



Senate Fiscal Agency  
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## BILL ANALYSIS



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Senate Bill 381 (Substitute S-2 as passed by the Senate)  
Sponsor: Senator Rick Jones  
Committee: Judiciary

Date Completed: 7-17-17

### **RATIONALE**

In many cases, a criminal defendant may be released on bail or bond pending court proceedings in the case against him or her. A defendant can secure his or her release by posting the bond himself or herself or by using a surety (a party who pledges money to guarantee the defendant's appearance in court), such as a bail bondsman. When a defendant fails to appear at a scheduled court proceeding, the court clerk must enter the default on the record. The Code of Criminal Procedure requires the court, within seven days of default, to give each surety notice either in-person or by leaving the notice at the surety's last known business address. Apparently, a recent court case has made it unclear as to whether first-class mail is an appropriate method of service to a surety's last known business address. To address this concern, it has been suggested that the Code should specify which methods of service are appropriate to provide notice to a surety of a defendant's default.

### **CONTENT**

**The bill would amend the Code of Criminal Procedure to allow the court to send a required notice of a person's failure to appear by first-class mail to a surety's last known business address.**

The Code requires a court clerk to enter a default on the record if the default is made in any recognizance in a court of record (e.g., a defendant who has posted bail later fails to appear in court). After the default is entered, the court must give each surety immediate notice not to exceed seven days after the date of the failure to appear. The bill instead provides that if a defendant failed to appear, within seven days after the date of the failure to appear, the court would have to serve each surety notice of the failure to appear.

Currently, the notice must be served on each surety in person or left at the surety's last known business address. Under the bill, the notice would have to be served in person, left at the surety's last known business address, electronically mailed to an electronic mail address provided to the court by the surety, or mailed by first-class mail to the surety's last known business address. If the notice were served by first-class mail, it would have to be mailed separately from the notice of intent to enter judgment.

The bill would take effect 90 days after its enactment.

MCL 765.28

### **BACKGROUND**

A recent court case addressed certain issues related to service of notice of a person's failure to appear to a surety. In this case, after a defendant defaulted on his bond obligation by failing to appear, the circuit court hearing the case forfeited the bond and served notice on the defendant's

surety (a bail bond agency). The notice was served via first-class mail postmarked eight days after the default, and was received by the surety the next day. The surety asserted that notice was not timely. The circuit court entered judgment against the surety for the full amount of the bond, and added a 20% late fee for its failure to pay the judgment within the specified period of time. The trial court later denied a motion to vacate the judgment. In an opinion issued on November 22, 2016, The Michigan Court of Appeals reversed the circuit court's denial of the motion to vacate (*In re Forfeiture of Bail Bond*, No. 328784). The Court noted that service was not timely because the circuit court failed to provide the appropriate notice within seven days of the defendant's default. The Court also held that "mailing the notice did not effectuate timely or proper service" because, under the Code of Criminal Procedure, "the court was required to notify the surety in person or leave the notice at the surety's last known business address". On December 15, 2016, the Court vacated its earlier opinion and replaced it with an opinion in which the Court still concluded that the notice was not timely, but omitted the language stating that the mailing did not effectuate timely or proper service.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Generally, in-person service of process is used at the outset of a case to inform the parties of a dispute; however, once the case commences, most notices are served by mail (and in some situations, e-mail). Service of a notice in person is expensive and cumbersome. The recent Court of Appeals case discussed above has left it unclear as to whether service by first-class mail is appropriate to notify a surety of a defendant's default on his or her bond obligations. The bill would clarify this issue by specifying the appropriate methods of service that a court could use to notify a surety that a defendant had defaulted, while ensuring that the surety received appropriate notice.

Legislative Analyst: Jeff Mann

## **FISCAL IMPACT**

The bill would have no fiscal impact on the State and could have a small positive fiscal impact on local government. The changes in the bill would allow a court to serve notice of default by email or first class mail instead of serving the notice in person or leaving it at the surety's last known business address. This change could result in lower administrative costs to local courts.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.