

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**SENATE BILL 797
Judiciary II Committee Substitute Adopted 5/31/05
Third Edition Engrossed 6/1/05**

Short Title: Bail Bonds/Forfeitures & Remittances.

(Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT FORFEITURE OF A BAIL BOND SHALL BE SET
2 ASIDE IF THE DEFENDANT FOR WHOM THE BOND WAS POSTED WAS
3 INCARCERATED ANYWHERE AT THE TIME OF THE FAILURE TO
4 APPEAR, TO PROVIDE THAT BOND SHALL NOT BE FORFEITED UNLESS
5 THE SURETY OR BAIL AGENT HAD NOTICE OR ACTUAL KNOWLEDGE
6 THAT THE DEFENDANT HAD FAILED TO APPEAR ON TWO OR MORE
7 OCCASIONS ON THE SAME CHARGE, AND TO PROVIDE THAT BOND
8 SHALL BE REMITTED IF THE DEFENDANT RECEIVES A PRAYER FOR
9 JUDGMENT CONTINUED OR DEFERRED PROSECUTION UNLESS THE
10 DISTRICT ATTORNEY OBJECTS.
11

12 The General Assembly of North Carolina enacts:

13 **SECTION 1.** G.S. 15A-544.5 reads as rewritten:

14 **"§ 15A-544.5. Setting aside forfeiture.**

15 (a) Relief Exclusive. – There shall be no relief from a forfeiture except as
16 provided in this section. The reasons for relief are those specified in subsection (b) of
17 this section. The procedures for obtaining relief are those specified in subsections (c)
18 and (d) of this section. Subsections (f), (g), (h), and (i) of this section apply regardless of
19 the reason for relief given or the procedure followed.

20 (b) Reasons for Set Aside. – A forfeiture shall be set aside for any one of the
21 following reasons, and none other:

22 (1) The defendant's failure to appear has been set aside by the court and
23 any order for arrest issued for that failure to appear has been recalled,
24 as evidenced by a copy of an official court record, including an
25 electronic record.

26 (2) All charges for which the defendant was bonded to appear have been
27 finally disposed by the court other than by the State's taking dismissal

- 1 with leave, as evidenced by a copy of an official court record,
2 including an electronic record.
- 3 (3) The defendant has been surrendered by a surety on the bail bond as
4 provided by G.S. 15A-540, as evidenced by the sheriff's receipt
5 provided for in that section.
- 6 (4) The defendant has been served with an Order for Arrest for the Failure
7 to Appear on the criminal charge in the case in question.
- 8 (5) The defendant died before or within the period between the forfeiture
9 and the final judgment as demonstrated by the presentation of a death
10 certificate.
- 11 (6) The defendant at the time of the failure to appear ~~was incarcerated~~
12 was:
- 13 a. Incarcerated, sentenced, or confined in a unit of the Department
14 of Correction or a detention facility and is serving a sentence or
15 confinement;
- 16 b. ~~or~~ Incarcerated, sentenced, or confined in a unit of the Federal
17 Bureau of Prisons located within the borders of the State at the
18 time of the failure to appear. ~~State; or~~
- 19 c. Incarcerated, sentenced, or confined in any state, federal, or
20 local penal institution or state, federal, or local detention facility
21 located anywhere in the United States.
- 22 (7) No final judgment shall be rendered on a forfeiture of any appearance
23 bond if it is shown to the court that the principal on the bond was
24 prevented from attending because the principal was detained by reason
25 of arrest, sentence, or confinement in a penal institution or jail in this
26 State, or in another jurisdiction, or because the principal was confined
27 or detained under a court order in a medical or mental institution in
28 this State or in another jurisdiction. An official written notice of the
29 holding institution in which the principal is being detained or confined
30 shall be considered proof of the principal's detention or confinement
31 and the notice may be sent from the holding institution by mail,
32 delivered by hand, or sent by facsimile machine. The surety shall
33 present the written notice and a letter of intent to transport the
34 defendant to the clerk of the proper court, the district attorney having
35 jurisdiction over the case, and the county board of education, and the
36 notice and letter of intent shall serve as the surety's request for a
37 detainer or hold to be placed on the principal. In no event shall the
38 letter of intent to transport the defendant be construed to require the
39 surety to pay transportation costs that exceed the face amount of the
40 bond.
- 41 (8) No final judgment shall be rendered on a forfeiture of any appearance
42 bond if it is shown to the court that prior to the entry of final judgment
43 on the forfeiture the principal on the bond is in the custody of any law
44 enforcement agency. An official written notice of the holding

1 institution in which the principal is being detained or confined shall be
2 considered proof of the principal's detention or confinement and the
3 notice may be sent from the holding institution by mail, delivered by
4 hand, or sent by facsimile machine. The surety shall present the written
5 notice and a letter of intent to transport the defendant to the clerk of
6 the proper court, the district attorney having jurisdiction over the case
7 and the county board of education and the notice and letter of intent
8 shall serve as the surety's request for a detainer or hold to be placed on
9 the principal. In no event shall the letter of intent to transport the
10 defendant be construed to require the surety to pay transportation costs
11 that exceed the face amount of the bond.

12 (c) Procedure When Failure to Appear Is Stricken. – If the court before which a
13 defendant's appearance was secured by a bail bond enters an order striking the
14 defendant's failure to appear and recalling any order for arrest issued for that failure to
15 appear, that court may simultaneously enter an order setting aside any forfeiture of that
16 bail bond. When an order setting aside a forfeiture is entered, the defendant's further
17 appearances shall continue to be secured by that bail bond unless the court orders
18 otherwise.

19 (d) Motion Procedure. – If a forfeiture is not set aside under subsection (c) of this
20 section, the only procedure for setting it aside is as follows:

- 21 (1) At any time before the expiration of 150 days after the date on which
22 notice was given under G.S. 15A-544.4, the defendant or any surety on
23 a bail bond may make a written motion that the forfeiture be set aside,
24 stating the reason and attaching the evidence specified in subsection
25 (a) of this section.
- 26 (2) The motion is filed in the office of the clerk of superior court of the
27 county in which the forfeiture was entered, and a copy is served, under
28 G.S. 1A-1, Rule 5, on the district attorney for that county and the
29 county board of education.
- 30 (3) Either the district attorney or the county board of education may object
31 to the motion by filing a written objection in the office of the clerk and
32 serving a copy on the moving party.
- 33 (4) If neither the district attorney nor the board of education has filed a
34 written objection to the motion by the tenth day after the motion is
35 served, the clerk shall enter an order setting aside the forfeiture.
- 36 (5) If either the district attorney or the county board of education files a
37 written objection to the motion, then not more than 30 days after the
38 objection is filed a hearing on the motion and objection shall be held in
39 the county, in the trial division in which the defendant was bonded to
40 appear.
- 41 (6) If at the hearing the court allows the motion, the court shall enter an
42 order setting aside the forfeiture.

1 (7) If at the hearing the court does not enter an order setting aside the
2 forfeiture, the forfeiture shall become a final judgment of forfeiture on
3 the later of:

4 a. The date of the hearing.

5 b. The date of final judgment specified in G.S. 15A-544.6.

6 (e) Only One Motion Per Forfeiture. – No more than one motion to set aside a
7 specific forfeiture may be considered by the court.

8 (f) No More Than Two Forfeitures May Be Set Aside Per Case. – In any case in
9 which the State proves that the surety or the bail agent had notice or actual knowledge,
10 before executing a bail bond, that the defendant had already failed to appear on two or
11 more prior ~~occasions~~, occasions on the same charge, no forfeiture of that bond may be
12 set aside for any reason. Notice or actual knowledge exists when a reasonable surety
13 exercising due diligence would have been able to obtain the information before
14 executing the bail bond.

15 (g) No Final Judgment After Forfeiture Is Set Aside. – If a forfeiture is set aside
16 under this section, the forfeiture shall not thereafter ever become a final judgment of
17 forfeiture or be enforced or reported to the Department of Insurance.

18 (h) Appeal. – An order on a motion to set aside a forfeiture is a final order or
19 judgment of the trial court for purposes of appeal. Appeal is the same as provided for
20 appeals in civil actions. When notice of appeal is properly filed, the court may stay the
21 effectiveness of the order on any conditions the court considers appropriate."

22 **SECTION 2.** G.S. 15A-547.1 reads as rewritten:

23 "**§ 15A-547.1. Remit bail bond if ~~defendant sentenced to community or~~**
24 **intermediate punishment in certain circumstances.**

25 (a) If a defendant is convicted and sentenced to community punishment or
26 intermediate punishment and no appeal is pending, then the court shall remit the bail
27 bond to the obligor in accordance with the provisions of this Article and shall not
28 require that the bail bond continue to be posted while the defendant serves his or her
29 sentence.

30 (b) Unless the district attorney objects, the court shall remit the bail bond to the
31 obligor as provided under this Article and shall not require that the bail bond continue to
32 be posted if the defendant receives a prayer for judgment continued or a deferred
33 prosecution."

34 **SECTION 3.** This act becomes effective December 1, 2005, and applies to
35 bail bonds posted for offenses committed on or after that date.