

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 316

Short Title: Pretrial Release/Rebuttable Presumption. (Public)

Sponsors: Senators McKissick and Woodard (Primary Sponsors).

Referred to: Judiciary II.

March 14, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A REBUTTABLE PRESUMPTION EXISTS IN CERTAIN
3 CIRCUMSTANCES THAT A PERSON CHARGED WITH A FELONY OR CLASS A1
4 MISDEMEANOR OFFENSE INVOLVING THE ILLEGAL USE, POSSESSION, OR
5 DISCHARGE OF A FIREARM SHOULD NOT BE RELEASED PRIOR TO TRIAL.

6 The General Assembly of North Carolina enacts:

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

8 "§ 15A-533. **Right to pretrial release in capital and noncapital cases.**

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

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

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

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

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

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



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

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

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

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

26 **SECTION 2.** This act becomes effective December 1, 2013, and applies to
27 proceedings to determine pretrial release conditions on or after that date.