

## CAVEAT EMPTOR: IN-CUSTODY CASES NO SLAM DUNK

LESSONS LEARNED FROM A PRACTITIONER'S POINT OF VIEW

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My good friends in the bail industry, on its face it is easy to quickly jump to the conclusion that once your bail skip is in custody in a jail in the United States, that all of your worries are over and your liabilities on the bail forfeiture are certain to be exonerated. However, in my opinion, based on my experience working on bail forfeiture related in-custody cases within the State of California, I find these types of cases to be very complex in nature, quite time intensive, and a far cry from a slam dunk. You may be shocked to hear this, but the laws in the area of in-custody cases are vastly complex, and the procedures are equally as complex. The average telephone call I receive from a bail agent usually starts out something like this - I have a bail forfeiture and my bail enforcement agent has located the defendant in-custody. I have an in-custody letter from the jail, please file a motion to exonerate the bond. Simple enough, right? Wrong! First of all, time is of the essence to move quickly and to get hot on the trail. What kind of trail? A document trail. The first question that should be answered is where is the defendant/fugitive located in custody. Is the jail in the same county where bail was forfeited or in the same state where the bail was forfeited, but is in a different county; or in a sister states's jail or in federal custody? The answer to this question will likely trigger different procedures that may very well include notification requirements to the prosecuting agency and law enforcement that must be made before the defendant is released from custody. The next question to ask is has a warrant hold/detainer been placed on the defendant in the jail he/she is currently located in, for the warrant that was issued in the case of your bail forfeiture? Have any of our readers out there had a defendant released from custody without the warrant hold being attached? The record speaks for itself and the cases are often factually



driven and determined by varying laws. Depending on the factual scenario and the laws of the state, a defendant in custody can present quite a dilemma indeed, not to mention the clock is running on the jurisdictional time line to timely file a motion with the proper court for full relief from the forfeiture. Now, what about that in-custody letter the bail agent has in their file, ready to be used as Exhibit Numero Uno for the exoneration motion? Not so fast; does the document satisfy the rules of evidence from your state, is it hearsay or lack authenticity. Lesson learned, the in-custody document should dot the Is and cross the Ts and should comply with the rules of evidence of the state from where the bail forfeiture was ordered.

If my point on complexities of in-custody cases has not yet been driven to home plate, try this on for size. The penal code provisions that govern in custody situations in a given state can be misunderstood if read simply by the naked eye. What does this mean, you ask? Well, the meaning of a statute may not be determined from a single word or sentence, but must be construed in context and in harmony with the legislature's intent. Different courts and members of the judiciary use differing theories of law in the area of statutory interpretation. These theories run the entire spectrum, including the plain meaning rule; to, what is the overall purpose of the statute; to, what is the legislative history or a combination of theories. The theory of statutory interpretation adopted by a court can affect the entire outcome of a case. Believe it or not, the outcome of an in-custody case can even turn on the legislature's overall intent behind the words, such as a surrender or if located outside the county where the case is located.

The lesson learned from all of this is not to treat an in-custody case as a slam dunk or this can take you down a long and slippery slope. This can be so easy to say, but so hard to do. These cases require immediate attention to detail.