

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 173
Committee Substitute Favorable 3/17/15
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PROPOSED SENATE COMMITTEE SUBSTITUTE H173-PCS40509-TJ-58

Short Title: Omnibus Criminal Law Bill.

(Public)

Sponsors:

Referred to:

March 10, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS CRIMINAL LAWS FOR THE PURPOSE OF
3 IMPROVING TRIAL COURT EFFICIENCY.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. EXTEND THE PERIOD OF TIME TO AVOID THE COURT COSTS FOR**
7 **FAILURE TO PAY**

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

9 "(a) In every criminal case in the superior or district court, wherein the defendant is
10 convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the
11 prosecuting witness, the following costs shall be assessed and collected. No costs may be
12 assessed when a case is dismissed. Only upon entry of a written order, supported by findings of
13 fact and conclusions of law, determining that there is just cause, the court may (i) waive costs
14 assessed under this section or (ii) waive or reduce costs assessed under subdivision (7), (8),
15 (8a), (11), (12), or (13) of this section.

16 ...
17 (6) For support of the General Court of Justice, the sum of two hundred dollars
18 (\$200.00) is payable by a defendant who fails to appear to answer the charge
19 as scheduled, unless within 20 days after the scheduled appearance, the
20 person either appears in court to answer the charge or disposes of the charge
21 pursuant to G.S. 7A-146, and the sum of fifty dollars (\$50.00) is payable by
22 a defendant who fails to pay a fine, penalty, or costs within ~~20 days~~ 40 days
23 of the date specified in the court's judgment. Upon a showing to the court
24 that the defendant failed to appear because of an error or omission of a
25 judicial official, a prosecutor, or a law-enforcement officer, the court shall
26 waive the fee for failure to appear. These fees shall be remitted to the State
27 Treasurer.

28"

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

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



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- 1 (1) Fails to appear to answer the charge as scheduled, unless within 20 days
 2 after the scheduled appearance, he either appears in court to answer the
 3 charge or disposes of the charge pursuant to G.S. 7A-146; or
 4 (2) Fails to pay a fine, penalty, or costs within ~~20 days~~ 40 days of the date
 5 specified in the court's judgment."

6 **SECTION 1.(c)** This section becomes effective December 1, 2015, except that a
 7 failure to pay after 20 days occurring before the effective date of this act is not abated or
 8 affected by this act and the statutes that would be applicable but for this act remain applicable
 9 to that failure to pay.

10
 11 **PART II. DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO REPORT**
 12 **ON CERTAIN ORDERS OF REMAND FROM SUPERIOR COURT**

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

27
 28 **PART III. REVISE THE LAW AUTHORIZING A CHIEF DISTRICT COURT JUDGE**
 29 **TO DESIGNATE CERTAIN MAGISTRATES TO APPOINT COUNSEL/AUTHORIZE**
 30 **MAGISTRATES TO ACCEPT GUILTY PLEAS AND ENTER JUDGMENT FOR**
 31 **OFFENSE OF INTOXICATED AND DISRUPTIVE IN PUBLIC**

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

33 "**§ 7A-146. Administrative authority and duties of chief district judge.**

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

- 38 ...
 39 (11) Designating certain magistrates to appoint counsel and accept waivers of
 40 counsel pursuant to Article 36 of this Chapter. This designation ~~may only be~~
 41 ~~given to magistrates who are duly licensed attorneys and~~ does not give any
 42 magistrate the authority ~~to: (i) to~~ appoint counsel or accept waivers of
 43 counsel for potentially capital offenses, as defined by rules adopted by the
 44 Office of Indigent Defense Services; ~~or (ii) accept a waiver of~~
 45 ~~counsel.~~Services.

46"

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

48 "**§ 7A-292. Additional powers of magistrates.**

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

51 ...

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

4"

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

6 "**§ 14-444. Intoxicated and disruptive in public.**

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

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

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

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

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

16 (5) Begging for money or other property.

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

20
21 **PART IV. AMENDMENT TO ADDRESS AND CLARIFY PROBATION**
22 **REVOCAATION APPEALS**

23 **SECTION 4.** G.S. 15A-1347 is amended by adding a new subsection to read:

24 "(c) If a defendant appeals an activation of a sentence as a result of a finding of a
25 violation of probation by the district or superior court, probation supervision will continue
26 under the same conditions until the termination date of the supervision period or disposition of
27 the appeal, whichever comes first."

28
29 **PART V. CONFORM STATE LAW WITH THE UNITED STATES SUPREME COURT**
30 **DECISIONS IN HALL V. FLORIDA AND BRUMFIELD V. CAIN**

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

32 "**§ 15A-2005. ~~Mentally retarded defendants; Intellectual disability; death sentence~~**
33 **prohibited.**

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

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

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

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

47 (2) The defendant has the burden of proving significantly subaverage general
48 intellectual functioning, significant limitations in adaptive functioning, and
49 that ~~mental retardation~~ intellectual disability was manifested before the age
50 of 18. An intelligence quotient of 70 or below on an individually
51 administered, scientifically recognized standardized intelligence quotient test

1 administered by a licensed psychiatrist or psychologist is evidence of
2 significantly subaverage general intellectual functioning; however, it is not
3 sufficient, without evidence of significant limitations in adaptive functioning
4 and without evidence of manifestation before the age of 18, to establish that
5 the defendant ~~is mentally retarded~~ has an intellectual disability. An
6 intelligence quotient of 70, as described in this subdivision, is approximate
7 and a higher score resulting from the application of the standard error of
8 measurement to an intelligence quotient of 70 shall not preclude the
9 defendant from being able to present additional evidence of intellectual
10 disability, including testimony regarding adaptive deficits. Accepted clinical
11 standards for diagnosing significant limitations in intellectual functioning
12 and adaptive behavior shall be applied in the determination of intellectual
13 disability.

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

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

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

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

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

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

40 (h) The provisions of this section do not preclude the sentencing of ~~a mentally retarded~~
41 an offender with an intellectual disability to any other sentence authorized by G.S. 14-17 for
42 the crime of murder in the first degree."
43

44 PART VII. MAKE CONFORMING CHANGE TO PETITION FOR JUDICIAL 45 REVIEW

46 SECTION 7. G.S. 7B-323(f) reads as rewritten:

47 "(f) A party may appeal the district court's decision under
48 ~~G.S. 7A-27(e)~~ G.S. 7A-27(b)(2)."
49

50 PART VIII. EXPUNCTION INFORMATION MAY BE TRANSMITTED 51 ELECTRONICALLY OR BY FACSIMILE

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

2 "**§ 15A-150. Notification requirements.**

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

6 (1) Persons granted an expunction under this Article.

7 (2) Persons granted a conditional discharge under G.S. 14-50.29.

8 (3) Persons granted a conditional discharge under G.S. 90-96 or G.S. 90-113.14.

9 (4) Repealed by Session Laws 2010-174, s. 7, effective October 1, 2010.

10 (5) Persons granted a conditional discharge under G.S. 14-204.

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

19 (1) The sheriff, chief of police, or other arresting agency.

20 (2) When applicable, the Division of Motor Vehicles and the Division of Adult
21 Correction of the Department of Public Safety.

22 (3) Any State or local agency identified by the petition as bearing record of the
23 offense that has been expunged.

24 (4) The Department of Public Safety.

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

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

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

36
37 **PART IX. DOUBLING OF BOND IS PERMISSIVE RATHER THAN MANDATORY**
38 **FOR CERTAIN DEFENDANTS**

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

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

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

48
49 **PART X. DISPOSITION OF CERTAIN PHYSICAL EVIDENCE THAT MAY**
50 **CONTAIN BIOLOGICAL EVIDENCE**

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

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

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

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

- 7 (1) For conviction resulting in a sentence of death, until execution.
- 8 (2) For conviction resulting in a sentence of life without parole, until the death
9 of the convicted person.
- 10 (3) For conviction of any homicide, sex offense, assault, kidnapping, burglary,
11 robbery, arson or burning, for which a Class B1-E felony punishment is
12 imposed, the evidence shall be preserved during the period of incarceration
13 and mandatory supervised release, including sex offender registration
14 pursuant to Article 27A of Chapter 14 of the General Statutes, except in
15 cases where the person convicted entered and was convicted on a plea of
16 guilty, in which case the evidence shall be preserved for the earlier of three
17 years from the date of conviction or until released.
- 18 (4) Biological evidence collected as part of a criminal investigation of any
19 homicide or rape, in which no charges are filed, shall be preserved for the
20 period of time that the crime remains unsolved.
- 21 (5) A custodial agency in custody of biological evidence unrelated to a criminal
22 investigation or prosecution referenced by subdivision (1), (2), (3), or (4)
23 of this subsection may dispose of the evidence in accordance with the rules of
24 the agency.
- 25 (6) Notwithstanding the retention requirements in subdivisions (1) through (5)
26 of this subsection, at any time after collection and prior to or at the time of
27 disposition of the case at the trial court level, if the evidence collected as part
28 of the criminal investigation is of a size, bulk, or physical character as to
29 render retention impracticable or should be returned to its rightful owner, the
30 State may petition the court for retention of samples of the biological
31 evidence in lieu of the actual physical evidence. After giving any defendant
32 charged in connection with the case an opportunity to be heard, the court
33 may order that the collecting agency take reasonable measures to remove or
34 preserve for retention portions of evidence likely to contain biological
35 evidence related to the offense through cuttings, swabs, or other means
36 consistent with Crime Laboratory minimum guidelines in a quantity
37 sufficient to permit DNA testing before returning or disposing of the
38 evidence."

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

40
41 **PART XI. AMEND THE RULES OF EVIDENCE TO ALLOW A CERTIFICATION BY**
42 **THE CUSTODIAN OF A BUSINESS RECORD TO SHOW THE AUTHENTICITY OF**
43 **THE RECORD IN LIEU OF OFFERING THE CUSTODIAN'S IN-PERSON**
44 **TESTIMONY**

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

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

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

50 ...

1 (6) Records of Regularly Conducted Activity. – A memorandum, report, record,
2 or data compilation, in any form, of acts, events, conditions, opinions, or
3 diagnoses, made at or near the time by, or from information transmitted by, a
4 person with knowledge, if (i) kept in the course of a regularly conducted
5 business ~~activity, activity~~ and ~~if~~ (ii) it was the regular practice of that
6 business activity to make the memorandum, report, record, or data
7 compilation, all as shown by the testimony of the custodian or other
8 qualified witness, or by affidavit or by document under seal under Rule 902
9 of the Rules of Evidence made by the custodian or witness, unless the source
10 of information or the method or circumstances of preparation indicate lack
11 of trustworthiness. Authentication of evidence by affidavit shall be confined
12 to the records of nonparties, and the proponent of that evidence shall give
13 advance notice to all other parties of intent to offer the evidence with
14 authentication by affidavit. The term "business" as used in this paragraph
15 includes business, institution, association, profession, occupation, and
16 calling of every kind, whether or not conducted for profit."

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

18
19 **PART XIII. BAIL BOND CONTINUING EDUCATION**

20 **SECTION 13.(a)** G.S. 58-71-1 reads as rewritten:

21 **"§ 58-71-1. Definitions.**

22 The following definitions apply in this Article:

23 ...

24 (1a) Approved provider. – A person or entity whose certificate of authority issued
25 by the Commissioner to provide either bail bond continuing education or
26 prelicensing courses in this state in accordance with G.S. 58-71-72 was in
27 effect on May 15, 2015, and remains in effect. The certificate of authority
28 issued by the Commissioner to any such person or entity is not transferable
29 or assignable to any other person or entity nor are the benefits or any part
30 thereof transferable or assignable to any other person or entity.

31"

32 **SECTION 13.(b)** G.S. 58-71-71 reads as rewritten:

33 **"§ 58-71-71. Examination; educational requirements; penalties.**

34 (a) In order to be eligible to take the examination required to be licensed as a runner or
35 bail bondsman under G.S. 58-71-70, each person shall complete at least 12 hours of education
36 as provided by ~~the North Carolina Bail Agents Association~~ an approved provider in subjects
37 pertinent to the duties and responsibilities of a runner or bail bondsman, including all laws and
38 regulations related to being a runner or bail bondsman.

39 (b) Each year every licensee shall complete at least three hours of continuing education
40 as provided by ~~the North Carolina Bail Agents Association~~ an approved provider in subjects
41 related to the duties and responsibilities of a runner or bail bondsman before renewal of the
42 license. This continuing education shall not include a written or oral examination. A person
43 who receives his first license on or after January 1 of any year does not have to comply with
44 this subsection until the period between his first and second license renewals.

45 ...

46 (d) Educational courses offered by ~~the North Carolina Bail Agents Association~~ an
47 approved provider under this section must be approved by the Commissioner before they may
48 be offered. Before approving a course, the Commissioner must be satisfied that the course will
49 enhance the professional competence and professional responsibility of bail bondsmen and
50 runners. ~~The North Carolina Bail Agents Association~~ Approved providers shall not offer,
51 sponsor, or conduct any course under this section unless the Commissioner has given

1 authorization to do so. The Commissioner shall not authorize educational courses to be offered
2 solely online.

3"

4 **SECTION 13.(c)** This section becomes effective October 1, 2015.

5

6 **PART XIV. EFFECTIVE DATE**

7 **SECTION 14.** Except as otherwise provided, this act is effective when it becomes
8 law.