

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 726

Short Title: Criminal Procedure Tech. Amend. (Public)

(Public)

Sponsors: Representative Kerr.

Referred to: Judiciary.

March 20, 1989

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE LAWS CONCERNING
BENEFITS TO PRIVATE PERSONS ASSISTING LAW-ENFORCEMENT
OFFICERS, INVOLUNTARY COMMITMENT PROCEDURES, PROOF OF
PRIOR MOTOR VEHICLE CONVICTIONS, AND COLLATERAL ATTACKS
ON CONVICTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-405 reads as rewritten:

"§ 15A-405. Assistance to law-enforcement officers by private persons to effect arrest or prevent escape; benefits for private persons.

11 (a) Assistance upon Request; Authority. – Private persons may assist law-
12 enforcement officers in effecting arrests and preventing escapes from custody when
13 requested to do so by the officer. When so requested, a private person has the same
14 authority to effect an arrest or prevent escape from custody as the officer making the
15 request. He does not incur civil or criminal liability for an invalid arrest unless he knows
16 the arrest to be invalid. Nothing in this subsection constitutes justification for willful,
17 malicious or criminally negligent conduct by such person which injures or endangers
18 any person or property, nor shall it be construed to excuse or justify the use of
19 unreasonable or excessive force.

(b) Benefits to Private Persons. – A private person assisting a law-enforcement officer pursuant to subsection (a) is:

22 (1) To be treated as a citizen duly deputized as a deputy by a sheriff or
23 other law enforcement officer in an emergency for the purposes of

1 G.S. 143-166(m) (Law Enforcement Officers' Benefit and Retirement
2 Fund);

- 3 (2) Entitled to the same benefits as a 'law-enforcement officer' as that
4 term is defined in G.S. 143-166.2(d) (Law-Enforcement Officers',
5 Firemen's and Rescue Squad Workers' Death Benefit Act); and
6 (3) To be treated as an employee of the employer of the law-enforcement
7 officer within the meaning of G.S. 97-2(2) (Workers' Compensation
8 Act).

9 The Governor and the Council of State are authorized to allocate funds from the
10 Contingency and Emergency Fund for the payment of benefits under subdivisions (1) and
11 subdivision (3) when no other source is available for the payment of such benefits and
12 when they determine that such allocation is necessary and appropriate."

13 Sec. 2. G.S. 15A-534.1 reads as rewritten:

14 **"§ 15A-534.1. Crimes of domestic violence; bail and pretrial release.**

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

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

- 28 (2) A judicial official may impose the following conditions on pretrial
29 release:

- 30 a. That the defendant stay away from the home, school, business
31 or place of employment of the alleged victim;
32 b. That the defendant refrain from assaulting, beating, molesting,
33 or wounding the alleged victim;
34 c. That the defendant refrain from removing, damaging or injuring
35 specifically identified property;
36 d. That the defendant may visit his or her child or children at
37 times and places provided by the terms of any existing order
38 entered by a judge.

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

- 41 (3) Should the defendant be an inebriate, mentally ill or imminently
42 dangerous to himself or others the provisions of Article 5A of Chapter
43 122-Article 5, Part 7 of Chapter 122C 'Involuntary Commitment' shall
44 apply."

1 Sec. 3. G.S. 15A-924(d) reads as rewritten:

2 "(d) In alleging and proving a prior conviction, it is sufficient to state that the
3 defendant was at a certain time and place convicted of the previous offense, without
4 otherwise fully alleging all the elements. A duly certified transcript of the record of a
5 prior conviction is, upon proof of the identity of the person of the defendant, sufficient
6 evidence of a prior conviction. If the surname of a defendant charged is identical to the
7 surname of a defendant previously convicted and there is identity with respect to one
8 given name, or two initials, or two initials corresponding with the first letters of given
9 names, between the two defendants, and there is no evidence that would indicate the
10 two defendants are not one and the same, the identity of name is *prima facie* evidence
11 that the two defendants are the same person. ~~Proof of previous convictions under G.S. 20-~~
12 ~~138 and 20-139 may be made in accordance with G.S. 8-35.1.~~"

13 Sec. 4. G.S. 15A-1027 reads as rewritten:

14 "**§ 15A-1027. Limitation on collateral attack on conviction.**

15 Noncompliance with the procedures of this Article may not be a basis for review of
16 a conviction after the appeal period for the conviction has ~~expired, unless the review is~~
17 ~~expressly authorized by G.S. 15-217. expired.~~"

18 Sec. 5. This act is effective upon ratification.