

STATE OF SOUTH DAKOTA
THIRD JUDICIAL CIRCUIT COURT
314 Sixth Avenue, Brookings, South Dakota 57006

David R. Gienapp
Presiding Judge
(605) 688-5705

Anthony W. Benning
Administrator
(605) 688-4621

Counties
*Beadle, Brookings, Clark
Codington, Deuel, Grant
Hamlin, Hand, Jerauld
Kingsbury, Lake, Miner
Moody and Sanborn*

THIRD CIRCUIT POLICY – 04-02-P

Bond Forfeiture

The judges of the Third Circuit have determined that a clarification of bond forfeiture proceedings is necessary. This procedure has not been strictly followed in all areas of the circuit in the past, but will be from this point forward.

The statutory procedure is contained in SDCL 23A-43-21 through 23A-32.

SDCL 23A-43-21. Upon a showing that there has been a material breach of the condition of release without good cause, the Court shall declare a forfeiture of the bond and shall enter an order revoking conditions of release. If the breach of the condition of release is a failure to appear, the Court may take judicial notice of the failure to appear on the record and issue a bench warrant immediately. If the allegation is a breach of behavioral conditions, there must be an on-the-record showing by supporting affidavit or other sworn testimony.

SDCL 23A-43-22. Even though the bond has been forfeited, the Court may set it aside if it appears that justice does not require enforcement of the forfeiture.

SDCL 23A-43-23. Once bond is forfeited, and has not been set aside, the State's Attorney must file a motion to enter a judgment of default execution. The State's Attorney should file the motion with the Clerk of Courts. Under the statute, the clerks are appointed irrevocably as the agent of the obligor. As such, the clerk should set a date for hearing with the judge and mail a notice of the hearing to the last known address of the obligor.

SDCL 23A-43-24. At the hearing, the court may direct that the forfeiture be set aside, or remit only part of the bond under such terms and conditions as it may impose.

SDCL 23A-43-25. When bail is forfeited under SDCL 23A-43-21, the money deposited must be forwarded by the clerk of courts to the county treasurer monthly.

SDCL 23A-43-25.1. If the Court orders that a forfeiture be set aside in whole or in part, the county treasurer must remit the amount set aside to the clerk of courts.

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SDCL 23-43-27. Upon a verdict or plea of guilty, the court must remand the defendant to the custody of the appropriate official and exonerate bail. If the court chooses to release the defendant pending sentencing, it must reset bond.

SDCL 23A-43-29. If a surety finds that the principal has or may violate a term and condition of his release, other than for a failure to appear, he may arrest the principal and bring him before the judge who set bond, whereupon the Court shall exonerate and discharge the surety and order the principal into custody.

Finally, the judges have established as a matter of policy that if a principal fails to appear, a forfeiture may be set aside as long as the surety arrests and brings the defendant before the judge who set bond no later than three weeks after the failure to appear. The principal may be held responsible for any costs incurred.

If any person has a question concerning the forfeiture process, please advise either myself or the Circuit Court Administrator. If any State's Attorney's office wishes a member of the UJS or a judge to explain the procedure at a county commission meeting, feel free to let us know and someone will be made available to meet with the commissioners.

Dated this 28th day of March, 2011.



David R. Gienapp
Presiding Judge
Third Judicial Circuit

Revised 3/28/2011