



# HOUSE BILL 173: Omnibus Criminal Law Bill

2015-2016 General Assembly

Committee:

Introduced by:

Analysis of: S.L. 2015-247

Date:

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Staff Attorney

**SUMMARY:** *S.L. 2015-247 amends various criminal laws by doing the following:*

- *Extending the period of time to avoid the court costs for failure to pay.*
- *Directing the Administrative Office of the Courts to report on certain orders of remand from superior court.*
- *Revising the law authorizing a chief district court judge to designate certain magistrates to appoint counsel, and authorizing magistrates to perform certain functions.*
- *Clarifying the law pertaining to probation revocation appeals.*
- *Conforming State law with United States Supreme Court decisions relating to individuals with intellectual disability.*
- *Making a conforming change to petition for judicial review.*
- *Providing that expunction information may be transmitted electronically or by facsimile.*
- *Providing that doubling of bond is permissive rather than mandatory for certain defendants.*
- *Amending statutory provisions pertaining to disposition of certain physical evidence that may contain biological evidence.*
- *Amending the rules of evidence to allow certification by the custodian of a business record to show the authenticity of the record.*
- *Amending laws relating to bail bond continuing education.*

*This act has various effective dates; please see the full summary for more detail.*

## **BILL ANALYSIS:**

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

**Section 1** of the act extends 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 became 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** requires 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

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superior court judge has signed an order remanding the case to the district court. AOC is 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** allows a chief district court judge to authorize any magistrate to appoint counsel and accept waivers of counsel for non-capital offenses. (*Previously, only magistrates who were attorneys could be designated to appoint counsel and no magistrates could accept waivers of counsel.*)

This section also removes 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** creates 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.

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

**Section 5** conforms State law to the U.S. Supreme Court decisions in *Hall v. Florida* and *Brumfield v. Cain*. Specifically, this section changes the term "mental retardation" to "intellectual disability" and clarifies 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.

**(There is no Part VI.)**

## **PART VII: MAKE CONFORMING CHANGE TO PETITION FOR JUDICIAL REVIEW**

**Section 7** of the act 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** of S.L. 2015-247 authorizes 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** amends the conditions of the pretrial release statute, G.S. 15A-534. Section 9(a) changes 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 became 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**

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**Section 10** amends 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 became 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** amends 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 became effective October 1, 2015.

**(There is no Part XII.)**

## **PART XIII: BAIL BOND CONTINUING EDUCATION**

Current law: 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** amends G.S. 58-71-1 to add a definition of “approved provider” of bail bond continuing education and prelicensing courses. It also amends G.S. 58-71-71 to replace references 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 became effective October 1, 2015.

**EFFECTIVE DATE:** Except as otherwise provided, this act became effective when the Governor signed it into law on September 23, 2015.