

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 909

Short Title: Probation Bonds.

(Public)

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Sponsors: Representatives Justus; and Thompson.

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Referred to: Appropriations - Subcommittee on Justice and Public Safety.

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April 12, 1995

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A COURT TO ORDER CERTAIN DEFENDANTS TO  
POST A PROBATION BOND AS A CONDITION OF PROBATION.

The General Assembly of North Carolina enacts:

Section 1. Article 82 of Chapter 15A of the General Statutes is amended by  
adding a new section to read:

**"§ 15A-1343.3. Probation bonds.**

(a) In addition to the incidents and conditions of probation otherwise provided for  
in this Article, the court may, as an incident of the probation of a defendant convicted of  
a nonviolent misdemeanor or felony, require the defendant to post a probation bond to  
secure compliance with the conditions of probation if the defendant is:

(1) Eligible to receive an intermediate punishment based on the class of  
offense and prior record level; and

(2) Facing an imminent and substantial threat of imprisonment.

(b) A probation bond shall be:

(1) In writing, with a description of the terms and conditions of the surety's  
obligations, and shall include a guarantee of the defendant's compliance  
with the conditions of probation imposed by the court;

1           (2) In an amount of not less than fifteen thousand dollars (\$15,000) but not  
2           more than fifty thousand dollars (\$50,000), as determined by the court;  
3           and

4           (3) Delivered to the court by the surety.

5           A probation bond shall have a one-year term and shall be renewed annually. The  
6           probation bond of a surety shall be accepted by the court if executed under penalty of  
7           perjury and issued in the name of the surety.

8           For purposes of this section, a surety means any person qualifying as a surety  
9           bondsman under Article 71 of Chapter 58 of the General Statutes. A surety issuing a  
10          probation bond under this section shall not act as a substitute for a probation officer, but  
11          the court may, in its discretion and with the consent of the surety, assign to the surety  
12          some of the duties that would otherwise be assigned to a probation officer under this  
13          Article.

14          (c) If the defendant complies with all of the conditions of probation imposed by  
15          the court, the probation bond shall be exonerated at the earlier of (i) the conclusion of the  
16          term of probation set by the court; or (ii) five years from the date of posting of the  
17          probation bond.

18          (d) Upon a defendant's violation of any of the conditions of probation, the court in  
19          its discretion may:

20               (1) Revoke and immediately reinstate the probation bond on the same or  
21               different terms. In the event that the court elects to reinstate the  
22               probation bond, the court shall mail notice of that reinstatement to the  
23               surety within 48 hours of the order of reinstatement; or

24               (2) Revoke the probation bond along with the defendant's probation and  
25               activate the suspended sentence of imprisonment imposed pursuant to  
26               G.S. 15A-1342(d).

27          (e) During the term of the probation bond, the surety shall report in writing any  
28          violation of the conditions of probation to the court within 10 days of the violation. If the  
29          surety fails to report a violation of the conditions of probation, the amount of the  
30          probation bond shall be forfeited to the court as provided in subsection (g) of this section.  
31          In no event shall the surety's liability exceed the amount of the probation bond.

32          (f) Upon receiving the surety's report of the defendant's violation of the condition of  
33          probation and the court's election to revoke the probation bond, the court shall mail to the  
34          surety, at the address provided on the probation bond, a demand for payment within 30  
35          days of the surety's filing of the report. The surety shall remit a prorated percentage of  
36          the face amount of the probation bond, as calculated pursuant to subsection (h) of this  
37          section, within 30 days of receipt of the court's demand for payment. The court's failure  
38          to timely mail the demand for payment shall relieve the surety of all liability under the  
39          probation bond.

40          (g) Upon obtaining independent knowledge of the defendant's violation of the  
41          conditions of probation and the surety's failure to timely report that failure pursuant to  
42          subsection (e) of this section and upon the court's election to revoke the probation bond,  
43          the court shall mail to the surety, at the address provided on the probation bond, a notice

1 of forfeiture within 30 days of the court's obtaining knowledge of the violation and the  
2 surety's failure to timely report. The surety shall remit to the court the full amount of the  
3 probation bond within 30 days of receipt of the court's notice of forfeiture. The court's  
4 failure to timely mail the notice of forfeiture shall relieve the surety of all liability under  
5 the probation bond.

6 (h) Upon a demand for payment pursuant to subsection (f) of this section, the  
7 surety shall remit payment to the court calculated as follows:

8 (1) Ten percent (10%) of the amount of the bond if the violation giving rise  
9 to the demand for payment occurs in the first quarter of any premium  
10 year on the probation bond.

11 (2) Seven and one-half percent (7.5%) of the amount of the bond if the  
12 violation giving rise to the demand for payment occurs in the second  
13 quarter of any premium year on the probation bond.

14 (3) Five percent (5%) of the amount of the bond if the violation giving rise  
15 to the demand for payment occurs in the third quarter of any premium  
16 year on the probation bond.

17 (4) Two and one-half percent (2.5%) of the amount of the bond if the  
18 violation giving rise to the demand for payment occurs in the fourth  
19 quarter of any premium year on the probation bond.

20 Upon the surety's payment of a demand for payment pursuant to this section, all  
21 further obligations under the probation bond are discharged.

22 (i) If the defendant is returned to the court within 30 days of the mailing of a  
23 notice of forfeiture, the surety shall be remitted or credited seventy-five percent (75%) of  
24 the amount of the probation bond. If the defendant is returned to the court within 120  
25 days of the mailing of a notice of forfeiture, the surety shall be remitted or credited fifty  
26 percent (50%) of the amount of the probation bond.

27 (j) The surety may surrender the defendant to the court if the premium due on the  
28 probation bond is not paid in full, and the bond shall be exonerated effective on the date  
29 of surrender. However, if the surety surrenders the defendant within 30 days of the  
30 failure to pay the premium on the probation bond, the bond shall be exonerated  
31 retroactive to that date that the premium was initially earned by the surety.

32 (k) Upon the failure of a surety to timely respond in payment to a demand for  
33 payment or a notice of forfeiture, the court may enter a summary judgment against the  
34 surety in the amount owed the court on the date of judgment. A court shall not accept  
35 any probation bond from a surety under this section if any summary judgment against  
36 that surety remains unpaid after the expiration of 20 days after entry of the summary  
37 judgment, unless the surety initiates an action challenging the validity of the summary  
38 judgment within that period."

39 Sec. 2. This act becomes effective October 1, 1995, and applies to persons  
40 placed on probation on or after that date.