

ARIZONA BAIL BONDSMEN ASSOCIATION

1012 N 7th Ave Phoenix Arizona 85007

John Burns
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Conditional Early Release by Bond Act Post Conviction Performance Surety Bonds

Bill #6

SPONSORED BY REPRESENTATIVE GOWAN

Last Update: **November 28, 2012**

"Conditional Early Release by Bond Act for Post Conviction Surety Bonds" authorizes a judicial officer to allow early release once a cash or surety bond has been posted by an authorized licensed bail bond agent or surety. Recommendation can be made by the Department of Corrections for early release for non-violent non-sexual offenders.

Judicial officer will review the recommendation within 60 days from date of filing. Any objections from victim(s) or prosecutors must be received within 30 days from the date received FILED by the clerk of the court.

Principals that are recommended must have no behavioral infractions, and have complied with any court-ordered programs while in custody. The amount of the post conviction bond shall be determined by judicial officer. The length of the bond is not to exceed five years.

- (1) 'Bail bond agency' means a bail bond agency that is qualified pursuant to the provisions of ARS Code 20-340.01.
- (2) 'Breach' means any condition of release violated by the principal.
- (3) 'Charge' means the amount of money the surety charges to write the bond. The charges must not be less than ten percent annually of the aggregate penalty amounts which charge shall be fully earned when the bond is written.
- (4) 'Clerk of court', unless otherwise specified, means the clerk of the superior court of the county in the state where the surety or bail bond agency is currently writing or obligated on the majority of those bonds which he has written or on which he is obligated pursuant to the provisions of this article.
- (5) 'Conditions' means such conditions as the releasing authority may impose as a prerequisite to being released from custody.
- (6) 'Department of Corrections' or 'department' means the Arizona Department of Corrections or Sheriff of the County Jail.
- (7) 'Early release bond' means the written undertaking delivered by the surety to the releasing authority and describing the terms and conditions of the surety's duties.
- (8) 'Mandatory conditions' mean those conditions the releasing authority must place upon the principal as a condition to early release.

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- (9) 'Penalty breach' means the amount of money to be paid by the surety to the state upon the surety's failure to meet the requirements under the provisions of this article. The penalty breach shall be equal to the face amount of the bond. There can be two penalty breaches: (1) an amount of money paid by the surety upon breach of a release condition; and (2) an amount of money paid by the surety if the principal is not back in custody within a given amount of time following the breach of a release condition.
- (10) 'Principal' means a person released pursuant to the provisions of this article. No person serving a life sentence or who has been convicted of a violent crime, or who is a sexual offender shall be eligible for an early release bond.
- (11) 'Prison' means a correctional facility operated by the department or Sheriff of the County Jail.
- (12) 'Prison system' means the prisons operated by the department or Sheriff of the County Jail.
- (13) 'Prisoner' means every person who is serving a criminal sentence under commitment to the department, including persons serving sentences in local detention facilities designated under the provisions of applicable law and regulations.
- (14) 'Prison system population' means the total number of prisoners housed in the prisons operated by the department or County Sheriff.
- (15) 'Releasing authority' means Judicial Officer authorized to sign release order.
- (16) 'Revocation of bond' means the use and effectiveness of the bond has ceased. The releasing authority may revoke the bond upon a breach or continue the bond by nullifying the breach. The bond may be revoked at any time the releasing authority or surety determines that the principal is not complying with the conditions of the bond.
- (17) 'Surety' means an insurance company licensed under the laws of Arizona to execute bonds filed in criminal cases.
- (18) "Collateral" means property or cash pledged to the surety for the entire amount of the bond.
- (19) 'Indemnitor' means Guarantor of the bond amount.

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Upon decision of the department of corrections recommend a principal for early release bond by surety program to judicial officer in which jurisdiction the principal was sentenced, said department shall recommend conditions of release which shall be made part of the bond. The conditions shall be appropriate to the character and circumstances of the principal and the circumstances of the principal's release. The principal must serve at least 50% of the minimum sentence to be eligible for early release bond. The conditions may, unless otherwise specified, be any of the following, but are not limited to these conditions and are to include additional conditions imposed by the releasing authority:

- (1) The principal shall be subject to drug or alcohol testing as specified in the bond;
- (2) The principal shall be required to participate in specified recovery programs;
- (3) The principal shall not contact, visit, or communicate directly with a witness or a victim involved in the principal's conviction;
- (4) The principal shall obtain and retain employment;
- (5) The principal shall be on home detention by way of a global positioning satellite (GPS) monitoring device that has been approved by the state;
- (6) The principal shall abide by specified travel restrictions;
- (7) The principal shall make specified periodic restitution payments;
- (8) The principal shall pay specified fines and court costs;
- (9) The principal shall perform specified community services;
- (10) The principal shall obtain such education as specified in the bond;
- (11) The principal shall participate in specified family or third party involvement.
- (12) The principal's compliance to all terms and conditions shall be filed with the clerk of the court on a quarterly basis for judicial review.

(B) The following are mandatory conditions and shall be imposed on the principal as a matter of law:

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- (1) The principal shall pay the surety's charges; for drug testing, electronic monitoring and a weekly contact management fee.
 - (2) The principal shall personally report to the surety at the time and in the manner as directed by the releasing authority and the surety shall keep an electronic attendance and compliance data base.
 - (C) A surety or bail bond agency that maintains a physical location in Arizona that is accessible to the public and that has been qualified as a bail bond agency or surety pursuant to ARS Code 20-340.01 for at least one year, may post an early release bond pursuant to this article. The surety or bail bond agency must register with the local clerk of court and pay an annual fee of five hundred dollars.
 - (D) The terms of the bond posted by the surety or the bail bond agency shall be in writing in an amount to be determined by the Judicial officer and shall be made in favor of and payable to the county general fund from where the defendant committed the offense. The term of the bond shall be determined by the releasing authority, but shall not be for a period of more than five years.
 - (E) The releasing authority shall give the surety written notice of any breach of condition within five days of its knowledge of the breach.
 - (F) If, within 90 calendar days from the date of receipt of written notice by the releasing authority that the principal has failed to meet one or more of the conditions of the principal's early release and the principal has been placed back in custody, whether by the surety or another agency, then the bond shall be exonerated.
 - (G) The surety can surrender the principal to any County Sheriff if the principal is not following the terms and conditions of the early release bond. The judicial officer shall exonerate the bond if the surety surrenders the defendant prior to any notices from the releasing authority.
 - (H) If the indemnitor that is pledging the collateral for the early release bond revokes the collateral in writing, the surety can return the principal to custody of the County Sheriff.
- 20) The surety shall pay for penalty breaches:
- (A) Upon a breach of a condition by the principal; or
 - (B) Upon the principal not being back in custody within the prescribed 90 days.
 - (C) Upon a breach of subsection (A), the surety shall pay ten percent of the face amount of the bond directly to the county treasurer to be deposited to the general fund. Upon a breach of subsection (B), the surety shall pay the remaining ninety percent of the face amount of the



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bond directly to the county treasurer to be deposited in the general fund.

- 21) At any time after receiving a notice of breach by the principal, the surety may arrest the principal and surrender him to the nearest county jail. If the principal is surrendered within 90 days of receipt of the notice of breach, the bond shall be exonerated. Any and all costs shall be paid by the Indemnitor that pledged the collateral of the entire bond amount. To include recovery fees, past due balances owed to the Surety for all fees charged.