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Short Title: Pretrial Release & Bond Forfeiture.

(Public)

Sponsors:

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A BILL TO BE ENTITLED
AN ACT TO MODERNIZE THE PRETRIAL RELEASE AND BOND FORFEITURE
PROCEDURE AND TO REQUIRE EACH CLERK OF COURT TO ENSURE
THAT ALL RECORDS OF DISPOSITIONS IN CRIMINAL CASES CONTAIN
CERTAIN INFORMATION.

The General Assembly of North Carolina enacts:

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

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

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

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

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

15 Section 2. 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 one
18 of the following conditions:

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

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

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

39 (c) In determining which conditions of release to impose, the judicial official
40 must, on the basis of available information, take into account the nature and
41 circumstances of the offense charged; the weight of the evidence against the defendant;
42 the defendant's family ties, employment, financial resources, character, and mental
43 condition; whether the defendant is intoxicated to such a degree that he would be

1 endangered by being released without supervision; the length of his residence in the
2 community; his record of convictions; his history of flight to avoid prosecution or failure
3 to appear at court proceedings; and any other evidence relevant to the issue of pretrial
4 release.

5 (c1) If a secured bond is required by a magistrate or clerk of superior court in a case
6 in which the only charges against the defendant are misdemeanors, the defendant, unless
7 sooner released, shall be entitled to have the conditions of pretrial release reviewed at the
8 next regularly scheduled session of district court at which criminal matters may be heard.
9 If no such session is scheduled within 96 hours after the time when the defendant is taken
10 into custody, the conditions shall be reviewed within the 96 hours by a judicial official
11 other than the one who required the secured bond.

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

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

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

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

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

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

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

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

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

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

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

5 (4) Prayer for judgment has been continued indefinitely in the district court.

6 (i) In accordance with G.S. 15A-543, if the principal fails to appear in court as
7 required, the court shall issue an order for arrest for the failure to appear and shall set a
8 secured bond at an amount of at least twice the amount of the previous bond. Failure by
9 the court to comply with this provision shall not affect the validity of any order or
10 judgment."

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

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

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

22 "**§ 15A-544. Forfeiture.**

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

32 (b) If the principal does not comply with the conditions of the bail bond, the court
33 having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is
34 ordered by the court, a copy of the order of forfeiture and notice that judgment will be
35 entered upon the order after 60 days must be served on each obligor. ~~Service is to~~ Unless
36 waived in writing by the obligor, service shall be made by the clerk mailing by certified
37 mail, return receipt requested, on an accommodation bondsman as defined in G.S. 58-71-
38 1, and by first-class mail on all other obligors. The clerk shall serve a copy of the order
39 of forfeiture and notice to on each obligor at each obligor's address as noted on the bond
40 and shall note on the original the date of mailing. Service is complete three days after the
41 mailing.

42 (c) ~~Except as provided in subsection (c1) of this section, at~~ At any time within 60 days
43 following the date of service, or on the first presentment of the forfeiture calendar more

1 than 60 days after the date of service, the principal or surety may move the court having
2 jurisdiction of the matter, orally or in writing, to strike the order of forfeiture and recall
3 the notice of forfeiture. If the principal or surety appears and moves within the time
4 allowed following the date of service and satisfies the court that the principal's failure to
5 appear on the date set was ~~impossible or impossible~~, that the principal's failure to appear
6 was without the principal's fault, or that the principal was surrendered by the surety, the
7 order of forfeiture must be set aside. However, if the principal's failure to appear was the
8 result of the principal's being incarcerated elsewhere in North Carolina, the order of
9 forfeiture shall be set aside only on a showing that the principal, while incarcerated, was
10 served with an order for arrest for the failure to appear or placed under a detainer for the
11 charge for which the order of forfeiture was issued. If the principal or surety does not
12 satisfy the court that the principal's appearance on the date set was ~~impossible or~~
13 ~~impossible~~, that the principal's failure to appear was without the principal's fault, or that
14 the principal was surrendered by the surety, the court must then enter judgment for the
15 State against the principal and surety for the amount of the bail and the cost of the
16 proceeding.

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

22 (d) To facilitate the procedure under this section, the clerk in each county shall
23 prepare for both the district and superior court a forfeiture calendar once each month
24 when court is in session. The forfeiture calendar shall list the names of all principals and
25 sureties to whom forfeiture has been ordered more than 60 days previously in the county
26 and as to which judgments of forfeiture against the principal and surety have not been
27 entered or, if entered, not yet satisfied by execution. The forfeiture calendar shall show
28 the amount of the bond ordered forfeited in each case. In addition, the clerk shall place on
29 the forfeiture calendar for hearing all written motions to strike an order of forfeiture filed
30 since the previous forfeiture calendar. It shall be the duty of the district attorney to
31 present the forfeiture calendar to the court, but the attorney for the county school board
32 shall have the right to appear and be heard when the forfeiture calendar is presented. At
33 the district attorney's discretion, the district attorney may appoint the county school board
34 attorney as the district attorney's designee for the presentation of the forfeiture calendar.

35 ~~(e) At any time within 90 days after entry of the judgment against a principal or~~
36 ~~surety, the principal or surety, by verified written petition, may request that the judgment~~
37 ~~be remitted in whole or in part, upon such conditions as the court may impose, if it~~
38 ~~appears that justice requires the remission of part or all of the judgment. A copy of the~~
39 ~~petition must be served upon the attorney for the county school board at least three~~
40 ~~working days prior to the hearing. The clerk shall place on the forfeiture calendar for~~
41 ~~hearing all petitions that have been filed during the previous month or since the last~~
42 ~~forfeiture calendar. The petitioner, the district attorney, and the school board attorney~~
43 ~~shall be notified of the date, time, and place of the hearing. The petitioner, the district~~

1 ~~attorney, and the county school board attorney shall be given an opportunity to appear~~
2 ~~and be heard.~~—If the principal is surrendered by the surety and incarcerated in the State
3 ~~within 90 days of the entry of the judgment, at any time between the date of the~~
4 ~~principal's failure to appear and the 90th day after entry of judgment, the forfeiture shall~~
5 be stricken upon the payment of costs. If the principal is incarcerated or served an order
6 for arrest ~~for the failure to appear in North Carolina within 90 days of the entry of the~~
7 ~~judgment at any time between the date of the principal's failure to appear and the 90th~~
8 ~~day after the entry of judgment and the principal placed on a new bond or released by the~~
9 ~~court, or if extraordinary cause is shown, then the forfeiture shall may, in the discretion~~
10 ~~of the court, be stricken upon the payment of costs. Notwithstanding any other provision~~
11 ~~of this subsection, if the principal is released on bond after being charged with a failure to~~
12 ~~appear pursuant to G.S. 15A-543 and is surrendered by the surety or arrested by law~~
13 ~~enforcement and served an order for arrest for a subsequent failure to appear within 90~~
14 ~~days after the entry of judgment, then the remission, if any, of the forfeiture shall be in~~
15 ~~the discretion of the judge. Relief under this subsection may be obtained only upon~~
16 ~~written petition filed with the court within 90 days after entry of the judgment. The clerk~~
17 ~~shall place on the forfeiture calendar for hearing all petitions that have been filed during~~
18 ~~the previous month or since the last forfeiture calendar. A copy of the petition, together~~
19 ~~with a notice of hearing shall be served by the petitioner on the attorney for the school~~
20 ~~board and on the district attorney at least three days prior to the hearing. The petitioner,~~
21 ~~the attorney for the school board, and the district attorney shall be given an opportunity to~~
22 ~~be heard.~~

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

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

34 (h) For extraordinary cause shown, the court which has entered judgment upon a
35 forfeiture of a bond may, after execution, remit the judgment in whole or in part and
36 order the clerk to refund such amounts as the court considers appropriate. Any person
37 moving for remission of judgment must do so by verified petition, and a copy of the
38 petition must be served upon the attorney for the county school board at least three
39 working days prior to the hearing on the motion. The moving party must notify the
40 attorney for the school board of the time and place of the hearing, and such attorney, if he
41 so desires, must be given an opportunity to appear and be heard. If money has been paid
42 to the county pursuant to execution on a judgment of forfeiture, it must refund to the

1 person entitled the amount of any remission granted under the terms of this subsection
2 upon receipt of a certified copy of the judgment of remission from the clerk."

3 Section 5. Article 12 of Chapter 7A of the General Statutes is amended by
4 adding a new section to read:

5 **"§ 7A-109.2. Records of dispositions in criminal cases.**

6 Each clerk of superior court shall ensure that all records of dispositions in criminal
7 cases, including those records filed electronically, contain all the essential information
8 about the case, including the identity of the presiding judge and the attorneys representing
9 the State and the defendant."

10 Section 6. Section 5 of this act is effective upon ratification and applies to
11 records compiled on or after that date. The remainder of this act becomes effective
12 December 1, 1997. Sections 1, 2, and 3 apply to offenses committed on or after that date.
13 Section 4 applies to forfeitures ordered on or after that date.