

**Instructions for Affidavits of Incarceration**  
**(Art. 17.16 of Texas Code of Criminal Procedure)**

**Art. 17.16. DISCHARGE OF LIABILITY; SURRENDER OR INCARCERATION OF PRINCIPAL BEFORE FORFEITURE; VERIFICATION OF INCARCERATION**

(a) A surety may before forfeiture relieve the surety of the surety's undertaking by:

- (1) surrendering the accused into the custody of the sheriff of the county where the prosecution is pending; or
- (2) delivering to the sheriff of the county in which the prosecution is pending and to the office of the prosecuting attorney an affidavit stating that the accused is incarcerated in federal custody, in the custody of any state, or in any county of this state.

**Procedure:** The bondsman will complete the Affidavit of Incarceration (AOI) and obtain the Lee County Sheriff's verification of incarceration. **All information must be filled in on the Affidavit of Incarceration Form before obtaining the Lee County Sheriff's verification.** Bondsman then delivers the AOI to the office of the Lee County Attorney who shall advise the bondsmen in which court the matter is pending. Upon determining the appropriate court, the Lee County Attorney shall file the original of the Affidavit of Incarceration with the clerk of the Court in which the criminal proceeding is pending.

(b) On receipt of an affidavit described by Subsection (a) (2), the Lee County Sheriff shall verify whether the accused is incarcerated as stated in the affidavit. If the sheriff verifies the statement in the affidavit, the sheriff shall notify the magistrate or court before which the prosecution is pending of the verification.

**Procedure:** The Lee County Sheriff will notify the Lee County Attorney's Office to retrieve from the Lee County Sheriff Office the AOI that has been verified by the Lee County Sheriff or his/her designee. The Lee County Attorney shall determine in which court the criminal proceeding is pending and shall deliver notice of said AOI to that court.

(c) On a verification described by this article, the sheriff shall place a detainer against the accused with the appropriate officials in the jurisdiction in which the accused is incarcerated. On receipt of notice of a verification described by this article, the magistrate before whom the prosecution is pending shall direct the clerk of the court to issue a capias for the arrest of the accused, except as provided by Subsection (d).

(d) A capias for the arrest of the accused is not required if:

- (1) A warrant has been issued for the accused's arrest and remains outstanding; or
- (2) The issuance of a capias would otherwise be unnecessary for the purpose of taking the accused into custody.

(e) For the purposes of Subsection (a) (2) of this article, the bond is discharged and the surety is absolved of liability on the bond on the verification of the incarceration of the accused.

(f) An affidavit described by Subsection (a) (2) and the documentation of any verification obtained under Subsection (b) must be:

- (1) Filed in the court record of the underlying criminal case in the court in which the prosecution is pending or, if the court record does not exist, in a general file maintained by the clerk of the court; and
- (2) Delivered to the office of the prosecuting attorney.

(g) A surety is liable for all reasonable and necessary expenses incurred in returning the accused into the custody of the sheriff of the county in which the prosecution is pending.

**Procedure:** The Sheriff will provide the Lee County Attorney a cost statement of the expenses incurred by the Sheriff in bringing back a defendant from another jurisdiction. The Lee County Attorney will prepare and deliver an invoice to the bondsmen and recover the costs.

State of Texas, County of Lee

Before me, the undersigned Notary Public, on this day did personally appear \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing Affidavit and upon his/her oath, stated that the information contained therein is true and correct.

SUBSCRIBED AND SWORN BEFORE ME BY \_\_\_\_\_, A  
COMPETENT AND CREDIBLE PERSON, ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

**VERIFICATION OF INCARCERATION**

The undersigned, being the Sheriff or Sheriff's designee of **LEE COUNTY, TEXAS**, hereby verifies that the Defendant, \_\_\_\_\_ is in the custody of the following jurisdiction: \_\_\_\_\_, as of \_\_\_\_\_: \_\_\_\_\_ o'clock AM/PM, on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
# \_\_\_\_\_ Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Signature

**LEE COUNTY SHERIFF or Sheriff's designee**

**A DETAINER HAS BEEN PLACED ON \_\_\_\_\_ IN ACCORDANCE WITH ARTICLE 17.16(C), TEXAS CODE OF CRIMINAL PROCEDURE ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_ . \_\_\_\_\_ (INITIALS OF PERSON PLACING DETAINER ON DEFENDANT)**

CAUSE/AGENCY CASE NO. \_\_\_\_\_

STATE OF TEXAS ) ( IN THE \_\_\_\_\_ COURT  
VS ) ( OF  
\_\_\_\_\_ ) ( LEE COUNTY, TEXAS

AFFIDAVIT OF SURETY FOR DISCHARGE OF LIABILITY AND SURRENDER OF  
PRINCIPAL BEFORE FORFEITURE

State of Texas  
County of Lee

"I, \_\_\_\_\_, am the licensed agent of  
\_\_\_\_\_ surety in the above-entitled cause. As surety, I posted a bond in  
the amount of \$ \_\_\_\_\_ for the MISDEMEANOR/FELONY charge  
\_\_\_\_\_ on the defendant's behalf on  
\_\_\_\_\_, 20\_\_\_\_. Said charge is currently pending in the \_\_\_\_\_  
Court (District/County/Justice/Municipal - Circle one) in this County as Cause No.  
\_\_\_\_\_."

"This bond is not the subject of a forfeiture and no forfeiture proceeding is pending at this time."

"The Defendant is currently incarcerated in the **FEDERAL/STATE/COUNTY** (circle one)  
custody of \_\_\_\_\_ in \_\_\_\_\_ **COUNTY, TEXAS.**  
The \_\_\_\_\_ facility and contact \_\_\_\_\_ phone \_\_\_\_\_ number \_\_\_\_\_ are  
\_\_\_\_\_."

"Said charge is pending in **LEE COUNTY**, and, therefore in accordance with Article  
17.16, Texas Code of Criminal Procedure, Surety hereby requests that the Sheriff of **LEE COUNTY,**  
**TEXAS** hereby verify the incarceration of the Defendant in the **FEDERAL/STATE/COUNTY** custody  
of \_\_\_\_\_ in \_\_\_\_\_ **COUNTY, TEXAS.**"

"That upon verification of incarceration of the Defendant, surety hereby requests that the bond  
described herein be discharged and surety be absolved of all further liability on said bond, provided that I  
**acknowledge that 17.16(g) of the Texas Code of Criminal Procedure provides that a surety is liable  
for all reasonable and necessary expenses incurred in returning the accused into the custody of the  
Lee County Sheriff.**"

Respectfully submitted,

\_\_\_\_\_  
**Bonding Company**

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_  
\_\_\_\_\_

**SURETY'S CERTIFICATE OF NOTIFICATION**

I hereby certify:

- The Defendant does NOT have an attorney on record for this case.
- The Defendant does have an attorney on record for this case, however, Article 17.16 C.C.P. does NOT require attorney notification.

**CERTIFICATE OF SERVICE**

- This affidavit has been submitted to the office of the prosecuting attorney pursuant to Article 17.16 C.C.P.

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, the Affidavit to Surrender Surety/Affidavit for Discharge of Liability for defendant \_\_\_\_\_, DOB \_\_\_\_\_ Cause # \_\_\_\_\_ Charged with the offense of \_\_\_\_\_ was hand delivered to the Lee County Attorney's Office, located at 200 S. Main, Suite 305, Giddings, TX 78942.

\_\_\_\_\_  
Signature

Received this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ .

\_\_\_\_\_  
Lee County Attorney or Assistant

CAUSE/AGENCY CASE NO. \_\_\_\_\_

STATE OF TEXAS ) ( IN THE \_\_\_\_\_ COURT  
VS ) ( OF  
\_\_\_\_\_ ) ( LEE COUNTY, TEXAS

**ORDER OF DISCHARGE AND DIRECTIVE TO ISSUE CAPIAS**

The undersigned judge/magistrate has reviewed the Affidavit of Surety and the correspond Verification of Incarceration by the Sheriff on the above-named defendant. Pursuant to the provisions of the Code of Criminal Procedure, Article 17.16, the Surety \_\_\_\_\_ is hereby discharged and absolved of liability in this matter.

IT IS ORDERED that the clerk shall immediately issue a warrant or alias capias directing the above-named defendant to be arrested and placed in the Lee County Jail; OR

This Magistrate HEREBY FINDS that the issuance of a capias is unnecessary for the purpose of taking the defendant into custody because either (1) a warrant has been issued for the defendant's arrest and remains outstanding OR (2) the issuance of a capias would otherwise be unnecessary due to the defendant currently being incarcerated in the Lee County Jail.

The surety, \_\_\_\_\_, shall be responsible for all necessary and reasonable expenses incurred by the sheriff(s) in re-arresting the defendant/principal and all other reasonable expenses incurred by any other sheriff or peace officer in re-arresting the defendant/principal, in an amount to be determined after the defendant/principal is arrested and placed in the Lee County Jail.

**SIGNED AND ENTERED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Judge/Magistrate Lee County, Texas

**BOND AMOUNT: \$ \_\_\_\_\_ CASH OR SURETY ONLY**