GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H **D**

HOUSE BILL 173
PROPOSED COMMITTEE SUBSTITUTE H173-PCS30105-SA-15

Short Title: Omnibus Criminal Law Bill. (Public)

Sponsors:

Referred to:

March 10, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS CRIMINAL LAWS FOR THE PURPOSE OF IMPROVING TRIAL COURT EFFICIENCY.

The General Assembly of North Carolina enacts:

PART I. EXTEND THE PERIOD OF TIME TO AVOID THE COURT COSTS FOR FAILURE TO PAY

SECTION 1.(a) G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected. No costs may be assessed when a case is dismissed. Only upon entry of a written order, supported by findings of fact and conclusions of law, determining that there is just cause, the court may (i) waive costs assessed under this section or (ii) waive or reduce costs assessed under subdivision (7), (8), (8a), (11), (12), or (13) of this section.

…

(6) For support of the General Court of Justice, the sum of two hundred dollars ($200.00) is payable by a defendant who fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, the person either appears in court to answer the charge or disposes of the charge pursuant to G.S. 7A-146, and the sum of fifty dollars ($50.00) is payable by a defendant who fails to pay a fine, penalty, or costs within ~~20 days~~ 40 days of the date specified in the court's judgment. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive the fee for failure to appear. These fees shall be remitted to the State Treasurer.

…."

SECTION 1.(b) G.S. 20-24.2(a) reads as rewritten:

"(a) The court must report to the Division the name of any person charged with a motor vehicle offense under this Chapter who:

(1) Fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, he either appears in court to answer the charge or disposes of the charge pursuant to G.S. 7A-146; or

(2) Fails to pay a fine, penalty, or costs within ~~20 days~~ 40 days of the date specified in the court's judgment."

SECTION 1.(c) This section becomes effective July 1, 2015, and applies to fees assessed on or after that date.

PART II. DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO REPORT ON CERTAIN ORDERS OF REMAND FROM SUPERIOR COURT

SECTION 2. The Administrative Office of the Courts, in consultation with the Conference of Clerks of Superior Court, shall make any necessary modifications to its information systems to maintain records of all cases in which the defendant in a criminal case withdraws an appeal for trial de novo in superior court and the superior court judge has signed an order remanding the case to the district court and shall report on those remanded cases to the Chairs of the Senate Appropriations Committee on Justice and Public Safety, the Chairs of the House Appropriations Committee on Justice and Public Safety, and the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by February 1 of each year. The report shall (i) include the total number of remanded cases and also the total number of those cases for which the court has remitted costs and (ii) aggregate those totals by the district in which they were granted and by the name of each judge ordering remand. The Administrative Office of the Courts may obtain any information that may be needed from individual clerks of superior court in order to make the modifications necessary to maintain the records required under this section.

PART III. REVISE THE LAW AUTHORIZING A CHIEF DISTRICT COURT JUDGE TO DESIGNATE CERTAIN MAGISTRATES TO APPOINT COUNSEL/AUTHORIZE MAGISTRATES TO ACCEPT GUILTY PLEAS AND ENTER JUDGMENT FOR OFFENSE OF INTOXICATED AND DISRUPTIVE IN PUBLIC

SECTION 3.(a) G.S. 7A-146 reads as rewritten:

"**§ 7A-146. Administrative authority and duties of chief district judge.**

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

…

(11) Designating certain magistrates to appoint counsel and accept waivers of counsel pursuant to Article 36 of this Chapter. This designation ~~may only be given to magistrates who are duly licensed attorneys and~~ does not give any magistrate the authority ~~to: (i)~~ to appoint counsel or accept waivers of counsel for potentially capital offenses, as defined by rules adopted by the Office of Indigent Defense ~~Services; or (ii) accept a waiver of counsel.~~Services.

…."

SECTION 3.(b) G.S. 7A-292 reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

…

(15) When authorized by the chief district judge, as permitted in G.S. 7A-146(11), to provide for appointment of counsel and acceptance of waivers of counsel pursuant to Article 36 of this Chapter.

…."

SECTION 3.(c) G.S. 14-444 reads as rewritten:

"**§ 14-444. Intoxicated and disruptive in public.**

(a) It shall be unlawful for any person in a public place to be intoxicated and disruptive in any of the following ways:

(1) Blocking or otherwise interfering with traffic on a highway or public vehicular area, or

(2) Blocking or lying across or otherwise preventing or interfering with access to or passage across a sidewalk or entrance to a building, or

(3) Grabbing, shoving, pushing or fighting others or challenging others to fight, or

(4) Cursing or shouting at or otherwise rudely insulting others, or

(5) Begging for money or other property.

(b) Any person who violates this section shall be guilty of a Class 3 misdemeanor.~~Notwithstanding the provisions of G.S. 7A-273(1), a magistrate is not empowered to accept a guilty plea and enter judgment for this offense.~~"

PART IV. MODIFY WHEN A NEW SENTENCING HEARING MUST BE HELD IN DISTRICT COURT ON AN IMPLIED CONSENT CONVICTION FOR WHICH THE APPEAL TO SUPERIOR COURT HAS BEEN WITHDRAWN

SECTION 4.(a) G.S. 20-38.7(c) reads as rewritten:

"(c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, ~~the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When~~ when an appeal is withdrawn or a case is remanded back to district court, the sentence imposed by the district court is vacated and the district court shall hold a new sentencing hearing and shall consider any new ~~convictions.~~convictions unless one of the following conditions is met:

(1) If the appeal is withdrawn pursuant to G.S. 15A-1431(c), the prosecutor has certified to the clerk, in writing, that the prosecutor has no new sentencing factors to offer the court.

(2) If the appeal is withdrawn and remanded pursuant to G.S. 15A-1431(g), the prosecutor has certified to the clerk, in writing, that the prosecutor has no new sentencing factors to offer the court.

(3) If the appeal is withdrawn and remanded pursuant to G.S. 15A-1341(h), the prosecutor has certified to the clerk, in writing, that the prosecutor consents to the withdrawal and remand and has no new sentencing factors to offer the court."

SECTION 4.(b) This section becomes effective October 1, 2015, and applies to appeals filed on or after that date.

PART V. CONFORM STATE LAW WITH THE UNITED STATES SUPREME COURT DECISION IN HALL V. FLORIDA

SECTION 5. G.S. 15A-2005 reads as rewritten:

"**§ 15A-2005. ~~Mentally retarded defendants;~~ Intellectual disability; death sentence prohibited.**

(a) (1) The following definitions apply in this section:

a. ~~Mentally retarded.~~ Intellectual disability. – A condition marked by ~~Significantly~~ significantly subaverage general intellectual functioning, existing concurrently with significant limitations in adaptive functioning, both of which were manifested before the age of 18.

b. Significant limitations in adaptive functioning. – Significant limitations in two or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure skills and work skills.

c. Significantly subaverage general intellectual functioning. – An intelligence quotient of 70 or below.

(2) The defendant has the burden of proving significantly subaverage general intellectual functioning, significant limitations in adaptive functioning, and that ~~mental retardation~~ intellectual disability was manifested before the age of 18. An intelligence quotient of 70 or below on an individually administered, scientifically recognized standardized intelligence quotient test administered by a licensed psychiatrist or psychologist is evidence of significantly subaverage general intellectual functioning; however, it is not sufficient, without evidence of significant limitations in adaptive functioning and without evidence of manifestation before the age of 18, to establish that the defendant ~~is mentally retarded.~~has an intellectual disability. An intelligence quotient of 70, as described in this subdivision, is approximate and a higher score resulting from the application of the standard error of measurement to an intelligence quotient of 70 shall not preclude the defendant from being able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits. Accepted clinical standards for diagnosing significant limitations in intellectual functioning and adaptive behavior shall be applied in the determination of intellectual disability.

(b) Notwithstanding any provision of law to the contrary, no defendant ~~who is mentally retarded~~ with an intellectual disability shall be sentenced to death.

(c) Upon motion of the defendant, supported by appropriate affidavits, the court may order a pretrial hearing to determine if the defendant ~~is mentally retarded.~~ has an intellectual disability. The court shall order such a hearing with the consent of the State. The defendant has the burden of production and persuasion to demonstrate ~~mental retardation~~ intellectual disability by clear and convincing evidence. If the court determines that the defendant ~~to be mentally retarded,~~ has an intellectual disability, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

(d) The pretrial determination of the court shall not preclude the defendant from raising any legal defense during the trial.

(e) If the court does not find that the defendant ~~to be mentally retarded~~ has an intellectual disability in the pretrial proceeding, upon the introduction of evidence ~~of the defendant's mental retardation~~ raising the issue of intellectual disability during the sentencing hearing, the court shall submit a special issue to the jury as to whether the defendant ~~is mentally retarded~~ has an intellectual disability as defined in this section. This special issue shall be considered and answered by the jury prior to the consideration of aggravating or mitigating factors and the determination of sentence. If the jury determines that the defendant ~~to be mentally retarded,~~ has an intellectual disability, the court shall declare the case noncapital and the defendant shall be sentenced to life imprisonment.

(f) The defendant has the burden of production and persuasion to demonstrate ~~mental retardation~~ intellectual disability to the jury by a preponderance of the evidence.

(g) If the jury determines that the defendant ~~is not mentally retarded~~ does not have an intellectual disability as defined by this section, the jury may consider any evidence of ~~mental retardation~~ intellectual disability presented during the sentencing hearing when determining aggravating or mitigating factors and the defendant's sentence.

(h) The provisions of this section do not preclude the sentencing of ~~a mentally retarded~~an offender with an intellectual disability to any other sentence authorized by G.S. 14-17 for the crime of murder in the first degree."

PART VI. PROVIDE THAT THE REQUIREMENT FOR A PERSON CONVICTED OF SEXUAL BATTERY TO REGISTER AS A SEX OFFENDER IS DISCRETIONARY WITH THE COURT

SECTION 6.(a) G.S. 14-27.5A is amended by adding a new subsection to read:

"(c) When a person is convicted of a violation of this section, the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in G.S. 14-208.5. If the sentencing court finds that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register."

SECTION 6.(b) G.S. 14-208.6(4) reads as rewritten:

"(4) "Reportable conviction" means:

…

f. A final conviction for a violation of G.S. 14-27.5A, only if the court sentencing the individual issues an order pursuant to G.S. 14-27.5A(c) requiring the individual to register."

SECTION 6.(c) G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), ~~G.S. 14-27.5A (sexual battery),~~ former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or a mentally disabled person), G.S. 14-205.3(b) (promoting prostitution of a minor or a mentally disabled person), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 6.(d) G.S. 50-13.1(a1) reads as rewritten:

"(a1) Notwithstanding any other provision of law, any person instituting an action or proceeding for custody ex parte who has been convicted of a sexually violent offense as defined in G.S. 14-208.6(5) or who has been convicted of an offense under G.S. 14-27.5A and ordered to register under Article 27A of Chapter 14 of the General Statutes shall disclose the conviction in the pleadings."

SECTION 6.(e) This section becomes effective December 1, 2015, and applies to offenses committed on or after that date.

PART VII. AMENDMENTS TO CERTAIN LAWS REGARDING TRANSPORTATION OF AND CUSTODY ORDERS FOR PERSONS BEING INVOLUNTARILY COMMITTED

SECTION 7.(a) G.S. 122C-251(d) reads as rewritten:

"(d) ~~In~~ To the extent feasible, in providing transportation of a respondent, a city or county shall provide a driver or attendant who is the same sex as the respondent, unless the law-enforcement officer allows a family member of the respondent to accompany the respondent in lieu of an attendant of the same sex as the respondent."

SECTION 7.(b) Part 1 of Article 5 of Chapter 122C of the General Statutes is amended by adding a new section to read:

"**§ 122C-210.3. Electronic and facsimile transmission of custody orders.**

A custody order entered by the clerk or magistrate pursuant to this Chapter may be delivered to the law enforcement officer by electronic or facsimile transmission."

PART VIII. EXPUNCTION INFORMATION MAY BE TRANSMITTED ELECTRONICALLY OR BY FACSIMILE

SECTION 8. G.S. 15A-150 reads as rewritten:

"**§ 15A-150. Notification requirements.**

(a) Notification to AOC. – The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court, file with the Administrative Office of the Courts the names of the following:

(1) Persons granted an expunction under this Article.
(2) Persons granted a conditional discharge under G.S. 14-50.29.
(3) Persons granted a conditional discharge under G.S. 90-96 or G.S. 90-113.14.
(4) Repealed by Session Laws 2010-174, s. 7, effective October 1, 2010.
(5) Persons granted a conditional discharge under G.S. 14-204.

(b) Notification to Other State and Local Agencies. – ~~The~~ Unless otherwise instructed by the Administrative Office of the Courts pursuant to an agreement entered into under subsection (e) of this section for the electronic or facsimile transmission of information, the clerk of superior court in each county in North Carolina shall send a certified copy of an order granting an expunction to a person named in subsection (a) of this section to all of the agencies listed in this subsection. An agency receiving an order under this subsection shall expunge from its records all entries made as a result of the charge or conviction ordered expunged, except as provided in G.S. 15A-151. The list of agencies is as follows:

(1) The sheriff, chief of police, or other arresting agency.
(2) When applicable, the Division of Motor Vehicles and the Division of Adult Correction of the Department of Public Safety.
(3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.
(4) The Department of Public Safety.

(c) Notification to FBI. – The Department of Public Safety shall forward the order received under this section to the Federal Bureau of Investigation.

(d) Notification to Private Entities. – A State agency that receives a certified copy of an order under this section shall notify any private entity with which it has a licensing agreement for bulk extracts of data from the agency criminal record database to delete the record in question. The private entity shall notify any other entity to which it subsequently provides in a bulk extract data from the agency criminal database to delete the record in question from its database.

(e) The Director of the Administrative Office of the Courts may enter into an agreement with any of the State agencies listed in subsection (b) of this section for electronic or facsimile transmission of any information that must be provided under this section."

PART IX. DOUBLING OF BOND IS PERMISSIVE RATHER THAN MANDATORY FOR CERTAIN DEFENDANTS AND NO APPEARANCE BOND FOR FINE ONLY CLASS 3 MISDMEANORS

SECTION 9.(a) G.S. 15A-534(d3) reads as rewritten:

"(d3) When conditions of pretrial release are being determined for a defendant who is charged with an offense and the defendant is currently on pretrial release for a prior offense, the judicial official ~~shall~~ may require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least one thousand dollars ($1,000)."

SECTION 9.(b) This section becomes effective July 1, 2015, and applies to conditions of pretrial release imposed on or after that date.

PART X. DISPOSITION OF CERTAIN PHYSICAL EVIDENCE THAT MAY CONTAIN BIOLOGICAL EVIDENCE

SECTION 10.(a) G.S. 15A-268(a5) reads as rewritten:

"(a5) The duty to preserve may not be waived knowingly and voluntarily by a defendant, without a court ~~proceeding.~~ hearing, which may include any other hearing associated with the disposition of the case."

SECTION 10.(b) G.S. 15A-268(a6) reads as rewritten:

"(a6) The evidence described by subsection (a1) of this section shall be preserved for the following period:

(1) For conviction resulting in a sentence of death, until execution.

(2) For conviction resulting in a sentence of life without parole, until the death of the convicted person.

(3) For conviction of any homicide, sex offense, assault, kidnapping, burglary, robbery, arson or burning, for which a Class B1-E felony punishment is imposed, the evidence shall be preserved during the period of incarceration and mandatory supervised release, including sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for the earlier of three years from the date of conviction or until released.

(4) Biological evidence collected as part of a criminal investigation of any homicide or rape, in which no charges are filed, shall be preserved for the period of time that the crime remains unsolved.

(5) A custodial agency in custody of biological evidence unrelated to a criminal investigation or prosecution referenced by subdivision (1), (2), (3), or (4) of this subsection may dispose of the evidence in accordance with the rules of the agency.

(6) Notwithstanding the retention requirements in subdivisions (1) through (5) of this subsection, at any time after collection and prior to or at the time of disposition of the case at the trial court level, if the evidence collected as part of the criminal investigation is of a size, bulk, or physical character as to render retention impracticable or should be returned to its rightful owner, the State may petition the court for retention of samples of the biological evidence in lieu of the actual physical evidence. After giving any defendant charged in connection with the case an opportunity to be heard, the court may order that the collecting agency take reasonable measures to remove or preserve for retention portions of evidence likely to contain biological evidence related to the offense through cuttings, swabs, or other means consistent with Crime Laboratory minimum guidelines in a quantity sufficient to permit DNA testing before returning or disposing of the evidence."

SECTION 10.(c) This section becomes effective October 1, 2015.

PART XI. AMEND THE RULES OF EVIDENCE TO ALLOW A CERTIFICATION BY THE CUSTODIAN OF A BUSINESS RECORD TO SHOW THE AUTHENTICITY OF THE RECORD IN LIEU OF OFFERING THE CUSTODIAN'S IN-PERSON TESTIMONY

SECTION 11.(a) Rule 803(6) of the Rules of Evidence, Chapter 8C of the General Statutes, reads as rewritten:

"**Rule 803. Hearsay exceptions; availability of declarant immaterial.**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

…

(6) Records of Regularly Conducted Activity. – A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if (i) kept in the course of a regularly conducted business ~~activity,~~ activity and ~~if~~ (ii) it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified ~~witness,~~ witness or by a certification made by the custodian or witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The proponent shall give advance notice of intent to offer such records to all other parties. The method of authenticating evidence allowed under this subdivision shall be confined to the records of non-parties. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit."

SECTION 11.(b) This section becomes effective October 1, 2015.

PART XII. CLARIFY ENHANCED PENALTY FOR VIOLATION OF PROTECTIVE ORDER

SECTION 12. G.S. 50B-4.1(d) reads as rewritten:

"(d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this section shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to ~~a person who is charged with or convicted~~ convictions of a Class A or B1

felony or ~~to a person charged under~~ convictions of the offenses set forth in subsection (f) or subsection (g) of this section."

PART XIII. ALLOW EXTENSION OF ORDER ENTERED IN STREET GANG NUISANCE ABATEMENT CASE AFTER COURT HEARING

SECTION 13. G.S. 14-50.43(d) reads as rewritten:

"(d) An order entered under this section shall expire one year after ~~entry; however, the~~entry unless extended by the court for good cause established by the plaintiff after a hearing. The order may be modified, rescinded, or vacated at any time prior to its expiration date upon the motion of any party if it appears to the court that one or more of the defendants is no longer engaging in criminal street gang activities."

PART XIV. AMEND CERTIFICATE OF RELIEF

SECTION 14.(a) G.S. 15A-173.2(a) reads as rewritten:

"(a) An individual who is convicted of ~~no more than two Class G, H, or I felonies or misdemeanors in one session of court, and who has no other convictions for a felony or misdemeanor other than a traffic violation,~~ criminal offenses no higher than a Class G felony, may petition the court where the individual was convicted of his or her most serious offense for a Certificate of Relief relieving collateral consequences as permitted by this Article. Except as otherwise provided in this subsection, the petition shall be heard by the senior resident superior court judge if the convictions were in superior court, or the chief district court judge if the convictions were in district court. The senior resident superior court judge and chief district court judge in each district may delegate their authority to hold hearings and issue, modify, or revoke Certificates of Relief to judges, clerks, or magistrates in that district."

SECTION 14.(b) This section becomes effective October 1, 2015, and applies to petitions filed on or after that date.

PART XV. EFFECTIVE DATE

SECTION 15. Except as otherwise provided, this act is effective when it becomes law.