

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1078
House Committee Substitute Favorable 6/25/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1078-PCS75294-RK-80

Short Title: Delay Bond/Probationer Arrested for Felony.

(Public)

Sponsors:

Referred to:

March 31, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THE PROCEDURE FOR DETERMINING PRETRIAL RELEASE
3 CONDITIONS WHEN A PROBATIONER IS ARRESTED AND CHARGED WITH THE
4 COMMISSION OF A FELONY, AND TO PROVIDE THAT WHEN A PROBATIONER
5 IS CHARGED WITH A VIOLATION OF PROBATION AND HAS A PENDING
6 FELONY CHARGE, A JUDICIAL OFFICIAL MUST DETERMINE WHETHER THE
7 PROBATIONER POSES A DANGER TO THE PUBLIC AND, IF THE PROBATIONER
8 IS A DANGER TO THE PUBLIC, THE JUDICIAL OFFICIAL MUST DENY RELEASE
9 ON THE PROBATION VIOLATION CHARGE.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** G.S. 15A-534 is amended by adding a new subsection to read:

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

18 (1) If the judicial official determines that the defendant poses a danger to the
19 public, the judicial official must impose condition (4) in subsection (a) of
20 this section instead of condition (1), (2), or (3).

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

24 (3) If there is insufficient information to determine whether the defendant poses
25 a danger to the public, then the defendant shall be retained in custody until a
26 determination of pretrial release conditions is made pursuant to this
27 subdivision. The judicial official that orders that the defendant be retained in
28 custody shall set forth, in writing, the following at the time that the order is
29 entered:

30 a. The defendant is being held pursuant to this subdivision.

31 b. The basis for the judicial official's decision that additional
32 information is needed to determine whether the defendant poses a
33 danger to the public and the nature of the necessary information.



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1 c. A date, within 96 hours of the time of arrest, when the defendant
2 shall be brought before a judge for a first appearance pursuant to
3 Article 29 of this Chapter. If the necessary information is provided to
4 the court at any time prior to the first appearance, the first available
5 judicial official shall set the conditions of pretrial release. The judge
6 who reviews the defendant's eligibility for release at the first
7 appearance shall determine the conditions of pretrial release as
8 provided in this Article."

9 **SECTION 2.** G.S. 15A-1345 reads as rewritten:

10 **"§ 15A-1345. Arrest and hearing on probation violation.**

11 (a) Arrest for Violation of Probation. – A probationer is subject to arrest for violation of
12 conditions of probation by a law-enforcement officer or probation officer upon either an order
13 for arrest issued by the court or upon the written request of a probation officer, accompanied by
14 a written statement signed by the probation officer that the probationer has violated specified
15 conditions of his probation. However, a probation revocation hearing under subsection (e) may
16 be held without first arresting the probationer.

17 (b) Bail Following Arrest for Probation Violation. – If at any time during the period of
18 probation the probationer is arrested for a violation of any of the conditions of probation, he
19 must be taken without unnecessary delay before a judicial official to have conditions of release
20 pending a revocation hearing set in the same manner as provided in G.S. 15A-534. If the
21 probationer has been convicted of an offense at any time that requires registration under Article
22 27A of Chapter 14 of the General Statutes or an offense that would have required registration
23 but for the effective date of the law establishing the Sex Offender and Public Protection
24 Registration Program, the court must make a finding that the probationer is not a danger to the
25 public prior to release with or without bail.

26 **(b1)** If the probationer is arrested for a violation of any of the conditions of probation and
27 (i) has a pending charge for a felony offense or (ii) has been convicted of an offense at any time
28 that requires registration under Article 27A of Chapter 14 of the General Statutes or an offense
29 that would have required registration but for the effective date of the law establishing the Sex
30 Offender and Public Protection Registration Program, ~~the court must make a finding that the~~
31 probationer is not a danger to the public prior to release with or without bail. the judicial official
32 shall determine whether the probationer poses a danger to the public prior to imposing
33 conditions of release and must record that determination in writing.

34 (1) If the judicial official determines that the probationer poses a danger to the
35 public, the probationer shall be denied release pending a revocation hearing.

36 (2) If the judicial official finds that the defendant does not pose a danger to the
37 public, then conditions of release shall be imposed as otherwise provided in
38 Article 26 of this Chapter.

39 (3) If there is insufficient information to determine whether the defendant poses
40 a danger to the public, then the defendant shall be retained in custody for not
41 more than seven days from the date of the arrest in order for the judicial
42 official, or a subsequent reviewing judicial official, to obtain sufficient
43 information to determine whether the defendant poses a danger to the public.

44 (4) If the defendant has been held seven days from the date of arrest pursuant to
45 subdivision (3) of this subsection, and the court has been unable to obtain
46 sufficient information to determine whether the defendant poses a danger to
47 the public, then the defendant shall be brought before any judicial official,
48 who shall record that fact in writing and shall impose conditions of pretrial
49 release as otherwise provided in this section.

50 (c) When Preliminary Hearing on Probation Violation Required. – Unless the hearing
51 required by subsection (e) is first held or the probationer waives the hearing, a preliminary

1 hearing on probation violation must be held within seven working days of an arrest of a
2 probationer to determine whether there is probable cause to believe that he violated a condition
3 of probation. Otherwise, the probationer must be released seven working days after his arrest to
4 continue on probation pending a ~~hearing-hearing~~, unless the probationer has been denied
5 release pursuant to subdivision (1) of subsection (b1) of this section, in which case the
6 probationer shall be held until the revocation hearing date.

7 (d) Procedure for Preliminary Hearing on Probation Violation. – The preliminary
8 hearing on probation violation must be conducted by a judge who is sitting in the county where
9 the probationer was arrested or where the alleged violation occurred. If no judge is sitting in the
10 county where the hearing would otherwise be held, the hearing may be held anywhere in the
11 district court district as defined in G.S. 7A-133 or superior court district or set of districts as
12 defined in G.S. 7A-41.1, as the case may be. The State must give the probationer notice of the
13 hearing and its purpose, including a statement of the violations alleged. At the hearing the
14 probationer may appear and speak in his own behalf, may present relevant information, and
15 may, on request, personally question adverse informants unless the court finds good cause for
16 not allowing confrontation. Formal rules of evidence do not apply at the hearing. If probable
17 cause is found or if the probable cause hearing is waived, the probationer may be held for a
18 revocation hearing, subject to release under the provisions of subsection (b). If the hearing is
19 held and probable cause is not found, the probationer must be released to continue on
20 probation.

21 (e) Revocation Hearing. – Before revoking or extending probation, the court must,
22 unless the probationer waives the hearing, hold a hearing to determine whether to revoke or
23 extend probation and must make findings to support the decision and a summary record of the
24 proceedings. The State must give the probationer notice of the hearing and its purpose,
25 including a statement of the violations alleged. The notice, unless waived by the probationer,
26 must be given at least 24 hours before the hearing. At the hearing, evidence against the
27 probationer must be disclosed to him, and the probationer may appear and speak in his own
28 behalf, may present relevant information, and may confront and cross-examine adverse
29 witnesses unless the court finds good cause for not allowing confrontation. The probationer is
30 entitled to be represented by counsel at the hearing and, if indigent, to have counsel appointed.
31 Formal rules of evidence do not apply at the hearing, but the record or recollection of evidence
32 or testimony introduced at the preliminary hearing on probation violation are inadmissible as
33 evidence at the revocation hearing. When the violation alleged is the nonpayment of fine or
34 costs, the issues and procedures at the hearing include those specified in G.S. 15A-1364 for
35 response to nonpayment of fine."

36 **SECTION 3.** This act becomes effective December 1, 2009, and applies to
37 offenses committed on or after that date.