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BOND, RECOGNIZANCE—FORFEITED IN CRIMINAL CASE—  
§2937.43 R.C.—COURT RENDERING JUDGMENT MAY REMIT  
WHOLE OR PART—§2937.39 R.C.

## SYLLABUS:

Under the provisions of Section 2937.43, Revised Code, a court which renders judgment on a forfeited recognizance in a criminal case may remit the whole or part of such judgment at any time even though the recognizance has been returned to the county auditor under the provisions of Section 2937.39, Revised Code.

Columbus, Ohio, September 3, 1958

Hon. Harry Friberg, Prosecuting Attorney  
Lucas County, Toledo, Ohio

Dear Sir:

You have made the following request for my opinion:

“May we kindly have your opinion as to whether, under the provision of Revised Code 2937.43, the Court may remit the whole or part of the penalty of a forfeited recognizance after judgment and after the said recognizance has been returned to the county auditor.”

The proceedings for taking and disposing of recognizances in criminal cases are set forth in Sections 2937.21 to 2937.44, Revised Code. This opinion is limited to criminal cases pending in the Court of Common Pleas.

Section 2937.05, Revised Code, provides that a recognizance shall be filed with the clerk of courts who shall file with the county recorder a notice of lien on the property of the defendant and his surety.

Section 2937.38, Revised Code, provides that the recognizance shall be forfeited in open court if the defendant fails to appear.

When the recognizance, commonly called a "bail bond", is forfeited, the clerk of courts is required to give the sureties twenty days written notice, served as a summons, to surrender the defendant on or before a given date or show cause why judgment should not be entered against them for the amount of the recognizance. If the body of the defendant is not produced on the given date and good cause is not shown, the court shall enter judgment against the sureties for such sum as it sees fit, not to exceed the full amount of the recognizance. Execution shall issue on this judgment as in civil actions.

Section 2937.39, Revised Code, provides that forfeited recognizances shall be returned *forthwith* to the county auditor. It is obvious, therefore, that the custody of a forfeited recognizance passes from the clerk of courts to the county auditor on the day the court declares it forfeited and remains with the county auditor thereafter.

Section 2937.43, Revised Code, provides that after judgment has been rendered, the court which rendered such judgment may remit or reduce the amount thereof in whole or in part. This might be done when the defendant is arrested and surrendered to the court. Since this section only applies after judgment, and since the forfeited recognizance upon which the judgment was returned is in the custody of the county auditor from the time of forfeiture, it follows that the answer to your inquiry is in the affirmative.

It is therefore my opinion and you are accordingly advised that under the provisions of Section 2937.43, Revised Code, a court which renders judgment on a forfeited recognizance in a criminal case may remit the whole or part of such judgment at any time even though the recognizance has been returned to the county auditor under the provisions of Section 2937.39, Revised Code.

Respectfully,  
WILLIAM SAXBE  
Attorney General