

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 1023
Committee Substitute Favorable 4/28/97

Short Title: Pretrial Release & Bond Forfeiture.

(Public)

Sponsors:

Referred to:

April 21, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE THE PRETRIAL RELEASE AND BOND FORFEITURE
3 PROCEDURE.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 15A-533 reads as rewritten:

6 **"§ 15A-533. Right to pretrial release in capital and noncapital cases.**

7 (a) A defendant charged with any crime, whether capital or noncapital, who is
8 alleged to have committed this crime while still residing in or subsequent to his escape or
9 during an unauthorized absence from involuntary commitment in a mental health facility
10 designated or licensed by the Department of Human Resources, and whose commitment
11 is determined to be still valid by the judge or judicial officer authorized to determine
12 pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release,
13 however, the individual shall be returned to the treatment facility in which he was
14 residing at the time of the alleged crime or from which he escaped or absented himself for
15 continuation of his treatment pending the additional proceedings on the criminal offense.

16 (b) A defendant charged with a noncapital offense other than an offense that
17 constitutes 'trafficking' in a controlled substance, as that term is defined by the
18 Controlled Substances Act, must have conditions of pretrial release determined, in
19 accordance with G.S. 15A-534.

1 (c) Subject to rebuttal by the person, it shall be presumed that no condition of
2 release will reasonably assure the appearance of the person as required and the safety of
3 the community if a judicial official finds that there is probable cause to believe that the
4 person committed ~~A judge may determine in his discretion whether a defendant charged with a~~
5 capital offense or an offense involving trafficking in a controlled substance. Such
6 persons may only be released by a district or superior court judge upon a finding that
7 there is a reasonable assurance that the person will appear and release does not pose an
8 unreasonable risk of harm to the community. ~~may be released before trial.~~ If he determines
9 release is warranted, the judge must authorize release of the defendant in accordance with
10 G.S. 15A-534."

11 Section 2. G.S. 15A-534 reads as rewritten:

12 **"§ 15A-534. Procedure for determining conditions of pretrial release.**

13 (a) In determining conditions of pretrial release a judicial official must impose one
14 of the following conditions:

15 (1) Release the defendant on his written promise to appear.

16 (2) Release the defendant upon his execution of an unsecured appearance
17 bond in an amount specified by the judicial official.

18 (3) Place the defendant in the custody of a designated person or
19 organization agreeing to supervise him.

20 (4) Require the execution of an appearance bond in a specified amount
21 secured by a cash deposit of the full amount of the bond, by a mortgage
22 pursuant to G.S. 58-74-5, or by at least one solvent surety.

23 If condition (3) is imposed, however, the defendant may elect to execute an appearance
24 bond under subdivision (4). The judicial official may also place restrictions on the travel,
25 associations, conduct, or place of abode of the defendant as conditions of pretrial release.

26 (b) The judicial official in granting pretrial release must impose condition (1), (2),
27 or (3) in subsection (a) above unless he determines that such release will not reasonably
28 assure the appearance of the defendant as required; will pose a danger of injury to any
29 ~~person; person or to the community;~~ or is likely to result in destruction of evidence,
30 subornation of perjury, or intimidation of potential witnesses. Upon making the
31 determination, the judicial official must then impose condition (4) in subsection (a) above
32 instead of condition (1), (2), or (3), and must record the reasons for so doing in writing ~~to~~
33 ~~the extent provided in the policies or requirements issued in such form as may be required by~~
34 the senior resident superior court judge pursuant to G.S. 15A-535(a).

35 (c) In determining which conditions of release to impose, the judicial official
36 must, on the basis of available information, take into account the nature and
37 circumstances of the offense charged; the weight of the evidence against the defendant;
38 the defendant's family ties, employment, financial resources, character, and mental
39 condition; whether the defendant is intoxicated to such a degree that he would be
40 endangered by being released without supervision; the length of his residence in the
41 community; his record of convictions; his history of flight to avoid prosecution or failure
42 to appear at court proceedings; and any other evidence relevant to the issue of pretrial
43 release.

1 (c1) If a secured appearance bond is required by a magistrate or clerk of court as a
2 condition of pretrial release, the defendant, unless sooner released, shall be entitled to
3 have his conditions of release reviewed at the first appearance conducted pursuant to G.S.
4 15A-601.

5 (d) The judicial official authorizing pretrial release under this section must issue
6 an appropriate order containing a statement of the conditions imposed, if any; inform the
7 defendant in writing of the penalties applicable to violations of the conditions of his
8 release; and advise him that his arrest will be ordered immediately upon any violation.
9 The order of release must be filed with the clerk and a copy given the defendant.

10 (e) A magistrate or a clerk may modify his pretrial release order at any time prior
11 to the first appearance before the district court judge. At or after such first appearance,
12 except when the conditions of pretrial release have been reviewed by the superior court
13 pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the
14 magistrate or clerk or any pretrial release order entered by him at any time prior to:

15 (1) In a misdemeanor case tried in the district court, the noting of an appeal;
16 and

17 (2) In a case in the original trial jurisdiction of the superior court, the
18 binding of the defendant over to superior court after the holding, or
19 waiver, of a probable-cause hearing.

20 After a case is before the superior court, a superior court judge may modify the pretrial
21 release order of a magistrate, clerk, or district court judge, or any such order entered by
22 him, at any time prior to the time set out in G.S. 15A-536(a).

23 (f) For good cause shown any judge may at any time revoke an order of pretrial
24 release. Upon application of any defendant whose order of pretrial release has been
25 revoked, the judge must set new conditions of pretrial release in accordance with this
26 Article.

27 (g) In imposing conditions of pretrial release and in modifying and revoking
28 orders of release under this section, the judicial official must take into account all
29 evidence available to him which he considers reliable and is not strictly bound by the
30 rules of evidence applicable to criminal trials.

31 (h) A bail bond posted pursuant to this section is effective and binding upon the
32 obligor throughout all stages of the proceeding in the trial division of the General Court
33 of Justice until the entry of judgment in the district court from which no appeal is taken
34 or the entry of judgment in the superior court. The obligation of an obligor, however, is
35 terminated at an earlier time if:

36 (1) A judge authorized to do so releases the obligor from his bond; or

37 (2) The principal is surrendered by a surety in accordance with G.S. 15A-
38 540; or

39 (3) The proceeding is terminated by voluntary dismissal by the State before
40 forfeiture is ordered under G.S. 15A-544(b); or

41 (4) Prayer for judgment has been continued indefinitely in the district
42 court."

43 Section 3. G.S. 15A-535(a) reads as rewritten:

1 "(a) Subject to the provisions of this Article, the senior resident superior court
2 judge for each district or set of districts as defined in G.S. 7A-41.1(a) in consultation with
3 the chief district court judge or judges of all the district court districts in which are
4 located any of the counties in the senior resident superior court judge's district or set of
5 districts, must devise and issue recommended policies to be followed within each of those
6 counties in determining whether, and upon what conditions, a defendant may be released
7 before trial, and ~~may~~ shall include in such policies, or issue separately, a requirement that
8 each judicial official who imposes condition (4) in G.S. 15A-534(a) must record the
9 reasons for doing so in writing."

10 Section 4. G.S. 15A-544 reads as rewritten:

11 **"§ 15A-544. Forfeiture.**

12 (a) By entering into a bail bond the obligor submits to the jurisdiction of the court
13 and irrevocably appoints the clerk as the obligor's agent for any proceedings with
14 reference to the bond. The obligor's liability may be enforced on motion without the
15 necessity of an independent action. Each obligor, including the principal, bail agent, and
16 the surety represented by the bail agent, shall enter on the bond the obligor's mailing
17 address, street address, and telephone number for the service of any process required by
18 this section or other provision of law. If the address or telephone number of the obligor
19 changes during the pendency of any proceeding with reference to the bond, it shall be the
20 duty of the obligor to notify the clerk of the obligor's new address and telephone number.

21 (b) If the principal does not comply with the conditions of the bail bond, the court
22 having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is
23 ordered by the court, a copy of the order of forfeiture and notice that judgment will be
24 entered upon the order after 60 days must be served on each obligor. Service is to be
25 made by the clerk mailing by certified mail, return receipt requested, a copy of the order
26 of forfeiture and notice to each obligor at each obligor's address as noted on the bond and
27 note on the original the date of mailing. Service is complete three days after the mailing.

28 (c) ~~Except as provided in subsection (c1) of this section, at~~ At any time within 60 days
29 following the date of service, or on the first presentment of the forfeiture calendar more
30 than 60 days after the date of service, the principal or surety may move the court having
31 jurisdiction of the matter, orally or in writing, to strike the order of forfeiture and recall
32 the notice of forfeiture. If the principal or surety appears and moves within the time
33 allowed following the date of service and satisfies the court that the principal's failure to
34 appear on the date set was ~~impossible or impossible~~, that the principal's failure to appear
35 was without the principal's fault, or that the principal was surrendered by the surety, the
36 order of forfeiture must be set aside. However, if the principal's failure to appear was the
37 result of the principal's being incarcerated elsewhere, the order of forfeiture may be set
38 aside only on a showing that the principal, while incarcerated, was served with an order
39 for arrest for the failure to appear or placed under a detainer for the charge for which the
40 order of forfeiture was issued. If the principal or surety does not satisfy the court that the
41 principal's appearance on the date set was ~~impossible or impossible~~, that the principal's
42 failure to appear was without the principal's fault, or that the principal was surrendered by

1 the surety, the court must then enter judgment for the State against the principal and
2 surety for the amount of the bail and the cost of the proceeding.

3 ~~(c1) If the principal does not appear before the court having jurisdiction because the~~
4 ~~principal is incarcerated in North Carolina and unable to appear before the court, but the~~
5 ~~surety appears within the time allowed following the date of service and satisfies the~~
6 ~~court that the principal's appearance on the date set was impossible because the principal~~
7 ~~was incarcerated in North Carolina, the order of forfeiture must be set aside.~~

8 (d) To facilitate the procedure under this section, the clerk in each county shall
9 prepare for both the district and superior court a forfeiture calendar once each month
10 when court is in session. The forfeiture calendar shall list the names of all principals and
11 sureties to whom forfeiture has been ordered more than 60 days previously in the county
12 and as to which judgments of forfeiture against the principal and surety have not been
13 entered or, if entered, not yet satisfied by execution. The forfeiture calendar shall show
14 the amount of the bond ordered forfeited in each case. In addition, the clerk shall place on
15 the forfeiture calendar for hearing all written motions to strike an order of forfeiture filed
16 since the previous forfeiture calendar. It shall be the duty of the district attorney to
17 present the forfeiture calendar to the court, but the attorney for the county school board
18 shall have the right to appear and be heard when the forfeiture calendar is presented. At
19 the district attorney's discretion, the district attorney may appoint the county school board
20 attorney as the district attorney's designee for the presentation of the forfeiture calendar.

21 ~~(e) At any time within 90 days after entry of the judgment against a principal or~~
22 ~~surety, the principal or surety, by verified written petition, may request that the judgment~~
23 ~~be remitted in whole or in part, upon such conditions as the court may impose, if it~~
24 ~~appears that justice requires the remission of part or all of the judgment. A copy of the~~
25 ~~petition must be served upon the attorney for the county school board at least three~~
26 ~~working days prior to the hearing. The clerk shall place on the forfeiture calendar for~~
27 ~~hearing all petitions that have been filed during the previous month or since the last~~
28 ~~forfeiture calendar. The petitioner, the district attorney, and the school board attorney~~
29 ~~shall be notified of the date, time, and place of the hearing. The petitioner, the district~~
30 ~~attorney, and the county school board attorney shall be given an opportunity to appear~~
31 ~~and be heard. If the principal is surrendered by the surety and incarcerated in the State~~
32 ~~within 90 days of the entry of the judgment, the forfeiture shall may, in the discretion of~~
33 ~~the court, be stricken upon the payment of costs. If the principal is incarcerated or served~~
34 ~~an order for arrest in North Carolina within 90 days of the entry of the judgment and the~~
35 ~~principal placed on a new bond or released by the court, then the forfeiture shall may, in~~
36 ~~the discretion of the court, be stricken upon the payment of costs. Relief under this~~
37 ~~subsection may be obtained only upon written petition filed with the court. The clerk~~
38 ~~shall place on the forfeiture calendar for hearing all petitions that have been filed during~~
39 ~~the previous month or since the last forfeiture calendar. A copy of the petition, together~~
40 ~~with a notice of hearing shall be served by the petitioner on the attorney for the school~~
41 ~~board and on the district attorney at least three days prior to the hearing. The petitioner,~~
42 ~~the attorney for the school board, and the district attorney shall be given an opportunity to~~
43 ~~be heard.~~

1 (f) If a judgment has not been remitted within the period provided in subsection
2 (e) above, the clerk must issue execution on the judgment within 30 days, and remit the
3 clear proceeds to the county for use in maintaining free public schools. Any clerk who
4 fails to perform his duty as required in this subsection is subject to a penalty of five
5 hundred dollars (\$500.00).

6 (g) If a levy of execution upon a judgment against an obligor remains unsatisfied
7 for 10 days, the sheriff shall notify the clerks and magistrates in each county in the
8 prosecutorial district and the obligor shall not become surety on any bail bond in the
9 prosecutorial district so long as the judgment remains unsatisfied. Nothing in this
10 subsection makes lawful any act made unlawful by Article 71 of Chapter 58 of the
11 General Statutes.

12 (h) For extraordinary cause shown, the court which has entered judgment upon a
13 forfeiture of a bond may, after execution, remit the judgment in whole or in part and
14 order the clerk to refund such amounts as the court considers appropriate. Any person
15 moving for remission of judgment must do so by verified petition, and a copy of the
16 petition must be served upon the attorney for the county school board at least three
17 working days prior to the hearing on the motion. The moving party must notify the
18 attorney for the school board of the time and place of the hearing, and such attorney, if he
19 so desires, must be given an opportunity to appear and be heard. If money has been paid
20 to the county pursuant to execution on a judgment of forfeiture, it must refund to the
21 person entitled the amount of any remission granted under the terms of this subsection
22 upon receipt of a certified copy of the judgment of remission from the clerk."

23 Section 5. This act becomes effective December 1, 1997. Sections 1, 2, and 3
24 apply to offenses committed on or after that date. Section 4 applies to forfeitures ordered
25 on or after that date.