

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE DRS35109-LH-132 (03/13)

Short Title: Domestic Violence/Bail & Aggravating Factor.

(Public)

Sponsors: Senators Daniel and Stein (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A JUDGE SHALL DETERMINE THE CONDITIONS OF PRETRIAL RELEASE FOR A DEFENDANT CHARGED WITH A DOMESTIC VIOLENCE OFFENSE WHEN THE DEFENDANT IS OR HAS BEEN IN A DATING RELATIONSHIP WITH THE VICTIM, AND TO INCLUDE IN THE LIST OF AGGRAVATING FACTORS THAT THE DEFENDANT KNEW OR SHOULD HAVE KNOWN THAT A MINOR WAS WITNESSING THE CRIME BY SIGHT OR HEARING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534.1 reads as rewritten:

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

(a) In all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former ~~spouse or spouse~~, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), 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. The judge shall direct a law enforcement officer or a district attorney to provide a criminal history report for the defendant and shall consider the criminal history when setting conditions of release. After setting conditions of release, the judge shall return the report to the providing agency or department. No judge shall unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the defendant's criminal history report. The following provisions shall apply in addition to the provisions of G.S. 15A-534:

- (1) Upon a determination by the 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 judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.
- (2) A 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.



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- 1 c. That the defendant refrain from removing, damaging or injuring
- 2 specifically identified property.
- 3 d. That the defendant may visit his or her child or children at times and
- 4 places provided by the terms of any existing order entered by a
- 5 judge.
- 6 e. That the defendant abstain from alcohol consumption, as verified by
- 7 the use of a continuous alcohol monitoring system, of a type
- 8 approved by the Division of Adult Correction of the Department of
- 9 Public Safety, and that any violation of this condition be reported by
- 10 the monitoring provider to the district attorney.

11 The conditions set forth above may be imposed in addition to requiring that

12 the defendant execute a secured appearance bond.

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

16 (b) A defendant may be retained in custody not more than 48 hours from the time of

17 arrest without a determination being made under this section by a judge. If a judge has not

18 acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the

19 provisions of this section."

20 **SECTION 2.** G.S. 15A-1340.16(d) is amended by adding a new subdivision to

21 read:

22 "(13a) The defendant knew or reasonably should have known that the offense was

23 being witnessed by sight or hearing, by a person under the age of 18 who

24 was not involved in the commission of the offense."

25 **SECTION 3.** This act becomes effective December 1, 2015, and applies to

26 offenses committed on or after that date.