

Legislative Updates: Setting Pretrial Release Conditions and Domestic Violence Law

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Road map

- Immigration detainers (H 318)
- Iryna's law (H 307)
- Misdemeanor crime of domestic violence (S 429)

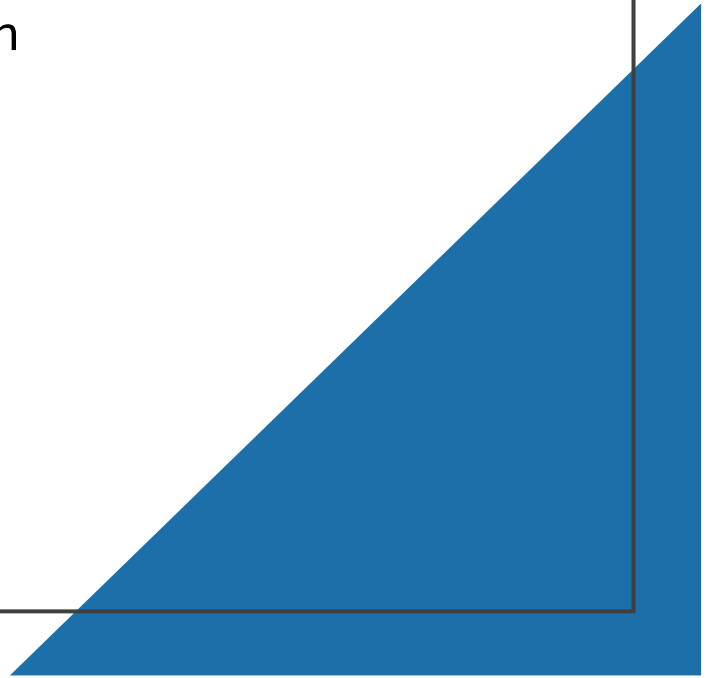


Immigration detainers and pretrial release



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.”

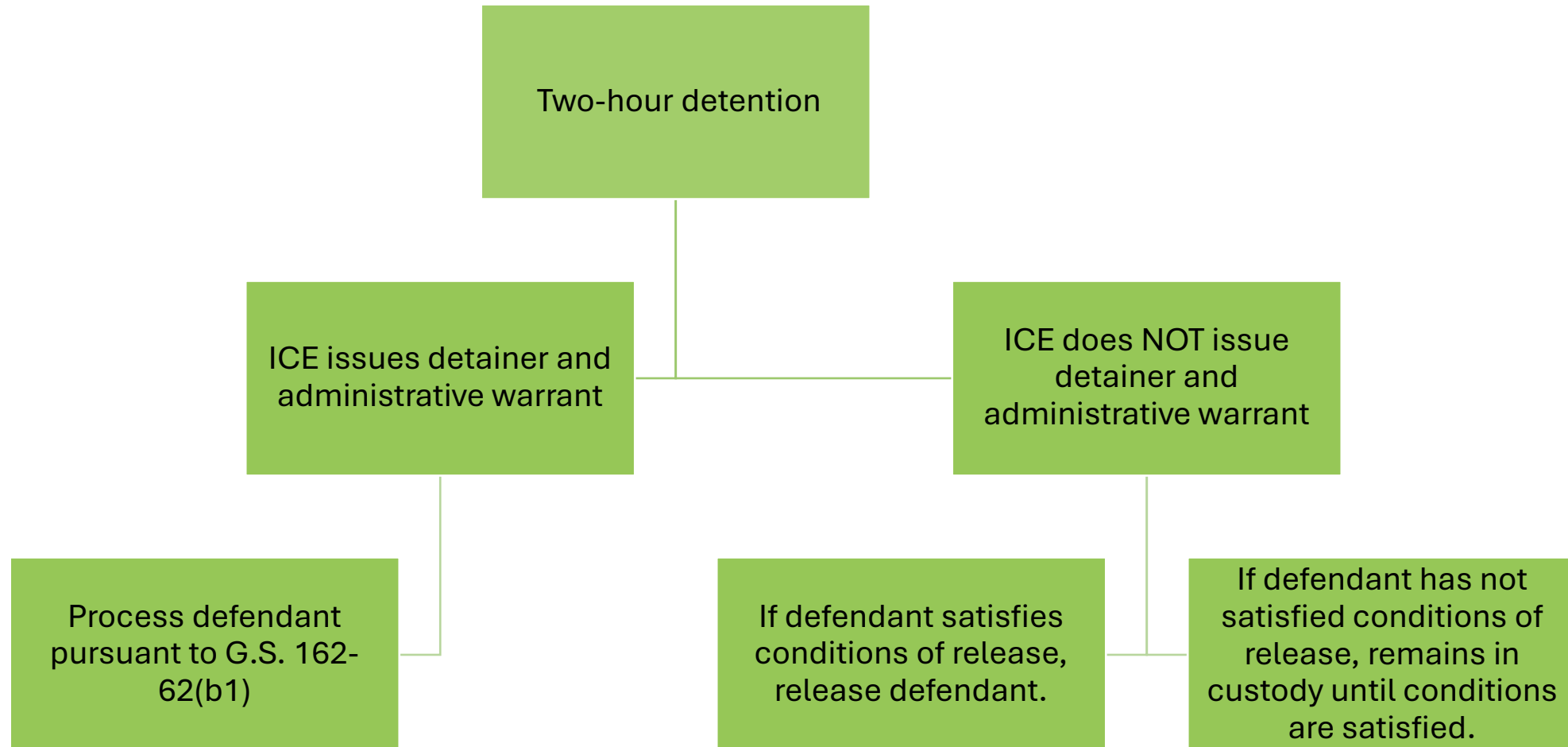
Considering the HOW

- 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.

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

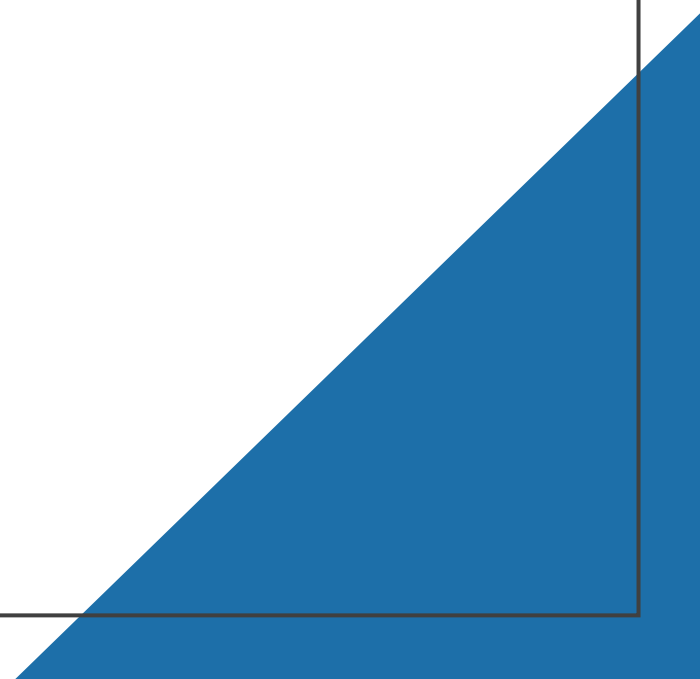
- G.S. 162-62(b1)
- When ICE issues detainer and administrative warrant:
 - Determine whether the defendant is the same person subject to the detainer and administrative warrant
 - Issue AOC-CR-662 order. Defendant will be released at the earliest of the following:
 - The passage of 48 hours from the 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) AOC-CR-662 order issued and 48-hour provision applies only if ICE issues detainer and warrant. If not, defendant should be released upon satisfying conditions of release.



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

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

IF the defendant is charged with a violent offense

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

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

OR 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

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

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Violent offenses

(includes attempts)

- 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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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 – G.S. 15A-534

- 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)

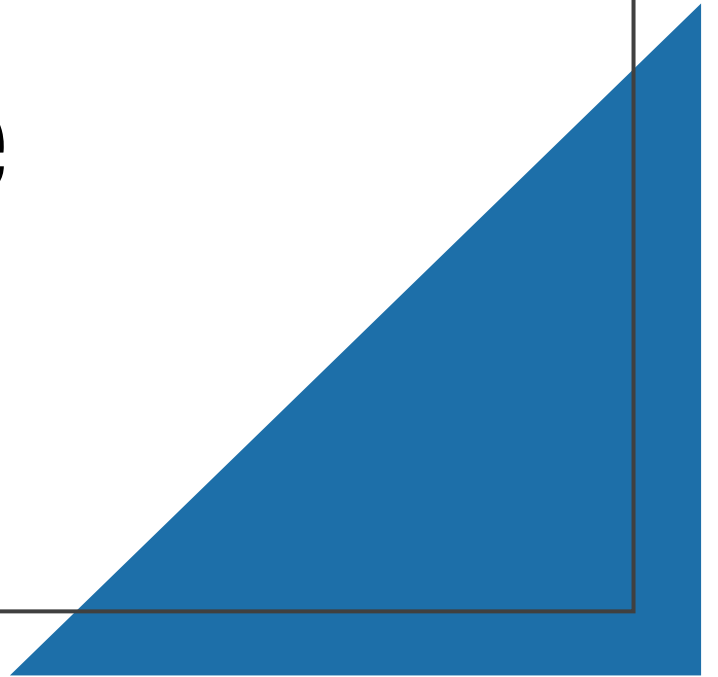
- Rebuttable presumption against PTR for violent offenses.
- For first violent offense charge, impose **secured bond** or **EHA** (with secured bond)
- For second or subsequent violent offense charge, impose **EHA** (with secured bond) if:
 - Defendant has been convicted of a prior violent offense OR
 - 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

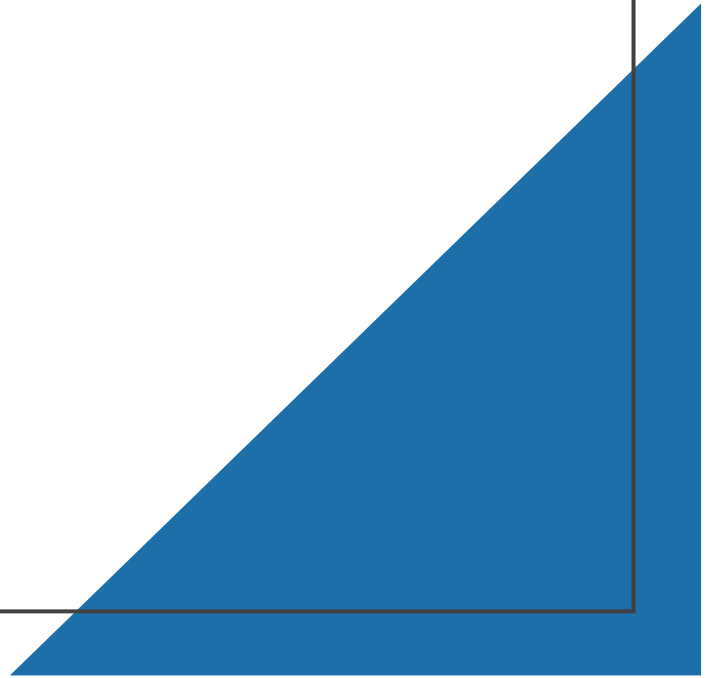


Misdemeanor crime of domestic violence



Session Law 2025-70 (S 429)

- Effective December 1, 2025.
- Modifies laws regarding the misdemeanor crime of domestic violence.



G.S. 14-32.5

- Class A1 misdemeanor to use or attempt to use physical force, or threaten the use of a deadly weapon, against another person.
 - A current or former spouse, parent, or guardian of the victim.
 - A person with whom the victim shares a child in common.
 - A person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian.
 - A person similarly situated to a spouse, parent, or guardian of the victim.
 - A person who has a current or recent former dating relationship with the victim.

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



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

- 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