

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 449

Short Title: Strengthen Law Enforcement Access/DV Crimes. (Public)

Sponsors: Representatives R. Moore, Fisher, and Alexander (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary I.

April 2, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO STRENGTHEN HABITUAL DOMESTIC VIOLENCE OFFENSES AND
3 INCREASE LAW ENFORCEMENT ACCESS TO INFORMATION TO IMPROVE
4 THEIR ABILITY TO PROTECT COMMUNITIES, SPECIFICALLY AS RELATED TO
5 CRIMES OF DOMESTIC VIOLENCE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 14-33.2 reads as rewritten:

8 "**§ 14-33.2. Habitual misdemeanor assault.**

9 A person commits the offense of habitual misdemeanor assault if that person violates any of
10 the provisions of G.S. 14-33 ~~and causes physical injury,~~ or G.S. 14-34, and has ~~two~~ one or
11 more prior convictions for either misdemeanor or felony assault, ~~with the earlier of the two~~
12 ~~prior convictions occurring no more than 15 years prior to the date of the current~~
13 ~~violation.~~ assault. A conviction under this section shall not be used as a prior conviction for any
14 other habitual offense statute. A person convicted of violating this section is guilty of a Class H
15 felony."

16 **SECTION 2.** G.S. 15A-534.1 reads as rewritten:

17 "**§ 15A-534.1. Crimes of domestic violence; bail and pretrial ~~release.~~ release; duties of**
18 **magistrate and clerk of court.**

19 (a) In all cases in which the defendant is charged with assault on, cyberstalking,
20 stalking, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or
21 15 of Chapter 14 of the General Statutes upon a spouse or former spouse or a person with
22 whom the defendant lives or has lived as if married, with domestic criminal trespass, or with
23 violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General
24 Statutes, the judicial official who determines the conditions of pretrial release shall be a judge.
25 The judge shall direct a law enforcement officer or a district attorney to provide a criminal
26 history report for the defendant and shall consider the criminal history when setting conditions
27 of release. After setting conditions of release, the judge shall return the report to the providing
28 agency or department. No judge shall unreasonably delay the determination of conditions of
29 pretrial release for the purpose of reviewing the defendant's criminal history report. The
30 following provisions shall apply in addition to the provisions of G.S. 15A-534:

31 (1) Upon a determination by the judge that the immediate release of the
32 defendant will pose a danger of injury to the alleged victim or to any other
33 person or is likely to result in intimidation of the alleged victim and upon a
34 determination that the execution of an appearance bond as required by
35 G.S. 15A-534 will not reasonably assure that such injury or intimidation will



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1 not occur, a judge may retain the defendant in custody for a reasonable
2 period of time while determining the conditions of pretrial release.

3 (2) A judge may impose the following conditions on pretrial release:

4 a. That the defendant stay away from the home, school, business or
5 place of employment of the alleged victim.

6 b. That the defendant refrain from assaulting, beating, molesting, or
7 wounding the alleged victim.

8 c. That the defendant refrain from removing, damaging or injuring
9 specifically identified property.

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

13 e. That the defendant abstain from alcohol consumption, as verified by
14 the use of a continuous alcohol monitoring system, of a type
15 approved by the Division of Adult Correction of the Department of
16 Public Safety, and that any violation of this condition be reported by
17 the monitoring provider to the district attorney.

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

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

23 (a1) After the judge has set the conditions of pretrial release pursuant to any crime of
24 domestic violence as described in this subsection, the magistrate before whom the defendant
25 initially appeared shall promptly enter the defendant's original pretrial release conditions into
26 the North Carolina Warrant Repository (NCAWARE). The clerk of court shall promptly enter
27 into NCAWARE all subsequent modifications to the defendant's pretrial release conditions.

28 (b) A defendant may be retained in custody not more than 48 hours from the time of
29 arrest without a determination being made under this section by a judge. If a judge has not
30 acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the
31 provisions of this section."

32 **SECTION 3.** G.S. 50B-4.1(f) reads as rewritten:

33 "(f) Unless covered under some other provision of law providing greater punishment,
34 any person who knowingly violates a valid protective order as provided in subsection (a) of this
35 section, after having been previously convicted of ~~two~~ one or more offenses under this Chapter,
36 shall be guilty of a Class H felony."

37 **SECTION 4.** This act becomes effective December 1, 2015, and applies to
38 offenses committed on or after that date.