

Irnya's Law (HB 307) in Pretrial Proceedings

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WHOSE CASE IS IT?

The case does not belong to you, the prosecutor, the victims, the Court, the county you are practicing in, or even the State of North Carolina

The case is your client's and theirs only!

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It is of the utmost importance to aggressively assert that this is the defendant's case and that all proceedings, rulings, contemplations, or negotiations are for your client's benefit (or detriment) and theirs alone.

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A hearing to determine pretrial release is not just a chance for the State to show how bad your client or their case is, but rather an opportunity for you to assert your client's absolute right to their liberty interest as guaranteed by the Procedural Due Process Clause (XIV Amendment) of the United States Constitution.

The Law

1. Pretrial Integrity Act

A. NCGS 7B-1906(b1) - Juveniles

B. NCGS 15A-533 – Right to Pretrial Release in Capital and Non-Capital Cases

2. Procedure for Determining Conditions of Pretrial Release

A. NCGS 15A-534

3. House Bill 307 (Iryna's Law)

4. State v. Washington, 665 S.E.2d 799 (2008).

House Bill 307 (Iryna's Law) 1. (b)

1. Violent Offense:

A. Any Class A-G Felony,

- i. Including assaults, use of physical force or threat of physical force as an essential element to a crime

B. Any felony offense requiring registration;

C. Any offense listed in 15-533(b); or

D. Trafficking in Fentanyl

NCGS 15A-533(b): Right to Pretrial Release in Capital and Non-Capital Cases

- 1. Pretrial release is discretionary if defendant is charged with:**
 - A. 1st or 2nd Degree Murder (or attempt)**
 - B. 1st or 2nd Degree Forcible Rape**
 - C. Statutory Rape of a Child by an Adult**
 - D. 1st Degree Statutory Rape or 1st/2nd Stat Sex Off**
 - E. 1st or 2nd Degree Forcible Sexual Offense**
 - F. Statutory Sex Offense w/Child by Adult**
 - G. AWDWIKISI**
 - H. 1st or 2nd Degree Kidnapping**

NCGS 15A-533(b): Right to Pretrial Release in Capital and Non-Capital Cases

- 1. Pretrial release is discretionary if defendant is charged with (contd.):**
 - A. RWDW**
 - B. 1st Degree Arson**
 - C. 1st Burglary**
 - D. Human Trafficking**
 - E. Discharging Certain Barreled Weapons or Firearms into Occupied Property**

House Bill 307 (Iryna's Law) 1. (c)

1. NCGS 15A-533(a):

1. If the defendant has alleged to have committed a crime while residing in or after escaping (or an unauthorized absence) from a valid involuntary commitment – defendant has no right to pre-trial release;
 - a. Defendant shall be returned to treatment facility.

House Bill 307 (Iryna's Law) 1. (c)

1. NCGS 15A-533(b):

1. rebuttable presumption that no condition of release will:
 - a) reasonably assure the appearance of the defendant for trial; and
 - b) the safety of the community
2. Applies to defendants charged with a crime listed under G.S. 15A-533(b). (See above)

House Bill 307 (Iryna's Law) 1. (c)

1. NCGS 15A-333(b1)(effective 12/01/2026:

1. Judicial official must set pretrial conditions and issue a separate order if:

- a) Charged with a violent offense & defendant has been involuntarily committed w/in last 3 years; or
- b) charged with any offense & judicial official has reasonable grounds to believe defendant is a danger to himself or others.

House Bill 307 (Iryna's Law) 1.(d)

1. NCGS 15A-534(a): is modified to remove written promises to appear from conditions of pretrial release.
2. NCGS 15A-534(b): judicial official must impose an unsecured bond or custody release unless
 1. Defendant has been convicted of 3 or more Class 1 misdemeanors or higher w/in 10 years.
 - a) Judicial official must impose secured bond w/or w/out EHA:

House Bill 307 (Iryna's Law) 1.(d)

1. NCGS 15A-534(b1): if a defendant is charged with a violent offense:

- 1. Rebuttable presumption that no condition of release will reasonably assure the appearance of the defendant and the safety of the community.**

House Bill 307 (Iryna's Law) 1.(d)

1. **NCGS 15A-534(b1):** if the judicial official determines that pretrial release is appropriate for a defendant, the judicial official must:
 1. If charged w/1st violent offense, impose a secured bond (with or without EHA); or
 2. If charged w/2nd or subsequent violent offense & either has been previously convicted of a violent offense or was on release from a violent offense, must be released on a secured bond with EHA if available.

House Bill 307 (Iryna's Law) 1.(d)

- 1. NCGS 15A-534(c): arresting law enforcement officer, a pretrial services program, or a district attorney must provide the judicial official the defendant's criminal history to be considered when setting conditions of pretrial release.**
 - 1. Must also consider defendant's housing situation.**

House Bill 307 (Iryna's Law) 1.(d)

- 1. NCGS 15A-534(d): if pretrial release is granted where defendant is charged w/violent offense or has been convicted of 3 or more offenses Class 1 or higher w/in 10 years then:**
 - 1. Judicial official must make written findings of fact explaining why the condition of release is appropriate pursuant to 534(c).**

Attacking Iryna's Law w/Constitutional Arguments

1. THE CONSTITUTION IS THE LAW OF THE LAND AND TRUMPS STATE LEGISLATIVE CONSIDERATIONS

- 1. Do not try to invalidate Iryna's law but show that strict appliance of the law is detrimental to your client's rights as guaranteed by the United States Constitution.**

Attacking Iryna's Law w/Constitutional Arguments

1. The State of North Carolina v. Frankie Deano Washington, 665 S.E.2d 799 (2008).
 - a. Mr. Washington's conviction to a minimum of 48 years was vacated and dismissed because of a violation of Washington's right to a speedy trial.

Attacking Iryna's Law w/Constitutional Arguments

1. Speedy Trial

- a. A balancing test involving four interrelated factors is used by courts in determining whether a defendant's constitutional right to a speedy trial has been violated.
- b. These factors include: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right to a speedy trial; and (4) prejudice to the defendant resulting from the delay.

Attacking Iryna's Law w/Constitutional Arguments

1. Speedy Trial

- a. None of the four factors is determinative; rather they are to be considered together, and each claim is to be decided on a case-by-case basis, after a careful balancing of the facts:
 - i. they are related factors and must be considered together with such other circumstances as may be relevant.

Attacking Iryna's Law w/Constitutional Arguments

1. Speedy Trial

- a. courts must still engage in a difficult and sensitive balancing process.
 - i. ..., because courts are dealing with a fundamental right of the accused, this process must be carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution.

Attacking Iryna's Law w/Constitutional Arguments

1. Result:

- a. Encourage courts not to punitively apply Iryna's Law in fear of trampling on your client's constitutional rights.

So now you are in front of a Superior Court Judge, now what?

1. MAKE SURE YOU SPEAK FIRST!:

- A. It is your motion (even if it is not) assert your right to address the court about your client before the prosecutor.**

Clearly State

- 1. The charged offenses;**
- 2. Current bond amount;**
- 3. Presumptive bond amounts;**
- 4. Amount of time your client has been in custody;**
- 5. The procedural history of the case;**
- 6. The actors;**
- 7. A clear statement of the facts (good and bad);**
- 8. The issues which make your client less culpable**

Clearly State

- 1. Your client's family ties;**
- 2. Your client's ties to the community;**
- 3. Your client's social (work/educational) history;**
- 4. A list of any mental health/medical history;**
- 5. Your client's criminal history;**
- 6. Your client's history of failures to appear.**

