

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 756
Judiciary II Committee Substitute Adopted 6/7/11

Short Title: Amend Bail Law/Pretrial Release Programs.

(Public)

Sponsors:

Referred to:

April 20, 2011

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 FUNDS MAY BE APPROPRIATED TO OR USED FOR
7 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.

35 (b) The judicial official in granting pretrial release must impose condition ~~(1), (2), or~~
36 ~~(3)~~ (1) or (3) in subsection (a) above unless he the judicial official determines that such release



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

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

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

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

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

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

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

48 (3) If there is insufficient information to determine whether the defendant poses
49 a danger to the public, then the defendant shall be retained in custody until a
50 determination of pretrial release conditions is made pursuant to this
51 subdivision. The judicial official that orders that the defendant be retained in

1 custody shall set forth, in writing, the following at the time that the order is
2 entered:

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

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

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

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

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

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

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

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

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

45 "(b) In any county in which there is a pretrial release program, the senior resident
46 superior court judge may, after consultation with the chief district court judge, order that
47 defendants accepted by such program for supervision shall, with their consent, be released by
48 ~~judicial officials-judges~~ to supervision of such ~~programs, programs~~ pursuant to G.S. 15A-534.7
49 and that defendants released to those programs shall be subject to its-the rules and regulations,
50 in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a)-regulations
51 of the programs."

1 **SECTION 3.** Article 26 of Chapter 15A of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 15A-534.7. Pretrial release programs.**

4 (a) For purposes of this section, a pretrial release program is an organization designated
5 by a judicial official that agrees to take custody of a defendant and supervise the defendant as a
6 condition of pretrial release.

7 (b) A judicial official may place a defendant in the custody of a pretrial release program
8 as a condition of pretrial release pursuant to this section. The condition may be imposed only
9 under the same circumstances that the condition described in G.S. 15A-534(a)(3) may be
10 imposed and only if all of the following criteria are met:

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

15 (2) The judicial official finds as fact that a period of at least 72 hours has
16 elapsed from the date and time on the defendant's release order and, pursuant
17 to G.S. 15A-534(d1) and (d2), determines that the defendant is not a flight
18 risk and does not pose a danger to the public. The pretrial release program
19 shall not contact or otherwise attempt to gain access to the defendant prior to
20 expiration of the 72-hour period.

21 (c) In addition to the criteria in subsection (b) of this section, the factors to be
22 considered in determining whether placement of a defendant with a pretrial release program is
23 an appropriate condition of pretrial release shall be the same as those in G.S. 15A-534. Except
24 as otherwise provided by this section, the procedure for imposing that condition and
25 authorizing pretrial release under this section shall be the same as those in G.S. 15A-534. In
26 any order imposing a pretrial release condition pursuant to this section, the judicial official
27 shall include the basis for the court's determination.

28 (d) No State government funds shall be appropriated to or used for the support of a
29 pretrial release program or its activities."

30 **SECTION 4.** This section is effective when it becomes law. G.S. 15A-534.7(d), as
31 enacted by Section 3 of this act, becomes effective July 1, 2011. The remainder of this act
32 becomes effective December 1, 2011, and applies to criminal actions to determine pretrial
33 release conditions on or after that date.