

Changes to Pretrial Release and Detention

Brittany Bromell, UNC School of Government

1

What is pretrial release?

“When a person is accused of a crime, who has been booked into custody, is then released from custody, with or without conditions, before trial, with charges pending.”



2



Pretrial release in North Carolina

- A person arrested for a noncapital criminal offense usually has a right to pretrial release upon the setting of reasonable conditions.*
- Pretrial release is generally ordered by a magistrate at a defendant's initial appearance.

3

Pretrial release in North Carolina

NC General Statutes provide general rules for considering the pretrial release of a defendant for most offenses, but there are some requirements and limitations for specific offenses:

- crimes of domestic violence,
- detention of impaired drivers,
- detention for communicable diseases,
- sex offenses and crimes of violence against child victims,
- detention to protect public health,
- manufacture of methamphetamine,
- communicating a threat of mass violence, and
- rioting or looting*.

4

S.L. 2023-6 (H 40) PTR for rioting/looting

- New G.S. 15A-534.8, effective December 1, 2023
- PTR conditions must be determined by judge within first 24 hours
- After 24 hours, set by magistrate



5

S.L. 2023-75 (H 813) Pretrial Integrity Act

- Effective October 1, 2023
- Two distinct statutes affecting pretrial release
 - Right to pretrial release for defendants charged with high level felonies
 - 48-hour defendants



6

Right to pretrial release for defendants charged with high level felonies

- **Previously:** Only offense for which a magistrate could not set pretrial release under any circumstance was first-degree murder.
- Judge had discretion to determine whether a defendant charged with first degree murder may be afforded pretrial release.

7

Expanded list:

- First and second-degree murder, G.S. 14-17, and attempts to commit those offenses.
- First and second-degree kidnapping, G.S. 14-39.
- First-degree forcible rape and sexual offense, G.S. 14-27.21; G.S. 14-27.26.
- Second-degree forcible rape and sexual offense, G.S. 14-27.22; G.S. 14-27.27.
- Statutory rape of and sexual offense with a child by an adult, G.S. 14-27.23; G.S. 14-27.28.
- First-degree statutory rape and sexual offense, G.S. 14-27.24; G.S. 14-27.29.
- Statutory rape of and sexual offense with a person 15 years old or younger, G.S. 14-27.25; G.S. 14-27.30.
- Human trafficking, G.S. 14-43.11.
- Assault with a deadly weapon with intent to kill inflicting serious injury, G.S. 14-32(a).
- Discharging barreled weapons or a firearm into occupied property, G.S. 14-34.1.
- First-degree burglary, G.S. 14-51.
- First-degree arson, G.S. 14-58.
- Armed robbery, G.S. 14-87.

8

48-hour
defendants

GENERAL RULE:

- If a defendant is arrested for a new offense allegedly committed while the defendant was on pretrial release, a judge must set PTR conditions within 48 hours of arrest

9

48-hour defendants

EXCEPTION:

- If the new offense is a violation of G.S. Chapter 20 EXCEPT
 - impaired driving, G.S. 20-138.1;
 - habitual impaired driving, G.S. 20-138.5;
 - impaired driving in a commercial vehicle, G.S. 20-138.2;
 - operating a commercial vehicle after consuming alcohol, G.S. 20-138.2A;
 - operating a school bus, school activity bus, child care vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle after consuming alcohol, G.S. 20-138.2B; and
 - death or injury by vehicle, G.S. 20-141.4.
- Then, a magistrate may set conditions at any time

10

48-hour defendants

If a judge does not set conditions within 48 hours after arrest of a defendant who is arrested for a new offense allegedly committed while the defendant was on pretrial release, then a magistrate may set conditions.

11

Why the changes?

- State's interest in providing that a legally trained judge perform individualized determinations of bail and set conditions of release in [high-level felony cases, and cases for reoffenders].

- *State v. Thompson*, 349 N.C. 483 (1998)

12



Questions?

bwilliams@sog.unc.edu
