

Professional Bail Agents of the U.S.[™] (PBUS[™]) Certified Bail Agent[™] Program – Course 4



REDUCING LOSSES

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The principle of bail in the American court system is viewed as a guarantee the defendant will appear in court when scheduled, which directly conflicts with the stark realities of the matter. At the time a defendant is arrested, a bail-setting decision is made with only sketchy facts available concerning the case and about the defendant. This has been the nucleus of concern outlining a conflict between the purpose and principle of bail. The fact of the matter is bail does not guarantee an individual will appear on the date and time certain. If the defendant posted a cash or property bond (less than 15 percent of the time), the only guarantee is that the court will forfeit that bail and keep the cash or property; justice is not necessarily served by disposition of the case. If the defendant received a bail of personal or own recognizance then the court has little remedy save that of issuing an order for an arrest warrant; also applicable in cases of 10 percent bail posted directly with the court. If bailed through a professional bail agent, then the court is cognizant of the fact the bail agent will usually produce the defendant within the grace period and/or guarantee the full amount of bail will be paid should all efforts to produce the defendant fail. This is where the bail agent's ace-in-the-hole comes in ... the recovery agent or bail enforcement agent.

Bail agents and their sureties are responsible for the financial outcome of a defendant absconding on his bond and failing to appear in court, hence it is more prudent for them to contract the services of a professional bail enforcement agent. Bail enforcement agents can be found in two main categories:

- The gun flashing, Hollywood-styled Rambo-type “wannabe;” and
- The ones who promote a business profile while maintaining an impressionable cache of successfully completed cases.

The first category of “bounty hunter” eventually tests a bail agent’s patience and possibly even taps into his liability insurance with tort actions and criminal sanctions. The second category of professional bail enforcement agent is the type a bail agent will contract with to retrieve the bail jumper without negative sanctions being imposed. A bounty hunter is just that ... a bounty hunter. A bail enforcement agent is a professional in his/her field and recognized as such throughout the law enforcement community. These professional and experienced bail enforcement agents are certified through extensive training and carry all proper licenses for the states and provinces they operate in.

Hiring a Bail Enforcement Agent

Bail enforcement agents who keep a low profile are generally the wisest choice. Conversely, those who advertise their services as gun-toting, macho headhunters clothed in camouflage will invariably subject the bail agent to serious civil law suits and possibly even some criminal sanctions should a situation deteriorate and they decide to live up to their self-proclaimed image. A bail agent or bail agency seeking to engage the services of a bail enforcement agent should:

- Check the applicant's reputation with other bail agents;
- Request the applicant to endorse a "release" and then conduct a background check;
- Require the applicant to endorse a "Hold Harmless" agreement in the event an illegal act is committed during the course of their duties;
- Conduct a verification of the applicant's qualifications, credibility and certifications; and
- Request and maintain file copies of the applicant's licenses.

In today's extremely litigious society the decision to employ the services of a recovery/bail enforcement agent is a critical one. This decision must be made with extreme care and caution, as certain liabilities cannot be overlooked. Police officers make arrests. Bail enforcement agents make apprehensions. As a bail agent once said, "There is no reason to out-fight or out-run anyone you can out-think."

Professional Recovery Agents/Bail Enforcement Agents

PBUS, as well as professional bail enforcement agents, take a strong stand against gun-toting, self-styled bounty hunters that have received little or undisciplined training and play off the image and successful stature of the professional bail enforcement agent. We as bail agents have had to defend our industry against the acts of these non-professionals, much like law enforcement has had to defend themselves as a whole for the illegal acts of a few. PBUS has always maintained the doctrine that bail enforcement is not the act of arresting an individual but of apprehending that person and returning him/her to the justice from which they originally fled without any liability concerns. We are cognizant of the fact that we reside in an extremely litigious society. In conforming to such, we long ago established strict in-house rules and ethics within the disciplines of the bail industry, while bearing foremost in mind the safety and protection of the general public.

Being a professional bail enforcement agent requires an extensive, definitive qualifying certification course before one can receive the credentials of a professionally trained bail enforcement agent. There is no recourse and there are no alternatives. Professional bail enforcement agents are proficient in the various facets and descending phases of bail enforcement and possess all applicable and required licenses for their particular areas of operation. There can be no "Rambo's" and there can be no self-style bounty hunters. Within the ranks are only modern-day professionally trained bail enforcement agents who are accredited and certified for this industry.

What Is A Bounty Hunter?

A bounty hunter in the modern vernacular (bail enforcement agent or fugitive recovery agent), is a duly appointed agent (or deputy) of the surety (bail agent) who posted the bail obligation for the defendant. He/she is, for all intents and purposes, the representative of the surety and as such, has all due authority designated to the bail agent to act in his place and stead, much like an extended but limited power of attorney.

A bail enforcement or fugitive recovery agent wears many hats and is proficient in all areas of his/her professional expertise.

The Arrest

What is the arrest? According to Black's Law Dictionary, the absolute definition of arrest is "the apprehending or detaining of a person in order to be forthcoming to answer an alleged or suspected crime."

An often misunderstood concept is that of the right of a private citizen to affect an arrest. In the days of medieval England, citizens were encouraged and often rewarded by the Sheriffs of the Realm and Forests to participate in apprehending the alleged "bad guys." The right of an English citizen to make arrests was with the same authority as if the Sheriff himself had made the arrest. It was the concept of "posse comitatus."

The validity of a citizen arrest in modern times has been argued strongly via the Ninth Amendment preserving an individual's natural rights to self-preservation and to the defense of other parties. Most of the laws in the United States regarding the rights of citizens to affect an arrest, stem from the root effect of the Second Amendment. Most states in this country recognize the obligations of citizen arrest when the alleged offense was committed in the presence of the person making the apprehension or if that person has reasonable reason to believe the arrestee is wanted on a felony count. Also recognized is the legality of a citizen's arrest during any assistance of a law enforcement officer or any other person authorized to make an arrest. Some of the more questionable statutes still on the books include Massachusetts, which allows for the arrested person to sue the person who made the citizen's arrest for false arrest or false imprisonment should the original charges be dismissed in court. In Kentucky, under Criminal Code 37; S 43, 44, a citizen is allowed to kill a fleeing felon in the course of a citizen's arrest. Utah also allows for citizens to arrest, but strictly forbids any deadly force in effecting the action no matter what the provocation. Bail enforcement agents, by definition, are affecting a citizen's arrest when apprehending their fugitive under the protections of the fugitive having violated a civil contract.

Arrest Authority

Who may arrest? Any law enforcement officer, to include: policeman, sheriff or his deputies, state police officer, federal officers, security personnel within their territorial jurisdiction (usually the job site such as on the property of a contracted business) and any other authorized person (this includes bail enforcement agents when properly titled). An arrest can be made with or without a warrant dependent on the circumstances.

Warrant

A warrant is an order issued by the proper authority such as a Magistrate or Judge and in some cases, a Justice of the Peace. A warrant describes the person to be arrested and lists the offense(s) the person is charged with. A warrant for arrest is necessary unless under one of the following conditions:

- The law enforcement officer has reasonable grounds to believe that a warrant has been issued; and
- The law enforcement officer has reasonable grounds to believe that a crime has been committed and the person being arrested is the suspect.

Arrest Process

The police can arrest a person and release them without filing a formal charge. This usually happens when it is decided there is not enough evidence to hold the arrested person. When a person is arrested and charged with a minor violation of the law, he/she will usually be given a date to appear in court and then released with a summons after being photographed and fingerprinted. If the charge is more serious than a minor offense then bail may have to be posted before the arrested person is released.

Rights under Arrest

A citizen's rights are clearly defined in the Fifth, Sixth and Eighth Amendments contained in the Bill of Rights and in the United States Constitution:

Fifth Amendment:

"No person... shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law..."

Sixth Amendment:

"In all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial, by an impartial jury... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense."

Eighth Amendment:

"Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted."

Since the inception of the Fourteenth Amendment to the Constitution, all states have had to literally guarantee the rights afforded by the Fifth, Sixth and Eighth Amendments, because of the provision: "No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States."

The Apprehension

The use of such terms as, "You're under arrest" or "Freeze" or "You're going to jail," or any other terms that can be considered as a threat should always be avoided. Respect is the key operative term to be adhered to at all times when affecting the apprehension of a bail jumper. Being led away in handcuffs is demeaning enough without a defendant having to bear any disrespectful language or attitude. Irritating behavior on the part of the recovery or bail enforcement agent will only cause problems. After having taken his/her principal into custody the recovery/bail enforcement agent should leave the immediate area posthaste, thereby avoiding any challenges from the principal's family and/or friends. Any continuing conversation will only serve to exacerbate the situation.

Transport

Transportation of bail jumpers must be conducted safely and prudently. It is advisable for the recovery or bail enforcement agent to photograph a prisoner prior to transporting him/her, especially on a long trip. If a male agent is transporting a female prisoner, it is advisable to have a witness along for the ride so that there will be no question as to any accusations of misconduct during the ride.

The Arrest: Procedural Safeguards

If a recovery or bail enforcement agent finds him/herself arrested during the course of pursuing a fugitive, the decision whether or not to comply with a law enforcement officer's request to answer questions is entirely up to them. However, one should carefully consider the long-range outcome because anything you say or write can and certainly will be used against you in a court of law. If offered any sort of compensation or coerced by force into saying or signing anything, one should advise an attorney immediately of the situation and/or request of the officer to have the officer in charge present.

When placed under arrest, the arresting officer is obligated to identify him/herself with name and badge number, if the situation allows for such a conversation. If the officer doesn't volunteer the information upon request, one should not force the issue. The information will be supplied on the arrest report. One should not argue or resist; an additional charge of resisting arrest could be applied. When you are making the arrest as a recovery or bail enforcement agent you cannot charge a principal with resisting arrest even though the arrest is within the parameters of the law governing citizen's arrest.

It is legal for a law enforcement officer to search or frisk a person and any areas within that person's immediate control. Upon initial confrontation an officer may frisk for weapons if he/she feels an imminent threat to personal safety exists (as a recovery or bail enforcement agent you can be assured you will be frisked for weapons).

When you are affecting an arrest, do not under any circumstances, conditions or provocation offer a captured fugitive any legal advice but merely suggest you are not an attorney and cannot give the advice requested.

Unlawful Arrest

In *Plummer vs. State*, 136 Ind. 306, citizens are allowed to resist an arrest if said arrest is unlawful. This has been upheld in the United States Supreme Court in *John Bad Elk vs. United States*, 177 U.S. 529, wherein the Court stated:

“Where the officer is killed in the course of the disorder which naturally accompanies and attempted arrest that is resisted, the law looks with very different eyes upon the transaction, when the officer had the right to make the arrest, from what it does if the officer had no right. What may be murder in the first case might be nothing more than manslaughter in the other, or the facts might show that no offense had been committed.”

“An arrest made with a defective warrant, or one issued without affidavit, or one that fails to allege a crime is within jurisdiction, and one who is being arrested, may resist arrest and break away. If the arresting officer is killed by one who is so resisting, the killing will be no more than involuntary manslaughter.”

Housch vs. People, 75 111. 491: reaffirmed and quoted in State vs. Leach, 7 Conn. 452; State vs. Gleason, 32 Kan. 245; Ballard vs. State, 43 Ohio 349; State vs. Rousseau, 241 P. 2d 447; State vs. Spaulding, 34 Minn. 3621.

“When a person being without fault, is in a place where he has a right to be, is violently assaulted, he may, without retreating, repel by force, and if, in the reasonable exercise of his right of self-defense, his assailant is killed, he is justifiable.”

Runyan vs. State, 57 Ind. 80; Miller vs. State, 74 Ind. 1.

“These principles apply as well to an officer attempting to make an arrest, who abuses his authority and transcends the bounds thereof by the use of unnecessary force and violence, as they do to a private individual who unlawfully uses such force and violence.”

Jones vs. State, 26 Tex. App. I; Beaverts vs. State, 4 Tex. App. I 75; Skidmore vs. State, 43 Tex.

Where Do Bail Enforcement Agents Get Their Authority to Apprehend?

Surety upon a bail bond or other undertaking have the right to surrender their principal at any time, and to this end may pursue and seize him wherever they may find him, even though they may be in another state. While the law is well settled and hardly open to argument on this point, there has been at times a failure to understand the reason for the rule and this strictly private right has been confused with the governmental process of extradition. The two remedies are distinct and independent and are only to be confused through lack of understanding of the nature and origin of the relationship of bail and principal.

Nature of the Relationship

It is a somewhat common error to suppose that a defendant released upon bail is thereby relieved from all custody and restraint and is under no obligation except that of appearing in court at such time during the prosecution of his case the law requires. Inherent in this mistaken conception is the thought that the purpose of bail is to recover the penalty of the bond upon default in appearance. This is the opposite of the truth. The primary purpose of bail is, and always has been, the retention of control over the defendant to the end that justice might be administered. The modern system is but a development of common law. It has been called:

“An ancient and extremely vigorous form of suretyship or hostage-ship, which rendered the surety liable to suffer the punishment that was hanging over the head of the released prisoner.” (2 Pollock & M. History of Eng. Law, p. 589.)

Thus, while in a sense the defendant is given a degree of freedom, in contemplation of the law the dominion of the court is continued in the person of the surety and there is no such relaxation or abandonment thereof as would require new process to reassert. This fundamental concept is essential to an undertaking of the rights that arise out of the relationship. In but slightly varying language the same idea has been expressed by the courts from early times:

“The doctrine is well settled that, when bail is given, the principal is regarded as delivered to the custody of the sureties. Their dominion is a continuance of the original imprisonment.” (Taylor v. Taintor, 16 Wall, 366, 21 L. Ed. 287; State v. Ligererfeit, 10J NC775, 14 S. E. 75.)

The books have clearly expressed this idea in regard to the relation of the principal to his bail and the authorities are pretty well agreed upon it.

“A man’s bail is looked upon as his jailers of his own choosing and the person bailed is, in the eye of the law, for many purposes esteemed to be as much in the prison of the court by which he is bailed as if he were in the actual custody of the proper jailer.”
(2 Hawk, P. C. 140)

“It is also said that when the obligation of bail is assumed, the surety becomes in law not only the jailer of his principal, as his custody is constructively a continuance of the original imprisonment, but though he cannot confine him except where actually necessary, and temporarily, for the purpose of surrender, he is subrogated to all the other rights and means which the state possesses to make his control of him effective.”
(Pickelsimer v. Glazener, 173 N. C. 630, 92 S. E. 700. And see Nitrograph Mfg Co. v. Scrugham, 197 N. Y. 377. 90 N. E. 962; Com v. Miller, 105 Pa., Super, 56, 160 A. 240; C J. Sec. Vol. 8, p. 39, n. 74.

“Under a bail bond or recognizance the principal is, upon filing of the bond, released in the custody of his bondsmen. He is still constructively, in the custody of the law. The dominion of the surety is a continuance of the original imprisonment.”
(In re Lexington Surety & I. Co. 272 N. Y. 210, 5N. E. (2nd) 204.

“The surety, in assuming the obligation of bail, becomes in the law the jailer of his principal and has custody of him. This custody is merely a continuance of the original imprisonment. The sureties are subrogated to all the right and means which the state possesses to make the control effective.”
(Grain v. State, (Ct. Cr. App.- Okla.) 90 Pac. (2nd) 954, quoting An. J., Vol. 6, p. 112, Sec. 165.)

“At common law, when bail was given and the principal relieved from the custody of the law, he was regarded, not as freed entirely, but as transferred to the friendly custody of his bail.”
(Stale v. Schenk, 138NC 560,495. E. 917.)

Right to Arrest

It is equally clear that in order to effectuate their right to relieve themselves from the responsibility of custody, the sureties have the right to arrest their principal. This may be done in person or by agent and may be accompanied by the use of such force as is reasonably necessary. No new process is necessary. In effect the arrest amounts to no more than the taking into actual custody of one already under his dominion. The scope of the right was stated in Com. v. Brickett, 8 Pick.) Mass.) 138 as follows:

“By the common law the bail has the custody of the principal and may take him at any time and at any place. The taking is not considered as service of process, but as a continuation of the custody which had been, at the request of the principal, committed to the bail. The principal may, therefore, be taken on Sunday. The dwelling house is no longer the castle of the principal, in which he may keep himself to stay off the bail. If the door should not be opened on demand at midnight, the bail may break it down, and take the principal from his bed, if that measure shall be necessary to enable the bail to take the principal.”

The Supreme Court of the United States in the case of Taylor v. Taintor 16 Wall, 366 used the following language, which has been quoted in the decisions ever since:

“(The sureties) . . . whenever they choose to do so may seize him and deliver him up in their discharge; and if this cannot be done at once, they may imprison him until it can be done. They may pursue him to another state; may arrest him on the Sabbath, and if necessary, break and enter his house for that purpose. The seizure is not made by virtue of new process. None is needed. It is likened to the re-arrest by the sheriff of an escaping prisoner.”

Also see Pickelsimer v. Glazener, supra, and cases collected in 73-A, L. R. 1370; Cartee v. Staet, 162 Miss. 272, 139 So. 620; U.S. v. Lee, (D. c. Ohio) 17 Fed.

It is not necessary that the surety make the arrest in person. He may delegate the right to another as his agent.

“I see nothing, on general principles, against allowing this power to be exercised by an agent or deputy and no case is to be found where the right has been denied. It is a general rule of law even with respect to public officers, that their ministerial acts may be performed by deputy and with respect to private individuals, the law recognizes the act of an authorized agent as equal to that of the principal; and there is no principal of policy which renders it necessary to make this an exception.” (Nicolls v. Ingersoll, 7 Johns, 154.) And see cases cited herein.

The sureties are not required to have a warrant or order of court. The right of bail to seize the principal arises from the nature of the undertaking; and does not depend on new process. The rule is said to rest upon the reason that the seizure “is likened to the re-arrest by the sheriff of an escaped prisoner.” (Taylor v. Taintor, supra.)