to break the law and other forces are at work among peers to make them want to comply with the law. Sometimes the rewards are greater in the eyes of the offended to commit a crime than the reward would be for not committing the crime.

Consider the tremendous pressures at work environments favoring the use of marijuana and other behavior modification substances, such as drugs and alcohol, certain language styles, manner of dress (or undress), antisocial behavior and incorrigibility toward parents and other symbols of institutional control, authority figures.

Fear of criticism by one's peers may overpower any less personal fear of apprehension and punishment, which may seem more remote and less personal. In fact, there may be a feeling that even though an act is against the law, there will be no punishment or that it will be minimal and far less to fear than ostracism by one's friends. When the controls are removed, the violator literally goes berserk in his or her efforts to yield to peer pressures on all sides and to express emancipation.

The stigma of being labeled "criminal" or "thief" or "child molester" may cause such a trauma for the offender or would-be offender that the mere fear of being found out serves as an effective social control. Fear in itself is a powerful force. On the other hand, the "stigmata" might serve as a badge of skill or courage and be sought by some offenders, such as in some violent street gangs which require initiates to perform some sort of violence in order to prove its accomplishment.

The town "bully" doesn't get to enjoy the reputation unless he gets to beat someone senseless once in a while to perpetuate his "social image" and status.

Criminal Statistics – "Uniform Crime Reports":

Statistical reports are essential to virtually every discussion and study of the problem of crime. The reports reflect trends, identify specific problems, and give tabulated facts about crimes and the people who commit them. It is extremely important that any set of statistics, no matter how valid or reliable, be considered with certain reservations.

One of the most reliable sources of criminal statistics in the United States that deals in nationwide computations and comparisons is the annual publication of the FBI, *The Uniform Crime Reports*. This *crime index* represents those crimes that are most likely to be reported to the police. They are:

1) criminal homicide

2) forcible rape

3) robbery

4) aggravated assault

5) burglary or breaking and entering

6) theft of property valued $50 and over

7) auto theft

8) arson

Overall Justice System and the Crime Problem:

Simply put, the courts and the officers attached to the court as prosecutors, defense attorneys, as well as the judges themselves are pledged to uphold the laws and the constitutions of the federal and state governments…it's just that simple!

And, ideally, the principal thrust of corrections programs is toward the eventual rehabilitation of criminal law violators.

THE CRIMINAL JUSTICE SYSTEM

Components of the System:

The criminal justice system throughout the United States is actually a conglomerate of systems. It is unique because of the governmental relationships in the U.S. political system. There are literally thousands of independent yet interrelated agencies with similar or identical responsibilities linked together into what appear to the casual observer to be a garbled collection of different bureaucracies.

There are four major components of the system of criminal justice. Those four are most commonly referred to as

1) the legislature component promulgates the laws, which serve as the tools of the criminal justice professions

2) the police component consists of federal, state and local agencies responsible for protection, investigation and law enforcement

3) the courts component comprises the judicial systems of all strata of government and includes the prosecuting attorneys and defense attorneys, as well as quasi-judicial (arbitration, fact-finding, investigating) agencies and the courts, which referee and regulate the many aspects of the system

4) corrections component includes the local, state and federal agencies of probation and parole as well as the various correctional institutions throughout the country

Legislature—Based upon the provisions and limitations of the United States Constitution and the constitutions of all the individual states, the various legislative bodies create the laws and agencies responsible for the enforcement of those laws.

Virtually, every government has its own lawmaking authority, regardless of level of government.

The result is an array of separate sets of laws for federal, state and local governments to be enforced by the executive branch of each government through their respective police agencies. Police power is the term, which describes the power of government to make and enforce these laws through legislative action.

Police—Although many laws are enacted by one legislative body, such as the federal or state legislature, many of those laws may be enforced by the police of any of the government levels regardless of geographic or legal jurisdictions. Thus, it is not unusual for state and local agencies to arrest violators of federal laws, and it is most usual for local police officers to arrest for state law violations.

In order to accomplish their goals of maintaining peace and tranquility in a state of ordered liberty, basic objectives of the police include the following:

a) to create a feeling of ever-presence of the uniformed patrol force in the community through motorized or foot patrol

b) to provide benevolent services in cooperation with other agencies, such as giving directions and information regarding the community and its facilities, providing emergency counseling services, rescue and emergency first aid assistance

c) to perform crisis-intervention activities for the purpose of minimizing criminal conduct, e.g. domestic disputes

d) to attend public gatherings to ascertain they are lawful and not infringing on others rights and to assure peaceful assembly

e) to investigate allegations of criminal behavior and take appropriate steps to identify, arrest and bring to a fair trial the alleged perpetrators of those crimes

f) to enforce the laws and ordinances of the federal, state and local government which are charged to the department for enforcement, and, to cooperate with other government agencies in enforcement of the laws charged to those agencies

g) to investigate the causes of traffic collisions and take appropriate action to reduce or eliminate such accidents, including reporting engineering or educational problems and enforcing traffic laws, including the arrest of violators

h) to investigate conditions and other matters related to licensing and other regulatory concerns of the jurisdiction and make appropriate reports to other responsible agencies

i) to direct vehicular/pedestrian traffic to expedite its flow with the greatest degree of efficiency and safety to all concerned

j) to maintain a peaceful/crime-free community through crime prevention, public information and preventative techniques

k) to investigate complaints and handle calls for police intervention in matters that involve the legal and traditional responsibilities of the department

l) to maintain thorough investigation and enforcement activities, an effective balance of vice control, in accordance with prevailing community standards

m) to perform as effectively as possible in activities to discover delinquent and pre-delinquent behavior of juveniles and take direct action to deter development of criminal and other asocial behavior patterns

n) to interact with as many individuals and groups in the community to explain the goals and objectives of the department and to secure their advice and assistance

o) to maintain a property and evidence storage facility to assure procedurally correct presentation of physical evidence in court and return of lost and stolen property to lawful owners

p) to prepare essential reports and records required by law and provide appropriate information to legally authorized persons

The Courts – Federal and State Systems:

The courts throughout the U.S. are, like the police, organized (or disorganized) in a fashion similar to the interrelationships of the local, state and federal governments, each operating within its own separate sphere of authority and responsibility.

The local courts at the municipal level and county level, numbering into the many thousands, have primary jurisdiction over criminal cases of misdemeanor and felony categories that involve municipal, county and state laws. An appeals process, through progressively higher court levels, provides for certain issues to be appealed through the state court system to the state supreme court, and, in some cases, to the U .S. Supreme Court.

The federal court system consists of the U.S. Supreme Court, the appellate courts, the military courts and the district courts. Jurisdiction of the Supreme Court includes appeals in matters of constitutionality, controversies involving certain public officials and other matters in which a state is a party to a legal action.

The courts of appeal, eleven in number, hear appeals from the district courts. Other special purpose appeals courts include the Court of Systems and Patent Appeals and the Court of Military Appeals. At the trial level in federal court are ninety-three district courts, the Court of Claims, Customs Court, and Courts Martial for the military services.

The Systems of Correction:

It is evident that the term *corrections* encompasses a multitude of functions, people, concepts and ideals. Corrections generally involves the rehabilitation—or correcting—phase of the process through which an individual must proceed once he has been determined guilty of a crime and inducted into the justice system. There are three basic parts to this component, although the first and third are quite similar. Those three parts are probation, institutions and parole.

Parole—Paroles are granted by federal, state or county boards from the various institutions. Following release from prison, the parolee is placed under the supervision of a parole or probation officer. A parolee is considered "still in custody" and only on leave from the institution during the period of time he is on his good behavior. He lives under the threat of immediate return to prison if he does not live according to the strict rules set forth.

The conditions of parole are also similar to those for the person on probation, but the two should not be confused. Probation refers to the term spent by the individual in lieu of a term of imprisonment. Parole follows imprisonment and is merely considered a continuation of that prison sentence while outside the walls of the institution.

The American Bar Association suggests that a significant reduction in crime is possible if specific objectives are followed:

1) Society must seek to prevent crime before it happens by assuring all Americans a stake in the benefits and responsibilities of American life, by strengthening law enforcement, and by reducing criminal opportunities.

2) Society's aim of reducing crime would be better served if the system of criminal justice developed a far broader range of techniques with which to deal with individual offenders.

3) The system of criminal justice must eliminate its existing lack of fairness if it is to achieve its ideals and win the respect and cooperation of all citizens.

4) The system of criminal justice must attract more people and better people—police, prosecutors, judges, defense attorneys, probation and parole officers and correctional officials with more knowledge, expertise, initiative and integrity.

5) There must be much more operational and basic research into the problems of crime and criminal administration, by those both within and without the system.

6) The police, courts and correctional agencies must be given substantially greater amounts of money if they are to improve their ability to control crime.

7) Individual citizens, civic and business organizations, religious institutions and all levels of government must take responsibility for planning and implementing the changes that must be made in the criminal justice system if crime is to be reduced.

THE COURTS

The Process Phase of Criminal Justice:

The courts component of the criminal justice system is the "process" part of what we present as a three-part system.

The police comprise the "input" part, courts are the processing component, and "output" includes the corrections subunits of probation, parole and the correctional institutions.

Representatives of the police, or "input" phase, make the initial decision of whether to introduce individuals to the system through arrests and summonses. Based upon facts discovered during their investigations, they make the decision to proceed with criminal charges. The next step is for the police to present the case to the prosecuting attorney, the first step in the "process" phase.

It is here, in the office of the people's prosecutor (also called the district attorney or state's attorney), that the hard decisions are made of whether to proceed with the charges originally presented by the police, to file an alternative charge, or not to file at all. Once the decision is made to proceed, the matter then goes to court.

Relationship to the Police and Corrections:

The American system of jurisprudence is based upon codified laws. There are criminal codes covering literally thousands of acts (or non-acts) of human behavior that legislators have defined as criminal law violations. New laws are added with fervent zeal to maintain a peaceful ordered liberty, and existing laws are reviewed and changed from time to time.

Sometimes old and unused laws are retired, or "decriminalized." The legislature provides the tools for the police to work with and the legal restrictions on how the correctional process should work. But the key to the system's success or failure lies in how the courts interpret the laws, process the accused and provide for correction and rehabilitation of the convicted offenders.

Three major premises comprise the doctrine of *judicial review*, which some legalists refer to as "judicial supremacy." Those premises are that:

1) the courts may make the final determination as to what is law and what is not

2) the courts may require—through legal means at their disposal—adherence to lawful conduct by the administrative branch of government

3) the courts may invalidate a legislative action on the basis of unconstitutionality

This doctrine refers to the Supreme Court, but the general principle is carried down to the lowest court at state level.

Judicial discretion is practiced by a lower court judge when hearing testimony and examining evidence to determine that a crime was, in fact, committed, and if the accused should be held to answer to the charges—or be bound over—in the higher court where the trial is to be held. During the trial, the judge has the authority to exclude evidence on the basis of unconstitutional behavior of the police in collecting and presenting such evidence. The judge may even declare a mistrial and dismiss the charges on Constitutional grounds.

The corrections component of the system is directly related to the authority of the court. Probation officers in many jurisdictions serve under the direction and at the pleasure of the local courts. Conditions of probation may be standardized, but they are articulated by the judge who grants probation in lieu of all or part of the incarceration in jail or prison.

Although sentencing laws may restrict the latitude within which the judge may function, the judge decides whether to sentence an individual to concurrent or consecutive terms in prison. Three concurrent terms of 5 years would mean that the convicted person would serve only 5 years, less time off for good behavior, while 3 consecutive terms of 5 years each would mean that the individual would spend 15 years less "good time" off. Obviously, there is a very substantial difference.

Municipal Courts:

This court may be called the mayor's court, the police court, or by some other name that designates it as one of the trial court where the greatest volume of cases are tried in civil and criminal matters. The municipal court may serve one city or several.

Misdemeanors committed within the municipal court's jurisdiction are tried in this court, and preliminary hearings for felonies may be held in the municipal court to determine if there is sufficient proof that a crime has been committed and that there is reason to believe that the

accused should be held to answer to the charges in superior court—in the State of Ohio, know as the Court of Common Pleas.

In misdemeanor cases, the municipal court judge may sentence the accused to jail and/or probation and/or a fine. Although the term of probation is not considered as punishment, violation of that probation may lead to a period of incarceration for the violation. In a felony case, the judge may receive a guilty plea but must first *certify* the plea to the superior court (Court of Common Pleas) along with the case, where the Common Pleas judge will pronounce the sentence.

Court of Common Pleas:

There is usually only one Court of Common Pleas per county, although there may be literally hundreds of divisions of that court as there are divisions of the municipal court.

Jurisdictions of the Court of Common Pleas usually include:

1) juvenile court, a separate civil division of the court that directs the county's juvenile justice network, including guidance and direction of the juvenile probation efforts

2) all felony trials and related hearings

3) certain "high misdemeanors" (in some states)

4) civil suits involving reparation for an amount larger than that allowed in the municipal court

5) court of equity, in which an order to "right a wrong or injustice" is sought rather than money damages

6) probate court, which is involved in the states and related matters of the deceased

7) appeals from the lower courts on matters of judicial error or constitutional issues

8) courts of conciliation or divorce

9) writs of habeas corpus and other types of legal actions involving property and debts

10) reciprocal enforcement of family support laws in cooperation with other states

11) mental health (sanity) and alcoholic commitment hearings

Courts of Appeal and Supreme Court:

The appellate division serves a specified portion of the state and its various trial courts. The division is comprised of three judges who sit and decide on issues as a group. They also review

cases on an individual basis, meet to discuss their cases, and then either concur with the judge who is writing the decision, or they dissent. The majority view is the binding one.

Jurisdiction of the appellate court extends to case review that may be a court-determined, or legally prescribed right to review, and to other cases that the appellate court reviews at its discretion upon petition for such review. The effect of the appeal may be a reversal, which puts the litigants back to their original starting point, or the case may be returned to the trial court to correct earlier errors that had been made during the trial, or a new trial may be ordered.

The court of last resort in the state, the Supreme Court, is the highest appeals court to which most cases may be taken from the trial courts or the intermediate appeals court. Exceptions, of course, involve issues of the U.S. Constitution and other matters that are clearly within the purview of the U.S. Supreme Court.

With great respect for the sovereignty of the states, the rights of the state supreme courts are recognized and enforced. The chief justice and the justices of the Supreme Court hear cases on appeal or by their direction. The cases appealed to the Supreme Court are decided upon and disposed of in the same manner as are those that are handled by the appellate courts.

The Grand Jury:

The grand jury is a body of citizens chosen for a specified period of time (usually one year) to audit the various offices of government and to conduct investigations of public offenses committed or subject to trial in its county of jurisdiction. The grand jury's origin was in England, when it was instituted in 1215 with the Magna Carta. The original principal purpose of the grand jury was to protect the people against the tyranny of their own government.

Prosecution and Defense:

Presentation of cases in a court involves the adversary system. In a non-criminal—or civil—case, the *plaintiff* and the *respondent* or *defendant*, both enter the trial at an even point, with an equal advantage. The *litigants* each present their case by introducing evidence and testimony.

The case is weighed by the judge or jury on its merits, which consists principally of the evidence presented. Whichever side in the case has the *preponderance* of weight in favor of his side of the case will win the lawsuit. The process involves a balancing of the scales with each side having an equal weight at the start of the case.

In a criminal trial, the accused is presumed to be innocent, or the preponderance of the case is immediately in his favor. The burden of proving the accused guilty of the crime rests on the prosecutor. The defense at no time has to prove innocence. As a matter of fact, and procedure, the defendant shall be considered innocent at all times until he is proven guilty *beyond all reasonable doubt* in the judgment of the judge or—in a jury trial—the jury.

"Beyond all reasonable doubt" does not mean absolute certainty, but the courts have held that there must be a moral certainty that the accused did commit the crime.

THE ACCUSED IS INNOCENT UNTIL, AND, ONLY IF, HE IS PROVEN TO BE GUILTY, BY DUE PROCESS IN A COURT OF LAW. NO ONE CAN THINK OTHERWISE!

The prosecutor represents the people of the state as the victim of the crime committed in the state because a crime is considered to be a *public* offense.

Every person accused of a crime shall have legal representation. This is a provision of the Sixth Amendment of the U.S. Constitution. The defense attorney will represent the accused to protect his interests.

In a trial by jury, the judge determines legality, while the jury determines fact. Without a jury, the judge determines both the legality and the fact and it is he who declares guilt. In the absence of a guilty finding, the accused goes free, still an innocent person.

TRACKING THE CRIMINAL TRIAL PROCESS

Although there are similarities in procedure with both felony and misdemeanor violations, they are tracked differently.

The Misdemeanor:

The Offense—If observed or discovered, the crime is then considered by one or more persons in view of the circumstances and a decision is made of whether to report it to the police.

Police Intervention—The investigating officer must rely upon evidence and statements of others in order to make a decision regarding the course of action to take. The officer's discretionary powers then determine the next step. The officer may determine that there was no crime, or that there was a crime and that he will arrest the violator, if available for arrest.

Arrest—If a person who observed the offense being committed in his presence calls the police, and if the officer appraises the situation and determines there is sufficient cause for the arrest, the officer will accept the arrestee. If the officer was present when the violation occurred, then the officer makes a personal decision of whether to arrest at the time or to postpone the arrest until later, at which time a complaint/warrant will be necessary.

Diversion—There are certain types of crimes and individuals that may call for some type of corrective action to prevent or reduce the likelihood of repetition. As part of the authority of the police, the prosecutor and the courts to proceed with criminal charges, there is also the authority to use discretion and decide not to proceed. One type of discretionary alternative is *diversion*, which may include an agreement not to file criminal charges providing the accused agrees to go through a voluntary detoxification program for drug or alcohol addicts; another would be to submit to a civil court process and be committed to psychiatric treatment or counseling.

Citation or Jail—The officer may collect evidence and testimony, then issue a citation to the offender in lieu of taking the arrestee to jail for booking. While the offender is being cited, he is

under arrest. Then, when he signs a promise to appear, which is on the citation form, the offender is—in effect—being released on his promise to appear in court to answer the charges.

Bail—When the offender signs a promise to appear in court on the prescribed date, he is actually offering his promise to appear as his bail. This is known as "own recognizance." Whatever form of bail the accused offers, its purpose is to assure the person's appearance in court to answer to the charges. A bail bond is an insurance policy, used in place of money.

Complaint and Warrant—The officer prepares an investigative report, and processes the evidence. The report is examined by the prosecutor and makes a determination as to what charge, if any, will be filed against the suspect. The prosecutor prepares a complaint if the decision is to proceed with the case. A judge reviews the complaint/affidavit and issues the arrest warrant.

Arraignment—This is the first appearance of the accused person in the criminal offense. If the person had been held in jail, the law requires an early date for the arraignment. This is where the accused is advised of the charges and constitutional rights. Bail or trial dates may be set. If the accused has legal representation and wishes to plead guilty, a guilty plea will be accepted.

Pretrial Motions—Usually limited to felony cases, this is the time prior to trial when the defense attorney files for discovery of information and makes various other motions.

Trial—The jury is selected—if it is a jury trial—to serve as a trier of fact, while the judge rules on matters of law. Both sides present their case and the jury deliberates to reach a verdict.

The Felony:

The Offense—A private person may arrest someone for committing a felony, even though not committed in their presence; the arrest requires actual perception by one or more of the senses that amounts to physical presence. The arrest cannot be made on suspicion; however, most felony arrests made by peace officers are on suspicion only, without an arrest warrant.

Police Intervention—The nature of the crime being a felony, the police will take a more positive action than they would in a misdemeanor case. Police latitude is greater in felony cases.

Arrest—Usually made without a warrant, the arrest may be made even though the investigation has just begun. The officer may arrest on multiple charges that may later be dropped because they are all related to the same series of acts. The prosecutor will later decide on sufficiency of evidence and appropriate charges to file.

Jail and Bail—Citations are not issued for felonies. The accused is taken to jail and taken through the booking process. Bail may be cash or bond or own recognizance.

Complaint and Warrant—This phase of the process is identical to the misdemeanor process. There may be more changes in charges filed versus "arrested for" because of sufficiency of evidence, availability of witnesses, and greater pressures to "plea bargain" for lower charges,

reduction of felonies to misdemeanors, reduced number of offenses charged, or a plea of guilty in exchange for assurance of less punishment, possibly a trade of release for information against a codefendant or more serious violator.

Arraignment—The first arraignment is held in the lower, municipal court, even though the trial will be held later in the Court of Common Pleas. This is the same as with the misdemeanor.

Plea Bargaining—The accused is allowed to plead guilty to a lesser charge than originally filed. The following circumstances might justify plea bargaining: suspicion arrests, stacked charges, multiple arrests, improper arrests based upon faulty information or unacceptable evidence, witness difficulties, communications problems, attorney's judgment.

Preliminary Hearing—Held in municipal court, the purpose is to have the prosecution prove the elements of the crime, and to produce sufficient evidence and testimony to convince the judge that the accused should be held to answer the charges in the Court of Common Pleas.

Grand Jury—If the prosecutor chooses not to go through the preliminary hearing process in a felony, the matter is brought before the grand jury. If the grand jury determines there is sufficient proof that a crime was committed and if they believe the accused should be held to answer, then the grand jury instructs the prosecutor to file an indictment in superior court. The grand jury takes the place of the preliminary hearing.

Motions—The defense has an opportunity to attack sufficiency of evidence and make other motions as necessary.

Arraignment—This arraignment is made in the Court of Common Pleas. It is similar to the arraignment held in municipal court, except that the charges and other information may have changed in the interim.

Trial—The felony trial is similar to the misdemeanor trial, except it is held in the Court of Common Pleas and verbatim transcripts are made of the entire trial…an integral part of the felony process.

The Jury Trial:

The accused has a Constitutional right to a jury trial. Jurors are selected by a lottery system from the citizens in the county who have a valid Ohio Driver's License -- assumed to be the peers of the accused, who is likely to be a resident of the same county occupied by the jurors. Once empanelled to sit as a jury in a criminal trial, they function as the judges of fact in the case.

While the judge determines which evidence and witnesses will be authorized for presentation during the trial in accordance with the rules of procedure and evidence and serves as the arbiter on the law, the jury determines the truth and weight of the evidence and then passes judgment on the guilt of the accused.

Juries usually consist of 12 members, except when waived in accordance with accepted practice. They hear testimony and examine evidence, receive instructions from the judge as to the legal considerations as to their role in the matter, and provides them guidelines to follow when arriving at their conclusions.

The jurors then retire to their chambers where they meet as a committee to discuss and to vote on the issues.

In criminal trial, the jury must vote unanimously for a guilty verdict. They may decide that there is no justification for a guilty verdict, or they may become hopelessly deadlocked over the issues. In the third instance, the judge may declare a mistrial, which would necessitate a new trial at the initiation of the prosecutor again.

In the absence of a finding of guilt, the jurors vote for a not-guilty plea. The jury advises the judge that they find the accused guilty or not guilty, at which time the judge assumes his role in the case to proceed with sentencing or to order the release of the accused.

COURTS FOR ALL PEOPLE

American society contains a complete spectrum of wealth, from affluent people enjoying the lifestyles of the rich and famous to destitute homeless people living in cardboard boxes in the street.

Anyone in the United States, regardless of their income, can enter the court system. Some people are dragged into court by being arrested for violating criminal laws while others voluntarily seek judicial assistance by filing lawsuits.

The American legal system is supposed to apply the same rules and procedures to all people. Inscribed in large letters above the entrance to the Supreme Court of the United States are the words "Equal Justice Under Law." These words represent the aspirational ideal of the American judicial system, namely that law and legal procedures will treat people equally regardless of their race, gender, religion or social status.

Because the judiciary portrays itself as providing impartial decisions, it deserves close scrutiny to determine the extent to which legal principles and court procedures achieve the aspirational ideal of equal justice.

Unlike the legislative and executive branches, in which wealthy and organized interests obviously receive preferential treatment because of their lobbyists and campaign contribution, the pervasiveness of wealth discrimination is less apparent in the components of American law and judicial process.

Bail and Jail:

People who are arrested and charged with criminal violations face the possibility of sitting in jail for weeks or months if they cannot make bail. For lesser offenses, people may be released with

merely a promise to appear. For more serious infractions, bail may be set by the court. The amount of bail is usually based upon a discretionary determination.

In either case, sad to say, poor people suffer disproportionately from a loss of freedom prior to trial, despite the judicial system's supposed adherence to the presumption of innocence until guilt is proven, because poor people lack the resources to gain pretrial release by posting bail.

Traditionally, bail was intended to insure the appearance of the defendant at trial; however, it can also be utilized by judges for punitive purposes by setting bail so high that the defendant cannot gain release. Although the Eighth Amendment to the Constitution forbids "excessive bail," that term has not been clearly defined and there is no federal constitutional right to release before trial, although some state constitutions grant a right to have bail set.

Effects of Pretrial Detention:

The consequences of failing to gain pretrial release can be significant. Fact is, people who are processed through the criminal justice system, whether or not they are ultimately convicted, suffer a variety of punishments simply from being dragged through the process. They must lose income-producing time from work in order to attend court appearances. In addition, while sitting in jail they may lose their jobs and their homes and suffer other detrimental consequences to their families' lives.

In a documented study of courts in three cities—Baltimore, Chicago and Detroit—the burdens on defendants, most of whom were poor, were considerable:

"Many will not be able to remove the blemish of their arrest from police records despite the lack of conviction. Some are forced to spend time in pretrial detention. It is likely that the economic costs of these unsuccessful prosecutions are considerable (even if small in absolute terms for each defendant) because most of the defendants in felony cases come from the working poor or welfare families. In addition, there is considerable psychic cost to have the possibility of a long term prison term hanging over one's future for several weeks or months."

In addition to suffering financial and personal costs from pretrial detention, defendants have less ability to assist in the preparation of their defenses. Moreover, jails are dangerous, depressing institutions which contain a continually changing population of criminal offenders, mentally ill people and substance abusers. These people are frequently placed in jail because police seek to remove them from the streets and authorities have few other places to send them.

While the middle-class defendant who can afford to make bail will reappear at trial well-dressed and accompanied by family and friends, the poor defendant who cannot make bail may be dragged into the courtroom wearing handcuffs and a prison jumpsuit. The imagery may affect the judges and juries regardless of the evidence of guilty or innocence.

Right to Counsel and Indigent Defense Systems:

During most of America's past, criminal defendants had to pay for a lawyer if they wished to be represented in court. The right to "have assistance of counsel for his defense" contained in the Sixth Amendment of the Constitution simply meant that defendants had a right to have a defense attorney if they could afford one. Obviously, poorer defendants were significantly disadvantages in a system in which the existence of any legal representation was based upon ability to pay.

It wasn't until 1938, that the Supreme Court construed the Sixth Amendment right to counsel as requiring the appointment of lawyers to represent indigent defendants in federal cases. The broad application of a constitutional right to counsel within state court systems occurred in 1963 when the Supreme Court decided that the Due Process Clause of the Fourteenth Amendment required states to provide defense counsel for all indigent defendants facing penalties of six months incarceration or greater.

The right to counsel was subsequently recognized for all cases of incarceration in 1972, but was not extended to encompass cases punished merely by fines. Although some states began to provide representation for poor defendants earlier in the twentieth century, it is only in the past few decades that all poor people have been protected by the right to counsel when facing jail or prison sentences.

Representation of Poor Criminal Defendants:

There are three primary methods of providing attorneys for defendants who are too poor to hire their own counsel. In public defender systems, salaried staff provide representation for indigent defendants. There are assigned counsels, private attorneys who are appointed to represent indigent defendants on a case-by-case basis and are then paid by local governments. And there are contract attorneys, private attorneys or law firms who submit a bid to local governments and a contract is awarded to provide representation for all poor defendants throughout the year for a set contract fee.

A variety of specific problems exist with each defense system, which can detract from the quality of representation received by indigent defendants. The timing of appointment of counsel, for example, can affect the outcome of the case. Although someone with means to hire a private attorney may acquire private representation immediately, some jurisdictions do not provide attorneys for indigent defendants until the formal arraignment.

By this delayed time, the defendant may inadvertently make incriminating statements, witnesses may disappear, and the defense may be placed at a significant disadvantage when pitted against a prosecutor who has been utilizing the government's investigative resources since the day of arrest or earlier.

Attorney-Client Relationships and Jury Composition:

The title of one classic study of indigent criminal defendants neatly sums up the attitudes of defendants toward their appointed legal representatives: "Did you Have a Lawyer When You Went to Court? No, I Had a Public Defender." Distrust can develop between attorneys and

clients because the defendants perceive their lawyers as representing the government. The same government pays all the salaries!"

Moreover, because the first contact between the attorneys and clients is often in the courtroom moments before a hearing, and the defense lawyers' first words are frequently to the effect that, "if you plead guilty, I can get you a reduced sentence," the defendants perceive that the lawyers are not concerned about their version of the events underlying the alleged criminal violation and are not interested in pursuing an acquittal.

The jury process is intended to provide citizens involvement in judicial decisions making, both to legitimate verdicts and to provide a check upon potential abuses of power by prosecutors and judges. Although there is a common notion that defendants should be tried before a "jury of peers," the actual composition of juries is usually not completely representative of the various groups within a community.

Studies find jury compositions in favor of middle-class affluent people, excluding minorities and young people. The reduced representation from these exclusions can disadvantage poor defendants, who are frequently young or minority group members. Discrimination in sentencing also occurs. Statistics show that more severe sentences have been applied to juvenile offenders of lower socioeconomic status. The bottom line is that poor people suffer detrimental consequences that collide with the aspirational ideal of "Equal Justice Under Law."

In Conclusion…This is How it Works:

As a person matures from childhood to adulthood, he progressively develops his own combination of needs and his own methods for seeking satisfaction of those needs. He learns by doing, by watching others, by studying the methods written and taught by others and by trial and error. The child learns the many taboos of his own culture that frequently frustrate the drives involved in seeking his goals of satisfaction. The child learns that the pain of punishment may be avoided by minding his parents. As an adult, he learns that sexual satisfaction is sometimes gained by reciprocating for the satisfying experience by assumption of the responsibilities of personal commitment or marriage. He also learns that basic sustenance is achieved with reasonably little effort or conflict, but certain minimum requirements must be met, such as work to earn money to spend.

The individual learns to share, to be patient, and to go about satisfying those needs in an orderly manner in keeping with the customs and mores of the particular society in which he holds membership. Frustrations are experienced and he learns that he will never satisfy all his needs. What he must learn is self-control and compromise. He learns to work for his money, study for his education and to respect the rights and property of others if he is to have them respect his rights and property.

He learns that some actions are right and others are wrong. There are laws, rules, customs, taboos, regulations, bans and a variety of agents and agencies to enforce them. Through interaction with others, and with respect to all of these laws and regulations the individual has to

obey, the majority of the population somehow manages to develop into law-abiding, socially acceptable members of society!

We must remember that crimes and the people who commit them should not be classified or graded as one labels fruits or vegetables for canning and the market…the study of criminology is not an exact science, but an on-going searching inquiry into the never-ending unexpected and mysterious changes of man in relationship to others and his environment.

OUR FINAL WORD
WHAT'S SO GREAT ABOUT AMERICA?

Every Licensed Surety Bail Bond Agent…and, every citizen…should ask: What lies behind an abundance unprecedented in history, and freedoms which are the envy of the world?

We must never forget that half the world goes to bed hungry. And, half the world lies under Communist rule, where freedoms, as we Americans know it, simply does not exist.

Homemakers in much of the world might never see in a lifetime the quantity of food which the American housewife can choose in just one trip to the supermarket. Is this abundance and this freedom ours merely by chance? Is it wholly due to what Americans like to perceive as U.S. energy and know-how? It God has indeed "blessed America," as the familiar song goes, why?

The Greatness of America's Land.

Some people say the land itself has made America great. One of our most moving patriotic hymns cites the beauty of America – a beauty that all who have traveled across the continent surely recognize. Katherine Lee Bates stood atop Pike's Peak and scanned the sweep of the land, then wrote of the "purple mountain majesties," and the "amber waves of grain." She concluded that God had shed His grace on this land – a vast unexplored wilderness that, in an astonishingly short period, grew into a great nation.

It would be foolish to deny that the rich natural resources of the land itself have not helped to make America. The oil, the ore, the timber, the water, the soil and climate, all have combined to nourish a civilization that would eventually spread from "sea to shining sea." Other nations too, though, have been blessed with fine resources: yet somehow these have not risen to such greatness as America has.

The Greatness of America's People.

Others have said that America's people have made her great. Lyman Abbot once said: "A nation is made great, not by its fruitful acres, but by the men who cultivate them; not by its mines, but by the men who build and run them. America was a great land when Columbus arried: Americans have made of it a great nation."

And, so they have! For they have pioneered a continent, subdued the elements that at first worked against them, molded a society of peoples from all over the world. America's initiative

and ingenuity are known across the earth. Other nations have looked on in awe at her ability over the decades to produce not only her own needs, but much more.

The Greatness of America's System.

America's free enterprise system and the spirit of her people, it would seem, have combined to deliver a flood of mass-produced goods to the consumer at a relatively low cost. At the same time, American economic genius has also helped to produce millions of jobs – from the factories to the professions – including the Bail Bond profession – which give Americans the income to buy the goods they produce.

The Greatness of America's Generosity.

Thus far, America has escaped the spectre of widescale hunger at home, and she has been able to feed at least some of the hungry abroad. Through the decades she has opened her heart to the poor of the world. She has given generously to every nation, even her enemies, in time of emergency.

The Greatness of America's Freedoms.

In spite of certain social ills – and, we as Surety Bail Bond Agent see them all – the U.S. has passed more social legislation and enacted more laws providing individual liberty than any other nation in world history. And, because of her belief in freedom of speech she has not hidden her scars – they are there for the world to see – while those totalitarian regimes that run a controlled press look on amazed.

All of these blessings point back to her foundations and to the providential hand of God. After all, the "purple mountain majesties" and the "fruited plains" originated with God!

America's blessings, despite her ills, call forth thanksgiving from all those who enjoy them. The great spiritual heritage that built America unfolded by remarkable design. So also did American democracy, the U.S. Constitution and, along with these, the great freedoms they ensure. Just look at your coins and currency…in no other land will you see the words "In God We Trust!"

No, America, did not just happen by mere chance, as is obvious to a person who truly understands the unfolding saga of events that shaped this nation. There is great evidence of this truth; and, when we look back throughout our history, we better understand where America is today, how she arrived here, and where she must remain during the trials of each day.

For as Thomas Jefferson once asked, "Can the liberties of a nation be secure, when we have removed the conviction that these liberties are the gift of God?"

And, as President Jefferson replied to himself, "My God! How little do my countrymen know what precious blessings they are in possession of, and which no other people on earth enjoy!"

THE EVIDENCE TO CONSIDER

The business of Bail Bonding has been in existence for over four thousand years. Writings found in the Old Testament, in both Jewish and Christian Scriptures! And, yes, there are many evidences that our great nation was founded on a commitment to God and His Holy Principles.

Let us conclude our study by recalling the exactness of our history…let us be proud to serve our fellow men and women as professional Surety Bail Bond Agents in the State of Ohio…

In the summer of 1787, representatives met in Philadelphia to write the *Constitution of the United States.* After they had struggled for several weeks and had made little or no progress, eighty-one year old Benjamin Franklin rose and addressed the troubled and disagreeing convention that was bout to adjourn in confusion.

"In the beginning of the contest with Britain, when we were sensible of danger, we had daily prayers in this room for Divine protection. Our prayers, Sir, were heard and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of superintending Providence in our favor…Have we now forgotten t his powerful Friend? Or, do we imagine we no longer need His assistance?"

"I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth: that God governs in the affairs of man. And if a sparrow cannot fall to the ground without His notice, is it profitable that an empire can rise without His aid? We have been assured, Sir, in the Sacred Writings that except the Lord build the house, they labor in vain that build it. I firmly believe this…"

"I therefore beg leave to move that, henceforth, prayers imploring the assistance of Heaven and its blessings on our deliberation be held I this assembly every morning."

The very purpose of the Pilgrims in 1620 was to establish a government based on Holy Scripture. The New England Charter, signed by King James I, confirmed this goal: "…to advance the enlargement of…religion, to the glory of God Almighty…"

Governor Bradford, in writing of the Prilgrims' landing, describes their first act: "being thus arrived in good harbor and brought safe to land, they fell upon their knees and blessed the God of Heaven…"

Confirmed by the Colonies.

The goal of government based on Holy Scripture was further reaffirmed by individual colonies such as The Rhode Island Charter of 1683 which begins: "We submit our persons, lives and estates unto our Lord…the King of kings and Lord of lords and to all those perfect and most absolute laws of His given us in His Holy Word."

Those "absolute laws" became the basis of our *Declaration of Independence,* which includes in its first paragraph an appeal to the laws of nature and of nature's God. Our national Constitution established a republic upon the "absolute laws" of the Holy Scripture, not a democracy based on the changing whims of people.

Reaffirmed by the Presidents of the United States.

In his inaugural address to Congress, the first president of our nation stressed God's role in the birth of this republic:

"No people can be bound to acknowledge and adore the invisible hand which conducts the affairs of men more that the people of the United States. Every step by which they have advanced to the character of an independent nation seems to have been distinguished by some token of providential agency…We ought to be no less persuaded that the propitious smiles of heaven cannot be expected on a nation that disregards the eternal rules of order and right, which heaven itself has ordained."

One of President George Washington's early official acts was the first Thanksgiving Proclamation, which reads, "Whereas it is the duty of all nations to acknowledge the providence of Almighty God, to obey His will, to be grateful for His benefits, and humbly implore His protection and favor…" It goes on to call the nation to thankfulness to Almighty God.

Continuing through the decades of history, we find in the inaugural addresses of all the Presidents, and in the Constitutions of all fifty of our states, without exception, references to the Almighty God of the Universe, the Author and Sustainer of our liberty!

Observed by Renowned American Historians.

The principles of God's Word guided the decisions on which this nations build its foundation. This was the discovery of Alex DeTocqueville, the noted French political philosopher of the nineteenth century. He visited America in her infancy to find the secret of her greatness. As he traveled from town to town, he talked with people and asked questions. He examined our young national government, our schools and centers of business, but could not find in them the reason for our strength.

Not until he visited the synagogues and churches of America and witnessed the pulpits of this land "aflame with righteousness" did he find the secret of our greatness. Returning to France, he summarized his findings:

"America is great because America is good; and if America ever ceases to be good, America will cease to be great."

Throughout our history, our forefathers have given eloquent testimony of our commitment to God and His principles:

"It is the duly of nations, as well as of men, to own their dependence upon the overruling power of God and to recognize the sublime truth announced in the Holy Scriptures and proven by all history, that those nations only are blessed whose God is the Lord." -- Abraham Lincoln
"The religion which has introduced civil liberty…to this we owe our free constitutions of government. The moral principles and precepts contained in the Scriptures ought to form the

basis of all our civil constitutions and laws. All the miseries and evils which men suffer from vice, crime, ambition, injustice, oppression, slavery, and war, proceed from their despising or neglecting the precepts contained in Holy Scripture." -- Noah Webster

Finally…

The concluding words of our National Anthem summarize the fact that the United States of America was born out of a commitment to God and His principles.

"Blessed with victory and peace, may this Heav'n-rescued land; Praise the Power that hath made and preserved us a nation!

The conquer we must, when our cause it is just; And this be our motto: 'In God is our trust!'

And the star-spangled banner in triumph shall wave; O'er the land of the free, and the home of the brave."

Never allow yourself, your family, your staff and the families you serve…to forget, that:

"With God, All Things Are Possible"…which is the "Official Motto" of the State of Ohio and Franklin County Government!

24 OCTOBER 2012

ADDENDUMS ALL BAIL BOND AGENTS SHOULD BE AWARE OF

* * *

FOR YOUR INFORMATION…

FROM THE 2010 "OHIO DEPARTMENT OF INSURANCE TRANSITION MANUAL"

SECTION 9 – ACCOMPLISHMENTS DURING STRICKLAND ADMINISTRATION

9.3 Creating and Retaining Jobs, Preparing Workers & Accelerating the Economy

9.3.6 Bail Bond Agents

"Over the past four years, the Department has outreached to the Ohio bail industry.
We began holding joint meetings between the Department and the Ohio Bail Agent Association (OBAA) two times per year to discuss industry issues and concerns. The Department added a link to the OBAA website to our website. The Department also sought input from the OBAA and other bail industry entities when drafting proposed rules for the Ohio Administrative Code and changes to the Ohio Revised Code sections dealing with the bail bond industry"

"The Department **facilitated a partnership between the OBAA** and the Common Pleas and Municipal Courts systems of Ohio to change the Bail Court registration requirement statute so that all stake holders agreed on a proper process. Staff members of the Department spoke with members of the bail industry, the Courts, and the Ohio Clerks throughout the state on bail issues on several occasions. The Department purchased undercover equipment for use in courthouses to view bail bond activity and we have increased our penalties on all bail bond infractions including

solicitation. **The Department also created posters and distributed them to Common Pleas and**

Municipal Court buildings to warn of illegal bond activities and how to report illegal activity. The Department is now reviewing all major market courts in an effort to prevent abuse of the bail

system. Hearings and prosecutions have increased in this area with the full support of the industry."

"The Department issued a rule designed to clarify appropriate surety bail bond agent conduct in Ohio in order to improve the integrity of this insurance market. The rule, 3901-1-66, was written **in collaboration with the Ohio Bail Agents Association (OBAA)**, with input being received from the Ohio Association of Municipal Court Clerks, the Ohio Clerk of Courts Association, and the Ohio Association for Court Administration. The rule clears up confusion that bail bond agents may have when it comes to selling their products to Ohioans and assure that such sales are conducted fairly and in accordance with Ohio Law."

(Important note regarding Rules and possible Rule revision: the OBAA IS NOT the OSBBA, Ohio State Bail Bond Association, who provides this Continuing Education Course for you!)

DRAFT OF UPCOMING RULE REVISIONS

PROMULGATED PURSUANT TO THE AUTHORITY VESTED IN THE SUPERINTENDENT UNDER SECTIONS 3901.041 AND 3905.95 OF THE O.R.C.

*** * * NOT YET FILED * * ***

Ohio Revised Code
§ 3901-1-66

(J) Prohibited Acts

(1) A surety bail bond agent shall not post any type of court bond on behalf of a person without using a bail instrument representing and insurer; except for a cash, property court bond, or ten per cent court bond requiring a payment of ten per cent of the face amount of the bond to the court if the surety bail bond agent:

(a) Discloses in writing that this is signed and dated by the client that the bail bond agent is posting the bond amount directly with the court, that the client could post the bond directly with the court themselves, and the amount that will be returned by the court after the completion of the hearing and that further defines the dollar amount the bail bond agent will receive to post the bond as a posting fee which is compliant with section 3905.55 of the Revised Code; and

(b) Returns all funds received back from the court to the client which is acknowledged by a signed receipt from the client.

(2) If less than one-hundred per cent of the charged filed rate of premium is collected on a surety bail bond at the time the bond is posted, the surety bail bond agent must document all collection efforts and further provide documentation to the underwriting company of all amounts that remain uncollected one-hundred-eighty days after the bond is posted with the court.

(3) All surety bail bond agents shall maintain the disclosures, receipts, bond paperwork, and notifications required by paragraph (J) of this rule pursuant to section 3905.90 of the Revised Code.

(K) Severability

If any paragraph, term or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair or invalidate any other paragraph, term or provision of this rule, but the remaining paragraphs, terms and provisions shall be and continue in full force and effect.

IMPORTANT LAW CHANGE:

In 2014 the Ohio Supreme Court ruled that a"cash only" bond was illegal and that Courts must accept a Surety Bond from a Licensed Surety Bail Bond Agent even if the Entry states "cash" or "cash only!"