Pretrial Release After Iryna's Law

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School of
Government

ADMINISTRATION OF JUSTICE BULLETIN

NO. 2026/02 | MARCH 2026

Iryna's Law and Pretrial Release

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The Law

“Iryna’s Law” – HB 307

- Effective for “persons appearing before a judicial official for the determination of pretrial release conditions” on or after December 1, 2025.

Determining conditions of release – Generally

- Written promise is no longer a permissible type of release.
- 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.
- Consider the criminal history when setting PTR conditions.
- Consider, based on available information, the defendant's housing situation.

Other 15A-534(c) factors

- the nature and circumstances of the offense charged;
- the weight of the evidence against the defendant;
- the defendant's family ties, employment, financial resources, character, and mental condition;
- whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision;
- the length of his residence in the community;
- his history of flight to avoid prosecution or failure to appear at court proceedings; and
- any other evidence relevant to the issue of pretrial release.

Determining conditions of release – Criminal history

- If a defendant has been <u>convicted</u> of 3 or more offenses (Class 1 misdemeanor or higher) in separate sessions of court within the previous 10 years, then impose secured bond or EHA (with secured bond).
  - Must make written findings of fact explaining why the imposed conditions are appropriate for that defendant.
  - Written findings must apply the factors provided in G.S. 15A-534(c).

Violent offenses

- Any Class A – G felony that includes assault or the use/threat of physical force against a person as an essential element of the offense
- Any felony offense requiring sex offender registration
- An offense listed in G.S. 15A-533(b)
- Specifically enumerated offenses
  - 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 with 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
  - G.S. 90-95(h)(4c) Trafficking in fentanyl
- An attempt to commit an offense captured by any of these subdivisions.

Violent offenses

Appendix A. Violent Offenses Under G.S. 15A-531(9)

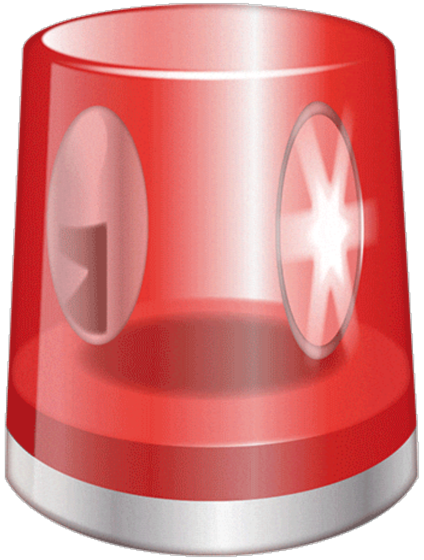
Offense	Class A–G felony involving assault or use of physical force as an essential element	Felony requiring sex offender registration	Offense listed in G.S. 15A-533(b)	Otherwise specifically enumerated
G.S. 14-16.6(b)–(c): Assault on executive, legislative, court, or local elected officers	●			
G.S. 14-17: Murder in the first and second degree			●	●
G.S. 14-18: Voluntary manslaughter	●			
G.S. 14-18.4: Death by distribution				●
G.S. 14-23.2(a)(1)-(a)(2): Murder of an unborn child	●			
G.S. 14-23.3: Voluntary manslaughter of an unborn child	●			
G.S. 14-23.5: Assault inflicting serious bodily injury on an unborn child	●			
G.S. 14-27.21: First-degree forcible rape	●	●	●	
G.S. 14-27.22: Second-degree forcible rape	●	●	●	
G.S. 14-27.23: Statutory rape of a child by an adult		●	●	
G.S. 14-27.24: First-degree statutory rape		●	●	
G.S. 14-27.25(a): Statutory rape of person who is 15 years of age or younger		●	●	
G.S. 14-27.25(b): Statutory rape of person who is 15 years of age or younger			●	
G.S. 14-27.26: First-degree forcible sexual offense	●	●	●	
G.S. 14-27.27: Second-degree forcible sexual offense	●	●	●	
G.S. 14-27.28: Statutory sexual offense with a child by an adult		●	●	
G.S. 14-27.29: First-degree statutory sexual offense		●	●	
G.S. 14-27.30(a): Statutory sexual offense with a person who is 15 years of age or younger		●	●	

Determining conditions of release – Violent offenses

- There is a rebuttable presumption against PTR for violent offenses.
- No condition of release will reasonably assure
  - (i) the appearance of the person as required and
  - (ii) the safety of the community.
- A magistrate generally has authority to set conditions of release for a violent offense.
  - Except those that fall under G.S. 15A-533(b).

ADMINISTRATION OF JUSTICE BULLETIN NO. 2026/04 | JUNE 2026

Rebuttable Presumptions Against Pretrial Release



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TL;DR:

15A-534(c) factors

- The defendant’s criminal history;
- the nature and circumstances of the offense charged;
- the weight of the evidence against the defendant;
- the defendant's family ties, employment, financial resources, character, housing situation, and mental condition;
- whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision;
- the length of his residence in the community;
- his history of flight to avoid prosecution or failure to appear at court proceedings; and
- any other evidence relevant to the issue of pretrial release.

Determining conditions of release – Violent offenses

- If you find the presumption overcome:
  - For first violent offense charge, impose secured bond or EHA (with secured bond)
  - If defendant is charged with a second or subsequent violent offense, and has been convicted of a prior violent offense, then impose EHA (with secured bond)
  - If defendant is charged with a second or subsequent violent offense, and was on PTR for a prior violent offense, then impose EHA (with secured bond)

- Must make written findings of fact explaining why the imposed conditions are appropriate for that defendant.
  - Written findings must apply the factors provided in G.S. 15A-534(c).
  - If denying release pursuant to the rebuttable presumption, written findings are permitted but not required

First appearances

- In-custody defendants are required to have a first appearance within 72 hours of being taken in custody.
- A magistrate's denial of release conditions does not require a separate bond hearing.
- A judge must determine or review conditions of release at the first appearance. G.S. 15A-605(1).
  - Judges are not required to but may authorize conditions of release for a person who was denied conditions of release by the magistrate.

Panel Questions

What challenges have you faced with court administration, particularly with striking a balance between getting through all first appearances on the docket and making sure attorneys and other staff can go home on time? How have you addressed those challenges?

How are you handling cases in which a criminal history report is not immediately available? What is the procedure in your district for making sure the criminal history report is available?

Can you walk us through your thought process for finding a rebuttable presumption overcome?

How are you managing cases that involve defendants who are required to be under a secured bond but also meet IVC criteria?

How have the statutory changes affected your decision-making in terms of whether you order a defendant to be supervised by pretrial services?

If electronic house arrest services exist in your district, how do you determine whether the service "is available" when you are imposing conditions of release? If it isn't available, how are you imposing conditions in those circumstances?

Submitted Questions

When a judge completes an AOC-CR-200 form, the information often does not translate to eWarrants. How have you addressed this issue?

- A note from the OGC:
  - There is no way for the clerk to stop eWarrants from generating a CR-200 and writing it to EJ once the conditions of release are entered there. This often results in multiple CR-200 forms in a case file.
  - The clerk should not sign the CR-200 under their own authority. Instead, the clerk should enter the order in eWarrants, such that the signature reflects that they have signed the order at the direction of the judge ("by and through").
  - Where a judge has concerns about the findings being documented beyond what is included in the CR-200 generated by eWarrants, the CR-305 is recommended as the more appropriate vehicle, as opposed to another version of the CR-200.

Questions from the Floor