

Pretrial Release

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This manuscript summarizes the law of pretrial release for new prosecutors.

Generally. A person who has been arrested must be taken “before a judicial official without unnecessary delay.” G.S. 15A-501(2). The judicial official will normally be a magistrate, except in domestic violence cases, as explained below. He or she will conduct an initial appearance pursuant to G.S. 15A-511. Among other duties, the magistrate must set conditions of release under G.S. 15A-531 et seq. You will not normally be involved in this process. In most districts, the magistrate will rely heavily on a “bond schedule,” which lists recommended bonds for different classes of offenses.

Defendants are normally entitled to have conditions of pretrial release set, *i.e.*, they are entitled to bond. See G.S. 15A-533(b), 15A-534. There are exceptions to this general rule, including for capital defendants, see G.S. 15A-533(c), certain recidivist drug traffickers, see G.S. 15A-533(d), and certain methamphetamine addicts, see G.S. 15A-534.6. Of course, any limitation on pretrial release is subject to challenge under the Eighth Amendment to the Constitution, which prohibits “[e]xcessive bail.”

Conditions. For defendants who are entitled to have conditions of pretrial release set, the magistrate must choose one of the following conditions set forth in G.S. 15A-534:

1. Release on the defendant’s written promise to appear.
2. Release on an unsecured bond.
3. Release into the custody of a designated person or organization.
4. Release on a secured bond.
5. Release on house arrest with electronic monitoring.

A secured bond may be imposed only if the magistrate determines that none of the lesser conditions will suffice to ensure the defendant’s appearance, community safety, and/or the integrity of court proceedings. House arrest may be imposed only in conjunction with a secured bond.

Factors. Some of the factors that the magistrate must consider in setting bond are enumerated in G.S. 15A-534. They include the seriousness of the charged offense; the strength of the evidence against the defendant; the defendant’s character, record, and community ties; and other common-sense factors. Each senior resident superior court judge must promulgate a bond policy for his or her district. See G.S. 15A-535. As noted above, in many districts, this policy includes a “bond schedule” that heavily influences how magistrates set bond.

Restrictions. The magistrate may also place additional restrictions on the defendant, such as limiting his travel or his conduct. *Id.* in child abuse and child sex abuse cases, certain restrictions of this nature are presumptively appropriate. G.S. 15A-534.4.

Forms. Typically, the magistrate's determination will be recorded on AOC-CR-200 (Conditions of Release and Release Order), though some magistrates (and judges, when they must set or review bond) use additional forms in some cases. For example, some districts have additional forms that are used to impose common restrictions in domestic violence cases, such as that the defendant not contact the victim.

Domestic violence cases. In certain domestic violence cases, only a judge may set bond in the first 48 hours after a defendant's arrest. See G.S. 15A-534.1. For this "48 hour rule" to apply, the defendant normally must be charged with a crime against "spouse or former spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship," and the crime must be among those enumerated in the statute. Again, you will not normally be involved in this.

DWI cases. If a defendant arrested for DWI is so impaired that the magistrate determines, by clear and convincing evidence, that he would be a danger to himself or others if released, he may be held until the danger has passed or a sober and responsible adult agrees to assume responsibility for him. G.S. 15A-534.2. The period of detention may not last longer than 24 hours, and during this time, the defendant must be permitted to communicate with counsel and friends.

Review of bond. In felony cases and in misdemeanor cases in which the defendant remains in custody, the defendant is entitled to a first appearance before a district court judge. G.S. 15A-601. If the defendant is incarcerated, this appearance normally must take place at the first regular session of district court after arrest, or in any event, within 72 hours of arrest. *Id.* At this hearing, the judge must "[d]etermine or review the defendant's eligibility for release." G.S. 15A-605(3). You may be called upon to express an opinion about the defendant's bond at this point, though how searching this review is varies by district and by judge. Likewise, at the probable cause hearing for a felony charge, if the defendant is bound over to superior court, the judge "must again review" the defendant's eligibility for release. G.S. 15A-614.

Motions to modify bond. Either party may move to modify the conditions of release, and the state may move to revoke a release order. G.S. 15A-538, 15A-539. In district court, bond hearings are often held on the defendant's scheduled court date. Sometimes, one side or the other will want to have a bond hearing prior to the defendant's scheduled court date; local practice varies as to how such requests are handled, but in general, notice must be given to the opposing party, and, at least for a

motion to increase bond or to revoke a release order, the defendant should be given the opportunity to be present.

Appeals. A defendant who is dissatisfied with a district court judge's bond ruling may "apply in writing to a superior court judge to modify the order." G.S. 15A-538(a).