

December 11, 2007

We have had many calls regarding the revision of 15-544.5 to add a seventh reason (incarcerated anywhere) to have a forfeiture set aside. Below you will find the revisions to the Statute. Be sure that proper notice and documentation are given. The Administrative Office of the Court has revised the Motion to Set Aside form, AOC-CR-213, adding Reason #7. You can find it at <http://www.nccourts.org/Forms/Documents/60.pdf>

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007
SESSION LAW 2007-105
SENATE BILL 880

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 evidenced by a copy of an official court record, including an electronic record.
- (5) The defendant died before or within the period between the forfeiture and the final judgment as demonstrated by the presentation of a death certificate.
- (6) The defendant was incarcerated in a unit of the North Carolina Department of Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to ~~appear.~~ appear as evidenced by a copy of an official court record or a copy of a document from the Department of Correction or Federal Bureau of Prisons, including an electronic record.
- (7) The defendant was incarcerated in a local, state, or federal detention center, jail, or prison located anywhere within the borders of the United States at the time of the failure to appear, and the district attorney for the county in which the charges are pending was notified of the defendant's incarceration while the defendant was still incarcerated and the defendant remains incarcerated for a period of 10 days following the district attorney's receipt of notice, as evidenced by a copy of the written notice served on the district attorney via hand delivery or certified mail and written documentation of date upon which the defendant was released from incarceration, if the defendant was released prior to the time the motion to set aside was filed.

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

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

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

- (2) The motion is filed in the office of the clerk of superior court of the county in which the forfeiture was entered, and a copy is served, under G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.
- (3) Either the district attorney or the county board of education may object to the motion by filing a written objection in the office of the clerk and serving a copy on the moving party.
- (4) If neither the district attorney nor the board of education has filed a written objection to the motion by the tenth day after the motion is served, the clerk shall enter an order setting aside the forfeiture.
- (5) If either the district attorney or the county board of education files a written objection to the motion, then not more than 30 days after the objection is filed a hearing on the motion and objection shall be held in the county, in the trial division in which the defendant was bonded to appear.
- (6) If at the hearing the court allows the motion, the court shall enter an order setting aside the forfeiture.
- (7) If at the hearing the court does not enter an order setting aside the forfeiture, the forfeiture shall become a final judgment of forfeiture on the later of:
 - a. The date of the hearing.
 - b. The date of final judgment specified in G.S. 15A-544.6.
- (8) If at the hearing the court determines that the documentation required to be attached pursuant to subdivision (1) of this subsection is fraudulent or was not attached to the motion at the time the motion was filed, the court may order monetary sanctions against the surety filing the motion, unless the court also finds that the failure to attach the required documentation was unintentional. This subdivision shall not limit the criminal prosecution of any individual involved in the creation or filing of any fraudulent documentation.

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

(f) No More Than Two Forfeitures May Be Set Aside Per Case. – In any case in which the State proves that the surety or the bail agent had notice or actual knowledge, before executing a bail bond, that the defendant had already failed to appear on two or more prior occasions, no forfeiture of that bond may be set aside for any reason.

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

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

SECTION 2. G.S. 15A-544.3(b)(9) reads as rewritten:

"(b) The forfeiture shall contain the following information:

...

(9) The following notice: "TO THE DEFENDANT AND EACH SURETY NAMED ABOVE: The defendant named above has failed to appear as required before the court in the case identified above. A forfeiture for the amount of the bail bond shown above was entered in favor of the State against the defendant and each surety named above on the date of forfeiture shown above. This forfeiture will be set aside if, on or before the final judgment date shown above, satisfactory evidence is presented to the court that one of the following events has occurred: (i) the defendant's failure to appear has been stricken by the court in which the defendant was required to appear and any order for arrest that was issued for that failure to appear is recalled, (ii) all charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking a voluntary dismissal with leave, (iii) the defendant has been surrendered by a surety or bail agent to a sheriff of this State as provided by law, (iv) 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 evidenced by a copy of an official court record, including an electronic record, (v) the defendant died before or within the period between the forfeiture and the final judgment as demonstrated by the presentation of a death certificate, ~~or~~ (vi) the defendant was incarcerated in a unit of the North Carolina Department of Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to appear, appear as evidenced by a copy of an official court record or a copy of a document from the Department of Correction or Federal Bureau of Prisons, or (vii) the defendant was incarcerated in a local, state, or federal detention center, jail, or prison located anywhere within the borders of the United States at the time of the failure to appear, and the district attorney for the county in which the charges are pending was notified of the defendant's incarceration while the

defendant was still incarcerated and the defendant remains incarcerated for a period of 10 days following the district attorney's receipt of notice, as evidenced by a copy of the written notice served on the district attorney via hand delivery or certified mail and written documentation of date upon which the defendant was released from incarceration, if the defendant was released prior to the time the motion to set aside was filed. The forfeiture will not be set aside for any other reason. If this forfeiture is not set aside on or before the final judgment date shown above, and if no motion to set it aside is pending on that date, the forfeiture will become a final judgment on that date. The final judgment will be enforceable by execution against the defendant and any accommodation bondsman and professional bondsman on the bond. The final judgment will also be reported to the Department of Insurance. Further, no surety will be allowed to execute any bail bond in the above county until the final judgment is satisfied in full."

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

In the General Assembly read three times and ratified this the 14th day of June, 2007.