

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 123

Short Title: Deny Bail on Child Sex Charge.

(Public)

Sponsors: Representatives McAllister; Bowman, Cummings, Decker, H. Hunter, McLawhorn, Spears, and Wainwright.

Referred to: Judiciary II.

February 14, 1994

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT BAIL MAY BE DENIED A DEFENDANT
2 CHARGED WITH COMMITTING CERTAIN SEX OFFENSES AGAINST A
3 MINOR IF THE COURT DETERMINES THAT NO CONDITION OF BAIL CAN
4 REASONABLY ASSURE THE SAFETY OF ANY OTHER PERSON AND THE
5 COMMUNITY.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. Article 26 of Chapter 15A of the General Statutes is amended by
9 adding the following new sections to read:

10 "**§ 15A-534.4. Sex offenses committed against minors; bail and pretrial release.**

11 (a) A judicial officer may determine in his or her discretion whether a defendant
12 charged with a sex offense listed below in this subsection and committed against a
13 minor may be released before trial. If, at the initial appearance of the defendant, the
14 judicial officer finds by clear and convincing evidence that no condition or combination
15 of conditions will reasonably assure the appearance of the defendant as required and the
16 safety of any other person and the community, the judicial officer shall order the
17 detention of the defendant before trial. There is a rebuttable presumption that no
18 condition or combination of conditions will reasonably assure the safety of any other
19 person and the community if the judicial officer finds that there is probable cause to
20 believe that the defendant committed any of the following offenses:

21 (1) G.S. 14-318.4. (Felony child abuse).

22 (2) G.S. 14-27.2. (First degree rape).

23 (3) G.S. 14-27.3. (Second degree rape).

- 1 (4) G.S. 14-27.4. (First degree sexual offense).
- 2 (5) G.S. 14-27.5. (Second degree sexual offense).
- 3 (6) G.S. 14-27.7. (Sexual act by a custodian).
- 4 (7) G.S. 14-177. (Crime against nature).
- 5 (8) G.S. 14-178. (Incest between certain near relatives).
- 6 (9) G.S. 14-179. (Incest between uncle and niece and nephew and aunt).
- 7 (10) G.S. 14-190.5. (Preparation of obscene photographs, slides, and
8 motion pictures).
- 9 (11) G.S. 14-190.6. (Employing or permitting minor to assist in a violation
10 of the obscenity laws).
- 11 (12) G.S. 14-190.7. (Dissemination of obscene material to minors under age
12 16).
- 13 (13) G.S. 14-190.8. (Dissemination of obscene material to minors under age
14 13).
- 15 (14) G.S. 14-190.14. (Displaying material harmful to minor).
- 16 (15) G.S. 14-190.15. (Disseminating harmful material to
17 minors; exhibiting harmful performances to minors).
- 18 (16) G.S. 14-190.16. (First degree sexual exploitation).
- 19 (17) G.S. 14-190.17. (Second degree sexual exploitation).
- 20 (18) G.S. 14-190.18. (Promoting the prostitution of a minor).
- 21 (19) G.S. 14-202.1. (Taking indecent liberties with a minor).

22 (b) In determining whether a defendant may be released before trial, the judicial
23 officer shall, on the basis of available information, consider the factors set out in G.S.
24 15A-534(c). The judicial officer shall record in writing the judicial officer's findings of
25 fact, state the reasons for the detention, and direct that the defendant be afforded
26 reasonable opportunity for private consultation with counsel. The judicial officer may,
27 by subsequent order, permit the temporary release of the defendant in the custody of a
28 law enforcement officer to the extent that the judicial officer determines the release to
29 be necessary for preparation of the defendant's defense or for another compelling
30 reason.

31 (c) The judicial officer shall hold a hearing as provided by this Chapter to
32 determine whether any condition or combination of conditions set forth in G.S. 15A-534
33 will reasonably assure the appearance of the person as required and the safety of any
34 other person and the community upon motion of the district attorney in a case that
35 involves a sexual offense committed against a minor. The hearing shall be held
36 immediately upon the defendant's first appearance before the judicial officer unless the
37 defendant or the district attorney seeks a continuance. Except for good cause, a
38 continuance on motion of the defendant may not exceed five days, and a continuance on
39 motion of the district attorney may not exceed three days. During a continuance, the
40 defendant shall be detained. At the hearing, the defendant has the right to be
41 represented by counsel, and, if financially unable to obtain adequate representation, to
42 have counsel appointed. The defendant shall be afforded an opportunity to testify, to
43 present witnesses, to cross-examine witnesses who appear at the hearing, and to present
44 information by proffer or otherwise. The rules concerning admissibility of evidence in

1 criminal trials do not apply to the presentation and consideration of information at the
2 hearing. The facts the judicial officer uses to support a finding that no condition or
3 combination of conditions will reasonably assure the safety of any other person and the
4 community shall be supported by clear and convincing evidence. The defendant may be
5 detained pending completion of the hearing. The hearing may be reopened, before or
6 after a determination by the judicial officer, at any time before trial if the judicial officer
7 finds that information exists that was not known to the movant at the time of the hearing
8 and that has a material bearing on the issue whether there are conditions of release that
9 will reasonably assure the appearance of the defendant as required and the safety of any
10 other person and the community."

11 Sec. 2. G.S. 15A-533(b) reads as rewritten:

12 "(b) Except as provided in G.S. 15A-534.4, a ~~A~~-defendant charged with a
13 noncapital offense must have conditions of pretrial release determined, in accordance
14 with G.S. 15A-534."

15 Sec. 3. G.S. 15A-534 reads as rewritten:

16 "**§ 15A-534. Procedure for determining conditions of pretrial release.**

17 (a) In determining conditions of pretrial release a judicial official must impose
18 one of the following ~~conditions:~~ conditions, unless a defendant is charged with an
19 offense listed in G.S. 15A-534.4(a):

- 20 (1) Release the defendant on his written promise to appear.
- 21 (2) Release the defendant upon his execution of an unsecured appearance
22 bond in an amount specified by the judicial official.
- 23 (3) Place the defendant in the custody of a designated person or
24 organization agreeing to supervise him.
- 25 (4) Require the execution of an appearance bond in a specified amount
26 secured by a cash deposit of the full amount of the bond, by a
27 mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

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

32 (b) Except as provided in G.S. 15A-534.4, the ~~The~~-judicial official in granting
33 pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless he
34 determines that such release will not reasonably assure the appearance of the defendant
35 as required; will pose a danger of injury to any person; or is likely to result in
36 destruction of evidence, subornation of perjury, or intimidation of potential witnesses.
37 Upon making the determination, the judicial official must then impose condition (4) in
38 subsection (a) above instead of condition (1), (2), or (3), and must record the reasons for
39 so doing in writing to the extent provided in the policies or requirements issued by the
40 senior resident superior court judge pursuant to G.S. 15A-535(a).

41 (c) In determining which conditions of release to impose, the judicial official
42 must, on the basis of available information, take into account the nature and
43 circumstances of the offense charged; the weight of the evidence against the defendant;
44 the defendant's family ties, employment, financial resources, character, and mental

1 condition; whether the defendant is intoxicated to such a degree that he would be
2 endangered by being released without supervision; the length of his residence in the
3 community; his record of convictions; his history of flight to avoid prosecution or
4 failure to appear at court proceedings; and any other evidence relevant to the issue of
5 pretrial release.

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

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

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

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

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

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

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

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

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

38 (2) The principal is surrendered by a surety in accordance with G.S. 15A-
39 540; or

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

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

1 Sec. 4. This act becomes effective January 1, 1995, and applies to persons
2 charged on or after that date.