

The information provided here is for informational and educational purposes and current as of the date of publication. The information is not a substitute for legal advice and does not necessarily reflect the opinion or policy position of the Municipal Association of South Carolina. Consult your attorney for advice concerning specific situations.

SC DOI
WHERE PROTECTION & REGULATION MEET

Guidelines to Estreating Bail Bonds in South Carolina

Code Law 38-53-10

"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-updated with recent law change
---------------------------------------------------	------------	-------------------------------------------

If a defendant violates the conditions of release on a bond, the court shall issue a bench warrant for the defendant. The court must provide written or electronic notice of the issuance of the bench warrant within thirty days of its issuance to every party bound in the recognizance. 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

Estreatment orders must list all parties on the order.

Sample Orders – Professional Bondsman

State of South Carolina
County of _____
VS
John Smith – defendant
VS
Joe Doe – Professional Bondsman
dba ABC Bail Bonding

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

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

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.



When to notify the DOI

The Department is a regulatory body and not a debt collector. The Department does need to know if a bondsman is not paying an estreatment, but the courts need to show they have tried to collect the payment.

When you send notification that a bond estreatment has not been paid, please provide the following:

- 1. Estreatment order
- 2. All correspondences sent trying to get payment
- 3. Name of person who would testify that the bondsman has not paid the estreatment





Guidelines to Relieve a Bail Bondsman

Code Laws	Code Law 38-53
	<p>Section 50: Surety relieved on bond; surrender of defendant; filing of new undertaking.</p> <p>Section 70: Issuance of bench warrant; remission of judgment.</p> <p>Section 84: Notification when electronic monitoring violated.</p>
	<p>Code Law 17-15</p> <p>Section 20: Conditions of appearance recognizance or appearance bond; discharge, validity, relief of surety.</p>
	SC DOI

Conditions of appearance recognizance or appearance bond; discharge, validity, relief of surety.	Code 17-15	Section 20
<p><i>(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.</i></p> <p><i>(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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p>		
SC DOI		

Steps
<p>Step #1</p> <p>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.</p> <p>Step #2</p> <p>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.</p> <p>Step #3</p> <p>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.</p>
SC DOI

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 of 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 I, 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 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 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, 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.



When to notify the DOI

The Department is a regulatory body and needs to know if a bondsman is not filing the correct paperwork or if a bondsman is not filing the paperwork within the 3 days listed in code law.

When you send notification that these are not being followed, please provide the following:

1. Name of Defendant, County, Detention Center
2. Any and all paperwork
3. Name of person who would testify that the bondsman has not followed code law



Notification when electronic monitoring violated.

Code 38-53

Section 84-new section added to law

(A) A person engaged in electronic monitoring of a defendant must, within forty-eight hours, notify the solicitor having jurisdiction over the defendant when he becomes aware or should have become aware that the defendant has violated any provision of the court's order for electronic monitoring. Failure of a defendant to timely pay the bondsman the full monthly electronic monitoring fee associated with the cost of the electronic monitoring device and the associated cost of the monitoring service shall, in and of itself, constitute good cause for the bondsman to file a motion to be relieved on the bond and to surrender the defendant to the custody of the appropriate detention facility pursuant to Section 38-53-50.


(B) Failure of the bondsman to maintain compliance with the reporting requirement of subsection (A) shall be reported to the South Carolina Department of Insurance by the solicitor for administrative action whereby the bondsman's license may be fined, suspended, or revoked.







WHERE PROTECTION & REGULATION MEET


Other Bondsmen Instruction

\$10 Filing Fee	Code 8-21	Section 310(B)(14)
<p>SECTION 8-21-310. Schedule of fees and costs to be collected.</p> <p>(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 <u>filing fee of ten dollars</u>, unless otherwise stated, for the following documents or actions:</p> <p>(14) the taking and filing of an order for bail with or without bond;</p> <p style="text-align: right;"></p>		


\$10 Filing Fee - Suspension	Code 8-21	Section 310(B)(14)
<p>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.</p> <p>If the bondsman is not paying the filing fees and the court has tried to retrieve the dues, the court has authority to <u>suspend the bondsman</u> from writing any new bonds until the payment has been received.</p> <p>If this does not work, notify the Department by email to bondsmanlicensing@doj.sc.gov. The Department needs the following:</p> <ol style="list-style-type: none"> 1. Name of Defendant and County 2. Any and all paperwork 3. All correspondences sent trying to get payment 4. Name of person who would testify that the bondsman has not followed code law <p style="text-align: right;"></p>		


\$20 Filing Fee	Code 38-53	Section 50(A)
<p>SECTION 38-53-50. Surety relieved on bond; surrender of defendant; filing of new undertaking.</p> <p>(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, <u>a fee of twenty dollars</u> 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.</p> <p style="text-align: right;"></p>		


\$20 Filing Fee - Suspension	Code 38-53	Section 50(A)
<p>The Department's suggestion would be to require that payment of the \$20 accompanies the order and not have the bondsmen pay a monthly invoice.</p> <p>If the bondsman is not paying the filing fees and the court has tried to retrieve the dues, the court has authority to <u>suspend the bondsman</u> from writing any new bonds until the payment has been received.</p> <p>If this does not work, notify the Department by email to bondsmanlicensing@doj.sc.gov. The Department needs the following:</p> <ol style="list-style-type: none"> 1. Name of Defendant and County 2. Any and all paperwork 3. All correspondences sent trying to get payment 4. Name of person who would testify that the bondsman has not followed code law <div style="text-align: right;"></div>		

Bail bond reports.	Code 38-53	Section 310-new section added
<p><i>(A) 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.</i></p> <p><i>(B) Each surety bondsman shall, within thirty days of executing a bail bond, file with their respective insurance provider a written or electronic report in a form approved by the director or his designee detailing all bail bonds on which he has cause to be executed.</i></p> <p><i>(C) The reports referenced in subsections (A) and (B) shall include the following:</i></p> <p><i>(1) any current data on monies to be collected and retained as an express condition of the bond, whether for electronic monitoring or otherwise.</i></p> <p><i>(2) in lieu of the monthly submission of a written report to the clerk of court, the bondsman may utilize a data management software system, which contains the above required current information, and is capable of providing the appropriate clerk of court or his designee with real-time access to the data management system through a portal, website, or other data access system through which the clerk of court can confirm he has access to the required information.</i></p> <div style="text-align: right;"></div>		

Bondsman's monthly report - Suspension	Code 38-53	Section 310
<p>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.</p> <p>If the bondsman is not providing legible forms by the 15th of each month, the court has authority to <u>suspend the bondsman</u> from writing any new bonds until the legible form has been received.</p> <p>If this does not work, notify the Department by email to bondsmanlicensing@doj.sc.gov. The Department needs the following:</p> <ol style="list-style-type: none"> 1. Name of Bondsman and County 2. Month(s) bondsman has not provided the statement 3. Name of person who would testify that the bondsman has not followed code law <div style="text-align: right;"></div>		

Misuse of Detention Center - Notification	Code 38-53	Section 50(B)
<p>If a bondsman places a defendant in the detention center and does <u>not</u> file the paperwork, please notify the Department.</p> <p>If a bondsman <u>consistently files incorrect</u> paperwork, please notify the Department by email to bondsmanlicensing@doj.sc.gov. The Department needs the following:</p> <ol style="list-style-type: none"> 1. Name of Bondsman 2. Name of Defendant and County 3. Name(s) of person(s) who would testify that the bondsman has not followed code law 		
		

Unlawful acts.	Code 38-53	Section 170(e)- updated with recent law changes
<p><small>accept anything of value from a principal except the premium, which may not exceed fifteen percent of the face amount of the bond, with a minimum fee of one hundred dollars or ten percent of the bond, whichever is greater, that must be charged and collected by the bondsman before the execution of the bond. Conditions of the bond which expressly or implicitly require payment of monies in excess of the premium, as a cost of satisfying the condition of the bond, shall not be considered part of the bondsman's premium, and are not affected by this code provision. The bondsman may collect these fees from the defendant and is not limited by any language requirements of this code provision. However, the bondsman is permitted to enter into a payment agreement by attaching a statement of bondsman to the bond proceeding form and this agreement shall require the principal on the bail bond or any indemnitor to make a minimum down payment of one hundred dollars. This payment agreement may not be altered and must not exceed eighteen months after the date on which the bond was executed. If the payment has not been made for two consecutive months, the bondsman must send a certified notice to the last known address of the principal and indemnitor demanding payment to be made within ten days to bring the agreement current. If no payment is received by the end of the notice period, the bondsman must surrender the principal to the proper detention facility for holding and file a motion to be relieved as provided in Section 38-53-50(A) or (B), at which time the agreement must be accelerated, and the balance paid in full, before or at the motion hearing for the principal to be released on bond. The bondsman may accept collateral security or other indemnity from the principal which must be returned within ten days after final termination of liability on the bond unless a bench warrant has been issued.</small></p>		
		

<h2 style="color: #1a3d4d;">Questions?</h2>




SC DOI
WHERE PROTECTION & REGULATION MEET

Contact us at:
1-800-768-3467
Or
803-737-6160

We are located at:
1201 Main Street Suite
1000
Columbia, SC 29201

Visit us at:
doi.sc.gov

Facebook
The South Carolina
Department of Insurance

Instagram
[@south_carolina_doi](https://www.instagram.com/south_carolina_doi)

Twitter
[@scdoi](https://twitter.com/scdoi)
