

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 459

Short Title: Clarify Bail Bond Forfeitures.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II/Election Laws

March 22, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE BAIL BOND FORFEITURE PROCEDURE PROVIDED
BY ARTICLE 26 OF CHAPTER 15A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-544 reads as rewritten:

"§ 15A-544. Forfeiture.

(a) By entering into a bail bond the obligor submits ~~himself~~ to the jurisdiction of the court and irrevocably appoints the clerk as ~~his~~ the obligor's agent for any proceedings with reference to the bond. ~~His~~ The obligor's liability may be enforced on motion without the necessity of an independent action. The obligor shall enter on the bond the obligor's mailing address and telephone number for the service of any process required by this section or other provision of law. If the address or telephone number of the obligor changes during the pendency of any proceeding with reference to the bond, it shall be the duty of the obligor to notify the clerk of the obligor's new address and telephone number.

(b) If the principal does not comply with the conditions of the bail bond, the court having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is ordered by the court, a copy of the order of forfeiture and notice that judgment will be entered upon the order after 60 days must be served on each obligor. Service is to be made by ~~the sheriff by delivery of the order and notice to him or by delivery at his dwelling house or place of abode with some person of suitable age and discretion residing therein.~~ If the

1 sheriff is unable to effect service because an obligor cannot be found or has no dwelling house or
2 place of abode known to the sheriff, he must file a return to this effect; the clerk must then mail a
3 the clerk mailing by first class U. S. mail, postage prepaid, a copy of the order of
4 forfeiture and notice to the obligor at his address of record the obligor's address as noted on
5 the bond and note on the original the date of mailing. Service is complete three days after
6 the mailing.

7 (c) ~~If the principal does not appear before the court having jurisdiction~~ At any time
8 within 60 days of following the date of service, or on the first day of the next session of
9 court commencing presentment of the forfeiture calendar more than 60 days after the date
10 of service, and satisfy the court that his appearance on the date set was impossible or that his
11 failure to appear was without his fault, the court must enter judgment for the State against the
12 principal and his sureties for the amount of the bail and the costs of the proceedings. the
13 principal or surety may move the court having jurisdiction of the matter, orally or in
14 writing, to strike the order of forfeiture and recall the notice of forfeiture. If the principal
15 appears principal or surety appears and moves within the time allowed following the date
16 of service and satisfies the court that his appearance the principal's failure to appear on the
17 date set was impossible or that his the principal's failure to appear was without his the
18 principal's fault, the order of forfeiture must be set aside. If the principal appears but is
19 unable to or surety does not satisfy the court that his the principal's appearance on the date
20 set was impossible or that his the principal's failure to appear was without his fault, but the
21 court determines that justice does not require the forfeiture of the full amount of the bond, the
22 court may enter judgment in an amount it considers appropriate. the principal's fault, the court
23 must then enter judgment for the State against the principal and surety for the amount of
24 the bail and the cost of the proceeding.

25 (d) To facilitate the procedure under this section, the clerk in each county ~~must~~
26 ~~present a forfeiture roll at the first session of superior court commencing more than 60~~
27 ~~days after the entry of any order of forfeiture in either the district or superior court. shall~~
28 ~~prepare for both the district and superior court a forfeiture calendar once each month~~
29 ~~when court is in session. The forfeiture roll must~~ The forfeiture calendar shall list the
30 names of all principals as to which forfeiture has been ordered in the county in the past
31 three years and sureties to whom forfeiture has been ordered more than 60 days
32 previously in the county and as to which judgments of forfeiture against obligors the
33 principal and surety have not been entered or, if entered, not yet satisfied by execution. In
34 ~~addition, the~~ The forfeiture roll must calendar shall show the amount of the bond ordered
35 forfeited in each case and the names of all sureties liable on each bond. case. In addition,
36 the clerk shall place on the forfeiture calendar for hearing all written motions to strike an
37 order of forfeiture filed since the previous forfeiture calendar. It shall be the duty of the
38 district attorney to present the forfeiture calendar to the court, but the attorney for the
39 county school board shall have the right to appear and be heard when the forfeiture
40 calendar is presented. At the district attorney's discretion, the district attorney may
41 appoint the county school board attorney as the district attorney's designee for the
42 presentation of the forfeiture calendar.

1 (e) At any time within 90 days after entry of the judgment against a principal or
2 ~~his surety, or on the first day of the next session of court commencing more than 90 days~~
3 ~~after the entry of the judgment, the court may direct the principal or surety, by verified~~
4 written petition, may request that the judgment be remitted in whole or in part, upon such
5 conditions as the court may impose, if it appears that justice requires the remission of part
6 or all of the judgment. A copy of the petition must be served upon the attorney for the
7 county school board at least three working days prior to the hearing. The clerk shall
8 place on the forfeiture calendar for hearing all petitions that have been filed during the
9 previous month or since the last forfeiture calendar. The petitioner, the district attorney,
10 and the school board attorney shall be notified of the date, time, and place of the hearing.
11 The petitioner, the district attorney, and the county school board attorney shall be given
12 an opportunity to appear and be heard.

13 (f) If a judgment has not been remitted within the period provided in subsection
14 (e) above, the clerk must issue execution on the judgment within 30 days, and remit the
15 clear proceeds to the county for use in maintaining free public schools. Any clerk who
16 fails to perform his duty as required in this subsection is subject to a penalty of five
17 hundred dollars (\$500.00).

18 (g) If a ~~return~~ levy of execution upon a judgment against an obligor remains
19 unsatisfied for 10 days, the ~~obligor may~~ sheriff shall notify the clerk and magistrate and
20 the obligor shall not become surety on any bail bond in the prosecutorial district so long
21 as the judgment remains unsatisfied. Nothing in this subsection makes lawful any act
22 made unlawful by Article 71 of Chapter 58 of the General Statutes.

23 (h) For extraordinary cause shown, the court which has entered judgment upon a
24 forfeiture of a bond may, after execution, remit the judgment in whole or in part and
25 order the clerk to refund such amounts as the court considers appropriate. Any person
26 moving for remission of judgment must do so by verified petition, and a copy of the
27 petition must be served upon the attorney for the county school board at least three
28 working days prior to the hearing on the motion. The moving party must notify the
29 attorney for the school board of the time and place of the hearing, and such attorney, if he
30 so desires, must be given an opportunity to appear and be heard. If money has been paid
31 to the county pursuant to execution on a judgment of forfeiture, it must refund to the
32 person entitled the amount of any remission granted under the terms of this subsection
33 upon receipt of a certified copy of the judgment of remission from the clerk."

34 Sec. 2. This act becomes effective December 1, 1995, and applies to bail
35 bonds entered into on or after that date.