



ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

TO: Superior Court Judges
District Court Judges
Magistrates
Clerks of Superior Court
District Attorneys
Public Defenders

FROM: Troy D. Page
Assistant Legal Counsel

DATE: September 19, 2018

SUBJECT: 2018 Legislation - Bail Bonds and Bond Forfeitures¹

In its 2018 session, the General Assembly enacted only a few changes to the statutes governing bail bonds and bond forfeitures.²

I. Posting Bond - Professional Bondsman Posting Limits

Professional bondsmen are subject to limits on the total, outstanding liabilities for bail bonds they can carry at any one time. Among those limits, G.S. 58-71-145 provided previously that a professional bondsman must maintain deposits of securities with the Department of Insurance (DOI) of at least one-eighth the value of all current bond obligations as of the first of each month.

Effective June 22, 2018 (when it became law), S.L. 2018-38 (SB 140, Title Ins. Rev/Bailbondsmen Deposits) amended G.S. 58-71-145 to reduce a professional bondsman's deposit obligations to one twelfth of his or her current bond obligations as the first of each month.³

S.L. 2018-38 requires no procedural changes by judicial officials when processing bonds executed by professional bondsmen and their runners. The DOI and NCAOC currently cannot provide comprehensive, real-time information about (i) bondsmen's securities on deposit or (ii) the aggregate of a professional's total, outstanding bond obligations, so there currently is no practical way to enforce the limitation of G.S. 58-71-145 at the time new bonds are posted.

II. Bond Forfeitures - Amended Ground for Pre-Judgment Set-Asides

G.S. 15A-544.5(b) sets out seven statutory grounds for a motion to set aside a pending bond forfeiture. Subdivision (b)(7) currently provides that a forfeiture may be set aside if:

¹ For future reference, a copy of this memo will be available on the Administrative Office of the Courts (NCAOC)'s Juno site for Judicial Branch users at <http://juno.nccourts.org/legal-memos>, under the memo list for Criminal Memos.

² A separate provision concerning pretrial release for two new offenses was enacted in S.L. 2018-72 (HB 670, Protect Educational Property), effective December 1, and will be covered in a subsequent memo about that bill.

³ Full text of the enacted bill is available at <https://www.ncleg.net/Sessions/2017/Bills/Senate/PDF/S140v5.pdf>. A separate limitation on a professional bondsman's liabilities appears in G.S. 58-71-175: the professional may not become liable on a single bond or multiple bonds for a single defendant "that totals more than one-fourth of the value of the securities deposited with the Commissioner at that time, until final termination of liability on such bond or multiple of bonds." S.L. 2018-38 did not amend this separate limitation in G.S. 58-71-175.

- (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.

Relief under subdivision (b)(7) currently is available only when the defendant was incarcerated "at the time of the failure to appear." Effective for "hearings held" on or after October 1, 2018, S.L. 2018-120 (HB 382, DOI Omnibus) will amend subdivision (b)(7) to allow relief if the defendant was incarcerated in one of the listed facilities "at the time of the failure to appear, or any time between the failure to appear and the final judgment date" (new text emphasized).

The additional criteria of notice to the district attorney and the defendant's continued incarceration for at least ten days after that notice will apply to motions based on intervening incarceration in the same manner as to motions based on incarceration at the time of the FTA.

The effective date's qualifier of "hearings held" (rather than, *e.g.*, "motions filed") implies that a motion to set aside based on the new criterion of intervening incarceration might be filed prior to October 1, but relief on that ground may be granted only at a hearing that occurs on or after that date. However, an update to form AOC-CR-213 (Bond Forfeiture Notice) with the amended claim for relief will not be published until October 1.⁴ Set-aside motions filed on copies of the AOC-CR-213 generated before that date would need to be amended manually to assert the new basis for relief.

III. Conclusion

Court officials with questions about the changes described above should feel free to contact me at Troy.D.Page@nccourts.org or at 919-890-1323. Questions about the use of NCAOC's automated systems, forms, and recordkeeping procedures should be directed to the NCAOC's Training & Development Field Support Analysts for the official's county.⁵ Law enforcement officers, bail bondsmen, officials of agencies external to the Judicial Branch, and others with questions about the impact of the legislation discussed above should consult their respective counsel; counsel for the NCAOC cannot provide legal advice to entities outside the Judicial Branch.

⁴ See No. 7 in the MOTION TO SET ASIDE FORFEITURE on Side Two of the form, available at <https://www.nccourts.gov/documents/forms>.

⁵ A directory of field support staff by county and district is available to Judicial Branch personnel on Juno, currently posted at <http://juno.nccourts.org/sites/default/files/Directories%20Files/county-district-field-assignments.pdf>.

