

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 649
HOUSE BILL 1371

AN ACT TO AMEND THE NORTH CAROLINA GENERAL STATUTES RELATING TO
BODY EXECUTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-311, as the same appears in the 1969 Replacement Volume 1A of the General Statutes, is hereby amended by adding the following sentences at the end thereof:

"Such findings of fact shall include a finding that the defendant either (a) is about to flee the jurisdiction to avoid paying his creditors, (b) has concealed or diverted assets in fraud of his creditors, or (c) will do so unless immediately detained. If defendant appears at the hearing on the debt and the judge has reason to believe that the defendant is indigent, he shall inform the defendant that if he is an indigent person he is entitled to services of counsel under G.S. 7A-451, that he may petition for preliminary release on the basis of his indigency, that if he does so he will have an opportunity within 72 hours to suggest to a judge his indigency for purposes of appointment of counsel and provisional release, and that the judge will thereupon immediately appoint counsel for him if it is adjudged that he is unable to pay a lawyer. If defendant appears at the hearing on the debt and the judge provisionally concludes he is indigent, counsel should be appointed immediately."

Sec. 2. G.S. 1-313, as the same appears in the 1975 Cumulative Supplement to Volume 1A of the General Statutes, is hereby amended by rewriting subdivision (3) to read as follows:

- "(3) Against the person. — If it is against the person of the judgment debtor, it shall require the officer to arrest him, and commit him to the jail of the county until he pays the judgment or is released or discharged according to law. The execution shall include a statement that if the defendant is an indigent person he is entitled to services of counsel, that he may petition for preliminary release on the basis of his indigency, that if he does so he will have an opportunity within 72 hours to suggest to a judge his indigency for purposes of appointment of counsel and provisional release, and that the judge will thereupon immediately appoint counsel for him if it is adjudged that he is unable to pay a lawyer."

Sec. 3. G.S. 1-413, as the same appears in the 1969 Replacement Volume 1A of the General Statutes, is hereby amended by adding a new sentence at the end thereof to read as follows:

"The order shall include a statement that if the person arrested is an indigent person he is entitled to services of counsel under G.S. 7A-451, that he may petition for preliminary release on the basis of his indigency, that if he does so he will have an opportunity within 72 hours to suggest to a judge his indigency for purposes of appointment of counsel and preliminary release, and that the judge will thereupon immediately appoint counsel for him if it is adjudged that he is unable to pay a lawyer."

Sec. 4. G.S. 7A-451(a), as the same appears in the 1975 Cumulative Supplement to Volume 1B of the General Statutes, is hereby amended by rewriting subdivision (7) to read as follows:

"(7) In any case of execution against the person under Chapter 1, Article 28 of the General Statutes, and in any civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes;"

Sec. 5. Chapter 23, Article 4, of the General Statutes is hereby amended by adding thereto a new Section 23-30.1 to read as follows:

"§ **23-30.1.** Every person who has filed a petition under the provisions of G.S. 23-30 shall be brought before a judge within 72 hours after filing the petition and shall be provisionally released from imprisonment unless a hearing shall be held and the creditor shall establish that the prisoner has fraudulently concealed assets. If, at the time he is brought before a judge, the prisoner makes a showing of indigency, the judge shall appoint counsel for him. A provisional release under this section shall not constitute a discharge of the debtor, and the creditor may oppose the discharge by suggesting fraud even if he has unsuccessfully attempted to oppose the provisional release on the basis of fraudulent concealment. The debtor may be provisionally released even though actual service upon the creditor has not been accomplished if 72 hours has passed since the debtor delivered the notice to the sheriff for service upon the creditor."

Sec. 6. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 21st day of June, 1977.