

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 176

Short Title: No Pretrial Release If Dangerous.

(Public)

Sponsors: Representatives Decker; Bowman, McLawhorn, and Sexton.

Referred to: Judiciary III.

February 14, 1994

A BILL TO BE ENTITLED

AN ACT TO ALLOW A JUDGE TO DENY PRETRIAL RELEASE OF PERSONS WHO ARE CHARGED WITH CERTAIN FELONIES AND WHOSE RELEASE WOULD POSE A DANGER TO THE SAFETY OF THE COMMUNITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-533(b) reads as rewritten:

"(b) A defendant charged with a noncapital offense that is not governed by G.S. 15A-533.1 must have conditions of pretrial release determined, in accordance with G.S. 15A-534. A defendant charged with a noncapital offense that is governed by G.S. 15A-533.1 may be denied pretrial release in accordance with that statute or may be released before trial in accordance with that statute and G.S. 15A-534."

Sec. 2. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

**"§ 15A-533.1. Determination of whether pretrial release is appropriate in certain felony cases.**

(a) Scope and Presumption. – If a defendant is charged with a felony offense and any of the following descriptions apply to the defendant, a judicial official must hold a hearing upon motion of the district attorney to determine whether imposition of any of the conditions of pretrial release in G.S. 15A-534(b) will reasonably assure the defendant's appearance at trial and the safety of any other person and the community:

(1) The defendant has previously been convicted in a federal or state court of a felony.

(2) The defendant is charged with a violent felony in the commission of which the defendant is alleged to have used a firearm or to have caused

1           serious bodily injury to a person who was not a participant in the  
2           offense.

3           (3) The defendant is charged with any of the following felonies:

4           a. A felony included in Article 7A of Chapter 14 of the General  
5           Statutes, Rape and Other Sex Offenses.

6           b. Crime against nature, G.S. 14-177, unless the alleged victim is a  
7           beast.

8           c. Incest between certain near relatives, G.S. 14-178.

9           d. Employing or permitting a minor to assist in certain obscenity  
10           offenses, G.S. 14-190.6.

11           e. Dissemination of obscenity to minors under 16, G.S. 14-190.7.

12           f. Dissemination of obscenity to minors under 13, G.S. 14-190.8.

13           g. First degree sexual exploitation of a minor, G.S. 14-190.16.

14           h. Second degree sexual exploitation of a minor, G.S. 14-190.17.

15           i. Third degree sexual exploitation of a minor, G.S. 14-190.17A.

16           j. Promoting prostitution of a minor, G.S. 14-109.18.

17           k. Participating in prostitution of a minor, G.S. 14-190.19.

18           l. Taking indecent liberties with children, G.S. 14-202.1.

19           There is a rebuttable presumption that, for a defendant described in this subsection,  
20           there is no condition of pretrial release authorized in G.S. 15A-534(b) that will  
21           reasonably assure the defendant's appearance at trial and the safety of any other person  
22           and the community.

23           (b) Hearing. – A judicial official must hold a hearing required by this section at  
24           the first appearance of the defendant before the official unless the district attorney who  
25           made the motion for the hearing or the defendant requests a continuance. Except for  
26           good cause, a continuance on motion of the district attorney may not exceed three days  
27           and a continuance on motion of the defendant may not exceed five days.

28           At the hearing, the defendant has the right to be represented by counsel and, if  
29           indigent, to have counsel appointed. The defendant has the right to testify, to present  
30           witnesses, to cross-examine witnesses, and to present information. The rules of  
31           evidence that apply to a criminal trial do not apply to the hearing.

32           (c) Determination. – A judicial official must make the determination required by  
33           this section on the basis of clear and convincing evidence. If the judicial official finds  
34           that no condition of pretrial release in G.S. 15A-534(b) will reasonably assure the  
35           defendant's appearance at trial and the safety of any other person and the community,  
36           the judicial official must order the detention of the defendant and must state in the order  
37           the findings that support the detention. If the judicial official finds that a condition of  
38           pretrial release in G.S. 15A-534(b) will reasonably assure the defendant's appearance at  
39           trial and the safety of any other person and the community, the judicial official must  
40           grant the defendant pretrial release in accordance with that section.

41           (d) Temporary Release. – While a defendant is detained before a judicial official  
42           makes a determination under this section or after a judicial official denies a defendant  
43           pretrial release under this section, the judicial official may, by order, permit the  
44           temporary release of the defendant in the custody of a law enforcement officer if the

1 judicial official finds the release is necessary for preparation of the defendant's defense  
2 or for another compelling reason.

3 (e) Modification. – After a judicial official makes a determination but before the  
4 defendant's trial, the judicial official may, upon motion of the district attorney or the  
5 defendant, reopen a hearing held under this section if the official finds that information  
6 exists that was not known to the movant at the time of the hearing and that has a  
7 material bearing on the issue of whether there are conditions of release that will  
8 reasonably assure the appearance of the defendant and the safety of any other person  
9 and the community."

10 Sec. 3. G.S. 15A-534(a) reads as rewritten:

11 "(a) ~~In determining conditions of pretrial release a~~ A judicial official who authorizes  
12 pretrial release must impose one of the following conditions:

- 13 (1) Release the defendant on his written promise to appear.  
14 (2) Release the defendant upon his execution of an unsecured appearance  
15 bond in an amount specified by the judicial official.  
16 (3) Place the defendant in the custody of a designated person or  
17 organization agreeing to supervise him.  
18 (4) Require the execution of an appearance bond in a specified amount  
19 secured by a cash deposit of the full amount of the bond, by a  
20 mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

21 If condition (3) is imposed, however, the defendant may elect to execute an appearance  
22 bond under subdivision (4). The judicial official may also place restrictions on the  
23 travel, associations, conduct, or place of abode of the defendant as conditions of pretrial  
24 release."

25 Sec. 4. This act becomes effective December 1, 1994, and applies to offenses  
26 committed on or after that date.