



HOUSE BILL 173: Omnibus Criminal Law Bill

2015-2016 General Assembly

Committee:	Senate Judiciary II	Date:	July 22, 2015
Introduced by:	Reps. Stam, Faircloth, Glazier, R. Turner	Prepared by:	Janice Paul
Analysis of:	PCS to Third Edition H173-CSTJ-49		Committee Counsel

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

BILL ANALYSIS:

Section 1 of the PCS would extend 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 December 1, 2015, except that a failure to pay after 20 days occurring before the effective date of this act is not abated or affected by this act and the statutes that would be applicable but for this act remain applicable to that failure to pay.

Section 2 would require the Administrative Office of the Courts (AOC) to maintain records of all criminal cases when a 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. 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 authorize 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 that 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 create a new G.S. 15A-1347(c) to provide that if a defendant appeals an activation of a sentence based on a probation violation, probation supervision will continue under the same conditions until the specified time.

Section 5 would conform State law to the U.S. Supreme Court decisions in *Hall v. Florida*. And *Brumfield v. Cain*. Specifically, this section would change the term "mental retardation" 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 under G.S. 14-27.5A, a Class A1 misdemeanor, from the list of offenses that automatically require registration as a sex offender under Article 27A of Chapter 14, 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. This section would become effective December 1, 2015, and applies to offenses committed on or after that date.

O. Walker Reagan
Director



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Section 7 of the PCS amends G.S. 7B-323(f) to make a conforming change to a provision in the Juvenile Code relating to judicial review.

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. This section becomes effective October 1, 2015, and applies to conditions of pretrial release imposed on or after that date.

Section 10 of the PCS for HB173 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 would become 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 would become effective October 1, 2015.

Section 12 would make clarifying changes to the Certificate of Relief statute concerning who may petition and where the petition should be made. This section would become 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.