



HOUSE BILL 173: Omnibus Criminal Law Bill

This Bill Analysis reflects the contents of the bill as it was presented in committee.

2015-2016 General Assembly

Committee:	House Judiciary II	Date:	March 17, 2015
Introduced by:	Reps. Stam, Faircloth, Glazier, R. Turner	Prepared by:	Susan Sitze
Analysis of:	PCS to First Edition H173-CSSA-15		Committee Counsel

SUMMARY: *The Proposed Committee Substitute (PCS) for House Bill 173 amends various criminal laws.*

BILL ANALYSIS:

Section 1 would change from 20 days to 40 days the period of time allowed beyond the court established due date to pay a fine, penalty, or costs. This section becomes effective July 1, 2015, and applies to fees assessed on or after that date.

Section 2 would require AOC to maintain records of all criminal cases appealed for trial de novo to superior court and then withdrawn where the superior court judge has signed a remand order. The AOC would be required to report that information, including the number of cases for which costs were remitted by district and judge, to the Chairs of the House and Senate Appropriations Committees on Justice and Public Safety, and the Joint Legislative Oversight Committee on Justice and Public Safety by February 1 of each year.

Section 3 would allow a chief district court judge to designate any magistrate to appoint counsel and accept waivers of counsel for non-capital offenses. Currently, only magistrates who are attorneys may be designated to appoint counsel and no magistrates may accept waivers of counsel.

This section would also remove the restriction which prohibits magistrates from accepting guilty pleas and entering judgment for offenses of Intoxicated and Disruptive in Public pursuant to G.S. 14-444.

Section 4 would modify the statute requiring a new sentencing hearing in district court when the appeal for an implied consent conviction is withdrawn and remanded to only require a new sentencing hearing when there are new convictions to be considered. This section becomes effective October 1, 2015, and applies to appeals filed on or after that date.

Section 5 would conform State law to the US Supreme Court decision in *Hall v. Florida*. Specifically, this section would change the term "mentally retarded" to "intellectual disability" and would clarify that an IQ of 70 is approximate and a higher score resulting from the application of the standard error of measurement does not prevent the defendant from being able to present additional evidence of intellectual disability.

Section 6 would remove sexual battery pursuant to G.S. 14-27.5A from the list of offenses that automatically require registration as a sex offender and instead require the sentencing court to consider whether the person is a danger to the community and should be required to register as a sex offender. Sexual battery is a Class A1 misdemeanor. This section becomes effective December 1, 2015, and applies to offenses committed on or after that date.

Section 7 would modify the requirement that involuntary commitment respondents have a same sex driver or attendant when being transported, to clarify that the requirement applies "to the extent



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feasible". This section would also authorize custody orders for commitment to be delivered to law enforcement by electronic or facsimile transmission.

Section 8 would authorize AOC to send expunction orders by electronic or facsimile transmission to the State and local agencies required by statute to receive notice.

Section 9 would amend the conditions of pretrial release statute, G.S. 15A-534. Section 9(a) would change the current requirement that bond be doubled for anyone charged with a new crime while on pretrial release for pending charge from a mandatory requirement to a permissive authorization. Section 9(b) would add a new provision prohibiting the requirement of an appearance bond for anyone charged with only a Class 3 misdemeanor for which judgment for that person could consist of only a fine. This section becomes effective July 1, 2015, and applies to conditions of pretrial release imposed on or after that date.

Section 10 would amend the provisions regarding retention of biological evidence to require a hearing before a defendant may waive the duty to preserve evidence and to provide a procedure to allow cumbersome evidence to be disposed of or returned to a rightful owner with only the preservation of certain portions likely to contain biological evidence. This section becomes effective October 1, 2015.

Section 11 would 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. This section becomes effective October 1, 2015.

Section 12 would clarify that the exceptions to the penalty enhancement for committing a felony while violating a domestic violence order only applies to the offense for which they are convicted.

Section 13 would allow a street gang public nuisance order under G.S. 14-50.43 to be extended beyond one year by the court for good cause.

Section 14 would make clarifying changes to the Certificate of Relief statute regarding who may petition and where the petition should be made. This section becomes effective October 1, 2015, and applies to petitions filed on or after that date.

EFFECTIVE DATE: Except as otherwise noted, this act is effective when it becomes law.