



Criminal Law Update

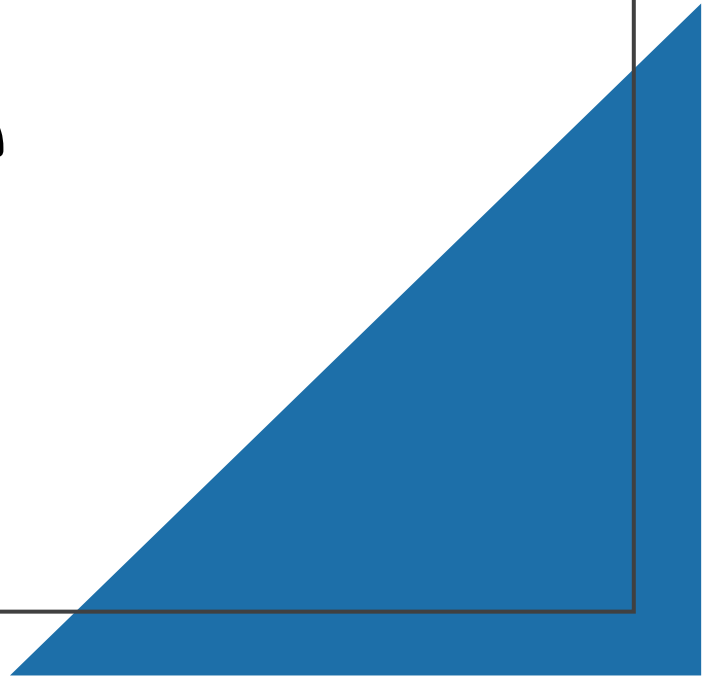
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Road map

- Immigration detainers (H 318)
- Iryna's law (H 307)
- Other legislation
- Cases

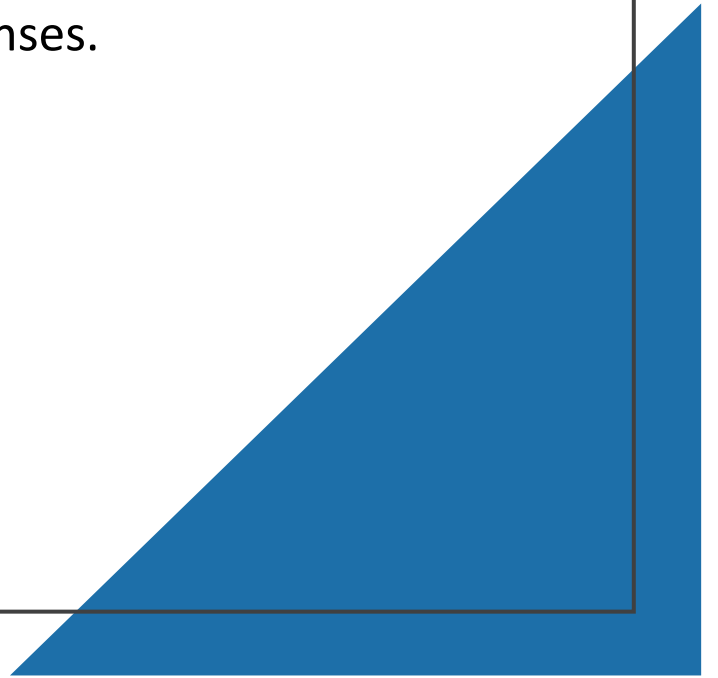


Immigration detainers and pretrial release



S.L. 2025-85 (H 318)

- Effective October 1, 2025.
- Creates a new pretrial release procedure that requires judicial officials to determine legal residency for defendants charged with certain offenses.
- Objectives:
 - Understand WHEN it applies
 - Consider HOW to apply it
 - Understand the procedure that follows the determination



Understanding the WHEN

G.S. 15A-534(d4)

When PTR conditions are being determined for a defendant charged with:

- any felony;
- a Class A1 misdemeanor under Article 6A (unborn victims), Article 7B (rape and other sex offenses), or Article 8 (assaults) of G.S. Chapter 14;
- any violation of G.S. 50B-4.1 (violation of a domestic violence protective order); and
- any offense involving impaired driving as defined in G.S. 20-4.01.



Considering the HOW

“...the judicial official shall attempt to determine if the defendant is a legal resident or citizen of the United States by an inquiry of the defendant, or by examination of any relevant documents, or both.”



Considering the HOW

- Potential methods:
 - Ask the defendant “Are you a legal resident or citizen of the United States?”
 - Ask for a driver’s license, state-issued ID, green card, or other identification.
 - May be limited to identification that is reasonably expected to be on defendant’s person.
 - Most times, the identification produced will have created only a presumption of citizenship/lawful residency status.
- Any method must be applied UNIFORMLY.

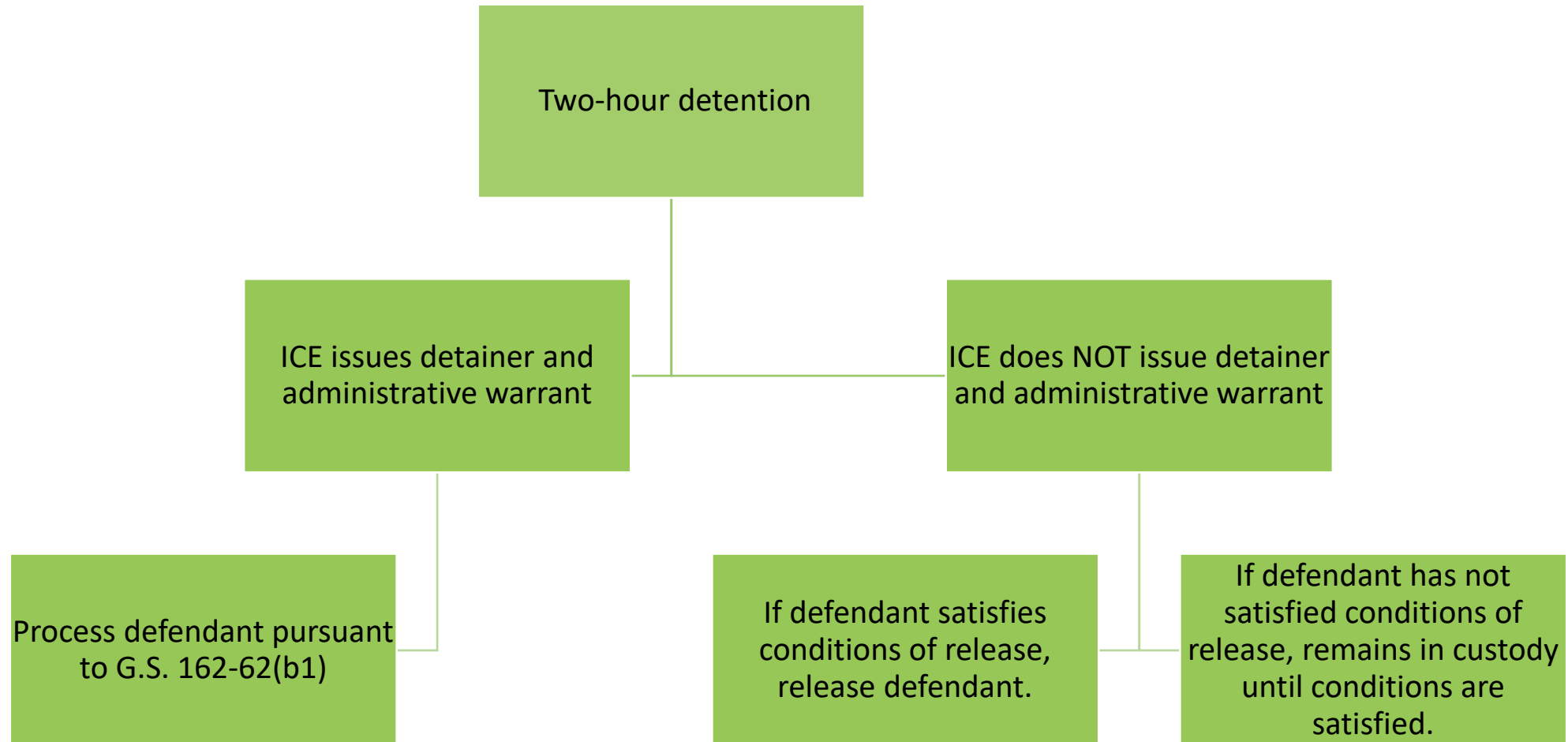
What about self-incrimination?

- The fifth-amendment privilege protects against any compelled disclosures that a person reasonably believes could be used in a criminal prosecution or could lead to the discovery of other evidence that might be used in a prosecution.
 - *Kastigar v. United States*, 406 U.S. 441 (1972).
- As a general rule, it is not a crime for a removable alien to remain present in the United States. Deportation hearings are civil proceedings.
 - *INS v. Lopez–Mendoza*, 468 U.S. 1032 (1984).
- If a defendant invokes the privilege or refuses to answer, proceed in accordance with G.S. 15A-534(d4).

Procedure following the determination

- “If the judicial official is unable to determine if the defendant is a legal resident or citizen of the United States,”
 - 1) Set conditions of pretrial release on AOC-CR-200 form
 - 2) Commit the defendant to an appropriate detention facility using AOC-CR-663 form
 - to be fingerprinted,
 - for an ICE query, and
 - to be held for two hours from the query.

Procedure following the determination



Procedure following the determination

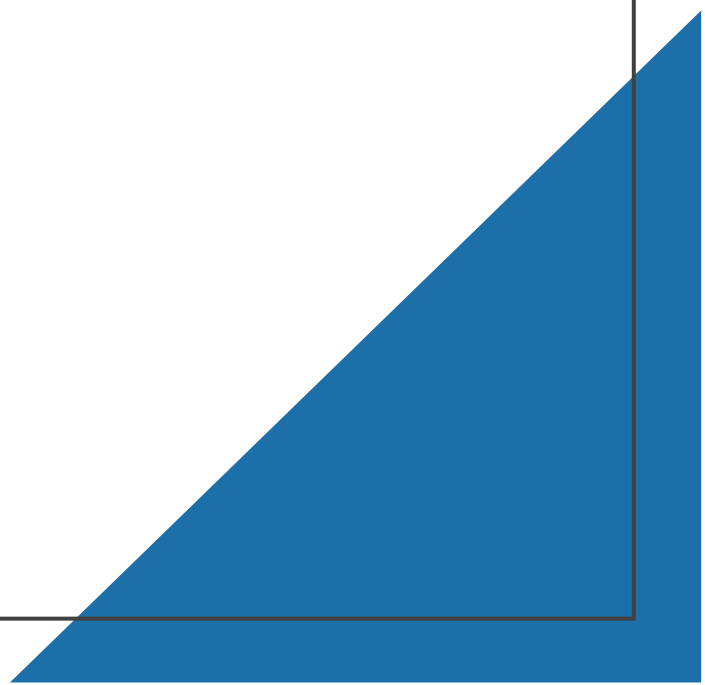
- G.S. 162-62(b1)
- When ICE issues detainer and administrative warrant:
 - Determine whether the defendant is the same person subject to the detainer and administrative warrant
 - Issue AOC-CR-662 order. Defendant will be released at the earliest of the following:
 - The passage of 48 hours from the time defendant would otherwise be released from the facility.*
 - ICE takes custody of the defendant
 - The detainer is rescinded by ICE
- *Jail administrator must notify DHS of this outer limit

Takeaways

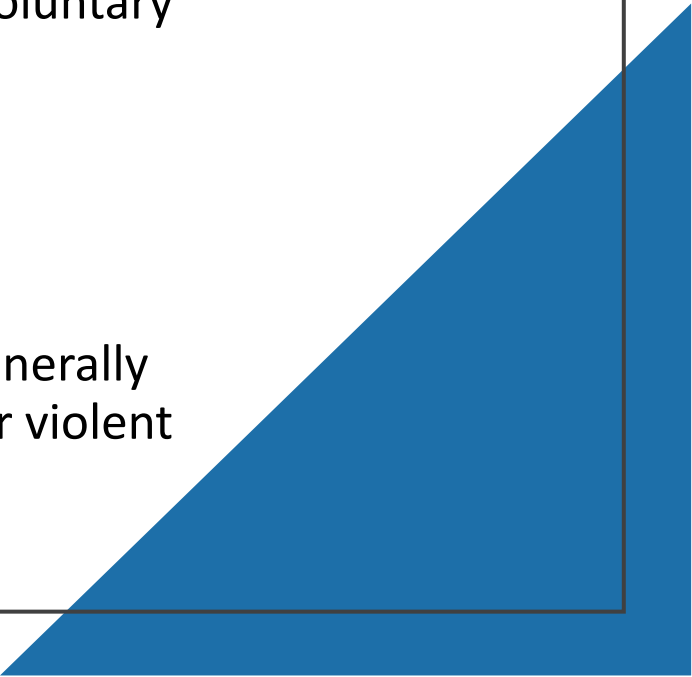
- 1) Inquiry triggered by certain offenses, not all
- 2) Method of inquiry will vary, but in all circumstances must be applied uniformly
- 3) G.S. 162-62 (requiring issuance of the AOC-CR-662 order and application of the 48-hour provision) applies only if ICE issues a detainer and warrant.
 - Where there is no detainer and warrant, defendant should be released upon satisfying conditions of release in the CR-200.



Iryna's Law



S.L. 2025-93 (H 307)

- Effective December 1, 2025.
 - Modifies laws affecting conditions of pretrial release. Creates a new category of criminal offenses that are subject to specific conditions. Creates a new pretrial release procedure that requires judicial officials to initiate involuntary commitment proceedings for certain defendants.
 - Objectives:
 - Increase familiarity with categorical “violent offenses”
 - Understand WHEN to initiate IVC proceedings
 - Understand new requirements for determining PTR conditions generally
 - Understand new requirements for determining PTR conditions for violent offenses
- 
- A large blue right-angled triangle is positioned in the bottom right corner of the slide, pointing towards the top right.

S.L. 2025-93 (H 307) – New G.S. 15A-533(b1)

IF the defendant is charged with a violent offense

IF the defendant is charged with any offense (violent or otherwise)

AND the defendant has previously been subject to an order of involuntary commitment within the last three years

OR there are reasonable grounds to believe the defendant is a danger to themselves or others

AND there are reasonable grounds to believe the defendant is a danger to themselves or others

THEN set conditions of release AND issue an order for an initial IVC exam

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Violent offenses

(includes attempts for these offenses)

- Any Class A through G felony that includes assault or the use or threat of physical force against a person
- Any felony offense requiring sex offender registration
- An offense under G.S. 14-17 (murder), and any other offense listed in G.S. 15A-533(b) (PTIA high-level felonies).
- G.S. 14-18.4 (death by distribution),
- G.S. 14-34.1 (discharging firearms into occupied property),
- G.S. 14-51(burglary),
- G.S. 14-54(a1)(breaking or entering w/ intent to injure/terrorize),
- G.S. 14-202.1 (taking indecent liberties with children),
- G.S. 14-277.3A (stalking),
- *G.S. 14-415.1 (possession of firearm by felon),
- An offense under G.S. 90-95(h)(4c) (trafficking in fentanyl)

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Access to IVC records

G.S. 122C-54(d)

- Permits judicial officials determining PTR conditions to access the defendant's IVC records for the purposes of determining whether the defendant has been involuntarily committed within the previous three years.
- AOC to provide a method for judicial officials to determine if a defendant has a prior order of IVC

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Danger determination

G.S. 15A-501(2a) (police duties upon arrest)

- Upon the arrest of a person, a LEO must inform any judicial official determining PTR conditions of any relevant behavior of the defendant observed by the officer prior to, during, or after the arrest that may provide reasonable grounds for the judicial official to believe the defendant is a danger to themselves or others.

G.S. 122C-3(11) defines “dangerous to self or others.”

Danger determination

Dangerous to others. – Within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.

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Issuing the order

- Require the defendant to receive an initial examination by a commitment examiner to determine if there are grounds to petition for IVC of the defendant
- Require the arresting officer (or an officer of the same agency) to immediately transport the defendant to a facility with certified commitment examiners for the initial examination
- Require the commitment examiner to either petition for IVC of the defendant if there are grounds to do so, or provide written notice to the judicial official that there are no grounds to petition for IVC
- Include terms for release depending on whether an IVC petition is filed or whether IVC is ordered

IVC exam and PTR

No petition for IVC is filed	Defendant has met PTR conditions	Release defendant
	Defendant has not met PTR conditions	Defendant remains in custody in county where PTR conditions were set
Petition for IVC is filed, but no custody order is issued	Defendant has met PTR conditions	Release defendant
	Defendant has not met PTR conditions	Defendant remains in custody in county where PTR conditions were set
Petition for IVC is filed and custody order is issued		Custody of defendant is pursuant to Chapter 122C, Article 5
Defendant is released from IVC custody	Defendant has met PTR conditions	Release defendant
	Defendant has not met PTR conditions	Defendant remains in custody in county where PTR conditions were set

Determining conditions of release – Generally

- Written promise is no longer a permissible type of release
- Statutory preference is for **unsecured bond** or **custody release** for offenses that are not violent offenses

Determining conditions of release – Generally

- When determining PTR conditions, direct the arresting LEO, a pretrial services program, or a district attorney to provide a criminal history report for the defendant. (G.S. 15A-534(c))
- Consider the criminal history when setting PTR conditions. (G.S. 15A-534(c))
- Consider, based on available information, the defendant's housing situation. (G.S. 15A-534(c))
- If a defendant has been convicted of 3 or more offenses (Class 1 misdemeanor or higher) within the previous 10 years, then impose **secured bond** or **EHA** (with secured bond). (G.S. 15A-534(b))
 - Must now make written findings of fact explaining why the imposed conditions are appropriate for that defendant. (G.S. 15A-534(d))



Determining conditions of release – Violent offenses G.S. 15A-534(b1)

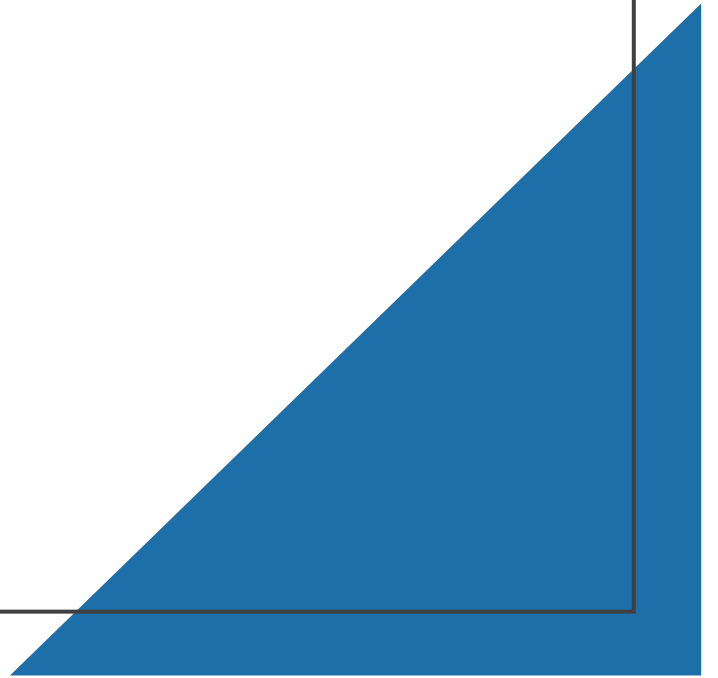
- Rebuttable presumption against PTR for violent offenses.
- For first violent offense charge, impose **secured bond** or **EHA** (with secured bond)
- For second or subsequent violent offense charge, impose **EHA** (with secured bond) if:
 - Defendant has been convicted of a prior violent offense
OR
 - Defendant was on PTR for a prior violent offense
- EHA imposed only “if available”
- Must now make written findings of fact explaining why the imposed conditions are appropriate for that defendant. (G.S. 15A-534(d))

Takeaways

- 1) IVC proceedings initiated when:
 - Violent offense + IVC in the last 3 years
 - Any offense + danger to self or others
- 2) No more written promises
- 3) Secured bond (and written findings) required when:
 - Violent offense
 - Defendant has 3 or more convictions for Class 1 misdemeanors or higher within the previous 10 years



Other legislative
updates



S.L. 2025-81 (H 193): Crimes against public officers

Increased penalties:

- Class H felony for assaults and threats
- Class E felony if the assault is with a deadly weapon
- Class D felon if the assault results in serious bodily injury

New G.S. 15A-534.9

- Creates a 48-hour pretrial release provision for defendants who commit threats against or assaults on public officers (all charges under G.S. 14-16.6, 14-16.7, or 163-275(11))

Session Law 2025-70 (S 429): Misdemeanor Crime of Domestic Violence

- Misdemeanor assaults are not lesser included offenses of MCDV
- LEOs can conduct a warrantless arrest for MCDV
- MCDV now a qualifying offense for habitual misdemeanor assault
- MCDV is an automatic trigger for the 48-hour rule under G.S. 15A-534.1



DV UNDER G.S. 15A-534.1 - ACTS

Assaults

(and felonies in Article 8)

Stalking

Communicating
threats

Domestic
criminal
trespass

Rape and other
sex offenses

(felonies in Article 7B)

Kidnapping and
abduction

(felonies in Article 10)

Arson and
other burnings

(felonies in Article 15)

Violation of a
50B order

FIRST...

Uses or attempts to
use physical force

Threatens the use of
a deadly weapon



Current or former
spouse, parent, or
guardian of the victim

Person with whom
the victim shares a
child in common

Person who is
cohabitating with or
has cohabitated with
the victim as a spouse,
parent, or guardian

Person similarly
situated to a spouse,
parent, or guardian of
the victim

Person who has a
current or recent
former dating
relationship with the
victim

THEN...

Assaults

(and felonies in Article 8)

Stalking

Communicating
threats

Domestic
criminal
trespass

Rape and other
sex offenses

(felonies in Article 7B)

Kidnapping and
abduction

(felonies in Article 10)

Arson and
other burnings

(felonies in Article 15)

Violation of a
50B order



→ A spouse or former spouse

→ A person with whom the defendant lives or has lived as if married

→ A person with whom the defendant is or has been in a dating relationship

Session Law 2025-70 (S 429): Misdemeanor Crime of Domestic Violence

Assaults (<u>and</u> felonies in Article 8 of G.S. Chapter 14)	Stalking	Communicating threats
Rape and other sex offenses (felonies in Article 7B of G.S. Chapter 14)	Kidnapping and abduction (felonies in Article 10 of G.S. Chapter 14)	Arson and other burnings (felonies in Article 15 of G.S. Chapter 14)
Domestic criminal trespass	Violation of a 50B order	Misdemeanor crime of domestic violence

Session Law 2025-70 (S 429): Misdemeanor Crime of Domestic Violence

- New habitual domestic violence status offense (G.S. 14-32.6)
 - The person must
 - Commit MCDV or an assault where the person is related to the victim by one or more of the relationship descriptions set forth in MCDV statute
- AND
- Have two or more prior convictions that include [a combination of DV-related offenses]



Session Law 2025-70 (S 429): Misdemeanor Crime of Domestic Violence

- Have two or more prior convictions that include [a combination of DV-related offenses]:
 - Two or more convictions of MCDV or an offense committed in another jurisdiction substantially similar to MCDV
 - One prior conviction of MCDV and at least one prior conviction (from anywhere) of an offense involving an assault where the person is related to the victim by one or more of the relationship descriptions set forth in the MCDV statute
- Lookback period is 15 years
- Class H felony; increases one level for subsequent convictions; limit is Class C felony



New offenses

S.L. 2025-71 (S 311): *Unlawful business entry.*

- G.S. 14-54(b1)
 - with the intent to commit an unlawful act, enters any area of a building
 - (i) that is commonly reserved for business personnel where money or other property is stored or
 - (ii) clearly marked with a sign that indicates to the public that entry is forbidden
- Class 1 misdemeanor for a first offense and a Class I felony for a second or subsequent offense.



New offenses

S.L. 2025-15 (H 183): *Wake surfing on Lake Glenville.*

- Prohibits wake surfing within 200 feet of the shoreline or any structure, moored vessel, kayak, canoe, paddleboard, or swimmer on Lake Glenville in Jackson County.
- Class 1 misdemeanor and minimum fine of \$100, in addition to any other applicable penalties.



New offenses

S.L. 2025-71 (S 311): *Commercial booting.*

- Class 2 misdemeanor to immobilize a commercial motor vehicle using a device such as a boot or any other device for the purposes of parking enforcement.



Increased punishment for existing offenses

S.L. 2025-70 (S 429): *Failure to yield.* (G.S. 20-160.1(a))

- Still a \$500 fine
- Now also a Class 2 misdemeanor
- 90-day license revocation upon conviction (was 90-day suspension upon charge)

S.L. 2025-71 (S 311): *Reckless driving.* (G.S. 20-140)

- Still a Class 2 misdemeanor
- Class 1 misdemeanor for serious injury
- Class A1 misdemeanor for serious bodily injury

S.L. 2025-73 (S 375): *Hazing.* (G.S. 14-35)

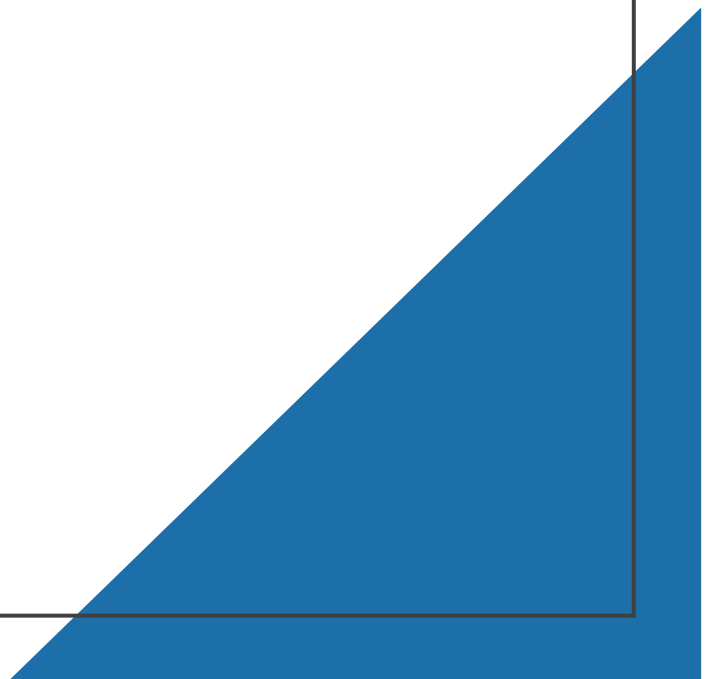
- Hazing by a student increased from a Class 2 misdemeanor to a Class A1
- Hazing by school personnel a Class I felony

Speaking of punishment...

S.L. 2025-70 (S 429): *Concurrent sentencing.*

- Removes G.S. 15A-1354(a) requirement that sentences run concurrently as a default.
- Court required to make a finding on the record stating the reasoning for the determination of imposing consecutive or concurrent sentences.

Cases?



State v.
Santana, (N.C.
Ct. App. Oct. 1,
2025)

Trial court has no authority to order a civil judgment for a fine immediately at sentencing.



State v.
Santana,
(N.C. Ct. App.
Oct. 1, 2025)

G.S. 7A-304

- A defendant who is convicted of a crime shall be assessed costs as enumerated unless the trial court specifically makes written findings of just cause to waive or reduce those costs.
- The court may allow a defendant owing monetary obligations under this statute to either make payment in full when costs are assessed or make payment on an installment plan arranged with the court.

State v.
Santana,
(N.C. Ct. App.
Oct. 1, 2025)

G.S. 15A-1362(b)

- A criminal fine “is payable forthwith” unless the court provides “for the payment to be made within a specified period of time or in specified installments.”

- G.S. 15A-1365

- When a defendant has defaulted in payment of a fine or costs, the judge may order that the judgment be docketed. Upon being docketed, the judgment becomes a lien on the real estate of the defendant in the same manner as do judgments in civil actions.

State v.
Santana,
(N.C. Ct. App.
Oct. 1, 2025)

G.S. 7A-455

- The court must enter a judgment for attorney fees that “shall constitute a lien as prescribed by the general law of the State applicable to judgments.”
- The judgment kicks in on the later of:
 - (a) the date on which the conviction becomes final if the person is not ordered to pay attorney fees as a condition of probation, or
 - (b) the date on which probation is terminated, revoked, or expires.



Why does
this matter?

G.S. 24-5(b)

- General statutes do not authorize the recovery of interest on a criminal fine; however, a civil money judgment bears interest from the date of entry.
- 

Why does this matter?

- Must indicate whether the fine is to be paid within a specific period of time or in specified installments.
 - If no indication, the fine will be due in full immediately.
- Before docketing as a civil judgment, must first determine that the defendant defaulted in payment of the costs or fine.



We recognize that it may be common practice for courts in criminal cases to immediately docket court costs and fines as civil judgments without first determining that the defendant has defaulted in payment. Amending our general statutes to reflect this practice lies within the purview of the Legislature and not the courts.

