

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 221

Short Title: Initial Appearance by Video.

(Public)

Sponsors: Representatives Culpepper, Hensley, R. Hunter, McCrary, and Neely.

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A MAGISTRATE OR OTHER AUTHORIZED JUDICIAL OFFICIAL IN A NONCAPITAL CASE TO CONDUCT AN INITIAL APPEARANCE BY A TWO-WAY AUDIO AND VIDEO PROCEEDING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-511 reads as rewritten:

"§ 15A-511. Initial appearance.

(a) Appearance before Magistrate. –

(1) A law-enforcement officer making an arrest with or without a warrant must take the arrested person without unnecessary delay before a magistrate as provided in G.S. 15A-501.

(2) The magistrate must proceed in accordance with this section, except in those cases in which he has the power to determine the matter pursuant to G.S. 7A-273. In those cases, if the arrest has been without a warrant, the magistrate must prepare a magistrate's order containing a statement of the crime with which the defendant is charged.

(3) If the defendant brought before a magistrate is so unruly as to disrupt and impede the proceedings, becomes unconscious, is grossly intoxicated, or is otherwise unable to understand the procedural rights afforded him by the initial appearance, upon order of the magistrate he

1 may be confined or otherwise secured. If this is done, the magistrate's
2 order must provide for an initial appearance within a reasonable time so
3 as to make certain that the defendant has an opportunity to exercise his
4 rights under this Chapter.

5 (a1) A proceeding for initial appearance in a noncapital case under this section may
6 be conducted by an audio and video transmission between the magistrate or other
7 authorized judicial official and the defendant in which the parties can see and hear each
8 other. If the defendant has counsel, the defendant shall be allowed to communicate fully
9 and confidentially with his attorney during the proceeding.

10 (a2) Prior to the use of audio and video transmission pursuant to subsection (a1) of
11 this section, the procedures and type of equipment for audio and video transmission shall
12 be submitted to the Administrative Office of the Courts by the senior regular resident
13 superior court judge and the chief district court judge for a judicial district or set of
14 districts and approved by the Administrative Office of the Courts.

15 (b) Statement by the Magistrate. – The magistrate must inform the defendant of:

16 (1) The charges against him;

17 (2) His right to communicate with counsel and friends; and

18 (3) The general circumstances under which he may secure release under the
19 provisions of Article 26, Bail.

20 (c) Procedure When Arrest Is without Warrant; Magistrate's Order. – If the person
21 has been arrested, for a crime, without a warrant:

22 (1) The magistrate must determine whether there is probable cause to
23 believe that a crime has been committed and that the person arrested
24 committed it, and in the manner provided by G.S. 15A-304(d).

25 (2) If the magistrate determines that there is no probable cause the person
26 must be released.

27 (3) If the magistrate determines that there is probable cause, he must issue a
28 magistrate's order:

29 a. Containing a statement of the crime of which the person is
30 accused in the same manner as is provided in G.S. 15A- 304(c)
31 for a warrant for arrest, and

32 b. Containing a finding that the defendant has been arrested without
33 a warrant and that there is probable cause for his detention.

34 (4) Following the issuance of the magistrate's order, the magistrate must
35 proceed in accordance with subsection (e) and must file the order with
36 any supporting affidavits and records in the office of the clerk.

37 (d) Procedure When Arrest Is Pursuant to Warrant. – If the arrest is made pursuant
38 to a warrant, the magistrate must proceed in accordance with subsection (e).

39 (e) Commitment or Bail. – If the person arrested is not released pursuant to
40 subsection (c), the magistrate must release him in accordance with Article 26 of this
41 Chapter, Bail, or commit him to an appropriate detention facility pursuant to G.S. 15A-
42 521 pending further proceedings in the case.

- 1 (f) Powers Not Limited to Magistrate. – Any judge, justice, or clerk of the General
2 Court of Justice may also conduct an initial appearance as provided in this section."
3 Section 2. This act is effective when it becomes law.