

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 379
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Short Title: Amend Criminal Laws/Procedures.

(Public)

Sponsors:

Referred to:

March 28, 1991

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FINE FOR PERSONS CONVICTED OF DRIVING MORE THAN FIFTEEN MILES PER HOUR OVER THE SPEED LIMIT, TO CHANGE THE STANDARD OF PROOF IN HEARINGS AND REHEARINGS FOR INVOLUNTARY COMMITMENT OF PERSONS FOUND NOT GUILTY BY REASON OF INSANITY, AND TO AUTHORIZE A JUDICIAL OFFICIAL IN A NONCAPITAL CASE TO CONDUCT CERTAIN PRETRIAL PROCEEDINGS BY A TWO-WAY AUDIO AND VIDEO TRANSMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141(j1) reads as rewritten:

"(j1) ~~It is a misdemeanor punishable as provided in G.S. 20-176 for a person to drive~~ A person who drives a vehicle on a highway at a speed that is more than 15 miles per hour more than the speed limit established by law for the highway where the offense occurred is guilty of a misdemeanor punishable by imprisonment for up to 60 days, a fine up to two hundred dollars (\$200.00), or both."

Sec. 2. G.S. 122C-268.1(b) reads as rewritten:

"(b) The district attorney in the county in which the respondent was found not guilty by reason of insanity may represent the State's interest at the ~~hearing~~ hearing, rehearings, and supplemental rehearings. If the district attorney declines to represent the State's interest, then the representation shall be determined as follows. An attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of the University of North

1 Carolina Hospitals at Chapel Hill, may represent the State's interest at commitment
2 hearings, rehearings, and supplemental hearings. Alternatively, the Attorney General
3 may, in his discretion, designate an attorney who is a member of his staff to represent
4 the State's interest at any commitment hearing, rehearing, or supplemental hearing."

5 Sec. 3. G.S. 122C-268.1(i) reads as rewritten:

6 "(i) The respondent shall bear the burden to prove by a preponderance of the
7 evidence that he is ~~(i) no longer dangerous to others. If the court is so satisfied, then the~~
8 ~~respondent shall bear the burden to prove by a preponderance of the evidence (i) that he~~
9 ~~does not have a mental illness, or (ii) that confinement is not necessary to ensure his~~
10 ~~own survival or safety and that confinement is not necessary to alleviate or cure his~~
11 ~~illness. has a mental illness as defined in G.S. 122C-3(21), or (ii) is no longer dangerous~~
12 ~~to others as defined in G.S. 122C-3(11)b. If the court is so satisfied, then the court shall~~
13 ~~order the respondent discharged and released. If the court finds that the respondent has~~
14 ~~not met his burdens~~ burden of proof, then the court shall order that inpatient
15 commitment continue at a 24-hour facility designated pursuant to G.S. 122C-252 for a
16 period not to exceed 90 days. The court shall make a written record of the facts that
17 support its findings."

18 Sec. 4. G.S. 122C-276.1(c) reads as rewritten:

19 "(c) The respondent shall bear the burden to prove by a preponderance of the
20 evidence that he is ~~(i) no longer dangerous to others. If the court is so satisfied, then the~~
21 ~~respondent shall bear the burden to prove by a preponderance of the evidence (i) that he~~
22 ~~does not have a mental illness, or (ii) that confinement is not necessary to ensure his~~
23 ~~own survival or safety and that confinement is not necessary to alleviate or cure his~~
24 ~~illness. has a mental illness as defined in G.S. 122C-3(21), or (ii) is no longer dangerous~~
25 ~~to others as defined in G.S. 122C-3(11)b. If the court is so satisfied, then the court shall~~
26 ~~order the respondent discharged and released. If the court finds that the respondent has~~
27 ~~not met his burdens~~ burden of proof, then the court shall order inpatient commitment be
28 continued for a period not to exceed 180 days. The court shall make a written record of
29 the facts that support its findings."

30 Sec. 5. G.S. 122C-271 is amended by adding a new subsection to read:

31 "(c) If the respondent was found not guilty by reason of insanity and has been held
32 in a 24-hour facility pending the court hearing held pursuant to G.S. 122C-268.1, the
33 court may make one of the following dispositions:

34 (1) If the court finds that the respondent has not proved by a
35 preponderance of the evidence that he no longer has a mental illness or
36 that he is no longer dangerous to others, it shall order inpatient
37 treatment at a 24-hour facility for a period not to exceed 90 days.

38 (2) If the court finds that the respondent has proven by a preponderance of
39 the evidence that he no longer has a mental illness or that he is no
40 longer dangerous to others, the court shall order the respondent
41 discharged and released."

42 Sec. 6. G.S. 15A-532 reads as rewritten:

43 "**§ 15A-532. Persons authorized to determine conditions for ~~release~~ release; use of**
44 **two-way audio and video transmission.**

1 (a) Judicial officials may determine conditions for release of persons brought
2 before them or as provided in subsection (b) of this section, in accordance with this
3 Article.

4 (b) Any proceeding under this Article to determine, modify, or revoke conditions
5 of pretrial release in a noncapital case may be conducted by an audio and video
6 transmission between the judicial official and the defendant in which the parties can see
7 and hear each other. The defendant's attorney and the prosecutor may be present at the
8 proceeding. The defendant shall be allowed to communicate fully with his attorney
9 during the proceeding."

10 Sec. 7. G.S. 15A-601 reads as rewritten:

11 "**§ 15A-601. First appearance before a district court judge; right in felony and**
12 **other cases in original jurisdiction of superior court; consolidation of**
13 **first appearance before magistrate and before district court judge; first**
14 **appearance before clerk of superior court; use of two-way audio**
15 **and video transmission.**

16 (a) Any defendant charged in a magistrate's order under G.S. 15A-511 or
17 criminal process under Article 17 of this Chapter, Criminal Process, with a crime in the
18 original jurisdiction of the superior court must be brought before a district court judge in
19 the district court district as defined in G.S. 7A-133 in which the crime is charged to
20 have been committed. This first appearance before a district court judge is not a critical
21 stage of the proceedings against the defendant.

22 (a1) A first appearance in a noncapital case may be conducted by an audio and
23 video transmission between the judge and the defendant in which the parties can see and
24 hear each other. The defendant's attorney and the prosecutor may be present at the
25 proceeding. The defendant shall be allowed to communicate fully with his attorney
26 during the proceeding.

27 (b) When a district court judge conducts an initial appearance as provided in G.S.
28 15A-511, he may consolidate those proceedings and the proceedings under this Article.

29 (c) Unless the defendant is released pursuant to Article 26 of this Chapter, Bail,
30 first appearance before a district court judge must be held within 96 hours after the
31 defendant is taken into custody or at the first regular session of the district court in the
32 county, whichever occurs first. If the defendant is not taken into custody, or is released
33 pursuant to Article 26 of this Chapter, Bail, within 96 hours after being taken into
34 custody, first appearance must be held at the next session of district court held in the
35 county. This subsection does not apply to a defendant whose first appearance before a
36 district court judge has been set in a criminal summons pursuant to G.S. 15A-303(d).

37 (d) Upon motion of the defendant, the first appearance before a district court
38 judge may be continued to a time certain. The defendant may not waive the holding of
39 the first appearance before a district court judge but he need not appear personally if he
40 is represented by counsel at the proceeding.

41 (e) The clerk of the superior court in the county in which the defendant is taken
42 into custody may conduct a first appearance as provided in this Article if a district court
43 judge is not available in the county within 96 hours after the defendant is taken into

1 custody. The clerk, in conducting a first appearance, shall proceed under this Article as
2 would a district court judge."

3 Sec. 8. G.S. 15A-941 reads as rewritten:

4 "**§ 15A-941. Arraignment before judge; use of two-way audio and video**
5 **transmission.**

6 (a) Arraignment consists of bringing a defendant in open court or as provided
7 in subsection (b) of this section before a judge having jurisdiction to try the offense,
8 advising him of the charges pending against him, and directing him to plead. The
9 prosecutor must read the charges or fairly summarize them to the defendant. If the
10 defendant fails to plead, the court must record that fact, and the defendant must be tried
11 as if he had pleaded not guilty.

12 (b) An arraignment in a noncapital case may be conducted by an audio and video
13 transmission between the judge and the defendant in which the parties can see and hear
14 each other. The defendant's attorney and the prosecutor may be present at the
15 proceeding. The defendant shall be allowed to communicate fully with his attorney
16 during the proceeding."

17 Sec. 9. Section 1 of this act becomes effective October 1, 1992, and applies
18 to offenses committed on or after that date. Sections 2, 3, 4, and 5 are effective upon
19 ratification and apply to all hearings and rehearings on discharge and conditional release
20 occurring on or after the date of ratification. The remainder of this act is effective upon
21 ratification and applies to proceedings occurring on or after that date.