

EXCEPTIONS TO PRETRIAL RELEASE PROCEDURES: A GUIDE FOR MAGISTRATES

THE GENERAL RULE: Upon arrest, the defendant must be taken without unnecessary delay before a magistrate, who **MUST** hold an initial appearance and set pretrial release (PTR) conditions. G.S. 15A-511. There are **LIMITED** exceptions to this rule.*

Category	Specific Situation	Response	Statutory Basis	Form to Use
<i>Delay initial appearance altogether</i>	Person is unable to understand rights (ex., person is unconscious, grossly intoxicated, does not understand English)	Delay initial appearance for reasonable time without setting PTR conditions. If you commit person to jail until able to understand rights, set reasonable outer time limit and check regularly with jail. To avoid delay of initial appearance if person does not speak English, use telephone interpreting service when possible.	15A-511(a)(3)	AOC-CR-200 Fill out commitment portion of form only. Check box to hold person for "following purpose" and write purpose. Do not set PTR conditions in upper portion of form.
<i>Conduct initial appearance, BUT delay setting pretrial release conditions</i>	Person is charged with domestic violence offense under "48-hour" law	Conduct initial appearance, but do not set PTR conditions. Order that person be returned to magistrate if judge does not set PTR conditions within 48 hours. After 48 hours, magistrate has authority to delay setting of PTR conditions for reasonable time if person continues to pose danger, but authority should rarely be used.	15A-534.1	AOC-CR-200 Fill out commitment portion of form only. Check domestic violence box and indicate when defendant should be returned to magistrate if judge has not acted.
	Felony by person on probation if insufficient information about danger to public ¹	Conduct initial appearance, but do not set PTR conditions. Order that person be brought for first appearance before judge no later than 96 hours. If sufficient information before then, set PTR conditions.	15A-534(d2)	Revised AOC form forthcoming
	Violation of probation by person who has pending felony charge or who is subject to sex offender registration if insufficient information about danger to public ²	Conduct initial appearance, but do not set PTR conditions. If defendant has been held for 7 days without PTR conditions, defendant must be brought before any judicial official to set PTR conditions. If sufficient information before then that not a danger, set PTR conditions.	15A-1345(b1)	Revised AOC form forthcoming

* For more information about conducting initial appearances, see Jessica Smith, *Criminal Procedure for Magistrates*, ADMINISTRATION OF JUSTICE BULLETIN No. 2009/08 (Dec. 2009), online at <http://www.sog.unc.edu/pubs/electronicversions/pdfs/aojb0908.pdf>.

1. Effective for offenses committed on or after Dec. 1, 2009.

2. Effective for offenses committed on or after Dec. 1, 2009. Also applies if probationer would be subject to sex offender registration but for the effective date of NC's sex offender registration program. For offenses committed before Dec. 1, 2009, 15A-1345(b) requires that pretrial release conditions be denied to a person who violates probation and who is subject to sex offender registration, or would be subject to sex offender registration but for the effective date of NC's sex offender registration program, unless the court finds no danger.

Category	Specific Situation	Response	Statutory Basis	Form to Use
Conduct initial appearance, set pretrial release conditions, BUT delay release	Probable cause of impaired driving offense and clear and convincing evidence that person is so impaired as to present danger to self or others if released	Set pretrial release conditions (ex., unsecured or secured bond) <u>and</u> order defendant into custody, up to 24 hours, until he or she is no longer impaired to dangerous extent or sober responsible adult agrees to take custody.	15A-534.2	AOC-CR-200, AOC-CR-270 Make special findings in AOC-CR-270. Use AOC-CR-200 for PTR conditions; check box that release is subject to AOC-CR-270.
	Probable cause that individual was exposed to defendant in a nonsexual manner that poses significant risk of transmission of AIDS or Hepatitis B	Contact public health official to determine risk of transmission. If risk exists, order defendant detained for up to 24 hours for testing. Set PTR conditions, to go into effect once testing is completed.	15A-534.3	AOC-CR-200, AOC-CR-270 See immediately above.
Conduct initial appearance, BUT deny any pretrial release conditions if criteria met	<ul style="list-style-type: none"> • Capital offense • Fugitive from another state charged with offense punishable by life in prison or death, or fugitive charged with any offense after arrest on Governor’s warrant • Out-of-state probationer arrested for violation of probation if subject to Interstate Compact for Adult Supervision • Offense while person was involuntarily committed or on escape from involuntary commitment if person is still subject to commitment • Certain drug trafficking offenses if certain findings • Certain gang offenses if certain findings • Violation of certain health control measures if person poses health and safety threat • Certain methamphetamine offenses if certain findings • Military deserter • Violation of post-release supervision or parole • Violation of probation by person who has pending felony charge or is subject to sex offender registration if danger to public³ 	<p>In all of these situations, deny release if criteria are met. Make findings if required.</p> <p>If offense is while person was involuntarily committed or on escape from involuntary commitment, and person is still subject to commitment, person should be returned to treatment facility.</p> <p>If offense is violation of health control measure (under 130A-145 or 130A-475), pretrial confinement terminates when judicial official finds, based on recommendation of state or local health director, that person no longer poses health and safety threat.</p>	<ul style="list-style-type: none"> • 15A-533(c) • 15A-736 • Ch. 148, Art. 4B (Interstate Compact) • 15A-533(a) • 15A-533(d) • 15A-533(e) • 15A-534.5 • 15A-534.6 • Case law • 15A-1368.6, 15A-1376 • 15A-1345(b1) 	AOC-CR-200 In upper portion of form, check the box that states “Your release is not authorized.” In additional information section, write any findings or instructions.

3. Effective for offenses committed on or after Dec. 1, 2009. See note 2 for a further discussion of applying this law to a person subject to sex offender registration.

Category	Specific Situation	Response	Statutory Basis	Form to Use
Conduct initial appearance, BUT set certain pretrial release conditions	Arrested on order for arrest (OFA) after failure to appear (FTA)	If OFA requires certain PTR conditions, set those conditions. If OFA does not require PTR conditions, set secured bond in at least twice the amount of previous bond. If OFA does not require conditions and there was no previous bond, set secured bond of at least \$500. If defendant was already surrendered by surety for this FTA and made new bond, release defendant without setting new bond.	15A-534(d1)	AOC-CR-200 Set pretrial release conditions. Check box in upper portion of form that defendant was arrested or surrendered for FTA. Also check box if this is defendant's second or subsequent FTA.
	Surrendered by surety following FTA	Require secured bond in at least twice the amount of previous bond. If defendant was already arrested for this FTA and made new bond, release defendant without setting new bond. If defendant has not been arrested for this FTA, attempt to get OFA recalled.	15A-534(d1)	AOC-CR-200 See immediately above. See also AOC-CR-214 (surrender of defendant by surety)
	Felony by person on probation if danger to public ⁴	Set secured bond, with or without electronic house arrest.	15A-534(d2)	Revised AOC form forthcoming
	Electronic house arrest ⁵	If you require house arrest with electronic monitoring, set secured bond.	15A-534(a)	Revised AOC form forthcoming
	Order of judge	Follow judge's order.		AOC-CR-200
	Certain child victims	In addition to any other PTR conditions, require that defendant stay away from, not communicate with, and not assault, threaten, or harm alleged victim.	15A-534.4	AOC-CR-200 Write required conditions in space for restrictions

4. Effective for offenses committed on or after Dec. 1, 2009.

5. Effective for offenses committed on or after Dec. 1, 2009.

Category	Specific Situation	Response	Statutory Basis	Form to Use
<i>Reasons that initial appearance and/or pretrial release conditions may NOT be delayed or denied</i>	Noncitizens	No authority to delay or deny PTR conditions. If ICE has filed detainer, defendant may be detained by jail for additional 48 hours (excluding weekends and holidays) after defendant makes PTR conditions.	8 C.F.R. 287.7 (ICE detainer)	AOC-CR-200 Fill out release order as in other cases.
	Out-of-county offenses or violations	No authority to delay or deny PTR conditions. See pp. 18–19 of AOJB No. 2009/08 for steps to take.		AOC-CR-200, AOC-CR-241 (Out-of-County Process Verification Recall and Transmission)
	Arrest without paperwork	No authority to delay or deny PTR conditions. See pp. 18–19 of AOJB No. 2009/08.	15A-401(a)(2) (arrest authority)	AOC-CR-200
	DCI hit states “no bond”	No authority to delay or deny PTR conditions.		AOC-CR-200
	Probation violation by in-state probationer or “absconder”	No authority to delay or deny PTR conditions except in the circumstances in 15A-1345(b1), described above.	15A-1345(b)	AOC-CR-200