

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1036

Short Title: Restrict Indigent Counsel.

(Public)

Sponsors: Representative Hardy.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

1 AN ACT TO RESTRICT ENTITLEMENT TO COUNSEL OF INDIGENT PERSONS
2 TO THOSE INSTANCES IN WHICH THE FEDERAL COURTS HAVE
3 INTERPRETED THE UNITED STATES CONSTITUTION TO REQUIRE THE
4 APPOINTMENT OF COUNSEL.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 7A-450(a) reads as rewritten:

8 "(a) An indigent person is a person who is financially unable to secure legal
9 representation and to provide all other necessary expenses of representation in an action
10 or proceeding enumerated in this ~~Subchapter~~ Subchapter, and who is entitled to the
11 appointment of counsel under the decisions of the federal courts in interpreting the
12 Constitution of the United States. An interpreter is a necessary expense as defined in
13 Chapter 8A of the General Statutes for a deaf person who is entitled to counsel under this
14 subsection."

15 Section 2. G.S. 7A-451 reads as rewritten:

16 "**§ 7A-451. Scope of entitlement.**

17 (a) An indigent person is entitled to services of counsel in ~~the following actions and~~
18 ~~proceedings:~~

19 (1) ~~Any case in which imprisonment, or a fine of five hundred dollars~~
20 ~~(\$500.00), or more, is likely to be adjudged;~~

- 1 (2) ~~A hearing on a petition for a writ of habeas corpus under Chapter 17 of~~
2 ~~the General Statutes;~~
- 3 (3) ~~A motion for appropriate relief under Chapter 15A of the General~~
4 ~~Statutes if the defendant has been convicted of a felony, has been fined~~
5 ~~five hundred dollars (\$500.00) or more, or has been sentenced to a term~~
6 ~~of imprisonment;~~
- 7 (4) ~~A hearing for revocation of probation;~~
- 8 (5) ~~A hearing in which extradition to another state is sought;~~
- 9 (6) ~~A proceeding for an inpatient involuntary commitment to a facility~~
10 ~~under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a~~
11 ~~proceeding for commitment under Part 8 of Article 5 of Chapter 122C~~
12 ~~of the General Statutes.~~
- 13 (7) ~~In any case of execution against the person under Chapter 1, Article 28~~
14 ~~of the General Statutes, and in any civil arrest and bail proceeding under~~
15 ~~Chapter 1, Article 34, of the General Statutes;~~
- 16 (8) ~~In the case of a juvenile, a hearing as a result of which commitment to~~
17 ~~an institution or transfer to the superior court for trial on a felony charge~~
18 ~~is possible;~~
- 19 (9) ~~A hearing for revocation of parole at which the right to counsel is~~
20 ~~provided in accordance with the provisions of Chapter 148, Article 4, of~~
21 ~~the General Statutes;~~
- 22 (10) ~~A proceeding for sterilization under Chapter 35, Article 7 (Sterilization~~
23 ~~of Persons Mentally Ill and Mentally Retarded) of the General Statutes;~~
24 ~~and~~
- 25 (11) ~~A proceeding for the provision of protective services according to~~
26 ~~Chapter 108, Article 4, of the General Statutes;~~
- 27 (12) ~~In the case of a juvenile alleged to be neglected under Chapter 7A,~~
28 ~~Article 23 of the General Statutes;~~
- 29 (13) ~~A proceeding to find a person incompetent under Subchapter I of~~
30 ~~Chapter 35A, of the General Statutes;~~
- 31 (14) ~~A proceeding to terminate parental rights where a guardian ad litem is~~
32 ~~appointed pursuant to G.S. 7A-289.23;~~
- 33 (15) ~~An action brought pursuant to Article 24B of Chapter 7A of the General~~
34 ~~Statutes to terminate an indigent person's parental rights.~~
- 35 (16) ~~A proceeding involving consent for an abortion on an unemancipated~~
36 ~~minor pursuant to Article 1A, Part 2 of Chapter 90 of the General~~
37 ~~Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this~~
38 ~~proceeding.~~

39 any action or proceeding in which the federal courts have interpreted the Constitution of
40 the United States to require the appointment of counsel.

41 (b) ~~In each of the actions and proceedings enumerated in subsection (a) of this section,~~
42 any action or proceeding in which the federal courts have interpreted the Constitution of
43 the United States to require the appointment of counsel, entitlement to the services of

1 counsel begins as soon as feasible after the indigent is taken into custody or service is
2 made upon him of the charge, petition, notice or other initiating process. Entitlement
3 continues through any critical stage of the action or proceeding, including, if applicable:

- 4 (1) An in-custody interrogation;
- 5 (2) A pretrial identification procedure which occurs after formal charges
6 have been preferred and at which the presence of the indigent is
7 required;
- 8 (3) A hearing for the reduction of bail, or to fix bail if bail has been earlier
9 denied;
- 10 (4) A probable cause hearing;
- 11 (5) Trial and sentencing; and
- 12 (6) Review of any judgment or decree pursuant to G.S. 7A-27, 7A-30(1),
13 7A-30(2), and Subchapter XIV of Chapter 15A of the General Statutes.

14 (c) In any capital case, an indigent defendant who is under a sentence of death
15 may apply to the superior court of the district where the defendant was indicted for the
16 appointment of counsel to represent the defendant in preparing, filing, and litigating a
17 motion for appropriate relief. The application for the appointment of such postconviction
18 counsel may be made prior to completion of review on direct appeal and shall be made no
19 later than 10 days from the latest of the following:

- 20 (1) The mandate has been issued by the Supreme Court of North Carolina
21 on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing
22 a petition for writ of certiorari to the United States Supreme Court has
23 expired without a petition being filed;
- 24 (2) The United States Supreme Court denied a timely petition for writ of
25 certiorari of the decision on direct appeal by the Supreme Court of
26 North Carolina; or
- 27 (3) The United States Supreme Court granted the defendant's or the State's
28 timely petition for writ of certiorari of the decision on direct appeal by
29 the Supreme Court of North Carolina, but subsequently left the
30 defendant's death sentence undisturbed.

31 If there is not a criminal or mixed session of superior court scheduled for that district,
32 the application must be made no later than 10 days from the beginning of the next
33 criminal or mixed session of superior court in the district. Upon application, supported by
34 the defendant's affidavit, the superior court shall enter an order appointing two counsel if
35 the court finds that the defendant is indigent and desires counsel. The defendant does not
36 have a right to be present at the time of appointment of counsel, and the appointment
37 need not be made in open court. If the defendant was previously adjudicated an indigent
38 for purposes of trial or direct appeal, the defendant shall be presumed indigent for
39 purposes of this subsection.

40 (d) The appointment of counsel as provided in subsection (c) of this section and
41 the procedure for compensation shall comply with the Rules and Regulations Relating to
42 the Appointment of Counsel for Indigent Defendants pursuant to G.S. 7A-459. The court
43 may appoint counsel recruited by the Appellate Defender pursuant to G.S. 7A-486.3(5).

1 (e) No counsel appointed pursuant to subsection (c) of this section shall have
2 previously represented the defendant at trial or on direct appeal in the case for which the
3 appointment is made unless the defendant expressly requests continued representation
4 and understandingly waives future allegations of ineffective assistance of counsel."

5 Section 3. This act is effective when it becomes law and applies to acts
6 committed, or causes of action arising, on or after that date.