



HOUSE BILL 173: Omnibus Criminal Law Bill

2015-2016 General Assembly

Committee:	Rules and Operations of the Senate	Date:	September 15, 2015
Introduced by:	Reps. Stam, Faircloth, Glazier, R. Turner	Prepared by:	Janice Paul
Analysis of:	PCS to Fourth Edition H173-CSTJ-58		Committee Counsel

SUMMARY: *The Proposed Committee Substitute (PCS) for House Bill 173 would amend various criminal laws. The PCS deletes Part VI (sexual battery) and Part XII (certificate of relief), and adds Section XIII pertaining to bail bond continuing education.*

BILL ANALYSIS:

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

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.

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

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.

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 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.

PART IV: AMENDMENT TO ADDRESS AND CLARIFY PROBATION REVOCATION APPEALS

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.

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House Bill 173

Page 2

PART V: CONFORM STATE LAW WITH THE UNITED STATES SUPREME COURT DECISIONS IN HALL v. FLORIDA AND BRUMFIELD v. CAIN

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.

PART VII: MAKE CONFORMING CHANGE TO PETITION FOR JUDICIAL REVIEW

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.

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

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.

PART IX: DOUBLING OF BOND IS PERMISSIVE RATHER THAN MANDATORY FOR CERTAIN DEFENDANTS

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.

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

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.

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 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.

PART XIII: BAIL BOND CONTINUING EDUCATION

Article 71 of Chapter 58 of the General Statutes sets forth requirements relating to the licensure of runners and bail bondsmen. G.S. 58-71-71 currently requires continuing education and prelicensing courses to be provided by the North Carolina Bail Agents Association.

Section 13 would amend G.S. 58-71-1 to add a definition of "approved provider" of bail bond continuing education and prelicensing courses. It would also amend G.S. 58-71-71 to replace references

House Bill 173

Page 3

to “the North Carolina Bail Agents Association” with “approved provider” and to prohibit the Commissioner from approving educational courses that are to be offered solely online. These changes would be effective October 1, 2015.

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