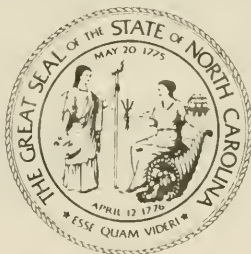


**LEGISLATIVE
RESEARCH COMMISSION**

**BAIL BONDSMEN, BAIL BOND
FORFEITURE, AND
PRETRIAL RELEASE**



**REPORT TO THE
1987 GENERAL ASSEMBLY
OF NORTH CAROLINA**

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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



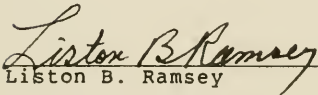
December 12, 1986

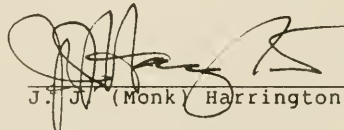
TO THE MEMBERS OF THE 1987 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1987 General Assembly on the matter of bail bondsmen, bail bond forfeiture, and pretrial release. The report is made pursuant to Chapter 790 of the 1985 General Assembly (1985 Session).

This report was prepared by the Legislative Research Commission's Committee on Bail Bondsmen, Bail Bond Forfeiture, and Pretrial Release and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted,


Liston B. Ramsey


J. J. (Monk) Harrington

Cochairmen Legislative Research Commission

PREFACE

PREFACE

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner." G.S. 120-30.17(1). The membership of the Legislative Research Commission is listed in Appendix A.

At the direction of the 1985 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The cochairmen of the Legislative Research Commission, under the authority of General Statute 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairmen, one from each house of the General Assembly, were designated for each committee.

The study of bail bondsmen, bail bond forfeiture, and pretrial release was authorized by Sections 7 and 25 of Chapter 790 of the 1985 Session Laws (1985 Session). That act states that the Commission may consider House Bill 967 and Senate Joint Resolution 297 in determining the nature, scope, and aspects of the study. Section 1 of House Bill 967 reads: "The Legislative Research Commission is authorized to study the bail bond system." Section 1 of Senate Joint Resolution 297 reads: "The Legislative Research Commission may study the laws of this State concerning the pretrial release from custody of persons arrested and charged with criminal offenses and the administration of these laws. The Commission may consider the conditions for pretrial release, the various types of bail bonds permitted by law, and the uniformity of the application of the current pretrial release provisions." Relevant portions of Chapter 790, House Bill 967, and Senate Joint Resolution 297 are included in Appendix B.

The Legislative Research Commission grouped this study in its Justice area under the direction of Senator Henson P. Barnes. The Committee was chaired by Representative Harry E. Payne, Jr. and Senator Dennis J. Winner. The full membership of the Committee is listed in Appendix C of this report.

BACKGROUND

BACKGROUND

The procedures governing bail bondsmen and pretrial release are primarily contained in Chapter 85C of the North Carolina General Statutes and Article 26 of Chapter 15A of the North Carolina General Statutes. These statutes affect the licensing and regulation of bail bondsmen, the methods of pretrial release, the availability of pretrial release, and the procedure for bail bond forfeiture.

The area of bail bondsmen, bail bond forfeiture, and pretrial release is both a complex and important area. The State must balance two competing interests. First, the State recognizes that it is not always desirable nor necessary to detain a defendant prior to his trial. Thus, pretrial release serves a vital function to assure that some defendants are released prior to trial. Second, if a defendant is released prior to trial, the State wants some assurance that he will be present at trial.

The current system of pretrial release exists to balance the competing interests discussed above. G.S. 15A-534(a) lists the following options for conditions of pretrial release:

- (1) Release the defendant on his written promise to appear.
- (2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.
- (3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.

- (4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S.109-25, or by at least one solvent surety.

The judicial official imposing the conditions of pretrial release "must impose condition (1), (2), or (3) . . . unless he determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subordination of perjury, or intimidation of potential witnesses." N.C. Gen. Stat. < 15A-534(b).

Thus, condition (4) is imposed only if the judicial official determines that none of the other conditions will be effective. Further, if a defendant requires the assistance of a bail bondsman, it will generally be with condition (4). It is therefore important that the State effectively regulate bail bondsmen in order to promote professionalism in the field to help assure that defendants appear at trial.

In 1985 Representative William T. Watkins introduced House Bill 967, AN ACT RELATING TO PROFESSIONAL BONDSMEN, RUNNERS AND FORFEITURES. The bill is contained in Appendix B. The bill made several amendments to the North Carolina General Statutes relating to bail bondsmen and bail bond forfeiture. The amendments related to changes in the qualifications of bail bondsmen, the amount of deposit that a bail bondsmen should be required to deposit with the Department of Insurance, and the forfeiture provisions. The

bill was referred to a House Judiciary Committee. The Committee gave a favorable report on a committee substitute, which authorized the Legislative Research Commission to study the issue of bail bondsmen and bail bond forfeiture. The bill was then re-referred to the Committee on Appropriations where it was incorporated into Chapter 790 of the 1985 Session Laws. Both bills are contained in Appendix B.

In 1985 Senator Dennis J. Winner introduced Senate Joint Resolution 297, A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE LAWS CONCERNING PRETRIAL RELEASE. The Joint Resolution was referred to the Senate Committee on Rules and re-referred to the Committee on Appropriations where it was incorporated into Chapter 790 of the 1985 Session Laws. Both bills are contained in Appendix B.

COMMITTEE PROCEEDINGS

COMMITTEE PROCEEDINGS

The Committee held three meetings in the Legislative Building on the following dates: February 27, 1986, November 26, 1986, and December 5, 1986. A short synopsis of each meeting is listed below. The minutes of each meeting are available in the Legislative Library of the Legislative Building.

February 27, 1986 Meeting

At the initial meeting the members of the Committee were briefed on the history of the legislation that authorized the Committee, the duties and powers of the Committee, and the budget of the Committee.

Ms. Libby Lefler, Committee Counsel, explained the North Carolina General Statutes governing bail bondsmen, bail bond forfeiture, and pretrial release. She discussed Chapter 85C and Article 26 of Chapter 15A of the General Statutes. She also discussed the proposed amendments to those statutes in House Bill 967. A copy of House Bill 967 is contained in Appendix B.

The Committee then heard from Mr. Michael Mangum, a Charlotte bail bondsman representing the North Carolina Bail Bondsmen Association. Mr. Mangum explained the procedure that bail bondsmen use to report the bonds that are written to the Department of Insurance.

The next speaker was Mr. David M. Blackwell, Deputy Commissioner of the Department of Insurance. Mr. Blackwell explained the procedure that the Department of Insurance uses to prevent bail bondsmen from writing larger bonds than allowed by the statutes. He advised that there are not, to his knowledge, any problems with bail bondsmen writing larger bonds than allowed by the statutes.

Mr. Richard Schwartz, a Raleigh attorney representing the North Carolina School Boards Association, was the next speaker. He advised the Committee that there are problems with bail bondsmen writing larger bonds than allowed by the statutes. He felt that the Committee needed to look at this issue.

The final speaker was Mr. Sam Johnson, a Raleigh attorney representing the North Carolina Bail Bondsmen Association. Mr. Johnson distributed a handout with several recommended changes to the statutes governing bail bondsmen. A copy of the handout is contained in Appendix D.

November 26, 1986 Meeting

At the second meeting the Committee heard from several speakers and voted on its recommendations to the 1987 General Assembly.

The first speaker was Mr. Stevens Clarke, Institute of Government. Mr. Clarke recently completed a study of pretrial release and bail bondsmen in Durham County. Mr. Clarke reported that although there are some problems in Durham County, the system works fairly well. He stated that 92% of all defendants are released on some form of pretrial release. The most common form of pretrial release is secured bond.

Mr. Clarke also reported that 16% of the defendants released failed to appear. The majority of those defendants, however, do appear at a later date. Only 2% of the defendants released continued to remain absent. The best factor to determine whether a defendant will fail to appear is the amount of time that it takes the court to dispose of the case. The longer it takes to dispose of the case, the greater the chance that a defendant will fail to appear for court.

One area of concern is the enforcement of bail bond forfeitures. The courts do not strictly enforce the forfeiture provisions. Further, if a defendant eventually appears for court, he is less likely to have to pay a bail bond forfeiture. Only 13% of the defendants who fail to appear are ordered to pay any amount of forfeiture.

Mr. Fred Mohn, Deputy Commissioner of the Department of Insurance, was the next speaker. He presented a handout to the Committee that contained numerous statistics on bail bondsmen in

North Carolina. The handout is contained in Appendix E.

Ms. Libby Lefler, Committee Counsel, was the next speaker. She presented information on the procedures used by other states to govern bail bondsmen. She stated that the only state to prohibit commercial bail bonding is Kentucky. Other states, however, have statutory provisions that essentially eliminate the need for bail bondsmen. For example, some states use a cash deposit system. Under this system, the defendant deposits 10% of the bond with the court. If the defendant returns on the court date, then the defendant receives 90% of his deposit back.

Mr. Sam Johnson, a Raleigh attorney representing the North Carolina Association of Professional Bail Bondsmen, also spoke to the Committee. Mr. Johnson presented several recommendations to the Committee.

The Committee then voted on its recommendations to the 1987 General Assembly. These recommendations are discussed in the Findings and Recommendations section of this Report.

December 5, 1986 Meeting

At the final meeting the Committee approved this Report.

FINDINGS AND RECOMMENDATIONS

FINDINGS AND RECOMMENDATIONS

The Committee believes that there are several changes that can be made in the area of bail bondsmen, bail bond forfeiture, and pretrial release to improve this area of the law. This Committee recommends that the General Assembly enact legislation to achieve these changes. Each of the recommendations is listed below.

I. A person should be 21 years of age or over before he can be licensed as a professional bondsman or runner.

Currently, a person can be licensed as a professional bondsman or runner if he is 18 years of age or over. The Committee recommends that G.S. 85C-11(a) be amended to provide that a person must be 21 years of age or over before he can be licensed as a professional bondsman or runner. The General Assembly further should grandfather in those persons licensed prior to the effective date of the amendment. A copy of the proposed legislation is contained in Appendix F.

II. No person should be licensed as a professional bondsman or runner if he has any outstanding bail bond obligations incurred while previously licensed as a professional bondsman.

G.S. 85C-11 lists the qualifications for professional bondsmen and runners. There is no reference to any prior obligations incurred while previously licensed as a professional bondsman. The State, however, does not want a bondsman to incur

numerous bail bond obligations and then later submit another application to become a professional bondsman or runner without satisfying the prior obligations. A person should not be licensed either as a professional bondsman or as a runner while he has any outstanding bail bond obligations.

Thus, G.S. 85C-11 should be amended to require an applicant for license as a professional bondsman or runner to disclose if he has any outstanding bail bond obligations incurred while previously licensed as a professional bondsman. A copy of the proposed legislation is contained in Appendix F.

III. A person submitting an application for a license to be a runner should disclose all prior employment as a professional bondsman or runner and list any outstanding judgments.

Before a person is licensed as a runner, it is important that the Department of Insurance investigate his past employment as a professional bondsman or runner and his financial responsibility. In order to conduct this investigation, it would be helpful if the applicant was required to disclose on his application any prior employment as a professional bondsman or runner and list any outstanding judgments.

The General Assembly therefore should amend G.S. 85C-14 to require a person submitting an application for a license to be a runner to disclose all prior employment as a professional bondsman

or runner and list any outstanding judgments. A copy of the proposed legislation is contained in Appendix F.

IV. No professional bondsman shall be allowed to act as a surety on any bail bonds for any one individual pertaining to any charges arising out of one transaction or related transactions whose principal sum is in excess of one fourth of the value of the securities deposited with the Commissioner of Insurance.

Currently, the statutes provide that no professional bondsman can write a bond if the amount of the bond is in excess of one fourth of the value of the securities deposited with the Commissioner of Insurance. Thus, if a professional bondsman has \$5,000 deposited with the Commissioner of Insurance, he cannot write a bond greater than \$1,250.

The statutes do not address whether a bondsman can write a bond for multiple offenses arising out of the same transaction. For example, a defendant steals a car and then drives the car on private property. The defendant is charged separately with theft and trespass. Each bond is for \$5,000. The bondsman clearly is prohibited from writing a bond greater than \$1,250. Thus, the issue arises as to whether the bondsman can write a bond for both of the offenses.

The Department of Insurance has issued an administrative rule that provides that "[w]hen multiple charges are pending against a single defendant, which charges arise out of one transaction, then for purposes of bond limits under General Statute 85C-36, that

shall be considered one bond, regardless of whether more than one warrant is issued and a separate bond set on each warrant." N.C.A.C. Title 11, Chapter 13, Section .0510. A copy of the administrative rule is contained in Appendix E. Under this rule, the bondsman could write a bond for either theft or trespass, but not both of the offenses.

The General Assembly should amend G.S. 85C-36 to prohibit a professional bondsman from acting as a surety on any bail bond for multiple offenses arising out of the same transaction if they exceed one fourth of the value of the securities deposited with the Commissioner of Insurance. This approach would be consistent with the administrative rule currently used by the Department of Insurance. A copy of the proposed legislation is contained in Appendix F.

V. The number of auditors in the Special Services Division of the Department of Insurance should be increased.

There are 176 professional bondsmen licensed in North Carolina. Each of these bondsmen has a statutory limit for the amount of bonds for which he is permitted to act as surety. This is in relation to the amount of securities he has deposited with the Commissioner of Insurance. It is important that professional bondsmen do not exceed this statutory limit.

Each professional bail bondsman is required to file with the Commissioner of Insurance a monthly report that lists all bail

bonds on which he is liable. Personnel from the Department of Insurance are required to examine these monthly reports to determine if the professional bail bondsman exceeds his statutory limit. Although the monthly reports provide some information, periodic audits are necessary to insure that the bondsmen do not exceed the statutory limit.

The Committee therefore recommends that the number of auditors in the Special Services Division of the Department of Insurance be increased. The Committee feels that this would help prevent professional bondsmen from exceeding the statutory limit. The Committee makes no recommendation on the number of additional auditors that would be needed, but recommends that the Appropriations Committee look at this issue during the 1987 General Assembly.

VI. The Fair Sentencing Act should be amended to list as an aggravating factor that the defendant willfully failed to appear before any court or judicial official while on pretrial release.

If a defendant who has been released on pretrial release fails to appear, it delays the proceedings against him. The proceedings must be rescheduled, which means additional costs and time for the court. It also can diminish the case against the defendant if the proceedings are postponed for long periods of time.

Although there are valid reasons for not appearing when scheduled, a willful failure to appear is classified as a

misdemeanor pursuant to G.S. 15A-543. Thus, the Committee recommends that the Fair Sentencing Act should be amended to list as an additional aggravating factor that the defendant willfully failed to appear before any court or judicial official while on pretrial release.

APPENDIX A

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



MEMBERSHIP OF THE
LEGISLATIVE RESEARCH COMMISSION

1985 - 1987

Senator J. J. Harrington, Cochairman
Senator Henson P. Barnes
Senator A. D. Guy
Senator Ollie Harris
Senator Lura Tally
Senator Robert D. Warren

Representative Liston B. Ramsey, Cochairman
Representative Christopher S. Barker, Jr.
Representative John T. Church
Representative Bruce Ethridge
Representative Aaron Fussell
Representative Barney Paul Woodard

APPENDIX B

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985
RATIFIED BILL

CHAPTER 790
SENATE BILL 636

AN ACT AUTHORIZING STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, MAKING TECHNICAL AMENDMENTS THERETO, AND TO MAKE OTHER AMENDMENTS.

The General Assembly of North Carolina enacts:

- Section 1. Studies Authorized. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1985 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:
- (1) Continuation of the Study of Revenue Laws (H.J.B. 17-Lilley),
 - (2) Continuation of the Study of Water Pollution Control (H.J.B. 141-Evans),
 - (3) Adolescent Sexuality Teaching (H.J.B. 275-Jerals),
 - (4) Continuation of the Study on the Problems of the Aging (H.J.B. 322-Greenwood),
 - (5) Continuation of the Study of Municipal Incorporations (H.J.B. 389-Greenwood),
 - (6) School Discipline (H.J.B. 861-Colton),
 - (7) Bail Bondsmen and Bail Bond Forfeiture (B.B. 967-Watkins),
 - (8) Preventative Medicine (H.B. 1052-Locks),
 - (9) Life Care Arrangements (H.B. 1053-Locks),
 - (10) State Personnel System (H.B. 1064-Wiser),
 - (11) Long-Term Health Care Insurance (H.B. 1103-Locks),
 - (12) Itinerant Merchants (H.B. 1170-Lancaster),
 - (13) Manufactured Housing Zoning (H.B. 1178-Ballance; S.B. 636-Plyler),
 - (14) Interest Rate Regulation (H.J.B. 1227-Evans),
 - (15) Underground Storage Tank Leakage Hazards and other ground water hazards (H.B. 1281-Locks),
 - (16) Mental Patient Commitments (H.J.B. 1313-Miller),
 - (17) High-Level Radioactive Waste Disposal (H.B. 1373-Diamond; S.B. 655-Hipps),
 - (18) Stun Guns (H.J.B. 1390-McDowell),
 - (19) Continuation of the Study of Water Quality in Haw River and B. Everett Jordan Reservoir (H.J.B. 1393-Hackney),
 - (20) Authority of Boards of County Commissioners in Certain Counties over Commissions, Boards and Agencies (H.J.B. 1405-Holroyd),
 - (21) Superintendent of Public Instruction and State Board of Education (H.J.B. 1412-Nye),
 - (22) Rental Referral Agencies (H.B. 1421-Stamey),
 - (23) Child Abuse Testimony Study (S.B. 165-Hipps),
 - (24) Home Schooling Programs (S.J.B. 224-Winner),
 - (25) Pretrial Release (S.J.B. 297-Winner),

- (26) Inmate Substance Abuse Therapy Program (S.J.R. 317-Plyler),
- (27) Inmate Work-Release Centers (S.B. 406-Swain),
- (28) Community College System (S.B. 425-Martin),
- (29) Community Service Alternative Punishment and Restitution (S.B. 495-Swain),
- (30) State Employee Salaries and Benefits (S.B. 514-Jordan),
- (31) State Infrastructure Needs (S.B. 541-Royall),
- (32) Commercial Laboratory Water Testing (S.B. 573-Taft),
- (33) Outdoor Advertising (S.B. 611-Thomas, R.P.),
- (34) Premium Tax Rate on Insurance Companies (S.B. 633-Hardison)
- (35) Continuation of the Study of Child Support (S.B. 638-Marvin),
- (36) Local Government Financing (S.B. 670-Rauch),
- (37) Medical Malpractice and Liability (S.B. 703-Taft),
- (38) Marketing of Perishable Food (S.B. 718-Basnight),
- (39) Child Protection (S.B. 802-Hipps),
- (40) Legislative Ethics and Lobbying (S.B. 829-Rauch),
- (41) Satellite Courts (S.B. 850-Barnes),
- (42) Substantive Legislation in Appropriations Bills (S.B. 851-Band),
- (43) School Finance Act (S.B. 848-Taft).

Sec. 2. Transportation Problems at Public Facilities. The Legislative Research Commission may identify and study transportation problems at public transportation facilities in North Carolina.

Sec. 2.1. The Legislative Research Commission may study the feasibility of the prohibition of investment by the State Treasurer of stocks of the retirement systems listed in G.S. 147-69.2(b)(6), or of the assets of the trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1 and G.S. 147-69.2(19) in a financial institution that has outstanding loans to the Republic of South Africa or in stocks, securities, or other obligations of a company doing business in or with the Republic of South Africa.

Sec. 3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1987 General Assembly, or the Commission may make an interim report to the 1986 Session and a final report to the 1987 General Assembly.

Sec. 4. Bills and Resolution References. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 5. The last sentence of G.S. 120-19.4(b) is amended by deleting the citation "G.S. 5-4" and inserting in lieu thereof the following: "G.S. 5A-12 or G.S. 5A-21, whichever is applicable".

Sec. 6. G.S. 120-99 is amended by adding a new paragraph to read:

"The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that the chairman shall sign all subpoenas on behalf of the Committee.

Sec. 7. G.S. 120-30.17 is amended by adding a new subsection to read:

"(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 18th day of July, 1985.

ROBERT B. JORDAN III

Robert B. Jordan III
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1985

HOUSE BILL 967

Short Title: Bailbond Forfeitures.

(Public)

Sponsors: Representative Watkins.

Referred to: Judiciary IV.

May 14, 1985

1 A BILL TO BE ENTITLED
2 AN ACT RELATING TO PROFESSIONAL BONDSMEN, RUNNERS AND
3 FORFEITURES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 85C-11 is amended by rewriting line 8
6 thereof to read as follows:

7 "(1) Is 21 years of age or over; provided, that any licensee
8 under 21 years of age as of October 1, 1985, shall not be
9 disqualified nor denied renewal of license solely because of
10 age."

11 Sec. 2. G.S. 85C-11 is further amended by adding at the
12 end thereof the following:

13 "(5) Has no outstanding obligations incurred while previously
14 employed as a runner by a professional bail bondsman."

15 Sec. 3. G.S. 85C-30 is amended by adding at the end
16 thereof the following:

17 "The five thousand dollar (\$5,000) minimum value of said
18 deposit shall be increased by five thousand dollars (\$5,000) each
19 fiscal year beginning July 1, 1986, through and including the

1 fiscal year beginning July 1, 1989, when said minimum value shall
2 be and remain twenty-five thousand dollars (\$25,000)."

3 Sec. 4. G.S. 85C-36 is amended by changing the words
4 "one-fourth", appearing in line 2 thereof, to "one-third",
5 beginning July 1, 1986.

6 Sec. 5. G.S. 15A-544(b) is amended by changing the
7 number "30" appearing in line 5 thereof to the number "120".

8 Sec. 6. G.S. 15A-544(c) is amended by rewriting said
9 subsection to read as follows: "If the principal does not appear
10 before the court having jurisdiction within 120 days of the date
11 of service, or on the first day of the next session of court
12 commencing more than 120 days after the date of service, the
13 court must enter judgment for the State against the principal and
14 his sureties for the amount of the bail and the costs of the
15 proceedings. If the principal appears within the time allowed
16 following the date of service, the order of forfeiture must be
17 set aside."

18 Sec. 7. G.S. 15A-544(e) is amended by rewriting said
19 subsection to read as follows: "If the principal appears within
20 120 days following the date of satisfaction of the judgment
21 against a principal or his surety, or on the first day of the
22 next session of court commencing more than 120 days after the
23 date of satisfaction of the judgment, the court must direct that
24 the judgment be remitted in an amount equal to three-fourths of
25 the amount of the bail; further, that if the principal appears
26 within the next additional 90 days, or on the first day of the
27 next session of court commencing after said next additional 90

28

1 days, the court must direct that the judgment be remitted in an
2 amount equal to one-half of the amount of the bail."

3 Sec. 8. G.S. 15A-544(f) is amended by rewriting said
4 subsection to read as follows: "If an order of forfeiture has
5 not been set aside within the period provided in subsection (c)
6 above, the clerk must issue execution on the judgment within 30
7 days, and remit the clear proceeds to the county for use in
8 maintaining free public schools. Any clerk who fails to perform
9 his duty as required in this subsection is subject to a penalty
10 of five hundred dollars (\$500.00)."

11 Sec. 9. G.S. 15A-544(g) is amended by changing the
12 number "10", appearing in line 2 thereof, to the number "30".

13 Sec. 10. G.S. 15A-544(h) is amended by rewriting said
14 subsection to read as follows: "If money has been paid to the
15 county pursuant to execution on a judgment of forfeiture, it must
16 refund to the person entitled the amount of remission granted
17 under this section upon receipt of a certified copy of the
18 judgment of remission from the clerk."

19 Sec. 11. This act shall become effective, and shall
20 apply to orders of forfeiture entered, on and after October 1,
21 1985.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985

SENATE JOINT RESOLUTION 297

Sponsors: Senator Winner.

Referred to: Rules & Operation of Senate.

April 15, 1985

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY THE LAWS CONCERNING PRETRIAL RELEASE.

3 Be it resolved by the Senate, the House of Representatives
4 concurring:

5 Section 1. The Legislative Research Commission may
6 study the laws of this State concerning the pretrial release from
7 custody of persons arrested and charged with criminal offenses
8 and the administration of these laws. The Commission may
9 consider the conditions for pretrial release, the various types
10 of bail bonds permitted by law, and the uniformity of the
11 application of the current pretrial release provisions.

12 Sec. 2. The Commission shall make a final report of its
13 findings and recommendations on pretrial release to the 1987
14 Session of the General Assembly.

15 Sec. 3. This resolution is effective upon ratification.

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APPENDIX C

LEGISLATIVE STUDY COMMISSIONBAIL BONDSMEN AND BAIL BOND FORFEITURE; PRETRIAL RELEASE

Senator Dennis Winner, Co-Chairman
81-B Central Avenue
Asheville, NC 28801
(704) 258-0094

Rep. Harry F. Payne, Jr., Co-Chairman
PO Box 1147
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Senator Cass Ballenger
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Judge J. William Copeland
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Mr. Charles A. Paxton
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Rep. Jonathan L. Rhyne, Jr.
PO Box 832
Lincolnton, NC 28092
(704) 735-1423

Ms. Libby Lefler, Counsel to the Commission

Janet Pruitt, Clerk

Senator Henson Barnes, LRC Member
PO Drawer 7
Goldsboro, NC 27530

APPENDIX D

JOHNSON, GAMBLE, HEARN & VINEGAR

ATTORNEYS AT LAW

SUITE 400, FIRST FEDERAL BUILDING

P. O. BOX 1770

RALEIGH, NORTH CAROLINA 27602

SAMUEL H. JOHNSON
RICHARD O. GAMBLE
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RONALD B. BLACK
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(610) 832-8300

TO: Legislative Study Committee

FROM: Sam Johnson, Atty.

RE: Bail Bondsmen Study

DATE: February 27, 1986

HB 967 was sponsored by Rep. Billy Watkins at the request of the North Carolina Association of Professional Bail Bondsmen to update state law in G.S. 85C-11 et al. (bail bondsmen) and G.S. 15A-544(b) (criminal procedure).

QUALIFICATION --

The age for licensing should be at least 21, not 18. G.S. 85C-11.

This is due to the fact that bail bondsmen must exercise considerable responsibility. A grandfather proviso relating to those who are now 18 could be used.

OBLIGATIONS --

While there are unpaid outstanding obligations for forfeitures, an individual should not be licensed either as a runner or professional bail bondsmen. Amendment needed to add G.S. 85C-11(5).

Some individuals act as bail bondsmen and have unsatisfied forfeitures, creating a bad example, and then becoming a "runner" for another bondsmen. The reverse can also take place. It is recommended that the statute be amended.

DEPOSIT --

The amount of deposit should be raised from \$5,000.00 which was established in 1963 to at least \$10,000.00 for a bondsmen and \$5,000.00 for each runner employed by the bondsmen. G.S. 85C-30.

This minimum increase keeps pace with inflation and should help guarantee solvent sureties.

FORFEITURE --

Amend the forfeiture statute to give a fixed time for delivery of the accused, and longer time before the forfeiture becomes absolute. G.S. 15A-544.

The bail bondsmen can often fill a function of getting individuals to court that the local law enforcement establishment could not match. Society should support the effort of the bail bondsmen to bring the accused to the halls of justice, but bail bondsmen become frustrated when judges order a forfeiture even though the bondsmen has gone to great lengths to locate the accused.

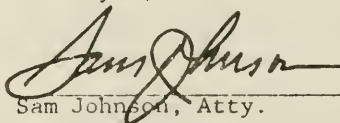
School board attorneys now urge more forfeitures which runs contrary to the whole intent of the accused coming to court.

Most trustworthy accused in simple cases sign their own recognizance and the bail bondsmen renders a service in working with accused persons in more aggravating cases and should be supported in whatever means possible to render this service.

OTHER --

In general, the North Carolina Association of Professional Bail Bondsmen would support statutes or regulations to enhance the professionalism of bail bondsmen and runners such as photographs on licenses, suspension for misconduct, grounds for disqualification, etc.

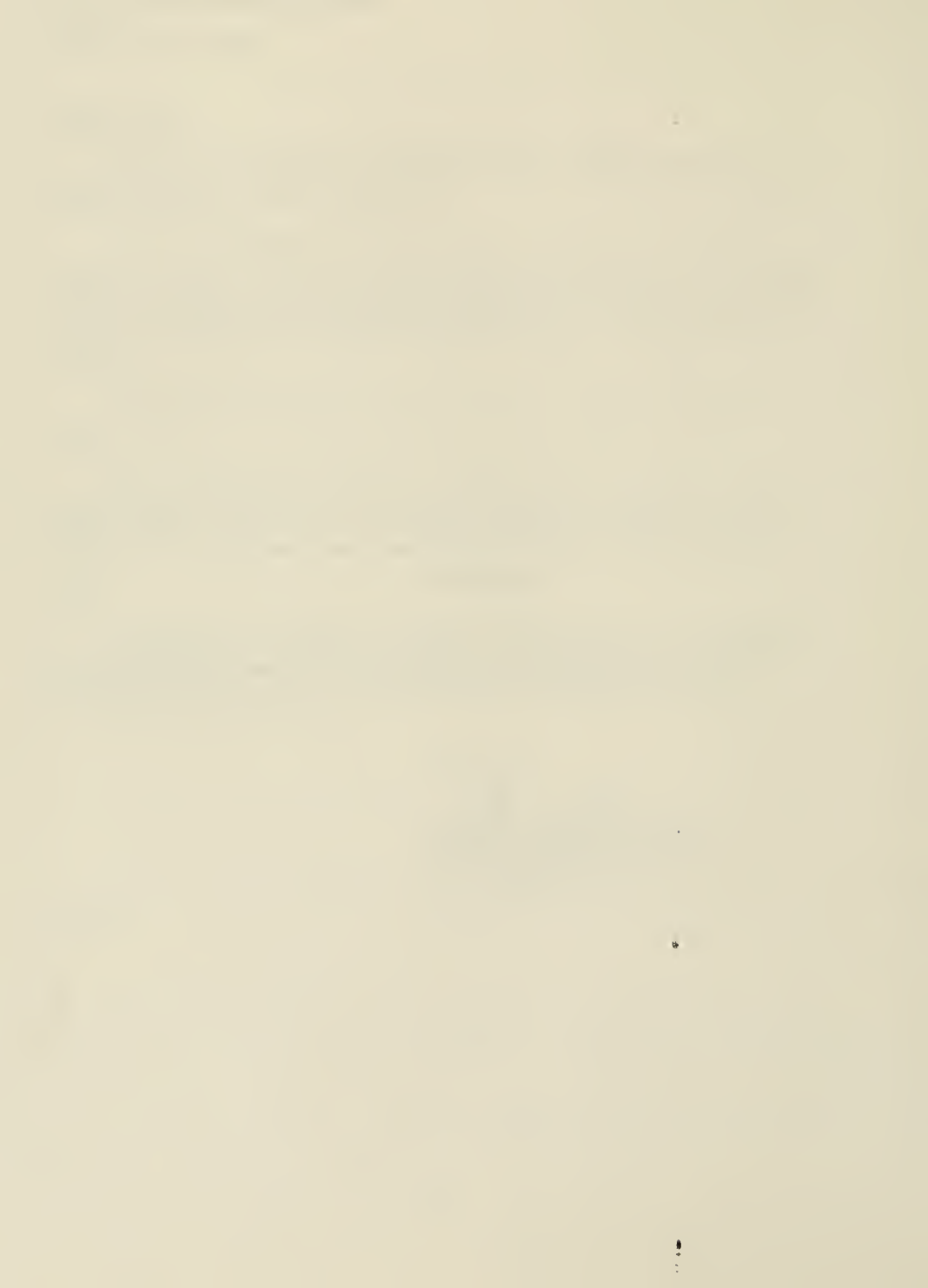
Thank you,



Sam Johnson, Atty.

SHJ/jpb

APPENDIX E





DEPARTMENT OF INSURANCE

State of North Carolina

P O BOX 26387

RALEIGH N C 27611

JIM LONG

COMMISSIONER OF INSURANCE

SPECIAL SERVICES DIVISION

(919) 733-2200

MEMORANDUM:

TO: Legislative Study Committee

FROM: Frederick H. Mohn **FHM**
Deputy Commissioner
Special Services Division

RE: Bail Bond Industry In North Carolina

DATE: November 25, 1986

I. INTRODUCTION:

The Special Services Division of the North Carolina Department of Insurance license and regulates the bail bond industry in North Carolina. This authority is granted under Chapter 85-C, North Carolina General Statute, and Title 11, Chapter 13, Section .0500 of the North Carolina Administrative Code.

II. STATISTICS:

Currently there are one-hundred and seventy-six (176) licensed professional bail bondsmen, and two-hundred and sixty-five (265) licensed bail bond runners. There are thirty-eight (38) licensed surety bondsmen (insurance agent/power of attorney).

The professional bondsmen have posted with this office, \$4,837,865.53 of professional bail bond security in the form of cash (certificates of deposits), stocks, bonds, and mortgage property. The minimum requirement is \$5,000 in the form of cash. The following is an indication of the number of bondsmen and the category of security with which they fall in:

\$5,000 - Less Than \$10,000	=	42
Over \$10,000 - Less Than \$20,000	=	50
Over \$20,000 - Less Than \$25,000	=	28
Over \$25,000	=	56
TOTAL	=	176

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Bail Bonding in North Carolina
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According to the table audit of the September 1986 professional bondsmen's monthly report filed with this office the following activity is listed:

1. Total Amount of Bond Fee Collected	=	\$2,431,063.00
2. Total Amount of Outstanding Bonds	=	\$16,207,093.00
3. Number of Bonds Executed (numbers include bonds carried over from previous months).	=	15,352

According to the same audit, the Surety Bondsmen (Insurance Agents) report indicated the following:

1. Total Amount of Outstanding Bonds	=	\$4,000,000.00
2. Number of Bonds Executed (numbers include bonds carried over from previous months).	=	4,000

III. FINDINGS OF FACTS AND REQUEST FOR PAYMENTS TO SATISFY BAIL BOND JUDGEMENTS:

The Special Services Division has diligently researched all accountable records of professional bail bondsmen back to 1975, and based on these records, the following activity is listed:

1. Paid to the Clerk of Superior Courts (from professional bail bondsmen's security redeemed by this office).	=	\$609,421.35
2. Number of Bondsmen Whose Security Has Been Redeemed To Satisfy Judgements.	=	66
3. Category By Amounts of Security Posted Where This Activity Occurred:		
(1) \$5,000 Less Than \$10,000	=	\$138,817.60
(2) \$10,000 Less Than \$15,000	=	\$113,045.36
(3) \$15,000 Less Than \$20,000	=	\$ 49,609.89
(4) \$20,000 Less Than \$25,000	=	\$ 40,894.49
(5) Over \$25,000	=	\$267,054.01

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IV. THE FOLLOWING IS A LIST OF ALL COUNTIES IN NORTH CAROLINA AND THE AMOUNT OF PAYMENTS MADE TO THOSE COUNTIES PURSUANT TO FINDINGS OF FACTS AND REQUEST FOR PAYMENTS RECEIVED IN THIS OFFICE:

<u>COUNTIES</u>	<u>AMOUNT PAID</u>
Alamance	\$ 3,017.10
Alexander	800.00
Alleghany	-0-
Anson	-0-
Ashe	-0-
Avery	-0-
Beaufort	6,289.85
Bertie	-0-
Bladen	-0-
Brunswick	769.59
Buncombe	100.00
Burke	-0-
Cabarrus	3,622.01
Caldwell	1,538.62
Camden	2,500.00
Carteret	11,903.65
Caswell	-0-
Catawba	7,959.43
Chatham	-0-
Cherokee	-0-
Chowan	1,469.98
Clay	-0-
Cleveland	-0-
Columbus	3,960.00
Craven	12,924.40
Cumberland	57,854.63
Currituck	200.00
Dare	6,550.00
Davidson	680.80
Davie	-0-
Duplin	-0-
Durham	14,761.93
Edgecombe	6,261.80
Forsyth	90,513.31
Franklin	780.42
Gaston	804.00
Gates	-0-
Graham	-0-
Granville	2,594.69

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Greene	630.97
Guilford	86,418.74
Halifax	3,855.60
Harnett	1,104.00
Haywood	-0-
Henderson	-0-
Hertford	-0-
Hoke	2,080.00
Hyde	-0-
Iredell	722.00
Jackson	-0-
Johnston	1,548.97
Jones	-0-
Lee	-0-
Lenoir	27,803.61
Lincoln	1,200.00
Macon	-0-
Madison	-0-
Martin	358.00
McDowell	4,244.50
Mecklenburg	70,590.82
Mitchell	-0-
Montgomery	-0-
Moore	-0-
Nash	20,838.84
New Hanover	2,132.69
Northampton	-0-
Onslow	11,065.33
Orange	3,828.37
Pamlico	-0-
Pasquotank	5,104.00
Pender	100.00
Perquimans	-0-
Person	-0-
Pitt	39,932.43
Polk	-0-
Randolph	15,694.63
Richmond	14,200.00
Robeson	15,440.61
Rockingham	2,513.98
Rowan	2,200.00
Rutherford	-0-
Sampson	5,040.35
Scotland	730.35
Stanly	-0-
Stokes	-0-
Surry	2,348.75

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Swain	-0-
Transylvania	-0-
Tyrrell	-0-
Union	14,270.47
Vance	-0-
Wake	40,127.51
Warren	3,476.00
Washington	-0-
Watauga	367.85
Wayne	-0-
Wilkes	-0-
Wilson	2,135.33
Yadkin	100.00
Yancey	-0-
TOTAL	<u>609,421.35</u>

The amount paid column only indicates those securities redeemed by the Department of Insurance and does not represent any payments made directly to the Clerk of Courts by the surety, nor does it represent outstanding unsatisfied bail bond judgements that still may be pending to be satisfied by the surety.

V. INVESTIGATIONS/ASSIGNMENTS TO DETERMINE IF BONDSMEN VIOLATED N.C.G.S. 85C-36 AND/OR NCAC 11 NCAC 13.0510

From January 1, 1986 to the date of this report, this office has made fifty three (53) assignments to field investigators to conduct investigations into the possible one fourth violation on bail bond overwrites. The result of these investigations are as follows:

1. Number of Bondsmen Investigated = 41
2. Number of Investigations which affirmed violations due to (single) Bail Bond Transaction. = 5
3. Number of Investigations which affirmed violations due to (multiple) bail bond transactions. = 9
4. Number of Investigations which affirmed NO violation due to a (multiple) bail bond transaction, and interpretation of 11 NCAC 13.0510. = 37

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5. Number of Investigation which affirmed NO violation due to a deficiency in reporting by the bondsmen. = 1

* Hereto attached is a copy of N.C.G.S. 85C-36 and 11 NCAC 13.0510.

85C-34. Monthly report required

Each professional bail bondsman shall file with the Commissioner of Insurance a written report in form prescribed by the Commissioner regarding all bail bonds on which he is liable as of the first day of each month showing (i) each individual bonded, (ii) the date such bond was given, (iii) the principal sum of the bond, (iv) the State or local official to whom given, and (v) the fee charged for the bonding service in each instance. Such report shall be filed on or before the fifteenth day of each month. Within the same time, a copy of this written report must also be filed with the clerk of superior court in any county in which he is obligated on bail bonds. (1975, c. 619, s. 1.)

85C-35. Examinations

Whenever the Commissioner deems it prudent he shall visit and examine or cause to be visited and examined by some competent person appointed by him for that purpose any professional bail bondsman subject to the provisions of this Chapter. For this purpose the Commissioner or person making the examination shall have free access to all books and papers of the bondsman that relate to his business and to the books and papers kept by any of his agents or runners. (1975, c. 619, s. 1.)

85C-36. Limit on principal amount of bond to be written by professional bondsman

No professional bondsman shall act as surety on any bail bond whose principal sum is in excess of one fourth of the value of the securities deposited with the Commissioner at that time. (1975, c. 619, s. 1.)

85C-37. Disposition of fees

Fees collected by the Commissioner pursuant to this Chapter shall be paid into the general fund of the State. (1963, c. 1225, s. 32; 1975, c. 619, s. 1.)

85C-38. Penalties for violations

Any person, firm, association or corporation violating any of the provisions of this Chapter shall upon conviction for each offense be

North Carolina in trust for (name of professional bondsman) and the State of North Carolina as their respective interests may appear under Chapter 85C of the North Carolina General Statutes" and other pertinent information. When satisfactory bonds are submitted to the commissioner by a professional bail bondsman, the commissioner will accept 80 percent of the fair market value of such bonds as the amount of security furnished. When satisfactory stocks are submitted by a professional bail bondsman, the commissioner will accept 60 percent of the fair market value of such stocks as the amount of security furnished.	34.48 34.49 34.50 34.51 34.52 34.53 34.54 34.55 34.56 34.57
History Note: Statutory Authority G.S. 85C-2(a); 85C-30; Eff. February 1, 1976; Readopted Eff. January 1, 1978.	35.3 35.4 35.5
.0509 REAL ESTATE AS SECURITY	35.7
History Note: Statutory Authority G.S. 85C-2(a); 85C-30; Eff. February 1, 1976; Readopted Eff. January 1, 1978; Repealed Eff. August 1, 1985.	35.10 35.11 35.12 35.13
.0510 MULTIPLE CHARGES AGAINST A SINGLE DEFENDANT	35.15
When multiple charges are pending against a single defendant, which charges arise out of one transaction, then for purposes of bond limits under General Statute 85C-36, that shall be considered one bond, regardless of whether more than one warrant is issued and a separate bond set on each warrant.	35.17 35.19 35.20 35.21
History Note: Statutory Authority G.S. 85C-2(a); 85C-36; Eff. February 1, 1976; Readopted Eff. January 1, 1978.	35.24 35.25 35.26
.0511 LICENSED PROFESSIONAL BONDSMAN AFFIDAVIT OF SURETY	35.28
Licensed professional bail bondsmen must file with the clerk of court having jurisdiction over the principal, an affidavit on a form furnished by the Administrative Office of the Courts (number AOC-L Form 277 or its successor) entitled "Affidavit of Surety (Bondsman)."	35.31 35.32 35.33 35.34
The affidavit shall include, but not be limited to: (1) a statement that he has not, nor has anyone for his use, been promised or received any collateral, security or premium for executing this appearance bond; or (2) if promised a premium, the amount of the premium promised and the due date; or (3) if he has received a premium, the amount of premium received shall be entered; or (4) if given collateral security the name of the person from whom it is received, and the nature and amount of the	35.35 35.36 35.37 35.38 35.39 35.40 35.41 35.43

APPENDIX F

1 "q. The defendant willfully failed to appear before any
2 court or judicial official while on pretrial release."

3 Sec. 6. Sections 1 and 2 shall not apply to persons
4 holding a valid license as a professional bondsman or runner on
5 the effective date of this act.

6 Sec. 7. This act shall become effective on October
7 1, 1987.

