

3-3-14

SIDEBAR

We'd stay forever if we could / 5

A new law that automatically doubles bonds for defendants out on bond offers a lesson in unintended consequences

MAKE THAT A DOUBLE

■ DAVID DONOVAN

david.donovan@lawyersweekly.com

Like taking a hammer to an ant, is how one attorney describes a new North Carolina law that forces magistrates to order draconian bonds for some defendants accused of minor offenses. The law, which sailed through the legislature little noticed last July, has led to some eyebrow-raising results since it became effective in December.

The new law provides that if a defendant is picked up for a charge while already out on bond, judicial of-

ficials must set a secured appearance bond of at least double the amount of the most recent existing bond, or at least \$1,000 if the previous charge carried no bond.

The requirement to double a defendant's bond applies regardless of the age of the previous charge, or the seriousness of the new one. As such, cases are arising that no one seems to have anticipated before the law was passed, where defendants who are out on bond for serious offenses are later charged with relatively minor ones. In such cases, magistrates now have no choice under the new rules but to hand out draconian bonds.

See **BOND**, Page 8 ▶

Continued from 1 ▶

for the low-level offense.

Robert Rader, the chief district court judge for the 10th Judicial District, said that he had already "seen a few interesting outcomes" in such cases that have come before his bench.

"I think the challenge for some is the fact that you may have someone out on a felony or a more serious misdemeanor, and they've posted the bond and then get picked up on a traffic offense like driving while license revoked or some minor offense, but you're required to put them under a bond that's twice what the previous bond is," Rader said.

Driving with a revoked license is typically a Class 3 misdemeanor, the lowest level of misdemeanor under state law. Defendants facing such charges are often released after signing a written promise to appear in court.

"We're seeing some cases where there are Class 3 misdemeanors with a substantial bond. I had a case a couple weeks ago with a \$60,000 bond on a Class 3 misdemeanor, which raised some eyebrows," Rader said.

'Whoever wrote it isn't an attorney'

The new rules apply as long as a defendant is out on bond awaiting resolution of an offense. George Laughrun, a criminal defense attorney with Goodman Carr in Charlotte, who made the hammer-and-ant analogy, said that for felonies in Mecklenburg County, the backlog for cases awaiting a trial can be one to two years, and cases ending in plea bargains often take more than nine months.

"If [the new offense] is not related to the first offense, then that seems a little bit exorbitant," Laughrun said. "You can tell whoever wrote [the law]

istrates are not always working with the most up-to-date information. If a defendant's bond is subsequently modified by a judge, an update reflecting that may not be entered into computer systems all the time in all counties, and it may present a challenge for magistrates to figure out what amount of bond needs to be ordered if the defendant is picked up on a new charge.

Durham County District Attorney Leon Stanback said that judges in his district were exercising discretion when reviewing bonds and adjusting any that are not appropriate.

"I think the judicial officer ought to have discretion when it comes to setting bonds. I don't think it should be an automatic bond, circumstances vary with each case, and I think the judicial officer ought to be able to adjust the bond as it relates to the circumstances in each case."

'An innocuous amendment'

Sen. Warren Daniel (R-Burke) offered the change in committee as an amendment to Senate Bill 316, which dealt with bond requirements for defendants charged with certain gun-related crimes. The minutes for the committee meeting say that the amendment would index for inflation the memo amount of a bond—which would not seem to be a very apt description—and that it was suggested by the North Carolina Sheriffs' Association.

The amendment was adopted and the bill passed both houses of the legislature unanimously and with little debate. It is codified as statute 15A-534(d3).

"The other language was added in somewhat of an innocuous amendment and it did not receive any significant debate," said Sen. Floyd McKissick (D-Durham), one

of the co-sponsors of Senate Bill 316. "When the amendment was proposed, I know the fact circumstance we anticipated was people who didn't show up for their court date, didn't appear, to make sure we were sending a strong message. It was designed and targeted to address those situations."

Eddie Caldwell, executive vice president and general counsel for the sheriffs' association, said that the new law reflected a balancing act inherent in setting bonds.

"The goal of the change in the law was to say that criminals who are out on bond ought to quit committing crimes and not commit any more crimes while they're out on bond," Caldwell.

As for cases where defendants were getting steep bonds for less serious crimes, Caldwell said he had heard of that happening.

"I don't know that it was intended or unintended," Caldwell said. "I don't know that anybody thought about it. People might have thought about it, but I don't know if anyone discussed it."

Caldwell said the sheriffs' association had not discussed whether any tweaks to law would be appropriate. McKissick and another legislator, Rep. Duane Hall (D-Wake), said that if there was a need to tweak the law, legislators might look at doing that at a future session.

Laughrun and Caldwell did agree on one thing—the new rules will increase populations in local jails. Caldwell predicted that would lead to fewer crimes being committed; Laughrun predicted it would place an extreme burden on the jails that would ultimately fall on the taxpayers.

Follow David Donovan on Twitter @NCLWDonovan



I had a case a couple weeks ago with a \$60,000 bond on a Class 3 misdemeanor, which raised some eyebrows

Robert Rader

isn't an attorney.

Laughrun said that he had not seen the situation come up in Mecklenburg County but had heard of it happening in nearby counties. If both offenses are in district court, Laughrun said that it wouldn't be too difficult to hold a hearing on the bonds together and negotiate a lower figure. But if the more serious offense is in superior court and the less serious one is in district court, adjusting the bond would be "a logistical nightmare," he said.

An initial bond is typically set by a magistrate using guidelines that are written for an entire judicial district. Defendants held on bond are entitled to a hearing before a judge within 72 hours, at which point bond can be re-considered. Even before the law was passed, if a defendant was already out on bond for a prior charge, magistrates would take that into account when setting a new bond, several sources said.

Rader noted, however, that mag-

information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter.

- (1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition (1), (2), or (3).
- (2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.
- (3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in custody shall set forth, in writing, the following at the time that the order is entered:
 - a. The defendant is being held pursuant to this subdivision.
 - b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.
 - c. A date, within 96 hours of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.

(d3) When conditions of pretrial release are being determined for a defendant who is charged with an offense and the defendant is currently on pretrial release for a prior offense, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least one thousand dollars (\$1,000).

(e) A magistrate or a clerk may modify his pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him at any time prior to:

- (1) In a misdemeanor case tried in the district court, the noting of an appeal; and
- (2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by him, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor