

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 735

Short Title: Domestic Violence/Bail & Sentence.

(Public)

Sponsors: Representatives Sherrill; Baker, Bowie, J. Brown, Cansler, Capps, Cummings, Davis, Decker, Edwards, Hayes, Hiatt, Ives, Justus, Linney, McComas, Nichols, Pate, Preston, Robinson, Russell, Sexton, Thompson, and G. Wilson.

Referred to: Judiciary II.

April 3, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE PENALTY FOR CERTAIN MISDEMEANORS IF
3 THEY ARE COMMITTED AS ACTS OF DOMESTIC VIOLENCE AND TO
4 PROVIDE THAT A JUDGE IS THE ONLY JUDICIAL OFFICIAL WHO MAY
5 SET CONDITIONS OF PRETRIAL RELEASE FOR CRIMES OF DOMESTIC
6 VIOLENCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-33 is amended by adding a new subsection to read:

"(c) Notwithstanding G.S. 15A-1340.23, if a defendant is convicted of an offense under subsection (a) of this section or of an offense under subdivisions (b)(1) or (b)(2) of this section the victim of the offense is a spouse or former spouse or a person with whom the defendant lives or has lived as if married, the defendant may be sentenced to an active term of imprisonment not to exceed 24 months."

Sec. 2. G.S. 14-134.3 reads as rewritten:

"§ 14-134.3. Domestic criminal trespass.

Any person who enters after being forbidden to do so or remains after being ordered to leave by the lawful occupant, upon the premises occupied by a present or former spouse or by a person with whom the person charged has lived as if married, shall be guilty of a

misdemeanor if the complainant and the person charged are living apart; provided, however, that no person shall be guilty if said person enters upon the premises pursuant to a judicial order or written separation agreement which gives the person the right to enter upon said premises for the purpose of visiting with minor children. Evidence that the parties are living apart shall include but is not necessarily limited to:

- (1) A judicial order of separation;
- (2) A court order directing the person charged to stay away from the premises occupied by the complainant;
- (3) An agreement, whether verbal or written, between the complainant and the person charged that they shall live separate and apart, and such parties are in fact living separate and apart; or
- (4) Separate places of residence for the complainant and the person charged.

On conviction, ~~said the person~~ is guilty of a Class 1 ~~misdemeanor~~ misdemeanor, and, notwithstanding G.S. 15A-1340.23, may be sentenced to an active term of imprisonment not to exceed 24 months."

Sec. 3. G.S. 14-277.1(b) reads as rewritten:

- 1 "(b) A violation of this section is a Class 1 misdemeanor. However,
2 notwithstanding G.S. 15A-1340.23, if the victim of the offense is a spouse or former
3 spouse or a person with whom the defendant lives or has lived as if married, the
4 defendant may be sentenced to an active term of imprisonment not to exceed 24 months."

Sec. 4. G.S. 15A-534.1 reads as rewritten:

"§ 15A-534.1. Crimes of domestic violence; bail and pretrial release.

In all cases in which the defendant is charged with assault on or communicating a threat to a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the judicial official who determines the conditions of pretrial release shall be a judge, and the following provisions shall apply in addition to the provisions of G.S. 15A-534:

(1) Upon a determination by the ~~judicial official~~ judge that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond as required by G.S. 15A-534 will not reasonably assure that such injury or intimidation will not occur, a ~~judicial official~~ judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.

(2) A ~~judicial official~~ judge may impose the following conditions on pretrial release:

- a. That the defendant stay away from the home, school, business or place of employment of the alleged victim;
- b. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;
- c. That the defendant refrain from removing, damaging or injuring specifically identified property;

d. That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

The conditions set forth above may be imposed in addition to requiring that the defendant execute a secured appearance bond.

(3) Should the defendant be mentally ill and dangerous to himself or others or a substance abuser and dangerous to himself or others, the provisions of Article 5 of Chapter 122C of the General Statutes shall apply."

Sec. 5. Sections 1, 2, and 3 of this act become effective December 1, 1995, and apply to offenses committed on or after that date. The remainder of this act is effective upon ratification.