

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 264  
PROPOSED COMMITTEE SUBSTITUTE S264-CSSA-37 [v.2]

5/1/2013 12:44:51 PM

Short Title: Abate Nuisances/Drug Sales From Stores.

(Public)

Sponsors:

Referred to:

March 13, 2013

A BILL TO BE ENTITLED  
AN ACT TO STRENGTHEN THE NUISANCE LAWS TO CLOSE DOWN BUSINESSES  
THAT REPEATEDLY SELL CONTROLLED SUBSTANCES AND TO CREATE A  
REBUTTABLE PRESUMPTION ON PRETRIAL RELEASE FOR REPEAT  
OFFENDERS WHO SELL DRUGS AT A PLACE OF BUSINESS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 19-1 reads as rewritten:

**"§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance. The activity sought to be abated need not be the sole purpose of the building or place in order for it to constitute a nuisance under this Chapter.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses so as to contribute to adverse secondary impacts shall constitute a nuisance.

(b2) The erection, establishment, continuance, maintenance, use, ownership, or leasing of any building or place for the purpose of carrying on, conducting, or engaging in any activities in violation of G.S. 14-72.7.

(c) The building, place, vehicle, or the ground itself, in or upon which a nuisance as defined in subsection (a), (b), or (b1) of this section is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

(d) No nuisance action under this Article may be brought against a place or business which is subject to regulation under Chapter 18B of the General Statutes when the basis for the action constitutes a violation of laws or regulations under that Chapter pertaining to the possession or sale of alcoholic beverages."

**SECTION 2.** G.S. 15A-533 reads as rewritten:

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



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(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:

- (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 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 that the person has been charged with a violation of G.S. 90-95(a)(1), the person is the owner or person who has operational control of a place of business, the controlled substance which is the basis for the charge was located at the place of business and finds either of the following:

- (1) The person has been previously arrested for a violation of G.S. 90-95(a)(1) and the controlled substance which was the basis for the previous charge was located at a place of business owned by or under the operational control of the person, and the person had been released on bail for the previous arrest at the time of the arrest for the current charge.
- (2) The person has a prior conviction for a violation of G.S. 90-95(a)(1), and the controlled substance which was the basis of the prior conviction was located

1                    at a place of business owned by or under the operational control of the  
2                    person.

3            For purposes of this subsection, a "place of business" is any location where a member of the  
4            general public may purchase, lease, or utilize goods, services, or other things of value.

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

9            **SECTION 3.** Section 1 of this act is effective when the act becomes law and  
10          applies to nuisance actions filed on or after that date. Section 2 of this act becomes effective  
11          December 1, 2013, and applies to offenses committed on or after that date. The remainder of  
12          this act is effective when it becomes law.