



Setting Conditions of Release

This guide is intended to assist judicial officials in determining WHO has authority to set conditions of release for a given offense and WHAT conditions may be imposed.

JUDGE ONLY

TYPE OF OFFENSE

Offenses Listed in G.S. 15A-533(b) ["Pretrial Integrity Act" Felonies]

- G.S. 14-17 First- or second-degree murder or attempted first- or second-degree murder
- 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. 14-32(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
- G.S. 14-39 First- or second-degree kidnapping
- G.S. 14-43.11 Human trafficking
- 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

Deny conditions of release unless the rebuttable presumption (pursuant to G.S. 15A-533(b) and -534(b1)) is overcome. The presumption may be overcome with a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community.

If the presumption is overcome and release of the defendant is authorized, findings of fact must be made and conditions must be imposed as follows:

- Impose **Secured Bond** or **Electronic House Arrest** (if available) if the defendant is charged with a first violent offense.
- Impose **Electronic House Arrest** (if available) **with a Secured Bond** if the defendant is charged with a second or subsequent violent offense and
 - has been convicted of a prior violent offense or
 - was on pretrial release for a prior violent offense.

JUDGE ONLY

Certain offenses are subject to rebuttable presumptions if all the relevant statutory findings are made. If all the relevant statutory findings are not made, then any judicial official may act, subject to other applicable rules.

TYPE OF OFFENSE

Drug Trafficking Offenses G.S. 15A-533(d)

- The defendant committed a drug trafficking offense.
- The drug trafficking offense was committed while the defendant was on pretrial release for another offense.
- The defendant has previously been convicted of a Class A–E felony or an offense involving drug trafficking and not more than 5 years have elapsed since conviction or release from prison, whichever is later.

Gang Offenses G.S. 15A-533(e)

- The defendant committed a gang offense.
- The gang offense was committed while the defendant was on pretrial release for another offense.
- The defendant has previously been convicted of a gang offense or has been convicted of a criminal offense and received an enhanced sentence pursuant to G.S. 15A-1340.16E and not more than five years have elapsed since conviction or release from prison, whichever is later.

Firearms Offenses G.S. 15A-533(f)

- The defendant committed a felony or Class A1 misdemeanor offense involving a firearm **AND**
- The firearm offense was committed while the defendant was on pretrial release for another felony or Class A1 misdemeanor offense involving a firearm **OR**
- The defendant has previously been convicted of a felony or Class A1 misdemeanor offense involving a firearm and not more than 5 years have elapsed since conviction or release from prison, whichever is later.

Deny conditions of release unless the applicable rebuttable presumption is overcome. The judge must find that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community. If the rebuttable presumption is overcome, then proceed in accordance with the section below.

Is the Offense Committed by the Defendant a Violent Offense?

YES

If the presumption is overcome and release of the defendant is authorized, findings of fact must be made and conditions must be imposed as follows:

- Impose **Secured Bond** or **Electronic House Arrest** (if available) if the defendant is charged with a first violent offense.
- Impose **Electronic House Arrest** (if available) **with a Secured Bond** if the defendant is charged with a second or subsequent violent offense and
 - has been convicted of a prior violent offense or
 - was on pretrial release for a prior violent offense.

NO

Has the defendant been convicted of three or more offenses (each at least a Class 1 misdemeanor) in separate sessions of court within the previous ten years?

YES

Impose **Secured Bond** and/or **Electronic House Arrest**, (if available) [make findings of fact].

NO

Set conditions as appropriate, which may include **Unsecured Bond** and/or **Custody Release**.

Violent offenses include the following:

- Any Class A through G felony that includes assault, the use of physical force against a person, or the threat of physical force against a person as an essential element of the offense.
- Any felony offense requiring sex offender registration, whether or not the person is currently required to register.
- An offense under **G.S. 14-17**, and any other offense listed in **G.S. 15A-533(b)** [see JUDGE ONLY].
- An offense under the following statutes:
 - **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
 - **G.S. 90-95(h)(4c)** Trafficking in fentanyl
- An attempt to commit any offense described in this section

JUDGE INITIALLY

TYPE OF OFFENSE

- New offenses allegedly committed while the defendant was on pretrial release for a pending proceeding [G.S. 15A-533(h)]
 - Any judicial official may set conditions immediately for offenses under **G.S. Chapter 20, except the following offenses:**
 - **G.S. 20-138.1** Impaired driving
 - **G.S. 20-138.2** Impaired driving in a commercial vehicle
 - **G.S. 20-138.2A** Operating a commercial vehicle after consuming alcohol
 - **G.S. 20-138.2B** Operating a school bus, school activity
- **G.S. 15A-534.1** Crimes of domestic violence
- **G.S. 15A-534.7** Communicating a threat of mass violence
- **G.S. 15A-534.9** Threats against public officers
- **G.S. 15A-534.8** Rioting or looting

THEN ANY JUDICIAL OFFICIAL

- After forty-eight hours, any judicial official may set conditions of release (24 hours for rioting and looting offenses)

Is the Offense Committed by the Defendant a Violent Offense?

YES

Deny conditions of release unless the rebuttable presumption for violent offenses is overcome. The presumption may be overcome with a finding that there is a reasonable assurance that the defendant will appear and release does not pose an unreasonable risk of harm to the community.

If the presumption is overcome and release of the defendant is authorized, findings of fact must be made and conditions must be imposed as follows:

- Impose **Secured Bond** or **Electronic House Arrest** (if available) if the defendant is charged with a first violent offense.
- Impose **Electronic House Arrest** (if available) **with a Secured Bond** if the defendant is charged with a second or subsequent violent offense and
 - has been convicted of a prior violent offense or
 - was on pretrial release for a prior violent offense.

If the defendant is arrested on an order for arrest for failing to appear and the underlying offense is a violent offense, then the magistrate must deny conditions of release unless the rebuttable presumption for violent offenses is overcome. The magistrate may, but is not required to, impose the conditions of release recommended by the judge in the order for arrest. Make written findings.

NO

Has the defendant been convicted of three or more offenses (each at least a Class 1 misdemeanor) in separate sessions of court within the previous ten years?

YES

Impose **Secured Bond** and/or **Electronic House Arrest**, (if available) [make findings of fact].

NO

Set conditions as appropriate, which may include **Unsecured Bond** and/or **Custody Release**.

If the defendant is arrested on an order for arrest for failing to appear and the underlying offense is NOT a violent offense, then the magistrate must at a minimum impose the conditions of release that are recommended in any order for arrest for the most recent failure to appear. If no conditions are recommended in that order for arrest, then a secured bond in an amount at least double the amount of the most recent previous bond (secured or unsecured) for the charges should be imposed. If no bond has yet been required for the charges, a secured bond in the amount of at least \$1,000 should be imposed.

Violent offenses include the following:

- Any Class A through G felony that includes assault, the use of physical force against a person, or the threat of physical force against a person as an essential element of the offense.
- Any felony offense requiring sex offender registration, whether or not the person is currently required to register.
- An offense under **G.S. 14-17**, and any other offense listed in **G.S. 15A-533(b)** [see JUDGE ONLY].
- An offense under the following statutes:
 - **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 any offense described in this section

ANY JUDICIAL OFFICIAL

TYPE OF OFFENSE

- Any offense not subject to a rule that limits or delays authority (see JUDGE ONLY and JUDGE INITIALLY).

Is the Offense Committed by the Defendant a Violent Offense?

YES

Deny conditions of release unless the rebuttable presumption for violent offenses is overcome. The presumption may be overcome with a finding that there is a reasonable assurance that the defendant will appear and release does not pose an unreasonable risk of harm to the community.

If the presumption is overcome and release of the defendant is authorized, findings of fact must be made and conditions must be imposed as follows:

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 - **G.S. 90-95(h)(4c)** Trafficking in fentanyl
- An attempt to commit any offense described in this section