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**2023 Legislation Affecting Criminal Law and Procedure**  
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(Last updated August 23, 2023)

Below are summaries of 2023 legislation affecting criminal law, criminal procedure, and motor vehicle law. To obtain the text of the legislation, click on the link provided below or go to the General Assembly's website, [www.ncleg.gov](http://www.ncleg.gov). Be careful to note the effective date of each piece of legislation.

1) [S.L. 2023-6 \(H 40\)](#), as amended by section 4 of S.L. 2023-71 (S 626): **Rioting**. Effective for offenses committed on or after December 1, 2023, section 1 of this act increases the penalties and adds new offenses for rioting and inciting to riot under G.S. 14-288.2. This section makes the following changes to G.S. 14-288.2:

- Amends subsection (c) to provide that any person who willfully engages in a riot is guilty of a Class H felony if in the course of the riot the person brandishes any dangerous weapon or uses a dangerous substance.
- Adds new subsection (c1), which provides that any person who willfully engages in a riot is guilty of a Class F felony if in the course of the riot the person causes property damage in excess of \$2,500 or causes serious bodily injury.

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S.L. 2023-14 (S 20), p.5

## New misdemeanor crime of domestic violence

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Effective December 1, 2023

“A person is guilty of a Class A1 misdemeanor if that person uses or attempts to use physical force, or threatens the use of a deadly weapon, against another person” ... with certain relationships

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S.L. 2023-14 (S 20), p.5

## Assault on a pregnant woman

- Effective December 1, 2023
- Codified as G.S. 14-33(c)(2a)
- Class A1 misdemeanor

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S.L. 2023-76 (H 34), p.13

## Assaults on emergency personnel

- Effective December 1, 2023
- New G.S. 14-34.1A
- Class H felony to discharge any firearm or certain barreled weapon at or into any unoccupied emergency vehicle

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## Assaults on emergency personnel

Amends G.S. 14-34.8

Class I felony to point a laser device at emergency personnel in lawful performance of his or her duties

Class A1 misdemeanor to point laser device at LEA animal or search/rescue animal

Infraction to point laser device at the head or face of any other person

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S.L. 2023-63 (S 582), p.8

## NC Farm Act

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- Making various changes to the agricultural and wastewater laws of the state
- Most are effective December 1, 2023

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## Animal waste spills

Adds new G.S. 14-399.3

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## Larceny of timber

Amends G.S. 14-135



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## Using unmanned aircraft systems near forest fires

- New G.S. 15A-300.4 prohibits use of drones near a forest fire
- Does not apply to a person who:
  - Has consent of an official in charge
  - Is a law enforcement officer using in accordance with G.S. 15A-300.1
  - Is a NC Forest service employee



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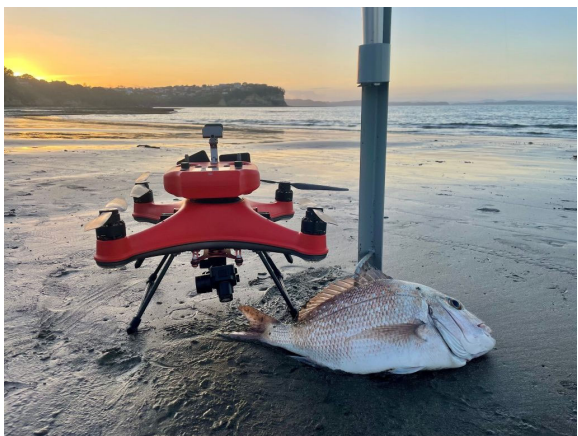
# Penalties

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- Class D felony when it causes death of another person
- Class E felony when it causes serious bodily injury to another person
- Class F felony when it causes serious physical or mental injury to another person
- Class G felony when it interferes with emergency operations and the interference causes damage to property or vegetation
- Class H felony when it interferes with emergency operations
- Class I felony when it physical or mental injury to another person
- Class A1 when not covered under any other provision of law

All violations carry a minimum \$1,000 fine

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S.L. 2023-69 (H 192), p.10

## Unmanned aircraft systems in fishing

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- Amends the definition of “to fish”
- Effectively prohibits the act of pulling fish out of the water with drones
- Leaves room for people to lawfully spot, locate, record, broadcast, stream, and deploy bait with a drone while fishing

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S.L. 2023-42 (H 347), p.6  
**Sports betting and  
horse race betting**

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Effective January 8, 2024

Anyone 21 or older can bet on professional and college sports and horse racing in NC, subject to regulations in new Article 9, Chapter 18C

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## Sports betting and horse racing penalties

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- Class 2 misdemeanor to engage in wagering in violation of the Article
- Class 2 misdemeanor for any person under 21 to engage in wagering
  
- Class G felony to influence the outcome of the competition
- Class I felony to provide false information on a licensing application

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S.L. 2023-97 (S 91), p.15  
**Street takeovers**

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Effective December 1, 2023

“The unauthorized taking over of a portion of highway, street, or public vehicular area by blocking or impeding the regular flow of traffic with a motor vehicle to perform a motor vehicle stunt, contest, or exhibition.”

And other relevant definitions

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## Penalties for street takeovers

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- Class A1 misdemeanor to operate motor vehicle in a street takeover
- Class H felony for subsequent violation in 24-month period
  
- Class A1 felony to
  - Knowingly participate
  - Coordinate through social media or otherwise
  - Commit an overt act in furtherance of
  - Facilitate
  
- Mere presence alone is not enough

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S.L. 2023-85 (S 246), p.15  
Second-degree  
trespass

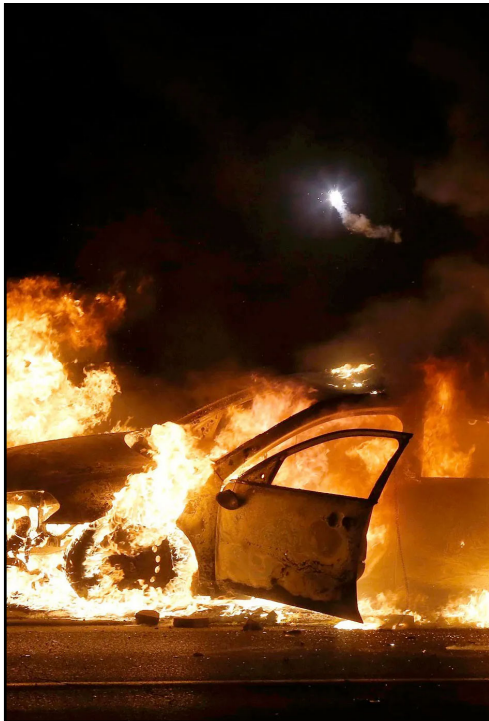
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## Second-degree trespass

- Effective December 1, 2023
- A person enters or remains on the curtilage of a dwelling of another between the hours of midnight and 6:00 A.M.

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S.L. 2023-6 (H 40), p.1

## Rioting/inciting a riot

- Effective December 1, 2023
- Class H felony for brandishing dangerous weapon while rioting
- Class F felony for property damage >\$2,500 or causing serious bodily injury
- Class E felony for causing death
- Class ~~A~~ A1 misdemeanor for inciting riot
- Class ~~F~~ E felony for inciting a riot that leads to property damage >~~\$1,500~~ >\$2,500
- Class D felony for inciting a riot that leads to death

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But...

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“Mere presence alone without an overt act is not sufficient to sustain a conviction.”

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## PTR for rioting and looting

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- 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

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# PRETRIAL INTEGRITY ACT

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S.L. 2023-75 (H 813), *p.12*

## Pretrial Integrity Act

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Effective October 1, 2023

Two distinct statutes affecting pretrial release

- Right to pretrial release for defendants charged with high level felonies
- 48-hour defendants

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Right to pretrial release for defendants charged with high level felonies

Currently: Only offense for which a magistrate cannot set pretrial release under any circumstance is

**First-degree murder**

Judge has discretion to determine whether a defendant charged with first degree murder may be afforded pretrial release

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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

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Separately

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## 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

### 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

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## 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.

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## Important notes

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- Applies for offenses committed on or after October 1
  - If offense occurred before then, set conditions as normal
- Does apply to defendants who were on PTR before October 1
  - Not looking at date of PTR, looking at date of offense
- Magistrate may set conditions if D on PTR is arrested for failing to appear
- New offense need not be the same as pending offense

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Defendant is arrested for misdemeanor larceny and released on PTR on August 15. On October 3, defendant is arrested for first degree trespass.

What do you do as the magistrate?

Conduct the initial appearance, but do not set conditions of release. Order that the defendant be taken to the first available court session in the county and that the person be returned to a magistrate if a judge does not set PTR conditions within 48 hours.

Why?

Defendant was on PTR for a pending proceeding and was arrested for a new offense allegedly committed while on PTR.

## Example 1

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Defendant is arrested for misdemeanor larceny and released on PTR on August 15. On October 3, defendant is arrested for speeding to elude arrest.

What do you do as the magistrate?

Conduct the initial appearance, and set conditions of release.

Why?

Defendant was on PTR for a pending proceeding and was arrested for a new offense allegedly committed while on PTR, BUT new offense was a Chapter 20 offense not specifically excluded

## Example 2

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Defendant is arrested for burglary and released on PTR on September 25. Defendant's first appearance is scheduled for October 2. Defendant fails to appear in court for the first appearance, and an order for arrest issued. Defendant is arrested and brought before you for failing to appear.

What do you do as the magistrate?

Conduct the initial appearance, and set conditions of release in accordance with OFA or with G.S. 15A-534(d1)

Why?

Although defendant was on PTR, defendant was not arrested for a new offense

## Example 3

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Defendant is arrested for misdemeanor larceny and released on PTR on August 15. On October 3, defendant is arrested for first degree kidnapping.

What do you do as the magistrate?

Conduct the initial appearance, but do not set conditions of release.

Why?

After October 1, only a judge may set conditions of release for first-degree kidnapping.

## Example 4

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Defendant is arrested for possession of marijuana and released on PTR on September 1. A warrant is issued for the defendant's arrest on September 30 for obtaining property by false pretenses. The defendant is arrested and brought before a magistrate on October 1.

What do you do as the magistrate?

Conduct the initial appearance, and set conditions of release.

Why?

Defendant is arrested for a new offense allegedly committed while the defendant was on pretrial release BUT offense was committed on September 30, so new PTR law wasn't effective yet

## Example 5

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## Suggested procedures for magistrates

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Ensure arrest isn't for one for the newly listed offenses

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Conduct a CJLEADS search to determine whether D has any pending criminal proceedings

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Determine whether D was out on PTR

- If a pending criminal proceeding was initiated by summons, D would not have been out on PTR, and magistrate may set conditions as normal

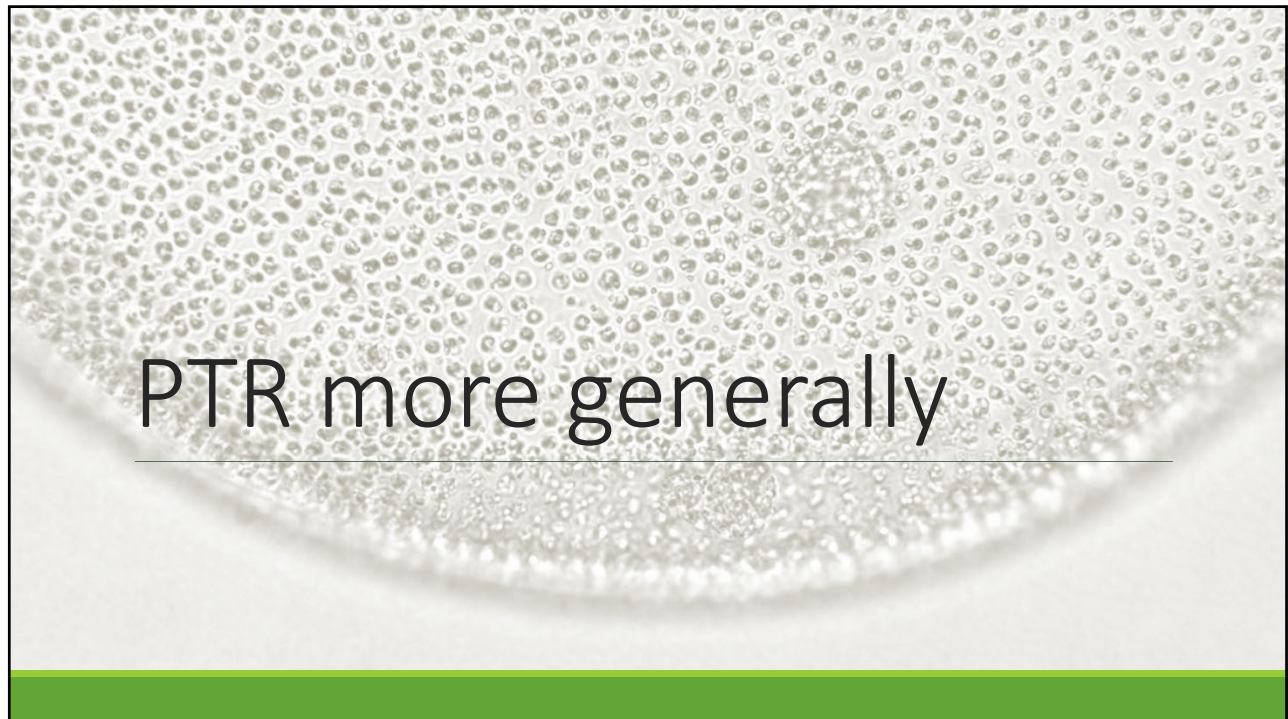
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## Handling DWI arrestees out on PTR

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- Conduct initial appearance (*e.g.*, inform of the charges, right to communicate with counsel and friends, etc.)
- But **delay** setting release conditions and order that the person be taken to the first available court session in the county
- Judge will conduct procedures as provided by the G.S. 15A-534.2 (*e.g.*, determining that the person is so impaired as to present a danger, no longer impaired, etc.)
- After 48 hours, magistrate sets conditions

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UNC SCHOOL OF GOVERNMENT

North Carolina Magistrates' Guide To **Pretrial Release**

- ✓ Initial Appearance
- ✓ Pretrial Release Conditions
- ✓ Release

Brittany Bromell

Guiding Principles

- ✓ Initial Appearance

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## Delay initial appearance

IF a person is unable to understand their rights (e.g., the person is unconscious, grossly intoxicated, or does not understand English)

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## ~~Conduct initial appearance~~ Delay setting release conditions

IF a person is charged with a domestic violence offense under the "48-hour" law

IF a person is charged with a violation of G.S. 14-288.2 or -288.6 (rioting or looting)

IF a person is charged with a violation of G.S. 14-277.6 or -277.7 (threat of mass violence on educational property or at a place of worship)

IF a person is arrested for a new offense allegedly committed while the person was on pretrial release for another pending proceeding

IF a person is charged with a felony and (1) the person is on probation and (2) there is insufficient information as to whether the person is a danger to the public

IF a person has been arrested for violating a condition of probation and the person (1) has a pending felony charge or (2) is subject to sex offender registration and (3) there is insufficient information as to whether the person is a danger to the public

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## ~~Conduct initial appearance~~ ~~Set release conditions~~ Delay release

IF a person has been arrested on probable cause of an impaired driving offense and a judicial official has determined by clear and convincing evidence that the person is so impaired as to present a danger to themselves or others if they were to be released

IF a judicial official finds probable cause that an individual was exposed to a person in a nonsexual manner that poses a significant risk of transmission of AIDS or Hepatitis B

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# Conduct initial appearance

## Deny release conditions

IF a person is charged with an offense under any of the following statutes:

- 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.

IF any of the following circumstances apply:

- Military deserter
- Out-of-state probationer supervised in North Carolina under the Interstate Compact for Adult Offender Supervision and arrested for a retaking hearing
- Person charged with committing a crime while involuntarily committed to, or while on escape from, a licensed or designated mental health facility:
- Person charged with a violation of a health control measure under G.S. 130A-145 or -475
- Person is a fugitive from another state and is charged with (1) an offense punishable by life in prison or death or (2) any offense after being arrested on a governor's warrant
- Person is charged with violating a condition of post-release supervision or parole

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# Conduct initial appearance

## Deny release conditions if criteria met

IF a person has been arrested for violating a condition of probation and the person either (1) has a pending felony charge or (2) is subject to sex offender registration, and (3) the person poses a danger to the public

IF a person is charged with certain methamphetamine offenses

IF a person is charged with certain drug trafficking offenses

IF a person is charged with certain gang offenses

IF a person is charged with certain offenses involving firearms

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## Conduct initial appearance Set certain release conditions

IF a person is charged with a domestic violence offense	IF a person is charged with certain sex offenses or crimes of violence against a minor	IF a person is charged with communicating a threat of mass violence on educational property or at a place of religious worship
IF a person has been arrested on an order for arrest (OFA) after a failure to appear (FTA)	IF a person has been surrendered by surety following an FTA	IF house arrest with electronic monitoring is imposed
IF a person's fingerprints or a DNA sample are required by G.S. 15A-502 or 15A-266.3A and have not been collected	IF a person is charged with a felony and the person is on probation for a prior offense	IF a judge has ordered certain PTR or no conditions

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Questions?

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