

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL 384*
Health Care Committee Substitute Adopted 4/20/17
Judiciary Committee Substitute Adopted 4/25/17
House Committee Substitute Favorable 6/27/17

Short Title: Criminal Law Changes.

(Public)

Sponsors:

Referred to:

March 27, 2017

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE USE OF MOTIONS FOR APPROPRIATE RELIEF; TO CLARIFY THE DEFINITION OF "FELONY OFFENSE" FOR PURPOSES OF THE HABITUAL FELON LAW AND TO REMOVE THE SUNSET ON DRIVERS LICENSE ELIGIBILITY FOR PERSONS CONVICTED OF HABITUAL IMPAIRED DRIVING; TO INCLUDE BREAKING AND ENTERING WITH THE INTENT TO TERRORIZE AS A HABITUAL BREAKING AND ENTERING STATUS OFFENSE; TO CLARIFY THAT WHEN A PERSON IS CHARGED WITH AN OFFENSE WHICH REQUIRES MANDATORY FINGERPRINTING, FINGERPRINTING WILL BE ORDERED BY THE COURT IF THE OFFENDER WAS NOT ARRESTED AND FINGERPRINTED AT THE TIME OF THE OFFENSE; AND TO PROVIDE THAT A PRIVATE CITIZEN'S SHOWING OF PROBABLE CAUSE TO THE MAGISTRATE SHALL INCLUDE SUFFICIENT INFORMATION SUPPORTED BY OATH OR AFFIRMATION THAT A CRIME HAS OCCURRED AND SHALL ISSUE AS A SUMMONS UNLESS A SUBSTANTIAL LIKELIHOOD EXISTS THAT THE DEFENDANT WILL NOT RESPOND TO A SUMMONS.

The General Assembly of North Carolina enacts:

PART I. MOTIONS FOR APPROPRIATE RELIEF

SECTION 1.(a) G.S. 15A-1413(d) reads as rewritten:

"(d) All motions for appropriate relief filed in superior court shall, when filed, be referred to the senior resident superior court judge, who shall assign the motion as provided by this section for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, including disclosure of expert witness information described in G.S. 15A-903(a)(2) and G.S. 15A-905(c)(2) for expert witnesses reasonably expected to be called at a hearing on the motion, or other appropriate actions.

All motions for appropriate relief filed in district court shall, when filed, be referred to the chief district court judge, who shall assign the motion as provided by this section for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, or other appropriate actions."

SECTION 1.(b) G.S. 15A-1420(b1) reads as rewritten:

"§ 15A-1420. Motion for appropriate relief; procedure.



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- 1 ...
- 2 (b1) Filing Motion With Clerk. –
- 3 (1) The proceeding shall be commenced by filing with the clerk of superior
- 4 court of the district wherein the defendant was indicted a motion, with
- 5 service on the district attorney in noncapital cases, and service on both the
- 6 district attorney and Attorney General in capital cases.
- 7 (2) The clerk, upon receipt of the motion, shall place the motion on the criminal
- 8 docket. When a motion is placed on the criminal docket, the clerk shall
- 9 promptly bring the motion, or a copy of the motion, to the attention of the
- 10 senior resident superior court judge or chief district court judge, as
- 11 appropriate, for assignment to the appropriate judge pursuant to
- 12 G.S. 15A-1413.
- 13 (3) The judge assigned to the motion shall conduct an initial review of the
- 14 motion. If the judge determines that all of the claims alleged in the motion
- 15 are frivolous, the judge shall deny the motion. If the motion presents
- 16 sufficient information to warrant a hearing or the interests of justice so
- 17 require, the judge shall appoint counsel for an indigent defendant who is not
- 18 represented by counsel. Counsel so appointed shall review the motion filed
- 19 by the petitioner and either adopt the motion or file an amended motion.
- 20 After postconviction counsel files an initial or amended motion, or a
- 21 determination is made that the petitioner is proceeding without counsel, the
- 22 judge may direct the State to file an answer. Should the State contend that as
- 23 a matter of law the defendant is not entitled to the relief sought, the State
- 24 may request leave to file a limited answer so alleging."

25 **SECTION 1.(c)** G.S. 7A-451(a) reads as rewritten:

26 **"§ 7A-451. Scope of entitlement.**

- 27 (a) An indigent person is entitled to services of counsel in the following actions and
- 28 proceedings:
- 29 (1) Any case in which imprisonment, or a fine of five hundred dollars (\$500.00),
- 30 or more, is likely to be ~~adjudged;~~adjudged.
- 31 (2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the
- 32 General ~~Statutes;~~Statutes.
- 33 (3) A motion for appropriate relief under Chapter 15A of the General Statutes if
- 34 appointment of counsel is authorized by Chapter 15A of the General Statutes
- 35 and the defendant has been convicted of a felony, has been fined five
- 36 hundred dollars (\$500.00) or more, or has been sentenced to a term of
- 37 imprisonment;imprisonment.
- 38 (4) A hearing for revocation of ~~probation;~~probation.
- 39 (5) A hearing in which extradition to another state is ~~sought;~~sought.
- 40 (6) A proceeding for an inpatient involuntary commitment to a facility under
- 41 Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding
- 42 for commitment under Part 8 of Article 5 of Chapter 122C of the General
- 43 Statutes.
- 44 (7) In any case of execution against the person under Chapter 1, Article 28 of
- 45 the General Statutes, and in any civil arrest and bail proceeding under
- 46 Chapter 1, Article 34, of the General ~~Statutes;~~Statutes.
- 47 (8) In the case of a juvenile, a hearing as a result of which commitment to an
- 48 institution or transfer to the superior court for trial on a felony charge is
- 49 ~~possible;~~possible.

- 1 (9) A hearing for revocation of parole at which the right to counsel is provided
 2 in accordance with the provisions of Chapter 148, Article 4, of the General
 3 ~~Statutes; Statutes.~~
 4 (10) Repealed by Session Laws 2003, c. 13, s. 2(a), effective April 17, 2003, and
 5 applicable to all petitions for sterilization pending and orders authorizing
 6 sterilization that have not been executed as of April 17, 2003.
 7 (11) A proceeding for the provision of protective services according to Chapter
 8 108A, Article 6 of the General ~~Statutes; Statutes.~~
 9 (12) In the case of a juvenile alleged to be abused, neglected, or dependent under
 10 Subchapter I of Chapter 7B of the General ~~Statutes; Statutes.~~
 11 (13) A proceeding to find a person incompetent under Subchapter I of Chapter
 12 35A, of the General ~~Statutes; Statutes.~~
 13 (14) A proceeding to terminate parental rights where a guardian ad litem is
 14 appointed pursuant to ~~G.S. 7B-1101; G.S. 7B-1101.~~
 15 (15) An action brought pursuant to Article 11 of Chapter 7B of the General
 16 Statutes to terminate an indigent person's parental rights.
 17 (16) A proceeding involving consent for an abortion on an unemancipated minor
 18 pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes.
 19 G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.
 20 (17) A proceeding involving limitation on freedom of movement or access
 21 pursuant to G.S. 130A-475 or G.S. 130A-145.
 22 (18) A proceeding involving placement into satellite monitoring under Part 5 of
 23 Article 27A of Chapter 14 of the General Statutes."

24 **SECTION 1.(d)** This section becomes effective December 1, 2017, and applies to
 25 motions for appropriate relief filed on or after that date.
 26

27 **PART II. HABITUAL FELONS/CLARIFY PREVIOUS CONVICTIONS**

28 **SECTION 2.(a)** G.S. 14-7.1 reads as rewritten:

29 **"§ 14-7.1. Persons defined as habitual felons.**

30 (a) Any person who has been convicted of or pled guilty to three felony offenses in any
 31 federal court or state court in the United States or combination thereof is declared to be an
 32 habitual felon and may be charged as a status offender pursuant to this Article.

33 (b) For the purpose of this Article, a felony offense is defined ~~as an~~ to include all of the
 34 following:

- 35 (1) An offense which that is a felony under the laws of the State or other
 36 sovereign wherein a this State.
 37 (2) An offense that is a felony under the laws of another state or sovereign that
 38 is substantially similar to an offense that is a felony in North Carolina, and to
 39 which a plea of guilty was entered, or a conviction was returned regardless
 40 of the sentence actually imposed.
 41 (3) An offense that is a crime under the laws of another state or sovereign that
 42 does not classify any crimes as felonies if all of the following apply:
 43 a. The offense is substantially similar to an offense that is a felony in
 44 North Carolina.
 45 b. The offense may be punishable by imprisonment for more than a
 46 year in state prison.
 47 c. A plea of guilty was entered or a conviction was returned regardless
 48 of the sentence actually imposed.
 49 (4) An offense that is a felony under federal law. Provided, however, that
 50 federal offenses relating to the manufacture, possession, sale and kindred

1 offenses involving intoxicating liquors shall not be considered felonies for
2 the purposes of this Article.

3 (c) For the purposes of this Article, felonies committed before a person attains the age
4 of 18 years shall not constitute more than one felony. The commission of a second felony shall
5 not fall within the purview of this Article unless it is committed after the conviction of or plea
6 of guilty to the first felony. The commission of a third felony shall not fall within the purview
7 of this Article unless it is committed after the conviction of or plea of guilty to the second
8 felony. Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be
9 felony offenses within the meaning of this Article. Any felony offense to which a pardon has
10 been extended shall not for the purpose of this Article constitute a felony. The burden of
11 proving such pardon shall rest with the defendant and the State shall not be required to disprove
12 a pardon."

13 **SECTION 2.(b)** Section 7 of S.L. 2009-369, as amended by Section 61.5 of S.L.
14 2014-115, reads as rewritten:

15 "SECTION 7. This act becomes effective December 1, 2009, and applies to applications
16 for reinstatement that occur on or after that date. ~~This act expires December 1, 2016.~~"

17 **SECTION 2.(c)** Subsection (a) of this section becomes effective December 1,
18 2017, and applies to any offense committed on or after that date and that is the principal felony
19 offense for a charge of a status offense of habitual felon. Subsection (b) of this section is
20 retroactively effective December 1, 2016. The remainder of this section is effective when it
21 becomes law. Prosecutions for offenses committed before the effective date of this section are
22 not abated or affected by this section, and the statutes that would be applicable but for this
23 section remain applicable to those prosecutions.

24 25 **PART III. INCLUDE BREAKING AND ENTERING WITH INTENT TO TERRORIZE** 26 **IN HABITUAL BREAKING AND ENTERING**

27 **SECTION 3.(a)** G.S. 14-7.25 reads as rewritten:

28 "§ 14-7.25. Definitions.

29 The following definitions apply in this Article:

- 30 (1) "Breaking and entering." – The term means any of the following felony
31 offenses:
32 a. First degree burglary (G.S. 14-51).
33 b. Second degree burglary (G.S. 14-51).
34 c. Breaking out of dwelling house burglary (G.S. 14-53).
35 d. Breaking or entering buildings generally (G.S. 14-54(a)).
36 d1. Breaking or entering with intent to terrorize or injure an occupant of
37 the building (G.S. 14-54(a1)).
38 e. Breaking or entering a building that is a place of religious worship
39 (G.S. 14-54.1).
40 f. Any repealed or superseded offense substantially equivalent to any of
41 the offenses in sub-subdivision a., b., c., d., or e. of this subdivision.
42 g. Any offense committed in another jurisdiction substantially similar to
43 any of the offenses in sub-subdivision a., b., c., d., or e. of this
44 subdivision.
45 (2) "Convicted." – The person has been adjudged guilty of or has entered a plea
46 of guilty or no contest to the offense of breaking and entering.
47 (3) "Status offender." – A person who is a habitual breaking and entering status
48 offender as described in G.S. 14-7.26."

49 **SECTION 3.(b)** This section becomes effective December 1, 2017, and applies to
50 offenses committed on or after that date.

PART IV. FINGERPRINTING UPON ARREST

SECTION 4.(a) G.S. 15A-502 is amended by adding a new subsection to read:

"§ 15A-502. Photographs and fingerprints.

...

(e) Fingerprints or photographs taken pursuant to subsection (a), (a1), or (a2) of this section may be forwarded to the State Bureau of Investigation, the Federal Bureau of Investigation, or other law-enforcement agencies.

(f) If a person is charged with an offense for which fingerprints are required pursuant to this section but the person is not arrested for that offense, the court before which the charge is pending shall order the defendant to submit to fingerprinting by the Sheriff or other appropriate law enforcement agency at the earliest practical opportunity. If the person fails to appear for fingerprinting as ordered by the court, the sheriff shall so inform the court, and the court may initiate proceedings for criminal contempt against the person pursuant to G.S. 5A-15, including issue of an order for arrest pursuant to G.S. 5A-16, if necessary. The defendant shall continue to be subject to the court's order to provide fingerprints until submitted."

SECTION 4.(b) This section becomes effective December 1, 2017, and applies to offenses committed on or after that date.

PART V. CITIZEN'S WARRANTS

SECTION 5.(a) G.S. 15A-304 reads as rewritten:

"§ 15A-304. Warrant for arrest.

(a) ~~Definition.— A warrant for arrest consists of a statement of the crime of which the person to be arrested is accused, and an order directing that the person so accused be arrested and held to answer to the charges made against him. It is based upon a showing of probable cause supported by oath or affirmation.~~Definitions. —

(1) Citizen's warrant. — A citizen's warrant is a warrant for arrest issued by a magistrate or a clerk based upon a showing of probable cause supported solely by information presented by a private person.

(2) Warrant for arrest. — A warrant for arrest consists of a statement of the crime of which the person to be arrested is accused and an order directing that the person so accused be arrested and held to answer to the charges made against that person. It is based upon a showing of probable cause supported by oath or affirmation.

(b) When Issued. — A warrant for arrest may be issued, instead of or subsequent to a criminal summons, when it appears to the judicial official that the person named should be taken into custody. Circumstances to be considered in determining whether the person should be taken into custody may include, but are not limited to, failure to appear when previously summoned, facts making it apparent that a person summoned will fail to appear, danger that the person accused will escape, danger that there may be injury to person or property, or the seriousness of the offense.

(c) Statement of the Crime. — ~~The~~Both a warrant for arrest and a citizen's warrant must contain a statement of the crime of which the person to be arrested is accused. No ~~warrant for arrest, warrant,~~ nor any arrest made pursuant thereto, is invalid because of any technicality of pleading if the statement is sufficient to identify the crime.

(d) Showing of Probable Cause.~~Cause for a Warrant for Arrest.~~ — A judicial official may issue a warrant for arrest only when ~~hethe~~ the official is supplied with sufficient information, supported by oath or affirmation, to make an independent judgment that there is probable cause to believe that a crime has been committed and that the person to be arrested committed it. The information must be shown by one or more of the following:

(1) Affidavit;

- 1 (2) Oral testimony under oath or affirmation presented by a sworn law
2 enforcement officer before the issuing official; or
3 (3) Oral testimony under oath or affirmation presented by a sworn law
4 enforcement officer to the issuing official by means of an audio and video
5 transmission in which both parties can see and hear each other. Prior to the
6 use of audio and video transmission pursuant to this subdivision, the
7 procedures and type of equipment for audio and video transmission shall be
8 submitted to the Administrative Office of the Courts by the senior regular
9 resident superior court judge and the chief district court judge for a judicial
10 district or set of districts and approved by the Administrative Office of the
11 Courts.

12 If the information is insufficient to show probable cause, the warrant may not be issued. A
13 judicial official shall not refuse to issue a warrant for the arrest of a person solely because a
14 prior warrant has been issued for the arrest of another person involved in the same matter.

15 (d1) Showing of Probable Cause for a Citizen's Warrant. – A magistrate may issue a
16 warrant or criminal summons only when the magistrate is supplied with sufficient information,
17 provided by a private person, supported by oath or affirmation, to make an independent
18 judgment that there is probable cause to believe that a crime has been committed and that the
19 person to be arrested committed it. The information shall be shown by one or more of the
20 methods listed in subdivisions (1) through (3) of subsection (d) of this section. A summons
21 rather than a warrant shall be issued unless:

- 22 (1) The accused has a history of failure to appear before the court as required;
23 (2) There is evidence that the accused is likely to escape or otherwise flee the
24 State in order to avoid prosecution for the offense alleged;
25 (3) There is evidence of imminent danger of harm to persons or property if the
26 accused is not taken into custody;
27 (4) The location of the accused is not readily discoverable, such that a criminal
28 summons would be unlikely to be served before any court date assigned at
29 the time of issue;
30 (5) A relevant statute provides that arrest is mandatory for an offense charged;
31 or
32 (6) The seriousness of the offense constitutes grounds for a warrant.

33 (e) Order for Arrest. – The order for arrest must direct that a law-enforcement officer
34 take the defendant into custody and bring him without unnecessary delay before a judicial
35 official to answer to the charges made against him.

36 (f) Who May Issue. – A warrant for arrest, valid throughout the State, may be issued
37 by:

- 38 (1) A Justice of the Supreme Court.
39 (2) A judge of the Court of Appeals.
40 (3) A judge of the superior court.
41 (4) A judge of the district court, as provided in G.S. 7A-291.
42 (5) A clerk, as provided in G.S. 7A-180 and 7A-181.
43 (6) A magistrate, as provided in G.S. 7A-273."

44 **SECTION 5.(b)** This section becomes effective December 1, 2017, and applies to
45 warrants issued on or after that date.

47 **PART VI. EFFECTIVE DATE**

48 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes
49 law.