

FORM SUMMARY

Name of Form: Notice of Bail/Bond Forfeiture

Form Number: CR-228

Statutory Reference: §969.13, Wisconsin Statutes

Benchbook Reference:

Purpose of Form: To give notice of the forfeiture of a criminal bail/bond and give the defendant and any sureties notice that they are to appear within 30 days if they object to the forfeiture of the bail/bond.

Another version of this form is available (CR-229) for those counties which schedule specific hearings on granting judgment. The only difference is that reference is made to the hearing date and time is made.

Who Completes It: Court clerk

Distribution of Form: Original to court; copies to attorneys; copies to defendant and all sureties

Accompanying Forms: Generally none

New Form/Modification: Modification, last update 5/00

Modifications: Changed name from "Order and Notice of Bail/Bond Forfeiture." Changed form content from an order to a notice. RMC believes the term 'bail' refers to cash conditions of release; and 'bond' refers to non-cash conditions of release (i.e. signature bond or property bond).

Comments: The procedure for forfeiting a criminal bail/bond is a multi-step process. After the alleged failure by the defendant to comply with the bail/bond, either by failing to appear or by violating some other condition of the bail/bond, the court orders the bail/bond forfeited. Notice must be sent to the defendant and any sureties of that order.

Section 969.13, Wisconsin Statutes, provides that if the defendant does not appear within that 30 day period and the defendant or sureties do not show the court that the defendant's failure to appear and surrender was impossible and without fault, the district attorney may move the court for entry of the judgment. If the defendant or sureties satisfy the court that appearance and surrender by the defendant was impossible and without the defendant's fault, the court may schedule the matter for another hearing to allow the defendant to explain the alleged failure to comply with the bail/bond.

This section does not explain what is to occur if the defendant does appear and surrender within the 30 day period. The Supreme Court in *State v. Achterberg*, 201 Wis. 2d 291, 548 N.W. 2d 515 (1996), concluded that a motion by the district attorney is not necessary before a court can enter judgment on the bail/bond forfeiture if the court is not satisfied with the defendant's explanation.

Confusion may occur because of the statutory references to the term "that appearance." The question is, which appearance? Is it the failure to originally appear in court which triggered the bail/bond forfeiture or is it the appearance and surrender required within 30 days? RMC believes, and the Supreme Court seems to concur, that the term "that appearance" must refer to the appearance within 30 days after the forfeiture is ordered. This is because bail/bonds can be forfeited for reasons in addition to a nonappearance. If the term "that appearance" refers to the initial event triggering the forfeiture, the statute seems to eliminate the possibility of forfeiting bail/bond for a violation of conditions. This is obviously illogical. RMC believes the logic of the statute is to provide a defendant with the due process right of allocation to explain why the bail/bond should not be forfeited. Thus, the statute gives the defendant 30 days to surrender and explain. If the defendant does not do so, the sureties are given the opportunity to show the court that the defendant's failure to appear and explain is without the defendant's fault and request the court to give the defendant another opportunity to do so before entering judgment. For example, the defendant may be hospitalized or incarcerated and thus unable to appear to make the explanation. This would comply with both the defendant's and sureties' due process rights.

About this form:

This form is the product of the Wisconsin Records Management Committee, a committee of the Director of State Court's Office and a mandate of the Wisconsin Judicial Conference.

If you have additional information that does not change the meaning of the form, attach it on a separate page. The form itself shall not be altered.