



Professional Bail Bondsman Arkansas Professional Bail Association

Commercial Bail and the concept of “Custody”.

The American commercial bail system is rooted in the English common law began in England in 1677, when there were no jails, by releasing the prisoner into the custody of the surety (an individual of means) to ensure that the defendant appear in court and to prevent any new crime; and this system of bail has served the criminal justice system in the United States well for over 300 years and without any taxpayer expense.

An extremely old and the most often quoted United States Supreme Court case is Taylor v Taintor, 83 U.S. 366, 21 L.Ed. 287 (1872) wherein the Supreme Court defined the rights and powers of sureties and bondsmen at common law. The Supreme Court stated that “when bail is given the principal is regarded as delivered to the custody of the surety. Their dominion is a continuation of the original imprisonment, considered a form of continued detention, and the common law viewed the surety's custody as a single, continuous event from the original imprisonment. “Whenever they choose to do so, they may seize him and render him in their discharge.”

Arkansas Statute 16-84-114: Surrender of Defendant

At any time before the forfeiture of the bond, the surety may surrender the defendant or the defendant may surrender himself to the jailer of the county in which the offense was committed. The surrender must be accompanied by a certified copy of the bail bond to be delivered to the jailer, who must detain the defendant in custody thereon as upon a commitment and give a written acknowledgment of the surrender. The surety shall thereupon be exonerated.

The act of surrender is putting a premature termination of the bail bond contract by a redelivery of “custody” back into the hands of the arresting authorities.

Guilty Plea: If the defendant is taken into custody by the arresting authorities after a plea of guilty custody of the defendant is taken from the surety; and the surety is thereupon discharged and exonerated as upon a surrender. In the event the defendant, after sentencing, remains free from the arresting authorities, custody remains with the surety and remains responsible for the appearances of the defendant.

The concept of “who has custody” determines the the responsibility for the defendant at any point of time.