

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 851

Short Title: Bail Bond Changes.

(Public)

Sponsors: Representatives Pulley, Lemmond; Fitch and H. Hunter.

Referred to: Judiciary II.

April 12, 1995

A BILL TO BE ENTITLED

AN ACT TO CHANGE SOME PROCEDURES WITH REGARD TO SURETY BONDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-290 reads as rewritten:

**"§ 7A-290. Appeals from district court in criminal cases; notice; appeal bond.**

Any defendant convicted in district court before the magistrate may appeal to the district court for trial de novo before the district court judge. Any defendant convicted in district court before the judge may appeal to the superior court for trial de novo. Notice of appeal may be given orally in open court, or to the clerk in writing within 10 days of entry of judgment. Upon expiration of the 10-day period in which an appeal may be entered, if an appeal has been entered and not withdrawn, the clerk shall transfer the case to the district or superior court docket.

~~The~~ If a defendant convicted in district court before a magistrate appeals for a trial de novo before a district court judge, then the original bail shall stand pending appeal, unless the judge orders bail denied, increased, or reduced. However, if a defendant convicted in district court before a district court judge appeals for a trial de novo in superior court, and the case is then transferred to superior court, there shall be a new determination of pretrial conditions in accordance with G.S. 15A-534."

Sec. 2. G.S. 15A-531 reads as rewritten:

1 **"§ 15A-531. Definitions.**

2 As used in this Article the following definitions apply unless the context clearly  
3 requires otherwise:

- 4 (1) Bail Bond. – An undertaking by the principal to appear in court as  
5 required upon penalty of forfeiting bail to the State of North Carolina in  
6 a stated amount. Bail bonds include an unsecured appearance bond, an  
7 appearance bond secured by a cash deposit of the full amount of the  
8 bond, an appearance bond secured by a mortgage pursuant to G.S. 58-  
9 74-5, and an appearance bond secured by at least one solvent surety. A  
10 surety bond shall be considered the same as a cash deposit for all  
11 purposes in this Article.
- 12 (2) Obligor. – A principal or a surety on a bail bond.
- 13 (3) Principal. – A defendant or material witness obligated to appear in court  
14 as required upon penalty of forfeiting bail under a bail bond.
- 15 (4) Surety. – One who, with the principal, is liable for the amount of the  
16 bail bond upon forfeiture of bail."

17 Sec. 3. G.S. 15A-533 is amended by adding a new subsection to read:

18 "(d) If a defendant convicted of a misdemeanor in district court appeals to superior  
19 court for a trial de novo pursuant to G.S. 7A-290, there shall be a new determination of  
20 pretrial conditions in accordance with G.S. 15A-534."

21 Sec. 4. G.S. 15A-540(a) reads as rewritten:

22 "(a) A surety may surrender his principal to the sheriff of the county in which the  
23 principal is bonded to ~~appear~~ appear or to the sheriff where the defendant was bonded. A  
24 surety may arrest his principal for the purpose of returning him to the sheriff. Upon  
25 surrender of the principal the sheriff must provide a receipt to the surety, a copy of which  
26 must be filed with the clerk. Upon application by the surety after the surrender of the  
27 principal, before the forfeiture of bail under G.S. 15A-544(b), the clerk must exonerate  
28 him from his bond."

29 Sec. 5. G.S. 15A-544 reads as rewritten:

30 **"§ 15A-544. Forfeiture.**

31 (a) By entering into a bail bond the obligor submits himself to the jurisdiction of  
32 the court and irrevocably appoints the clerk as his agent for any proceedings with  
33 reference to the bond. His liability may be enforced on motion without the necessity of an  
34 independent action.

35 (b) If the principal does not comply with the conditions of the bail bond, the court  
36 having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is  
37 ordered by the court, a copy of the order of forfeiture and notice that judgment will be  
38 entered upon the order after 60 days must be served on each ~~obligor~~ obligor, including  
39 the principal, the bail agent, and the surety represented by the bail agent. Service is to be  
40 made by the sheriff by delivery of the order and notice to him or by delivery at his  
41 dwelling house or place of abode with some person of suitable age and discretion residing  
42 therein. If the sheriff is unable to effect service because an obligor cannot be found or has  
43 no dwelling house or place of abode known to the sheriff, he must file a return to this

1 effect; the clerk must then mail a copy of the order of forfeiture and notice to the obligor  
2 at his address of record and note on the original the date of mailing. Service is complete  
3 three days after the mailing.

4 (c) ~~If Except as provided in subsection (c1) of this section, if~~ the principal does not  
5 appear before the court having jurisdiction within 60 days of the date of service, or on the  
6 first day of the next session of court commencing more than 60 days after the date of  
7 service, and satisfy the court that his appearance on the date set was impossible or that his  
8 failure to appear was without his fault, the court must enter judgment for the State against  
9 the principal and his sureties for the amount of the bail and the costs of the proceedings.  
10 If the principal appears within the time allowed following the date of service and satisfies  
11 the court that his appearance on the date set was impossible or that his failure to appear  
12 was without his fault, the order of forfeiture must be set aside. If the principal appears but  
13 is unable to satisfy the court that his appearance on the date set was impossible or that his  
14 failure to appear was without his fault, but the court determines that justice does not  
15 require the forfeiture of the full amount of the bond, the court may enter judgment in an  
16 amount it considers appropriate.

17 (c1) If the principal does not appear before the court having jurisdiction because the  
18 principal is incarcerated and unable to appear before the court, but the surety appears  
19 within the time allowed following the date of service and satisfies the court that the  
20 principal's appearance on the date set was impossible because the principal was  
21 incarcerated, the order of forfeiture must be set aside.

22 (d) To facilitate the procedure under this section, the clerk in each county must  
23 present a forfeiture roll at the first session of superior court commencing more than 60  
24 days after the entry of any order of forfeiture in either the district or superior court. The  
25 forfeiture roll must list the names of all principals as to which forfeiture has been ordered  
26 in the county in the past three years and as to which judgments of forfeiture against  
27 obligors have not been entered or, if entered, not yet satisfied by execution. In addition,  
28 the forfeiture roll must show the amount of the bond ordered forfeited in each case and  
29 the names of all sureties liable on each bond.

30 (e) At any time within 90 days after entry of the judgment against a principal or  
31 his surety, or on the first day of the next session of court commencing more than 90 days  
32 after the entry of the judgment, the court may direct that the judgment be remitted in  
33 whole or in part, upon such conditions as the court may impose, if it appears that justice  
34 requires the remission of part or all of the judgment. If the principal is incarcerated in  
35 North Carolina within 90 days of the entry of the judgment, then the forfeiture shall be  
36 stricken upon the payment of costs. If the principal is incarcerated anytime between  
37 failure to appear and up to 90 days after the entry of judgment, then the bond shall be  
38 totally remitted upon the payment of costs.

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

1 (g) If a return of execution upon a judgment against an obligor remains unsatisfied  
2 for 10 days, the obligor may not become surety on any bail bond in the prosecutorial  
3 district so long as the judgment remains unsatisfied. Nothing in this subsection makes  
4 lawful any act made unlawful by Article 71 of Chapter 58 of the General Statutes.

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

16 Sec. 6. Article 26 of Chapter 15A of the General Statutes is amended by  
17 adding a new section to read:

18 "**§ 15A-547.1. Remit bail bond if defendant sentenced to community or intermediate**  
19 **punishment.**

20 If a defendant is convicted and sentenced to community punishment or intermediate  
21 punishment and no appeal is pending, then the court shall remit the bail bond to the  
22 obligor in accordance with the provisions of this Article and shall not require that the bail  
23 bond continue to be posted while the defendant serves his or her sentence."

24 Sec. 7. G.S. 15A-1431(e) reads as rewritten:

25 "(e) Any order of pretrial release remains in effect pending appeal by ~~the defendant a~~  
26 defendant from a conviction before a magistrate unless the judge modifies the order.  
27 However, if the defendant appeals to superior court from a conviction before a judge in  
28 district court, there shall be a new determination of pretrial conditions in accordance with  
29 G.S. 15A-534."

30 Sec. 8. G.S. 58-74-1 reads as rewritten:

31 "**§ 58-74-1. Mortgage in lieu of required bond.**

32 (a) An administrator, executor, guardian, collector or receiver, or an officer  
33 required to give an official bond, or the agent or surety of such person or officer, may  
34 execute a mortgage on real estate, of the value of the bond required to be given by him to  
35 the State of North Carolina, conditioned to the same effect as the bond should be, were  
36 the same given, with a power of sale, which power of sale may be executed by the clerk  
37 of the superior court, with whom said mortgage shall be deposited, upon a breach of any  
38 of the conditions of said mortgage, after advertisement for 30 days.

39 (b) The real estate that has been mortgaged to secure a bond, pursuant to  
40 subsection (a) of this section, may be used to secure only one bond at a time. When the  
41 mortgage is cancelled or discharged, then the real estate securing the mortgage may be  
42 mortgaged again to secure another bond.

- 1       (c) All bonds in the amount of five thousand dollars (\$5,000) or more that are  
2 secured by real estate shall require a title search and a deed of trust to be executed."  
3       Sec. 9. This act is effective upon ratification.