

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE DRH70007-MD-22A (12/09)

Short Title: No Bail for Certain Illegal Aliens.

(Public)

Sponsors: Representative Burr.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PERSONS NOT LAWFULLY PRESENT IN THE UNITED STATES MAY BE DENIED PRETRIAL RELEASE IN CERTAIN CIRCUMSTANCES.

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.

(e) 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:



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- 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 the person is  
12 not lawfully present in the United States and a judicial official finds either of the following:

- 13 (1) There is reasonable cause to believe that the person committed one or more  
14 of the following offenses:  
15 a. A sex offense. As used in this sub-subdivision, a 'sex offense' is any  
16 offense upon conviction of which the offense becomes a reportable  
17 conviction, as that term is defined in G.S. 14-208.6(4).  
18 b. A violent felony, as that term is defined in G.S. 14-7.7(b), or any  
19 other criminal offense that includes assault as an essential element of  
20 the offense or as an aggravating factor in sentencing.  
21 c. A driving offense. As used in this sub-subdivision, the term 'driving  
22 offense' means a moving violation contained in Chapter 20 of the  
23 General Statutes.  
24 d. A drug offense. As used in this sub-subdivision, the term 'drug  
25 offense' means a violation of G.S. 90-95.  
26 e. A gang offense. As used in this sub-subdivision, the term 'gang  
27 offense' means any violation of Article 13A of Chapter 14.  
28 (2) There is reasonable cause to believe that the person committed an offense  
29 not listed in subdivision (f)(1) of this section and United States Immigration  
30 and Customs Enforcement has guaranteed that, in all such cases in this State,  
31 it will issue a detainer for the initiation of removal proceedings and agree to  
32 reimburse the State for the cost of incarceration from the time of the  
33 issuance of the detainer.

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

38 **SECTION 2.** This act becomes effective December 1, 2009.