

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 290
HOUSE BILL 851

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

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-531 reads as rewritten:

"§ 15A-531. Definitions.

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

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

Sec. 2. G.S. 15A-540(a) reads as rewritten:

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

Sec. 3. 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 agent for any proceedings with reference to the bond. His liability may be enforced on motion without the necessity of an independent action.

(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 sheriff is unable to effect service because an obligor cannot be found or has no dwelling house or place of abode known to the sheriff, he must file a return to this effect; the clerk must then mail a copy of the order of forfeiture and notice to the obligor at his address of record and note on the original the date of mailing. Service is complete three days after the mailing.

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

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

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

(e) At any time within 90 days after entry of the judgment against a principal or his surety, or on the first day of the next session of court commencing more than 90 days after the entry of the judgment, the court may direct that the judgment be remitted in whole or in part, upon such conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgment. If the principal is incarcerated or served an order for arrest in North Carolina within 90 days of the entry of the judgment and the principal placed on a new bond or released by the court, then

the forfeiture shall be stricken upon the payment of costs. If the principal is incarcerated or served an order for arrest and the principal placed on a new bond or released by the court anytime between failure to appear and up to 90 days after the entry of judgment, then the bond shall be totally remitted upon the payment of costs.

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

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

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

Sec. 4. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

“§ 15A-547.1. Remit bail bond if defendant sentenced to community or intermediate punishment.

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

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives