

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 1023
Committee Substitute Favorable 4/28/97
Senate Judiciary Committee Substitute Adopted 7/16/97

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

1 Controlled Substances Act, must have conditions of pretrial release determined, in
2 accordance with G.S. 15A-534.

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

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

14 **"§ 15A-534. Procedure for determining conditions of pretrial release.**

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

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

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

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

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

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

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

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

1 to appear at court proceedings; and any other evidence relevant to the issue of pretrial
2 release.

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

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

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

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

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

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

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

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

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

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

42 (2) The principal is surrendered by a surety in accordance with G.S. 15A-
43 540; or

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

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

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

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

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

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

20 "**§ 15A-544. Forfeiture.**

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

30 (b) If the principal does not comply with the conditions of the bail bond, the court
31 having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is
32 ordered by the court, a copy of the order of forfeiture and notice that judgment will be
33 entered upon the order after 60 days must be served on each obligor. ~~Service is to~~ Unless
34 waived in writing by the obligor, service shall be made by the clerk mailing by certified
35 mail, return receipt requested, on an accommodation party as defined in G.S. 25-3-419,
36 and by first-class mail on all other obligors. The clerk shall serve a copy of the order of
37 forfeiture and notice to ~~on~~ each obligor at each obligor's address as noted on the bond and
38 shall note on the original the date of mailing. Service is complete three days after the
39 mailing.

40 (c) ~~Except as provided in subsection (c1) of this section, at~~ At any time within 60 days
41 following the date of service, or on the first presentment of the forfeiture calendar more
42 than 60 days after the date of service, the principal or surety may move the court having
43 jurisdiction of the matter, orally or in writing, to strike the order of forfeiture and recall

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

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

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

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

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

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

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

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

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