

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H.B. 768  
Apr 10, 2013  
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH70221-LH-35 (01/24)

Short Title: Pretrial Release/No Unsecured Bond. (Public)

Sponsors: Representatives Schaffer, Hager, Jordan, and Brandon (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ELIMINATE UNSECURED APPEARANCE BOND AS A PRETRIAL  
3 RELEASE CONDITION AND TO MAKE CONFORMING CHANGES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 15A-534 reads as rewritten:

6 "§ 15A-534. Procedure for determining conditions of pretrial release.

7 (a) In determining conditions of pretrial release a judicial official must impose at least  
8 one of the following conditions:

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

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

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

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

17 (5) House arrest with electronic monitoring.

18 If condition (5) is imposed, the defendant must execute a secured appearance bond under  
19 subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may  
20 elect to execute an appearance bond under subdivision (4). If the defendant is required to  
21 provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to  
22 G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been  
23 taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial  
24 official shall make the collection of the fingerprints or DNA sample a condition of pretrial  
25 release. The judicial official may also place restrictions on the travel, associations, conduct, or  
26 place of abode of the defendant as conditions of pretrial release. The judicial official may  
27 include as a condition of pretrial release that the defendant abstain from alcohol consumption,  
28 as verified by the use of a continuous alcohol monitoring system, of a type approved by the  
29 Division of Adult Correction of the Department of Public Safety, and that any violation of this  
30 condition be reported by the monitoring provider to the district attorney.

31 (b) The judicial official in granting pretrial release must impose condition ~~(1), (2), or~~  
32 ~~(3)~~ (1) or (3) in subsection (a) above unless ~~he~~ the judicial official determines that such release  
33 will not reasonably assure the appearance of the defendant as required; will pose a danger of  
34 injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or  
35 intimidation of potential witnesses. Upon making the determination, the judicial official must  
36 then impose condition (4) or (5) in subsection (a) above instead of condition ~~(1), (2), or (3), (1)~~



1 or (3) and must record the reasons for so doing in writing to the extent provided in the policies  
2 or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

3 (c) In determining which conditions of release to impose, the judicial official must, on  
4 the basis of available information, take into account the nature and circumstances of the offense  
5 charged; the weight of the evidence against the defendant; the defendant's family ties,  
6 employment, financial resources, character, and mental condition; whether the defendant is  
7 intoxicated to such a degree that he would be endangered by being released without  
8 supervision; the length of his residence in the community; his record of convictions; his history  
9 of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence  
10 relevant to the issue of pretrial release.

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

17 (d1) When conditions of pretrial release are being imposed on a defendant who has failed  
18 on one or more prior occasions to appear to answer one or more of the charges to which the  
19 conditions apply, the judicial official shall at a minimum impose the conditions of pretrial  
20 release that are recommended in any order for the arrest of the defendant that was issued for the  
21 defendant's most recent failure to appear. If no conditions are recommended in that order for  
22 arrest, the judicial official shall require the execution of a secured appearance bond in an  
23 amount at least double the amount of the most recent previous secured ~~or unsecured~~ bond for  
24 the charges or, if no bond has yet been required for the charges, in the amount of at least five  
25 hundred dollars (\$500.00). The judicial official shall also impose such restrictions on the travel,  
26 associations, conduct, or place of abode of the defendant as will assure that the defendant will  
27 not again fail to appear. The judicial official shall indicate on the release order that the  
28 defendant was arrested or surrendered after failing to appear as required under a prior release  
29 order. If the information available to the judicial official indicates that the defendant has failed  
30 on two or more prior occasions to appear to answer the charges, the judicial official shall  
31 indicate that fact on the release order.

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

38 (1) If the judicial official determines that the defendant poses a danger to the  
39 public, the judicial official must impose condition (4) or (5) in subsection (a)  
40 of this section instead of condition ~~(1), (2), or (3)~~(1) or (3).

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

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

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

- 1           b.     The basis for the judicial official's decision that additional  
2           information is needed to determine whether the defendant poses a  
3           danger to the public and the nature of the necessary information.  
4           c.     A date, within 96 hours of the time of arrest, when the defendant  
5           shall be brought before a judge for a first appearance pursuant to  
6           Article 29 of this Chapter. If the necessary information is provided to  
7           the court at any time prior to the first appearance, the first available  
8           judicial official shall set the conditions of pretrial release. The judge  
9           who reviews the defendant's eligibility for release at the first  
10          appearance shall determine the conditions of pretrial release as  
11          provided in this Article.

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

- 17               (1)    In a misdemeanor case tried in the district court, the noting of an appeal; and  
18               (2)    In a case in the original trial jurisdiction of the superior court, the binding of  
19               the defendant over to superior court after the holding, or waiver, of a  
20               probable-cause hearing.

21          After a case is before the superior court, a superior court judge may modify the pretrial release  
22          order of a magistrate, clerk, or district court judge, or any such order entered by him, at any  
23          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 release.  
25          Upon application of any defendant whose order of pretrial release has been revoked, the judge  
26          must set new conditions of pretrial release in accordance with this Article.

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

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

- 36               (1)    A judge authorized to do so releases the obligor from his bond; or  
37               (2)    The principal is surrendered by a surety in accordance with G.S. 15A-540; or  
38               (3)    The proceeding is terminated by voluntary dismissal by the State before  
39               forfeiture is ordered under G.S. 15A-544.3; or  
40               (4)    Prayer for judgment has been continued indefinitely in the district court.

41          (i)    Repealed by Session Laws 2012-146, s. 1(b), effective December 1, 2012."

42          **SECTION 2.** G.S. 15A-535(b) reads as rewritten:

43               "(b)    In any county in which there is a pretrial release program, the senior  
44          resident superior court judge may, after consultation with the chief district court judge, order  
45          that defendants accepted by such program for supervision shall, with their consent, be released  
46          by judicial officials to supervision of such programs, and subject to its rules and regulations, in  
47          lieu of releasing the defendants on conditions ~~(1), (2), or (3)~~ (1) or (3) of G.S. 15A-534(a).

48          **SECTION 3.** This act becomes effective December 1, 2013, and applies to  
49          criminal actions to determine pretrial release conditions on or after that date.