

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 63
Feb 8, 2017
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40048-MD-1C (08/17)

Short Title: Citizens Protection Act of 2017.

(Public)

Sponsors: Representatives Warren, Collins, Jordan, and Adams (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REDUCE IDENTITY THEFT BY INCREASING PENALTIES FOR THE
MANUFACTURE OR SALE OF COUNTERFEIT DOCUMENTS; TO CREATE A
REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL RELEASE OF CERTAIN
UNDOCUMENTED ALIENS; AND TO ENACT A PENALTY FOR CITIES AND
COUNTIES THAT VIOLATE STATE LAWS RELATED TO SANCTUARY CITIES.

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE

SECTION 1. This act shall be known and may be cited as "The Citizens Protection Act of 2017."

PART II. INCREASE PENALTIES FOR MANUFACTURE OR SALE OF FALSE IDENTIFICATION DOCUMENTS

SECTION 2.(a) G.S. 14-100.1 reads as rewritten:

"§ 14-100.1. ~~Possession or manufacture~~ Possession, manufacture, or sale of certain fraudulent forms of identification.

(a) Except as otherwise made unlawful by G.S. 20-30, it ~~shall be~~ is unlawful for any person to knowingly ~~possess or manufacture~~ possess, manufacture, or sell a false or fraudulent form of identification as defined in this section for the purpose of deception, fraud, or other criminal conduct.

(b) Except as otherwise made unlawful by G.S. 20-30, it ~~shall be~~ is unlawful for any person to knowingly obtain a form of identification by the use of false, fictitious, or fraudulent information.

(c) Possession of a form of identification obtained in violation of subsection (b) of this section ~~shall constitute~~ is a violation of subsection (a) of this section.

(d) For purposes of this section, a "form of identification" means any of the following or any replica thereof:

- (1) An identification card containing a picture, issued by any department, agency, or subdivision of the State of North Carolina, the federal government, or any other state.
- (2) A military identification card containing a picture.
- (3) A passport.
- (4) An alien registration card containing a picture.



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1 (e) A violation of this section ~~shall be punished as is~~ a Class 1 ~~misdemeanor~~ misdemeanor,
2 except that a violation of subsection (a) of this section with respect to the manufacture or sale of a
3 false or fraudulent form of identification is a Class G felony."

4 **SECTION 2.(b)** G.S. 20-30 reads as rewritten:

5 **"§ 20-30. Violations of license, learner's permit, or special identification card provisions.**

6 It ~~shall be is~~ unlawful for any person to commit any of the following acts:

- 7 (1) To display or cause to be displayed or to have in possession a driver's license,
8 learner's permit, or special identification card, knowing the same to be fictitious
9 or to have been canceled, revoked, suspended or altered.
- 10 (2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled
11 thereto, a driver's license, learner's permit, or special identification card. A
12 violation of this subdivision by a person under the age of 21 for the purpose of
13 the underage purchase of alcohol shall be punished as a Class 1 misdemeanor.
14 A violation of this subdivision by a person under the age of 18 for the purpose
15 of the underage purchase of tobacco products or cigarette wrapping papers shall
16 be punished as a Class 2 misdemeanor. A person who otherwise violates the
17 provisions of this subdivision is guilty of a Class G felony.
- 18 (3) To display or to represent as one's own a drivers license, learner's permit, or
19 special identification card not issued to the person so displaying same.
- 20 (4) To fail or refuse to surrender to the Division upon demand any driver's license,
21 learner's permit, or special identification card that has been suspended, canceled
22 or revoked as provided by law.
- 23 (5) To use a false or fictitious name or give a false or fictitious address in any
24 application for a driver's license, learner's permit, or special identification card,
25 or any renewal or duplicate thereof, or knowingly to make a false statement or
26 knowingly conceal a material fact or otherwise commit a fraud in any such
27 application, or for any person to procure, or knowingly permit or allow another
28 to commit any of the foregoing acts. Any license, learner's permit, or special
29 identification card procured as aforesaid ~~shall be is~~ void from the issuance
30 thereof, and any moneys paid therefor shall be forfeited to the State. ~~Any A~~
31 ~~person violating who violates~~ the provisions of this subdivision ~~shall be is~~
32 guilty of a Class 1 misdemeanor.
- 33 (6) To make a color photocopy or otherwise make a color reproduction of a drivers
34 license, learner's permit, or special identification card ~~which that~~ has been
35 color-photocopied or otherwise reproduced in color, unless ~~such the~~ color
36 photocopy or other color reproduction was authorized by the Commissioner. It
37 ~~shall be is~~ lawful to make a black and white photocopy of a drivers license,
38 learner's permit, or special identification card or otherwise make a black and
39 white reproduction of a drivers license, learner's permit, or special identification
40 card.
- 41 (7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's
42 license, learner's permit, or special identification card. The provisions of this
43 subdivision ~~shall do~~ not apply to agents or employees of the Division while
44 acting in the course and scope of their employment. ~~Any A~~ person, firm or
45 corporation ~~violating that violates~~ the provisions of this subsection ~~shall be is~~
46 guilty of a Class ~~I~~ G felony.
- 47 (8) To possess more than one commercial drivers license or to possess a
48 commercial drivers license and a regular drivers license. Any commercial
49 drivers license other than the one most recently issued is subject to immediate
50 seizure by any law enforcement officer or judicial official. Any regular drivers

1 license possessed at the same time as a commercial drivers license is subject to
2 immediate seizure by any law enforcement officer or judicial official.

3 (9) To present, display, or use a drivers license, learner's permit, or special
4 identification card that contains a false or fictitious name in the commission or
5 attempted commission of a felony. ~~Any~~ A person violating who violates the
6 provisions of this subdivision shall be is guilty of a Class I felony.

7 (10) To possess more than one special identification card for a fraudulent purpose."

8 **SECTION 2.(c)** G.S. 20-37.8 is repealed.
9

10 **PART III. CREATION OF REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL**
11 **RELEASE OF CERTAIN UNDOCUMENTED ALIENS**

12 **SECTION 3.(a)** G.S. 15A-533 reads as rewritten:

13 **"§ 15A-533. Right to pretrial release in capital and noncapital cases.**

14 (a) A defendant charged with any crime, whether capital or noncapital, who is alleged to
15 have committed this crime while still residing in or subsequent to his escape or during an
16 unauthorized absence from involuntary commitment in a mental health facility designated or
17 licensed by the Department of Health and Human Services, and whose commitment is determined
18 to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid,
19 has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned
20 to the treatment facility in which he was residing at the time of the alleged crime or from which he
21 escaped or absented himself for continuation of his treatment pending the additional proceedings
22 on the criminal offense.

23 (b) A defendant charged with a noncapital offense must have conditions of pretrial release
24 determined, in accordance with G.S. 15A-534.

25 (c) A judge may determine in ~~his~~ the judge's discretion whether a defendant charged with a
26 capital offense may be released before trial. If ~~he~~ the judge determines release is warranted, the
27 judge must authorize release of the defendant in accordance with G.S. 15A-534.

28 (d) There ~~shall be~~ is a rebuttable presumption that no condition of release will reasonably
29 assure the appearance of the person as required and the safety of the community if a judicial
30 official finds the following:

31 (1) There is reasonable cause to believe that the person committed an offense
32 involving trafficking in a controlled substance;

33 (2) The drug trafficking offense was committed while the person was on pretrial
34 release for another offense; and

35 (3) The person has been previously convicted of a Class A through E felony or an
36 offense involving trafficking in a controlled substance and not more than five
37 years has elapsed since the date of conviction or the person's release from
38 prison for the offense, whichever is later.

39 (e) There ~~shall be~~ is a rebuttable presumption that no condition of release will reasonably
40 assure the appearance of the person as required and the safety of the community, if a judicial
41 official finds the following:

42 (1) There is reasonable cause to believe that the person committed an offense for
43 the benefit of, at the direction of, or in association with, any criminal street
44 gang, as defined in G.S. 14-50.16;

45 (2) The offense described in subdivision (1) of this subsection was committed
46 while the person was on pretrial release for another offense; and

47 (3) The person has been previously convicted of an offense described in
48 G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has elapsed
49 since the date of conviction or the person's release for the offense, whichever is
50 later.

1 (f) There ~~shall be~~ is a rebuttable presumption that no condition of release will reasonably
2 assure the appearance of the person as required and the safety of the community, if a judicial
3 official finds there is reasonable cause to believe that the person committed a felony or Class A1
4 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; and the
5 judicial official also finds any of the following:

6 (1) The offense was committed while the person was on pretrial release for another
7 felony or Class A1 misdemeanor offense involving the illegal use, possession,
8 or discharge of a firearm.

9 (2) The person has previously been convicted of a felony or Class A1 misdemeanor
10 offense involving the illegal use, possession, or discharge of a firearm and not
11 more than five years have elapsed since the date of conviction or the person's
12 release for the offense, whichever is later.

13 (f1) There is a rebuttable presumption that no condition of release will reasonably assure
14 the appearance of the person as required and the safety of the community if the person is
15 unlawfully present in the United States and a judicial official finds either of the following:

16 (1) There is probable cause to believe that the person committed one or more of the
17 following offenses:

18 a. A sex offense. As used in this sub-subdivision, a "sex offense" is any
19 offense upon conviction of which the offense becomes a reportable
20 conviction, as that term is defined in G.S. 14-208.6.

21 b. A violent felony, as that term is defined in G.S. 14-7.7(b), or any
22 criminal offense other than a violation described in G.S. 14-33(a) that
23 includes assault as an essential element of the offense or as an
24 aggravating factor in sentencing.

25 c. A driving offense. As used in this sub-subdivision, the term "driving
26 offense" means any violation that requires a mandatory drivers license
27 revocation upon a first conviction.

28 d. A drug offense. As used in this sub-subdivision, the term "drug offense"
29 means a violation of G.S. 90-95, other than a violation for mere
30 possession of a controlled substance.

31 e. A gang offense. As used in this sub-subdivision, the term "gang
32 offense" means any violation of Article 13A of Chapter 14 of the
33 General Statutes.

34 (2) There is probable cause to believe that the person committed an offense not
35 listed in subdivision (1) of this subsection, and United States Immigration and
36 Customs Enforcement has issued a detainer for the initiation of removal
37 proceedings against the person or has indicated that it will do so.

38 (g) Persons who are considered for bond under the provisions of subsections (d), (e), ~~and~~
39 ~~(f)~~ (f1), and (f1) of this section may only be released by a district or superior court judge upon a
40 finding that there is a reasonable assurance that the person will appear and release does not pose
41 an unreasonable risk of harm to the community."

42 **SECTION 3.(b)** Article 26 of Chapter 15A of the General Statutes is amended by
43 adding a new section to read:

44 **"§ 15A-534.7. Pretrial release of certain undocumented aliens.**

45 In all cases in which the defendant is an alien who (i) is not lawfully present in the United
46 States and (ii) is charged with a felony or a Class A1 misdemeanor, the judicial official shall
47 require the defendant to execute a secured appearance bond as a condition of pretrial release, as
48 described in G.S. 15A-534(a)(4)."

49
50 **PART IV. MISCELLANEOUS PROVISIONS**

1 **SECTION 4.(a)** Article 1 of Chapter 64 of the General Statutes is amended by adding
2 the following new sections to read:

3 **"§ 64-6. Permissible methods of verifying immigration status.**

4 Verification of a person's immigration status pursuant to this Chapter or any other provision of
5 State law shall be made consistent with federal law and may be made by any of the following
6 methods, as applicable:

- 7 (1) Pursuant to 8 U.S.C. §§ 1373(c) and 1644 or any other provision of federal law.
- 8 (2) By a law enforcement officer who is authorized by the federal government to
9 verify or ascertain an alien's immigration status.
- 10 (3) In any other manner authorized by the federal government.

11 **"§ 64-7. Admissibility of immigration status records in courts of this State.**

12 (a) A verification of an alien's immigration status received from the federal government
13 pursuant to G.S. 64-6 is proof of that alien's status. A court of this State shall consider only a
14 verification of immigration status made pursuant to G.S. 64-6 in determining whether an alien is
15 lawfully present in the United States.

16 (b) Any record that relates to the immigration status of a person is admissible in any court
17 of this State without further foundation or testimony from a custodian of records if all of the
18 following apply:

- 19 (1) The record is certified as authentic by the federal government agency that is
20 responsible for maintaining the record.
- 21 (2) The State notifies the person at least 15 business days before the proceeding at
22 which the evidence would be used of its intention to introduce the record into
23 evidence under this section and provides a copy of the record to the person.
- 24 (3) The person fails to file a written objection with the court, with a copy to the
25 State, at least five business days before the proceeding at which the record
26 would be used, that the person objects to the introduction of the record into
27 evidence.

28 If the person's attorney of record, or that person if the person is not represented by an attorney,
29 fails to file a written objection as provided in this subsection, then the record may be admitted into
30 evidence without the testimony of the custodian of records. Upon filing a timely objection, the
31 admissibility of the record is determined and governed by the appropriate rules of evidence.

32 **"§ 64-8. Law enforcement transport of certain unlawfully present aliens.**

33 Notwithstanding any other provision of law, a State or local law enforcement agency may
34 securely transport an alien who is in the agency's custody and who the agency has verified is
35 unlawfully present in the United States to a federal facility in this State or to any other point of
36 transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law
37 enforcement agency shall obtain judicial or executive authorization from the Governor before
38 securely transporting an alien who is unlawfully present in the United States to a point of transfer
39 that is outside this State.

40 **"§ 64-9. Construction and severability.**

41 (a) Construction. – This Chapter shall be construed in a manner consistent with federal
42 law.

43 (b) Severability. – The provisions of this Chapter are severable. If any part of this Chapter
44 is declared invalid or unconstitutional, the declaration shall not affect the remainder of this
45 Chapter. If any particular interpretation or application of the provisions of this Chapter is declared
46 invalid or unconstitutional, the declaration shall not affect other interpretations or applications of
47 this Chapter."

48 **SECTION 4.(b)** G.S. 153A-145.5 is amended by adding a new subsection to read:

49 "(c) The Secretary of Revenue shall withhold any distributions otherwise due under
50 G.S. 105-113.82, 105-164.44F, 105-164.44I, and 105-164.44L for any period during which a
51 county is in violation of subsection (a) or (b) of this section. The Attorney General shall be

1 responsible for administering this subsection and shall adopt rules governing its implementation.
2 The Secretary of Revenue, the Office of State Budget and Management, the State Controller, and
3 all other State agencies and officials shall cooperate fully with the implementation of this section
4 and the rules adopted pursuant thereto."

5 **SECTION 4.(c)** G.S. 160A-499.4 is amended by adding a new subsection to read:

6 "(d) The Secretary of Revenue shall withhold any distributions otherwise due under
7 G.S. 105-113.82, 105-164.44F, 105-164.44I, and 105-164.44L for any period during which a city
8 is in violation of subsection (a) or (b) of this section. The Attorney General shall be responsible
9 for administering this subsection and shall adopt rules governing its implementation. The
10 Secretary of Revenue, the Office of State Budget and Management, the State Controller, and all
11 other State agencies and officials shall cooperate fully with the implementation of this section and
12 the rules adopted pursuant thereto."

13 **SECTION 4.(d)** Subsections (b) and (c) of this section become effective October 1,
14 2017.

15 **PART V. EFFECTIVE DATE AND SEVERABILITY CLAUSE**

16 **SECTION 5.(a)** Sections 2 and 3 of this act become effective December 1, 2017, and
17 apply to offenses committed on or after that date. Except as otherwise provided, the remainder of
18 this act is effective when it becomes law.

19 **SECTION 5.(b)** The provisions of this act are severable. If any part of this act is
20 declared invalid or unconstitutional, the declaration shall not affect the remainder of this act. If
21 any particular interpretation or application of the provisions of this act is declared invalid or
22 unconstitutional, the declaration shall not affect other interpretations or applications of this act.
23