

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**SENATE BILL 797  
Judiciary II Committee Substitute Adopted 5/31/05**

Short Title: Bail Bonds/Forfeitures & Remittances.

(Public)

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Sponsors:

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Referred to:

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March 23, 2005

A BILL TO BE ENTITLED

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

11 The General Assembly of North Carolina enacts:

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

13 **"§ 15A-544.5. Setting aside forfeiture.**

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

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

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

25 (2) All charges for which the defendant was bonded to appear have been  
26 finally disposed by the court other than by the State's taking dismissal  
27 with leave, as evidenced by a copy of an official court record,  
28 including an electronic record.

- 1 (3) The defendant has been surrendered by a surety on the bail bond as  
2 provided by G.S. 15A-540, as evidenced by the sheriff's receipt  
3 provided for in that section.
- 4 (4) The defendant has been served with an Order for Arrest for the Failure  
5 to Appear on the criminal charge in the case in question.
- 6 (5) The defendant died before or within the period between the forfeiture  
7 and the final judgment as demonstrated by the presentation of a death  
8 certificate.
- 9 (6) The defendant was ~~incarcerated~~ incarcerated, arrested, sentenced, or  
10 confined in a unit of the Department of Correction or a detention  
11 facility and is serving a sentence or confinement or was incarcerated,  
12 arrested, sentenced, or confined in a unit of the Federal Bureau of  
13 Prisons located within the borders of the State at the time of the failure  
14 to appear.
- 15 (7) No final judgment shall be rendered on a forfeiture of any appearance  
16 bond if it is shown to the court that the principal on the bond was  
17 prevented from attending because the principal was detained by reason  
18 of arrest, sentence, or confinement in a penal institution or jail in this  
19 State, or in another jurisdiction, or because the principal was confined  
20 or detained under a court order in a medical or mental institution in  
21 this State or in another jurisdiction. An official written notice of the  
22 holding institution in which the principal is being detained or confined  
23 shall be considered proof of the principal's detention or confinement  
24 and the notice may be sent from the holding institution by mail,  
25 delivered by hand, or sent by facsimile machine. The surety shall  
26 present the written notice and a letter of intent to transport the  
27 defendant to the clerk of the proper court, the district attorney having  
28 jurisdiction over the case, and the county board of education, and the  
29 notice and letter of intent shall serve as the surety's request for a  
30 detainer or hold to be placed on the principal. Should there be a failure  
31 to place a detainer or hold on the detainee within 15 days and after the  
32 presentation of the notice, the surety shall then be relieved of the  
33 liability for the appearance bond without further order of the court. In  
34 no event shall the letter of intent to transport the defendant be  
35 construed to require the surety to pay transportation costs that exceed  
36 the face amount of the bond. The surety shall not be liable for  
37 transportation costs if the defendant is in custody due to the actions of  
38 any district attorney, judge, clerk, or magistrate in that judicial district.  
39 A final judgment may be rendered if the State has exhausted all  
40 remedies available to the State in regards to the extradition of the  
41 defendant, but has not been able to effectuate the extradition.
- 42 (8) No final judgment shall be rendered on a forfeiture of any appearance  
43 bond if it is shown to the court that prior to the entry of final judgment  
44 on the forfeiture the principal on the bond is in the custody of any law

1                    enforcement agency. An official written notice of the holding  
2                    institution in which the principal is being detained or confined shall be  
3                    considered proof of the principal's detention or confinement and the  
4                    notice may be sent from the holding institution by mail, delivered by  
5                    hand, or sent by facsimile machine. The surety shall present the written  
6                    notice and a letter of intent to transport the defendant to the clerk of  
7                    the proper court, the district attorney having jurisdiction over the case  
8                    and the county board of education and the notice and letter of intent  
9                    shall serve as the surety's request for a detainer or hold to be placed on  
10                    the principal. Should there be a failure to place a detainer or hold on  
11                    the detainee within 15 days and after the presentation of the notice, the  
12                    surety shall then be relieved of the liability for the appearance bond  
13                    without further order of the court. In no event shall the letter of intent  
14                    to transport the defendant be construed to require the surety to pay  
15                    transportation costs that exceed the face amount of the bond. The  
16                    surety shall not be liable for transportation costs if the defendant is in  
17                    custody due to the actions of any district attorney, judge, clerk, or  
18                    magistrate in that judicial district. A final judgment may be rendered if  
19                    the State has exhausted all remedies available to the State in regards to  
20                    the extradition of the defendant, but has not been able to effectuate the  
21                    extradition.

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

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

- 31            (1) At any time before the expiration of 150 days after the date on which  
32            notice was given under G.S. 15A-544.4, the defendant or any surety on  
33            a bail bond may make a written motion that the forfeiture be set aside,  
34            stating the reason and attaching the evidence specified in subsection  
35            (a) of this section.
- 36            (2) The motion is filed in the office of the clerk of superior court of the  
37            county in which the forfeiture was entered, and a copy is served, under  
38            G.S. 1A-1, Rule 5, on the district attorney for that county and the  
39            county board of education.
- 40            (3) Either the district attorney or the county board of education may object  
41            to the motion by filing a written objection in the office of the clerk and  
42            serving a copy on the moving party.

- 1 (4) If neither the district attorney nor the board of education has filed a
- 2 written objection to the motion by the tenth day after the motion is
- 3 served, the clerk shall enter an order setting aside the forfeiture.
- 4 (5) If either the district attorney or the county board of education files a
- 5 written objection to the motion, then not more than 30 days after the
- 6 objection is filed a hearing on the motion and objection shall be held in
- 7 the county, in the trial division in which the defendant was bonded to
- 8 appear.
- 9 (6) If at the hearing the court allows the motion, the court shall enter an
- 10 order setting aside the forfeiture.
- 11 (7) If at the hearing the court does not enter an order setting aside the
- 12 forfeiture, the forfeiture shall become a final judgment of forfeiture on
- 13 the later of:
- 14 a. The date of the hearing.
- 15 b. The date of final judgment specified in G.S. 15A-544.6.

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

18 (f) No More Than Two Forfeitures May Be Set Aside Per Case. – In any case in  
 19 which the State proves that the surety or the bail agent had ~~notice or~~ actual knowledge,  
 20 before executing a bail bond, that the defendant had already failed to appear on two or  
 21 more prior ~~occasions,~~ occasions on the same charge, no forfeiture of that bond may be  
 22 set aside for any reason. Actual knowledge exists only when the State indicates on the  
 23 release order provided by the State that the defendant has failed to appear on two or  
 24 more occasions on the same charge and the release order is subsequently signed by the  
 25 surety.

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

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

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

34 "**§ 15A-547.1. Remit bail bond if ~~defendant sentenced to community or~~**  
 35 **intermediate punishment in certain circumstances.**

36 ~~If a defendant is convicted and sentenced to community punishment or intermediate~~  
 37 ~~punishment and no appeal is pending, then the~~ The court shall remit the bail bond to the  
 38 obligor in accordance with the provisions of this Article and shall not require that the  
 39 bail bond continue to be posted while the defendant serves his or her ~~sentence.~~sentence  
 40 if any of the following circumstances exist:

- 41 (1) The defendant is sentenced to community punishment or intermediate
- 42 punishment, including a domestic violence program or drug treatment
- 43 court.
- 44 (2) The defendant receives a prayer for judgment continued.

1                   (3)    The defendant receives a deferred prosecution."

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