

North Carolina Magistrates' Guide To Pretrial Release

-  Initial Appearance
-  Pretrial Release Conditions
-  Release

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Guiding Principles

Upon arrest, a defendant must be taken without unnecessary delay before a judicial official, who **MUST** hold an initial appearance and set pretrial release (PTR) conditions except when a relevant statute prohibits release, restricts the officials who can set conditions, or requires the setting of certain conditions. G.S. 15A-511(f); 15A-533(right to PTR determination). Unless an exception applies, a magistrate has no authority to delay or deny the determination of PTR conditions.

Although any judicial official is authorized to preside at an initial appearance, in most cases that official is a magistrate. This guide addresses PTR only in the context of magistrates' authority and limitations.

- 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)

THEN you, as a magistrate, may delay an initial appearance for a reasonable period of time without setting PTR conditions. If you commit a person to jail until they are able to understand their rights, set a reasonable outer time limit and check regularly with the jail. To avoid delay of an initial appearance if a person does not speak English, use a telephone interpreting service when possible. (G.S. 15A-511(a)(3))

Initial Appearance - Delay Pretrial Release Conditions

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

THEN conduct an initial appearance but do not set PTR conditions. Order that the person 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 after arrest. After 48 hours, a magistrate may retain a person for a reasonable period of time while determining PTR conditions if the person's immediate release poses a danger of injury or intimidation and an appearance bond will not prevent injury or intimidation. (G.S. 15A-534.1)

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

THEN conduct an initial appearance but do not set PTR conditions. Order that the person be brought for a first appearance before a judge no later than 72 hours after arrest or 96 hours if the courthouse will be closed for longer than 72 hours after arrest. Make written findings of the information needed to determine danger to the public and order that the person be brought before the first available judicial official immediately if that information becomes available before the court appearance. If sufficient information to determine whether or not the person is dangerous is provided before the court appearance, set PTR conditions. If the defendant poses a danger, set a secured bond with or without house arrest. (G.S. 15A-534(d2))

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 **Initial Appearance**
- Delay **Pretrial Release Conditions**

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

THEN conduct an initial appearance but do not set PTR conditions. If the person has been held for 7 days without PTR conditions, the person must be brought before any judicial official to have PTR conditions set. If sufficient information to determine whether or not the person is dangerous is provided before the court appearance, set PTR conditions or deny release as required. (G.S. 15A-1345(b1))

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

THEN conduct an initial appearance but do not set PTR conditions. Order that the person 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 24 hours after arrest. After 24 hours, a magistrate may retain a person for a reasonable period of time while determining PTR conditions if the person's immediate release poses a danger of injury and an appearance bond will not prevent injury. (G.S. 15A-534.8, effective for offenses committed on or after Dec. 1, 2023 (S.L. 2023-6))

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)

THEN conduct an initial appearance but do not set PTR conditions. Order that the person 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. After 48 hours, a magistrate may retain a person for a reasonable period of time while determining PTR conditions if the person's immediate release poses a danger of injury and an appearance bond will not prevent injury. (G.S. 15A-534.7)

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

THEN conduct an initial appearance. If all charges are for G.S. Chapter 20 violations and do not include violations of G.S. 20-138.1, -138.2, -138.2A, -138.2B, -138.5, or -141.4, set conditions as normal. If any of those offenses or any non-Chapter 20 offense is charged, do not set PTR conditions. Order that the person 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. (G.S. 15A-533(h), effective for offenses committed on or after Oct. 1, 2023 (S.L. 2023-75))

 **Initial Appearance**
 **Pretrial 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

THEN set PTR conditions and order the person into custody, for up to 24 hours, until they are no longer impaired to a dangerous extent or until a sober responsible adult agrees to take custody of the person. In determining whether a person remains impaired, you may order periodic BAC testing or order that the person be brought back before you to assess recovery. (G.S. 15A-534.2)

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

THEN set PTR conditions and order the person into temporary custody for up to 24 hours for testing. Contact a public health official to arrange testing and order the temporary custody terminated after testing or 24 hours, whichever occurs first. (G.S. 15A-534.3)

 **Initial Appearance**
X Deny **Pretrial Release Conditions**

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

- G.S. 14-17 (First- or second-degree murder or attempted first- or second-degree murder)
- G.S. 14-39 (First- or second-degree kidnapping)
- 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 (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 (Statutory sexual offense with a person who is 15 years of age or younger)
- G.S. 14-43.11 (Human trafficking)
- G.S. 14-32(a) (Assault with a deadly weapon with intent to kill inflicting serious injury)
- G.S. 14-34.1 (Discharging certain barreled weapons or a firearm into occupied property)
- First-degree burglary pursuant to G.S. 14-51
- First-degree arson pursuant to G.S. 14-58
- G.S. 14-87 (Robbery with firearms or other dangerous weapons)

THEN conduct an initial appearance but do not set PTR conditions. Only a judge has the authority to set PTR conditions. Order that the person be brought for a first appearance before a judge no later than 72 hours after arrest or 96 hours if the courthouse will be closed for longer than 72 hours after arrest. (G.S. 15A-601(c); 15A-533(b), effective for offenses committed on or after Oct. 1, 2023 (S.L. 2023-75))

IF any of the following circumstances apply

THEN deny PTR conditions and take the indicated actions.

- **Military deserter:** Deny PTR conditions and contact military authorities as soon as possible to take custody of the deserter. (Huff v. Watson, 99 S.E. 307 (Ga. 1919))
- **Out-of-state probationer supervised in North Carolina under the Interstate Compact for Adult Offender Supervision and arrested for a retaking hearing:** Deny PTR conditions and notify the local probation office of the arrest. (G.S. 148-65.8(a))
- **Person charged with committing a crime while involuntarily committed to, or while on escape from, a licensed or designated mental health facility:** Deny PTR conditions and instead return the person to the mental health facility if it is determined that the person's commitment is still valid. (G.S. 15A-533(a))
- **Person charged with a violation of a health control measure under G.S. 130A-145 or -475:** Deny PTR conditions and commit the person to a designated facility. On recommendation of the State or a local health director, a judicial official may determine that the person does not pose a threat to the health and safety of others, terminate confinement, and set PTR conditions. (G.S. 15A-534.5)
- **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:** Deny PTR conditions and schedule extradition proceedings in district court. For any other fugitive proceeding, you may set PTR conditions as normal. (G.S. 15A-730, -736)
- **Person is charged with violating a condition of post-release supervision or parole:** Deny PTR conditions and ensure that the local probation office has been informed of the arrest. (G.S. 15A-1368.6, -1376)

 **Initial Appearance**
X Deny 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

THEN deny PTR conditions. If you find that the person does not pose a danger to the public, set PTR conditions as normal. If you are unable to determine whether or not the person poses a danger to the public, see the "DELAY PRETRIAL RELEASE CONDITIONS" section above for a person arrested for violating a condition of probation. (G.S. 15A-1345(b1))

IF a person is charged with certain methamphetamine offenses

THEN you may deny the setting of PTR conditions if

- the person was arrested for a violation of G.S. 90-95(b)(1a) or -95(d1)(2)b. and
- the person is in any manner dependent upon methamphetamine, or the person has a pattern of regular illegal use of methamphetamine, and the violation was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner.

(G.S. 15A-534.6)

IF a person is charged with certain drug trafficking offenses

THEN deny setting PTR conditions if

- there is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance,
- the alleged drug trafficking offense was committed while the person was on pretrial release for any other offense, and
- the person has been convicted of either a Class A through E felony or an offense involving drug trafficking and not more than five years have passed since the person's date of conviction or release from prison for the offense, whichever is later.

Only a judge may set PTR conditions for a defendant meeting these criteria.

(G.S. 15A-533(d), (g))

IF a person is charged with certain gang offenses

THEN deny setting PTR conditions if

- there is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal gang as defined in G.S. 14-50.16A(1);
- the offense was committed while the person was on pretrial release for another offense; and
- the person (1) has been previously convicted of an offense described in G.S. 14-50.16 through -50.20 or (2) has been convicted of a criminal offense and received an enhanced sentence for that offense pursuant to G.S. 15A-1340.16E and not more than five years have elapsed since the date of conviction or the person's release for the offense, whichever is later.

Only a judge may set PTR conditions for a defendant meeting these criteria.

(G.S. 15A-533(e), (g))

IF a person is charged with certain offenses involving firearms

THEN deny setting PTR conditions if there is reasonable cause to believe that the person committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm and

- the offense was committed while the person was on pretrial release for another felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm or
- the person has previously been convicted of a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm and not more than five years have elapsed since the date of conviction or the person's release for the offense, whichever is later.

Only a judge may set PTR conditions for a defendant meeting these criteria.

(G.S. 15A-533(f), (g))



Initial Appearance



Set Certain Release Conditions

IF a person is charged with a domestic violence offense

THEN, if authorized to set PTR conditions, a magistrate may, in addition to any other PTR conditions, require that the person

- (1) stay away from the victim,
 - (2) not assault the victim,
 - (3) not damage specified property, and
 - (4) may visit their children at times specified in a court order.
- (G.S. 15A-534.1(a)(2))

IF a person is charged with any of the following sex offenses or crimes of violence against a minor:

- Felonious or misdemeanor child abuse
- Taking indecent liberties with a minor in violation of G.S. 14-202.1
- Rape or any other sex offense in violation of G.S. Chapter 14, Article 7B against a minor victim
- Incest with a minor in violation of G.S. 14-178
- Kidnapping, abduction, or felonious restraint involving a minor victim
- Transporting a child outside the state with intent to violate a custody order, in violation of G.S. 14-320.1
- Assault or any other crime of violence against a minor victim
- Communicating a threat against a minor victim

THEN, in addition to any other PTR conditions, a magistrate may require that the person (1) stay away from the home, temporary residence, school, business, or place of employment of the alleged victim; (2) not communicate with the alleged victim; and (3) not assault, threaten, or harm the alleged victim. Such stay-away and non-communication conditions may be waived on proper findings. (G.S. 15A-534.4)

IF a person is charged with communicating a threat of mass violence on educational property or at a place of religious worship

THEN, if authorized to set PTR conditions, a magistrate may, in addition to any other PTR conditions, require that the person stay away from any threatened educational property or place of worship and, unless granted permission by a person in control of the property, from any other such properties. (G.S. 15A-534.7)

IF a person has been arrested on an order for arrest (OFA) after a failure to appear (FTA)

THEN, if the OFA designates certain PTR conditions, you must, at a minimum, set those conditions. If the OFA does not designate PTR conditions, set a secured bond in at least twice the amount of any previous bond. If the OFA does not require PTR conditions and there was no previous bond, set a secured bond of at least \$1,000. If the person was already surrendered by surety for this FTA and made new bond, order the person released due to satisfaction of the release order entered after surrender. (G.S. 15A-534(d1))

IF a person has been surrendered by surety following an FTA

THEN determine whether an OFA is outstanding for the FTA. If so, have an officer serve the OFA, and set PTR conditions as discussed above. If the OFA cannot be obtained for service, set a secured bond in at least twice the amount of any previous bond, or if there is no previous bond, set a secured bond of at least \$1,000 and recall the OFA. If the person already was arrested on an OFA for this FTA and made new bond, release the person without setting new bond. (G.S. 15A-534(d1), -301(g)(2)d.)

IF house arrest with electronic monitoring is imposed

THEN set a secured bond. (G.S. 15A-534(a))

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

THEN, in addition to any other PTR conditions, require the collection of fingerprints or a DNA sample from the person as a condition of release. (G.S. 15A-534(a))

IF a person is charged with a felony and the person is on probation for a prior offense

THEN, if a judicial official finds that the person does not pose a danger to the public, set PTR conditions as normal under G.S. 15A-534. If the person does pose a danger to the public, impose a secured bond with or without house arrest. (G.S. 15A-534(d2))

IF a judge has ordered certain PTR or no conditions

THEN set the PTR conditions as ordered by the judge.

