GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2017

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

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

D

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:

7 8 9

1

2

3

4

5 6 H

PART I. SHORT TITLE

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

11 12 13

14

15

16

17

18

19 20

21

22

23

24

25

26

2728

29

30

31 32

33

34

10

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.



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

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

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

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

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

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

- (9) To present, display, or use a drivers license, learner's permit, or special identification card that contains a false or fictitious name in the commission or attempted commission of a felony. Any A person violating who violates the provisions of this subdivision shall be is guilty of a Class I felony.
- (10) To possess more than one special identification card for a fraudulent purpose." **SECTION 2.(c)** G.S. 20-37.8 is repealed.

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

SECTION 3.(a) 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 <u>his-the judge's</u> discretion whether a defendant charged with a capital offense may be released before trial. If <u>he-the judge</u> determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.
- (d) There shall be is 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 is 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 for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.16;
 - (2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and
 - (3) The person has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

- (f) There shall be is 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 there is reasonable cause to believe that the person committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; and the judicial official also finds any of the following:

- judicial official also finds any of the following:

 (1) The offense was committed while the person was on pretrial release for another felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm.
 - (2) The person has previously been convicted of a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm and not more than five years have elapsed since the date of conviction or the person's release for the offense, whichever is later.
- (f1) There is 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 the person is unlawfully present in the United States and a judicial official finds either of the following:
 - (1) There is probable cause to believe that the person committed one or more of the following offenses:
 - a. A sex offense. As used in this sub-subdivision, a "sex offense" is any offense upon conviction of which the offense becomes a reportable conviction, as that term is defined in G.S. 14-208.6.
 - b. A violent felony, as that term is defined in G.S. 14-7.7(b), or any criminal offense other than a violation described in G.S. 14-33(a) that includes assault as an essential element of the offense or as an aggravating factor in sentencing.
 - c. A driving offense. As used in this sub-subdivision, the term "driving offense" means any violation that requires a mandatory drivers license revocation upon a first conviction.
 - d. A drug offense. As used in this sub-subdivision, the term "drug offense" means a violation of G.S. 90-95, other than a violation for mere possession of a controlled substance.
 - e. A gang offense. As used in this sub-subdivision, the term "gang offense" means any violation of Article 13A of Chapter 14 of the General Statutes.
 - (2) There is probable cause to believe that the person committed an offense not listed in subdivision (1) of this subsection, and United States Immigration and Customs Enforcement has issued a detainer for the initiation of removal proceedings against the person or has indicated that it will do so.
- (g) Persons who are considered for bond under the provisions of subsections (d), (e), and (f) (f), and (f1) of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community."
- **SECTION 3.(b)** Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

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

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

PART IV. MISCELLANEOUS PROVISIONS

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

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

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

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

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

- (a) A verification of an alien's immigration status received from the federal government pursuant to G.S. 64-6 is proof of that alien's status. A court of this State shall consider only a verification of immigration status made pursuant to G.S. 64-6 in determining whether an alien is lawfully present in the United States.
- (b) Any record that relates to the immigration status of a person is admissible in any court of this State without further foundation or testimony from a custodian of records if all of the following apply:
 - (1) The record is certified as authentic by the federal government agency that is responsible for maintaining the record.
 - (2) The State notifies the person at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the record into evidence under this section and provides a copy of the record to the person.
 - (3) The person fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the record would be used, that the person objects to the introduction of the record into evidence.

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

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

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

"§ 64-9. Construction and severability.

- (a) Construction. This Chapter shall be construed in a manner consistent with federal law.
- (b) Severability. The provisions of this Chapter are severable. If any part of this Chapter is declared invalid or unconstitutional, the declaration shall not affect the remainder of this Chapter. If any particular interpretation or application of the provisions of this Chapter is declared invalid or unconstitutional, the declaration shall not affect other interpretations or applications of this Chapter."

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

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

the rules adopted pursuant thereto."

this act is effective when it becomes law.

2 3 4

1

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

G.S. 105-113.82, 105-164.44F, 105-164.44I, and 105-164.44L for any period during which a city

is in violation of subsection (a) or (b) of this section. The Attorney General shall be responsible

for administering this subsection and shall adopt rules governing its implementation. The Secretary of Revenue, the Office of State Budget and Management, the State Controller, and all

other State agencies and officials shall cooperate fully with the implementation of this section and

apply to offenses committed on or after that date. Except as otherwise provided, the remainder of

PART V. EFFECTIVE DATE AND SEVERABILITY CLAUSE

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

The Secretary of Revenue shall withhold any distributions otherwise due under

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

SECTION 5.(a) Sections 2 and 3 of this act become effective December 1, 2017, and

SECTION 5.(b) The provisions of this act are severable. If any part of this act is

5

2017.

''(d)

6 7 8

9 10

11 12

13 14

15

16

17 18

20 21

22

19

23

declared invalid or unconstitutional, the declaration shall not affect the remainder of this act. If any particular interpretation or application of the provisions of this act is declared invalid or unconstitutional, the declaration shall not affect other interpretations or applications of this act.

Page 6

DRH40048-MD-1C [v.4] (08/16)