

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 880
Judiciary II (Criminal) Committee Substitute Adopted 4/30/07
House Committee Substitute Favorable 6/6/07

Short Title: Bail Bonds/Amend Forfeiture Requirement.

(Public)

Sponsors:

Referred to:

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A BOND FORFEITURE SHALL BE SET ASIDE IF
THE DEFENDANT FAILED TO APPEAR BECAUSE THE DEFENDANT WAS
INCARCERATED ANYWHERE IN THE UNITED STATES.

The General Assembly of North Carolina enacts:

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

"§ 15A-544.5. Setting aside forfeiture.

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

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

- (1) The defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by a copy of an official court record, including an electronic record.
- (2) All charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking dismissal with leave, as evidenced by a copy of an official court record, including an electronic record.
- (3) The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff's receipt provided for in that section.
- (4) The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in ~~question~~. question as

1 evidenced by a copy of an official court record, including an electronic
2 record.

3 (5) The defendant died before or within the period between the forfeiture
4 and the final judgment as demonstrated by the presentation of a death
5 certificate.

6 (6) The defendant was incarcerated in a unit of the North Carolina
7 Department of Correction and is serving a sentence or in a unit of the
8 Federal Bureau of Prisons located within the borders of the State at the
9 time of the failure to ~~appear~~-appear as evidenced by a copy of an
10 official court record or a copy of a document from the Department of
11 Correction or Federal Bureau of Prisons, including an electronic
12 record.

13 (7) The defendant was incarcerated in a local, state, or federal detention
14 center, jail, or prison located anywhere within the borders of the
15 United States at the time of the failure to appear, and the district
16 attorney for the county in which the charges are pending was notified
17 of the defendant's incarceration while the defendant was still
18 incarcerated and the defendant remains incarcerated for a period of 10
19 days following the district attorney's receipt of notice, as evidenced by
20 a copy of the written notice served on the district attorney via hand
21 delivery or certified mail and written documentation of date upon
22 which the defendant was released from incarceration, if the defendant
23 was released prior to the time the motion to set aside was filed.

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

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

33 (1) At any time before the expiration of 150 days after the date on which
34 notice was given under G.S. 15A-544.4, the defendant or any surety on
35 a bail bond may make a written motion that the forfeiture be set aside,
36 stating the reason and attaching the evidence specified in subsection
37 ~~(a)~~-(b) of this section.

38 (2) The motion is filed in the office of the clerk of superior court of the
39 county in which the forfeiture was entered, and a copy is served, under
40 G.S. 1A-1, Rule 5, on the district attorney for that county and the
41 county board of education.

42 (3) Either the district attorney or the county board of education may object
43 to the motion by filing a written objection in the office of the clerk and
44 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 (8) If at the hearing the court determines that the documentation required
17 to be attached pursuant to subdivision (1) of this subsection is
18 fraudulent or was not attached to the motion at the time the motion was
19 filed, the court may order monetary sanctions against the surety filing
20 the motion, unless the court also finds that the failure to attach the
21 required documentation was unintentional. This subdivision shall not
22 limit the criminal prosecution of any individual involved in the
23 creation or filing of any fraudulent documentation.
- 24 (e) Only One Motion Per Forfeiture. – No more than one motion to set aside a
25 specific forfeiture may be considered by the court.
- 26 (f) No More Than Two Forfeitures May Be Set Aside Per Case. – In any case in
27 which the State proves that the surety or the bail agent had notice or actual knowledge,
28 before executing a bail bond, that the defendant had already failed to appear on two or
29 more prior occasions, no forfeiture of that bond may be set aside for any reason.
- 30 (g) No Final Judgment After Forfeiture Is Set Aside. – If a forfeiture is set aside
31 under this section, the forfeiture shall not thereafter ever become a final judgment of
32 forfeiture or be enforced or reported to the Department of Insurance.
- 33 (h) Appeal. – An order on a motion to set aside a forfeiture is a final order or
34 judgment of the trial court for purposes of appeal. Appeal is the same as provided for
35 appeals in civil actions. When notice of appeal is properly filed, the court may stay the
36 effectiveness of the order on any conditions the court considers appropriate."
- 37 **SECTION 2.** G.S. 15A-544.3(b)(9) reads as rewritten:
- 38 "(b) The forfeiture shall contain the following information:
- 39 ...
- 40 (9) The following notice: "TO THE DEFENDANT AND EACH
41 SURETY NAMED ABOVE: The defendant named above has failed to
42 appear as required before the court in the case identified above. A
43 forfeiture for the amount of the bail bond shown above was entered in
44 favor of the State against the defendant and each surety named above

1 on the date of forfeiture shown above. This forfeiture will be set aside
2 if, on or before the final judgment date shown above, satisfactory
3 evidence is presented to the court that one of the following events has
4 occurred: (i) the defendant's failure to appear has been stricken by the
5 court in which the defendant was required to appear and any order for
6 arrest that was issued for that failure to appear is recalled, (ii) all
7 charges for which the defendant was bonded to appear have been
8 finally disposed of by the court other than by the State's taking a
9 voluntary dismissal with leave, (iii) the defendant has been
10 surrendered by a surety or bail agent to a sheriff of this State as
11 provided by law, (iv) the defendant has been served with an Order for
12 Arrest for the Failure to Appear on the criminal charge in the case in
13 ~~question,~~question as evidenced by a copy of an official court record,
14 including an electronic record, (v) the defendant died before or within
15 the period between the forfeiture and the final judgment as
16 demonstrated by the presentation of a death certificate, ~~or~~(vi) the
17 defendant was incarcerated in a unit of the North Carolina Department
18 of Correction and is serving a sentence or in a unit of the Federal
19 Bureau of Prisons located within the borders of the State at the time of
20 the failure to appear,appear as evidenced by a copy of an official court
21 record or a copy of a document from the Department of Correction or
22 Federal Bureau of Prisons, or (vii) the defendant was incarcerated in a
23 local, state, or federal detention center, jail, or prison located anywhere
24 within the borders of the United States at the time of the failure to
25 appear, and the district attorney for the county in which the charges
26 are pending was notified of the defendant's incarceration while the
27 defendant was still incarcerated and the defendant remains
28 incarcerated for a period of 10 days following the district attorney's
29 receipt of notice, as evidenced by a copy of the written notice served
30 on the district attorney via hand delivery or certified mail and written
31 documentation of date upon which the defendant was released from
32 incarceration, if the defendant was released prior to the time the
33 motion to set aside was filed. The forfeiture will not be set aside for
34 any other reason. If this forfeiture is not set aside on or before the final
35 judgment date shown above, and if no motion to set it aside is pending
36 on that date, the forfeiture will become a final judgment on that date.
37 The final judgment will be enforceable by execution against the
38 defendant and any accommodation bondsman and professional
39 bondsman on the bond. The final judgment will also be reported to the
40 Department of Insurance. Further, no surety will be allowed to execute
41 any bail bond in the above county until the final judgment is satisfied
42 in full."

43 **SECTION 3.** This act becomes effective October 1, 2007, and applies to
44 forfeitures entered on or after that date.