

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 316
Judiciary II Committee Substitute Adopted 3/28/13

Short Title: Pretrial Release/Rebuttable Presumption.

(Public)

Sponsors:

Referred to:

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A REBUTTABLE PRESUMPTION EXISTS IN CERTAIN CIRCUMSTANCES THAT A PERSON CHARGED WITH A FELONY OR CLASS A1 MISDEMEANOR OFFENSE INVOLVING THE ILLEGAL USE, POSSESSION, OR DISCHARGE OF A FIREARM SHOULD NOT BE RELEASED PRIOR TO TRIAL, AND TO AMEND CERTAIN BOND PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-533 reads as rewritten:

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

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

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

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

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

- (1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;
- (2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and
- (3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.



1 (e) There shall be 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 the following:

- 4 (1) There is reasonable cause to believe that the person committed an offense for
5 the benefit of, at the direction of, or in association with, any criminal street
6 gang, as defined in G.S. 14-50.16;
7 (2) The offense described in subdivision (1) of this subsection was committed
8 while the person was on pretrial release for another offense; and
9 (3) The person has been previously convicted of an offense described in
10 G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has
11 elapsed since the date of conviction or the person's release for the offense,
12 whichever is later.

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

- 18 (1) The offense was committed while the person was on pretrial release for
19 another felony or Class A1 misdemeanor offense involving the illegal use,
20 possession, or discharge of a firearm.
21 (2) The person has previously been convicted of a felony or Class A1
22 misdemeanor offense involving the illegal use, possession, or discharge of a
23 firearm and not more than five years have elapsed since the date of
24 conviction or the person's release for the offense, whichever is later.

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

29 **SECTION 2.** G.S. 15A-534 reads as rewritten:

30 **"§ 15A-534. Procedure for determining conditions of pretrial release.**

31 ...

32 (d1) When conditions of pretrial release are being imposed on a defendant who has failed
33 on one or more prior occasions to appear to answer one or more of the charges to which the
34 conditions apply, the judicial official shall at a minimum impose the conditions of pretrial
35 release that are recommended in any order for the arrest of the defendant that was issued for the
36 defendant's most recent failure to appear. If no conditions are recommended in that order for
37 arrest, the judicial official shall require the execution of a secured appearance bond in an
38 amount at least double the amount of the most recent previous secured or unsecured bond for
39 the charges or, if no bond has yet been required for the charges, in the amount of at least ~~five~~
40 ~~hundred dollars (\$500.00).~~ one thousand dollars (\$1,000). The judicial official shall also
41 impose such restrictions on the travel, associations, conduct, or place of abode of the defendant
42 as will assure that the defendant will not again fail to appear. The judicial official shall indicate
43 on the release order that the defendant was arrested or surrendered after failing to appear as
44 required under a prior release order. If the information available to the judicial official indicates
45 that the defendant has failed on two or more prior occasions to appear to answer the charges,
46 the judicial official shall indicate that fact on the release order.

47 ...

48 (d3) When conditions of pretrial release are being determined for a defendant who is
49 charged with an offense and the defendant is currently on pretrial release for a prior offense, the
50 judicial official shall require the execution of a secured appearance bond in an amount at least
51 double the amount of the most recent previous secured or unsecured bond for the charges or, if

1 no bond has yet been required for the charges, in the amount of at least one thousand dollars
2 (\$1,000).
3"
4 **SECTION 3.** This act becomes effective December 1, 2013, and applies to
5 proceedings to determine pretrial release conditions on or after that date.