

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE DRS15141-LH-124 (03/10)

Short Title: Amend Bail Law/Pretrial Release Programs. (Public)

Sponsors: Senators Clary, East, and Jones (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE STATE'S BAIL LAWS WITH REGARD TO PRETRIAL
3 RELEASE PROGRAMS, TO ELIMINATE UNSECURED APPEARANCE BOND AS A
4 PRETRIAL RELEASE CONDITION, TO AMEND HOUSE ARREST AND
5 ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE, AND TO
6 PROVIDE THAT NO STATE OR LOCAL FUNDS MAY BE APPROPRIATED TO OR
7 USED FOR THE SUPPORT OF A PRETRIAL RELEASE PROGRAM.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 15A-534 reads as rewritten:

10 "§ 15A-534. Procedure for determining conditions of pretrial release.

11 (a) In determining conditions of pretrial release a judicial official must impose at least
12 one of the following conditions:

- 13 (1) Release the defendant on his written promise to appear.
14 (2) ~~Release the defendant upon his execution of an unsecured appearance bond~~
15 ~~in an amount specified by the judicial official.~~
16 (3) Place the defendant in the custody of a designated person ~~or organization~~
17 agreeing to supervise ~~him~~ the defendant.
18 (4) Require the execution of an appearance bond in a specified amount secured
19 by a cash deposit of the full amount of the bond, by a mortgage pursuant to
20 G.S. 58-74-5, or by at least one solvent surety.
21 (5) ~~House arrest with electronic monitoring.~~ Electronic monitoring that may also
22 include house arrest.

23 If condition (5) is imposed, the defendant must execute a secured appearance bond of at
24 least one thousand dollars (\$1,000) under subdivision (4) of this subsection. If condition (3) is
25 imposed, however, the defendant may elect to execute an appearance bond under subdivision
26 (4). If condition (4) is imposed, the defendant may elect to be placed in a pretrial release
27 program pursuant to G.S. 15A-534.7.

28 If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or
29 a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or
30 DNA sample have not yet been taken or (ii) the defendant has refused to provide the
31 fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or
32 DNA sample a condition of pretrial release. The judicial official may also place restrictions on
33 the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial
34 release.



1 (b) The judicial official in granting pretrial release must impose condition ~~(1), (2), or~~
2 ~~(3)~~(1) or (3) in subsection (a) above unless ~~he~~the judicial official determines that such release
3 will not reasonably assure the appearance of the defendant as required; will pose a danger of
4 injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or
5 intimidation of potential witnesses. Upon making the determination, the judicial official must
6 then impose condition (4) or (5) in subsection (a) above instead of condition ~~(1), (2), or (3)~~(1)
7 or (3) and must record the reasons for so doing in writing to the extent provided in the policies
8 or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

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

17 (d) The judicial official authorizing pretrial release under this section must issue an
18 appropriate order containing a statement of the conditions imposed, if any; inform the
19 defendant in writing of the penalties applicable to violations of the conditions of ~~his~~the
20 defendant's release; and advise ~~him~~the defendant that his or her arrest will be ordered
21 immediately upon any violation. The order of release must be filed with the clerk and a copy
22 given the defendant.

23 (d1) When conditions of pretrial release are being imposed on a defendant who has failed
24 on one or more prior occasions to appear to answer one or more of the charges to which the
25 conditions apply, the judicial official shall at a minimum impose the conditions of pretrial
26 release that are recommended in any order for the arrest of the defendant that was issued for the
27 defendant's most recent failure to appear. If no conditions are recommended in that order for
28 arrest, the judicial official shall require the execution of a secured appearance bond in an
29 amount at least double the amount of the most recent previous secured ~~or unsecured~~ bond for
30 the charges or, if no bond has yet been required for the charges, in the amount of at least five
31 hundred dollars (\$500.00). The judicial official shall also impose such restrictions on the travel,
32 associations, conduct, or place of abode of the defendant as will assure that the defendant will
33 not again fail to appear. The judicial official shall indicate on the release order that the
34 defendant was arrested or surrendered after failing to appear as required under a prior release
35 order. If the information available to the judicial official indicates that the defendant has failed
36 on two or more prior occasions to appear to answer the charges, the judicial official shall
37 indicate that fact on the release order.

38 (d2) When conditions of pretrial release are being determined for a defendant who is
39 charged with a felony offense and the defendant is currently on probation for a prior offense, a
40 judicial official shall determine whether the defendant poses a danger to the public prior to
41 imposing conditions of pretrial release and must record that determination in writing. This
42 subsection shall apply to any judicial official authorized to determine or review the defendant's
43 eligibility for release under any proceeding authorized by this Chapter.

44 (1) If the judicial official determines that the defendant poses a danger to the
45 public, the judicial official must impose condition (4) or (5) in subsection (a)
46 of this section instead of condition ~~(1), (2), or (3)~~(1) or (3).

47 (2) If the judicial official finds that the defendant does not pose a danger to the
48 public, then conditions of pretrial release shall be imposed as otherwise
49 provided in this Article.

50 (3) If there is insufficient information to determine whether the defendant poses
51 a danger to the public, then the defendant shall be retained in custody until a

determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in custody shall set forth, in writing, the following at the time that the order is entered:

- a. The defendant is being held pursuant to this subdivision.
- b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.
- c. A date, within 96 hours of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.

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

- (1) In a misdemeanor case tried in the district court, the noting of an appeal; and
- (2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

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

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

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

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

- (1) A judge authorized to do so releases the obligor from his or her bond; or
- (2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or
- (3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544.3; or
- (4) Prayer for judgment has been continued indefinitely in the district court."

SECTION 2. G.S. 15A-535(b) reads as rewritten:

"(b) In any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by ~~judicial officials-judges~~ to supervision of such ~~programs, programs~~ pursuant to G.S. 15A-534.7 and ~~that defendants released to those programs shall be subject to its-the rules and regulations,~~

1 in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a), regulations
2 of the programs."

3 **SECTION 3.** G.S. 15A-536(b) reads as rewritten:

4 "(b) If release is ordered, the judge must impose the conditions set out in
5 G.S. 15A-534(a) which will reasonably assure the presence of the defendant when required and
6 provide adequate protection to persons and the community. If no single condition gives the
7 assurance, the judge may impose the condition in G.S. 15A-534(a)(3) in addition to any other
8 condition and may also, or in lieu of the condition in G.S. 15A-534(a)(3), place restrictions on
9 the travel, associations, conduct, or place of abode of the defendant. The judge may also
10 impose the condition in G.S. 15A-534.7 as provided by G.S. 15A-534.7 in addition to any other
11 condition."

12 **SECTION 4.** Article 26 of Chapter 15A of the General Statutes is amended by
13 adding a new section to read:

14 "**§ 15A-534.7. Pretrial release programs.**

15 (a) For purposes of this section, a pretrial release program is an organization designated
16 by a judge that agrees to take custody of a defendant and supervise the defendant as a condition
17 of pretrial release.

18 (b) A judge may place a defendant in the custody of a pretrial release program as a
19 condition of pretrial release pursuant to this section. A magistrate does not have the authority to
20 impose this condition. The condition may be imposed only under the same circumstances that
21 the condition described in G.S. 15A-534(a)(3) may be imposed and only if all of the following
22 criteria are met:

23 (1) The execution of a secured bond as described in G.S. 15A-534(a)(4) is a
24 condition of pretrial release for the defendant at the time that placement with
25 a pretrial release program is being considered as a pretrial release condition
26 under this section.

27 (2) The judge determines that the defendant is indigent and entitled to counsel
28 under Subchapter IX of Chapter 7A of the General Statutes.

29 (c) In addition to the criteria in subsection (b) of this section, the factors to be
30 considered in determining whether placement of a defendant with a pretrial release program is
31 an appropriate condition of pretrial release shall be the same as those in G.S. 15A-534. Except
32 as provided otherwise by this section, the procedure for imposing that condition and
33 authorizing pretrial release under this section shall be the same as those in G.S. 15A-534. The
34 judge shall include in any order imposing a pretrial release condition pursuant to this section,
35 the basis for determining that a defendant is indigent and entitled to counsel.

36 (d) No State or local government funds shall be appropriated to or used for the support
37 of a pretrial release program or its activities, except to cover any contractual obligations entered
38 into by the pretrial release program prior to July 1, 2011."

39 **SECTION 5.** This section is effective when it becomes law. G.S. 15A-534.7(d), as
40 enacted by Section 4 of this act, becomes effective July 1, 2011. The remainder of this act
41 becomes effective December 1, 2011, and applies to criminal actions to determine pretrial
42 release conditions on or after that date.