



WHERE PROTECTION & REGULATION MEET

Guidelines to Estreating Bail Bonds in South Carolina

Code Law 38-53

“Bail bond” means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State in a stated amount and may include an unsecured appearance bond, a premium secured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage, and an appearance bond secured by at least one surety.

“Bail Bondsman” means a surety bondsman, professional Bondsman, or an accommodation bondsman as defined in Code 38-53.

Issuance of bench warrant; remission of judgement

Code 38-53

Section 70

If a defendant fails to appear at a court proceeding to which he has been summoned, the court shall issue a bench warrant for the defendant. The court shall make available for pickup by the surety or the representative of the surety who executed the bond on their behalf, a true copy of the bench warrant within seven days of its issuance at the clerk of court's office. If the surety fails to surrender the defendant or place a hold on the defendant's release from incarceration, commitment, or institutionalization within ninety days of the issuance of the bench warrant, the bond is forfeited. At any time before execution is issued on a judgment of forfeiture against a defendant or his surety, the court may direct that the judgment be remitted in whole or in part, upon conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgment. In making a determination as to remission of the judgment, the court shall consider the costs to the State or a county or municipality resulting from the necessity to continue or terminate the defendant's trial and the efforts of law enforcement officers or agencies to locate the defendant. The court, in its discretion, may permit the surety to pay the estreatment in installments for a period of up to six months; however, the surety shall pay a handling fee to the court in an amount equal to four percent of the value of the bond. If at any time during the period in which installments are to be paid the defendant is surrendered to the appropriate detention facility and the surety complies with the recommitment procedures, the surety is relieved of further liability.

Steps

Step #1

Defendant fails to appear at a court proceeding to which he has been summoned, the court shall issue a bench warrant for the defendant.

Step #2

The court shall make available for pickup by the surety or the representative of the surety who executed the bond on their behalf, a true copy of the bench warrant within seven days of its issuance at the clerk of court's office.

Outcome

If the surety fails to surrender the defendant or place a hold on the defendant's release from incarceration, commitment, or institutionalization within 90 days of the issuance of the bench warrant, the bond is forfeited.

Steps Continued

Step #3 (Code 17-15-170)

Whenever the recognizance is forfeited by noncompliance with its condition, the attorney general, solicitor, magistrate, or other person acting for him immediately shall issue a notice to summon every party bound in the forfeited recognizance to appear at the next ensuing court to show cause, if he has any, why judgement should not be confirmed against him.

Outcome

If any person so bound fails to appear or, upon appearing, does not give a reason for not performing the condition of the recognizance as the court considers sufficient, then the judgment on the recognizance is confirmed. A magistrate may confirm judgments or not more than the maximum fine allowable under Section 22-3-550 in addition to assessments.

Steps Continued

Step #4

At any time before execution is issued on a judgement of forfeiture against a defendant or his surety, the court may direct that the judgement be remitted in whole or in part, upon conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgment.

In making a determination as to the remission of the judgment, the court shall consider the costs to the State or a county or municipality resulting from the necessity to continue or terminate the defendant's trial and the efforts of law enforcement officers or agencies to locate the defendant.

The court, in its discretion, may permit the surety to pay the estreatment in installments for a period of up to six months; however, the surety shall pay a handling fee to the court in an amount equal to four percent of the value of the bond.

Outcome

If at any time during the period in which installments are to be paid the defendant is surrendered to the appropriate detention facility and the surety complies with the recommitment procedures, the surety is relieved of further liability.

Estreatment Orders

Sample Orders – Professional Bondsman

State of South Carolina
County of

VS

John Smith – defendant

VS

Joe Doe – Professional Bondsman
dba ABC Bail Bonding

Sample Orders – Surety Bondsman

State of South Carolina
County of

VS

John Smith – defendant

VS

Joe Doe – Professional Bondsman
dba ABC Bail Bonding

VS

Palmetto Surety Company

Estreatment orders must list all parties on the order.

Estreatment orders must always include a final date that payment should be received.

If an estreatment is not paid by that final date mentioned in the order, **forward a copy of the order** to the SC DOI with a notice that the estreatment was not paid.

Questions?



WHERE PROTECTION & REGULATION MEET

Guidelines to Relieve a Bail Bondsman

Code Laws

Code Law 38-53

Section 50: Surety relieved on bond; surrender of defendant; filing of new undertaking.

Section 70: Issuance of bench warrant; remission of judgment.

Code Law 17-15

Section 20: Conditions of appearance recognizance or appearance bond; discharge, validity, relief of surety.

Conditions of appearance recognizance or appearance bond; discharge, validity, relief of surety.

Code 17-15

Section 20

A. An appearance recognizance or appearance bond must be conditioned on the person charged personally appearing before the court specified to answer the charge or indictment and to do and receive what is enjoined by the court, and not to leave the State, and be of good behavior toward all the citizens of the State, or especially toward a person or persons specified by the court.

B. Unless a bench warrant is issued, an appearance recognizance or an appearance bond is discharged upon adjudication, a finding of guilt, a deferred disposition, or as otherwise provided by law. An appearance bond is valid for a period of three years from the date the bond is executed for a charge triable in circuit court and eighteen months from the date the bond is executed for a charge triable in magistrates or municipal court.

In order for the surety to be relieved of liability on the appearance bond when the time period has run, the surety must provide sixty days written notice to the solicitor, when appropriate, and the respective clerk of court, chief magistrate, or municipal court judge with jurisdiction over the offense of the surety's intent to assert that the person is no longer subject to a valid appearance bond.

If the appropriate court determines the person has substantially complied with his court obligations and the solicitor does not object within the required sixty days by demanding a hearing, the court shall order the appearance bond converted to a personal recognizance bond and the surety relieved of liability.

Steps

Step #1

An appearance bond is valid for a period of three years from the date the bond is executed for a charge triable in circuit court and eighteen months from the date the bond is executed for a charge triable in magistrates or municipal court.

Step #2

In order for the surety to be relieved of liability on the appearance bond when the time period has run, the surety must provide sixty days written notice to the solicitor, when appropriate, and the respective clerk of court, chief magistrate, or municipal court judge with jurisdiction over the offense of the surety's intent to assert that the person is no longer subject to a valid appearance bond.

Step #3

If the appropriate court determines the person has substantially complied with his court obligations and the solicitor does not object within the required sixty days by demanding a hearing, the court shall order the appearance bond converted to a personal recognizance bond and the surety relieved of liability.

Surety relieved on bond; surrender of defendant; filing of new undertaking.

Code 38-53

Section 50

A. A surety desiring to be relieved on a bond for good cause shall file with the clerk of court a motion to be relieved on the bond. A copy of the motion must be served upon the defendant, his attorney, and the solicitor's office. The court then shall schedule a hearing to determine if the surety should be relieved on the bond and notify all parties of the hearing date. At the time of the filing of the motion, a fee of twenty dollars must be paid to the clerk of court to be retained by the clerk for use in the operation of the clerk's office. The fee will cover the cost of copies of the motion required by the surety.

B. If the circumstances warrant immediate incarceration of the defendant to prevent imminent violation of one of the specific terms of the bail bond, or if the defendant has violated one of the specific terms of the bond, the surety may take the defendant to the appropriate detention facility for holding until the court orders that the surety be relieved. The surety, within three business days following recommitment, must file with the detention facility and the court an affidavit clocked in with the clerk of court on a form provided by the Division of Court Administration stating the facts to support the surrender of the defendant for good cause. Nonpayment of fees alone is not sufficient cause to warrant immediate incarceration of the defendant. When the defendant and the affidavit are presented at the appropriate detention facility, the facility shall take custody of the defendant. When the affidavit is filed with the court, the surety also shall file a motion to be relieved on the bond pursuant to subsection (A). A surety who surrenders a defendant and files an affidavit which does not show good cause is subject to penalties imposed for perjury as provided for in Article 1, Chapter 9, Title 16.

C. If the defendant is incarcerated by the surety or a law enforcement agency as a result of a bench warrant, the surety shall file an affidavit with the court stating that the defendant is incarcerated in the appropriate detention facility as a result of the bench warrant as well as the violation of the specific term or terms of the bail bond stated in the bench warrant. Once the affidavit pursuant to the provisions of this subsection has been filed and served on the defendant, the surety is relieved of all liability on the bail bond by the court unless otherwise ordered by the circuit court within fourteen calendar days of the filing of the affidavit, or, if there is no term of court within the fourteen day period, at the ensuing term of court.

D. After the surety has been relieved by order of the court, a new undertaking must be filed with the appropriate court in order to secure the subsequent release of the defendant. The undertaking must contain the same conditions included in the original bond unless the conditions have been changed by the court.

Options

Option #1.

Defendant is placed in custody with the appropriate detention facility if circumstances warrant immediate incarceration to prevent imminent violation of one of the specific terms of the bail bond, or if the defendant has violated one of the specific terms of the bond, the surety make take the defendant to the appropriate detention facility for holding (include affidavit to support the surrender) until the court orders that the surety be relieved. Non-payment of fees alone is not sufficient cause to warrant immediate incarceration of the defendant.

Option #2.

A surety desiring to be relieved on a bond for “good cause” shall file with the clerk of court a motion to be relieved on the bond. A copy of the motion must be served upon the defendant, his attorney, and the solicitor’s office. The court then shall schedule a hearing to determine if the surety should be relieved on the bond and notify all parties of the hearing date. At the time of the filing of the motion, a fee of twenty dollars must be paid to the clerk of court to be retained by the clerk for use in the operation of the clerk’s office. The fee will cover the cost of copies or the motion required by the surety. A surety who surrenders a defendant and files an affidavit which does not show good cause is subject to penalties imposed for perjury as provided for in Article 1, Chapter 9, Title 16. After the surety has been relieved by order of the court, a new undertaking must be filed with the appropriate court in order to secure the subsequent release of the defendant. The undertaking must contain the same conditions included in the original bond unless the conditions have been changed by the court.

Option #1 Steps

Defendant is placed in custody with the appropriate detention facility if circumstances warrant immediate incarceration to prevent imminent violation of one of the specific terms of the bail bond, or if the defendant has violated one of the specific terms of the bond, the surety make take the defendant to the appropriate detention facility for holding (include affidavit to support the surrender) until the court orders that the surety be relieved. Non-payment of fees alone is not sufficient cause to warrant immediate incarceration of the defendant.

Step 1

Defendant violated conditions of bond and placed in detention center.

Step 2

Affidavit of surrender filed with detention center and clerk of court.

Step 3

Court reviews and orders the surety be relieved.

Option #2 Steps

A surety desiring to be relieved on a bond for “good cause” shall file with the clerk of court a motion to be relieved on the bond. A copy of the motion must be served upon the defendant, his attorney, and the solicitor’s office. The court then shall schedule a hearing to determine if the surety should be relieved on the bond and notify all parties of the hearing date. At the time of the filing of the motion, a fee of twenty dollars must be paid to the clerk of court to be retained by the clerk for use in the operation of the clerk’s office. The fee will cover the cost of copies or the motion required by the surety. A surety who surrenders a defendant and files an affidavit which does not show good cause is subject to penalties imposed for perjury as provided for in Article 1, Chapter 9, Title 16. After the surety has been relieved by order of the court, a new undertaking must be filed with the appropriate court in order to secure the subsequent release of the defendant. The undertaking must contain the same conditions included in the original bond unless the conditions have been changed by the court.

Step 1

Surety desires to be relieved on bond for “good cause”. File a ‘motion to be relieved’ and affidavit of good cause with clerk of court. Copy of ‘motion’ served to defendant, defendant’s attorney, and solicitor’s office. Filing fee paid now.

Step 2

Court schedules a hearing and notifies all parties of date.

Step 3

New bond must be completed for defendant to remain out of detention center.

Issuance of bench warrant; remission of judgment.

Code 38-53

Section 70

Once the surety surrender the defendant to the appropriate detention facility for holding as a result of the bench warrant or if the defendant is incarcerated by the surety or a law enforcement agency as a result of a bench warrant, the surety shall file an affidavit (with copy of bench warrant) with the court stating that the defendant is incarcerated in the appropriate detention facility as a result of the bench warrant as well as the violation of the specific term or terms of the bail bond stated in the bench warrant. Once the affidavit pursuant to the provisions of this subsection has been filed and served on the defendant, the surety is relieved of all liability on the bail bond by the court unless otherwise ordered by the circuit court within fourteen calendar days of the filing of the affidavit, or, if there is no term of court within the fourteen-day period, at the ensuing term of court. The surety is immediately relieved of all liability on the bail bond.

Steps

Step #1

If a defendant fails to appear at a court proceeding to which he has been summoned, the court shall issue a bench warrant for the defendant.

Step #2

The court shall make available for pickup by the surety or the representative of the surety who executed the bond on their behalf, a true copy of the bench warrant within seven days of its issuance at the clerk of court's office.

Step #3

Once the surety surrenders the defendant to the appropriate detention facility for holding as a result of the bench warrant or if the defendant is incarcerated by the surety or a law enforcement agency as a result of a bench warrant, the surety shall file an affidavit (with copy of the bench warrant) with the court stating that the defendant is incarcerated in the appropriate detention facility as a result of the bench warrant as well as the violation of the specific term or terms of the bail bond stated in the bench warrant. Once the affidavit pursuant to the provisions of this subsection has been filed and served on the defendant, the surety is relieved of all liability on the bail bond by the court unless otherwise ordered by the circuit court within fourteen calendar days of the filing of the affidavit, or I there is no term of court within the fourteen-day period, at the ensuing term of court. The surety is immediately relieved of all liability on the bail bond.

Questions?



WHERE PROTECTION & REGULATION MEET

Other Bondsmen Instruction

Filing Fees

Code 8-21

Section
310(B)(14)

SECTION 8-21-310. Schedule of fees and costs to be collected.

(B) Except as otherwise expressly provided, the clerks of court, registers of deeds, or county treasurers, as may be determined by the governing body of a county, shall collect a uniform **filing fee of ten dollars**, unless otherwise stated, for the following documents or actions:

(14) the taking and filing of an order for bail with or without bond;

The Department has no jurisdiction over this law, so we cannot force the bondsmen to pay. Our suggestion would be to require that payment of the \$10 accompanies the order and not have the bondsmen pay a monthly invoice.

Filing Fees

Code 38-53

Section 50(A)

SECTION 38-53-50. Surety relieved on bond; surrender of defendant; filing of new undertaking.

(A) A surety desiring to be relieved on a bond for good cause shall file with the clerk of court a motion to be relieved on the bond...At the time of the filing of the motion, **a fee of twenty dollars** must be paid to the clerk of court to be retained by the clerk for use in the operation of the clerk's office. The fee will cover the cost of copies of the motion required by the surety.

Our suggestion would be to require that payment of the \$20 accompanies the order and not have the bondsmen pay a monthly invoice.

Professional Bondsman's monthly report

Code 38-53

Section 310

SECTION 38-53-310. Written report to be filed with clerk of court.

Each professional bondsman shall by the fifteenth of each month file with the clerk of court of the county of his principal place of business **and** any other county where he is doing business a written report in a **form prescribed by the director or his designee** regarding all bail bonds on which he is liable as of the first day of each month.

The report must be on our form and must be legible.

You have the right to deny the form and make them give you a legible copy or a copy on our forms.

Misuse of Detention Center

Code 38-53

Section 50(B)

SECTION 38-53-50. Surety relieved on bond; surrender of defendant; filing of new undertaking.

(B) ...the surety may take the defendant to the appropriate detention facility for holding until the court orders that the surety be relieved. The surety, within **three business days following recommitment**, must file with the detention facility and the court an affidavit clocked in with the clerk of court on a form provided by the Division of Court Administration stating the facts to support the surrender of the defendant for good cause. **Nonpayment of fees alone is not sufficient cause to warrant immediate incarceration of the defendant...** A surety who surrenders a defendant and files an affidavit which does not show good cause is subject to penalties imposed for perjury as provided for in Article 1, Chapter 9, Title 16.

If a bondsman places a defendant in the detention center and does *not* file the paperwork, please notify the Department.

If a bondsman *consistently files incorrect* paperwork, please notify the Department.

Non-payment of Estreatments

Code 38-53

Section 70

SECTION 38-53-70. Issuance of bench warrant; remission of judgment.

...If the surety fails to surrender the defendant or place a hold on the defendant's release from incarceration, commitment, or institutionalization within ninety days of the issuance of the bench warrant, the bond is forfeited...The court, in its discretion, may permit the surety to pay the estreatment in installments for a period of up to six months; however, the surety shall pay a handling fee to the court in an amount equal to four percent of the value of the bond. If at any time during the period in which installments are to be paid the defendant is surrendered to the appropriate detention facility and the surety complies with the recommitment procedures, the surety is relieved of further liability.

If the estreatment is not paid within the given timeframe, please send a copy of order, bond form(s), and any correspondences to the Department.

Questions?



WHERE PROTECTION & REGULATION MEET

Contact us at:

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Or

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