



Initial Appearances Before North Carolina Magistrates

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Introduction

A person arrested by law enforcement must be brought before a judicial official for an initial appearance.¹ Most of the time, the judicial official presiding at an initial appearance is a magistrate, because they are available twenty-four hours a day and are generally prepared to see arrested persons as soon as they are brought in. At an initial appearance, the magistrate will review the reason for the arrest, advise the arrested person of their rights, set pretrial release conditions as allowed by law, and set a new court date. The magistrate may also take further steps such as appointing counsel. Law enforcement must bring the person in for this appearance without unnecessary delay.² There are a few requirements that apply to all initial appearances.

As a threshold matter, the initial appearance may be conducted in person or via audio and video transmission.³ While the arrested person must be included at the initial appearance, this is not the same as the right to be physically present.⁴ Therefore, there is no requirement for an arrested person to execute a waiver of rights before an initial appearance may be conducted via audio and video transmission. Additional provisions address initial appearances for implied consent offenses (discussed below in [Step 4, Additional Procedures for Implied Consent Offenses and Offenses Involving Impaired Driving](#)).

The Magistrate's Role

Initial appearances involve two interested parties: law enforcement and the arrested person. They also generally include two very significant inquiries: (1) Is there probable cause for the underlying offense (when the person is arrested without process), and (2) what should the pretrial release conditions be (when the person is eligible for conditions)? Both parties may have strong perspectives about the resolution of these inquiries. Occasionally, parties may desire a magistrate to be “on their side” or perceive the magistrate to be “not on their side” during an application for process, which runs afoul of the magistrate’s role to promote public confidence in the integrity and impartiality of the judicial system.⁵ A neutral, critical review by the magistrate during the initial appearance is the best approach for ensuring public confidence and the appearance of fairness. After a warrantless arrest, approaches vary between charging only the requested

1. [Chapter 15A, Section 511](#), and [Chapter 20, Section 38.4](#), of the North Carolina General Statutes [hereinafter G.S.].

2. Examples of permitted delays are provided by statute. In impaired-driving cases, [G.S. 20-38.3](#) provides that law enforcement may, before taking the person before a judicial official, take the arrested person to any place for a chemical analysis or other evaluation to determine the extent or cause of their impairment or may take the arrested person to some other place for the purpose of having them identified or completing a crash report. In other cases, [G.S. 15A-501](#) provides that law enforcement may, before taking the person before a judicial official, take them to some other place if the person so requests or if doing so is necessary for the purpose of having them identified.

3. Proceedings via audio and video transmission may be conducted when all parties, the presiding official, and any other participants are able to see and hear each other. If the arrested person has an attorney, they must also be able to communicate fully and confidentially with them. [G.S. 7A-49.6](#).

4. The right to be physically present generally attaches at all stages of trial and pretrial proceedings in which testimony or other evidence is subject to cross-examination. *Illinois v. Allen*, 397 U.S. 337 (1970); *State v. Seaberry*, 97 N.C. App. 203 (1990).

5. N.C. RULES OF CONDUCT FOR MAGISTRATES, r. 2A (2025).

offense(s) and charging all offenses for which probable cause exists, notwithstanding the request of the applicant. This is discussed in further detail below in [Step 3, Determining Whether Probable Cause Exists](#).

Step 1: Determining Whether to Begin the Initial Appearance

Upon arrest, law enforcement must bring a person arrested before a judicial official “without unnecessary delay.”⁶ Once the person is brought in for the initial appearance, there are some circumstances where the proceeding may be delayed or paused if it has already begun.

Medical Care

Sometimes, a person will require hospital care after they have been arrested. When law enforcement or first responders make this realization, they may take the person to a hospital or medical facility for care before bringing the person before a judicial official. Other times, when the sheriff’s office or magistrate determines that a person needs medical care, the person may be taken to a hospital or medical facility even after being brought to the detention center or before the magistrate. While the initial appearance may be delayed for hospital care, [G.S. 15A-511](#) still requires an initial appearance after a person is arrested. Practically speaking, this means law enforcement may not decide to terminate the arrest before the initial appearance and provide the person with a citation—they must still comply with [G.S. 15A-501](#) and take the arrested person before a judicial official for an initial appearance after the necessary health care has concluded.

Refusing to Be Identified

Sometimes, individuals will refuse to identify themselves after they have been arrested. [G.S. 15A-501\(4\)](#) permits law enforcement to take an arrested person to another location before the initial appearance for the purpose of having that person identified. Without knowing a person’s identity, it is impossible for law enforcement to check for other outstanding process and impossible for magistrates to assess a person’s eligibility for pretrial release conditions (and if they are eligible, what conditions to impose). This is because a person’s identity aids the magistrate in determining a person’s prior criminal history, including previous failures to appear. One response in this circumstance may be to delay the initial appearance so that law enforcement can investigate the defendant’s identity. Another option available to magistrates is to proceed with conducting the initial appearance and to consider the person’s refusal to identify themselves when setting pretrial release conditions. For example, a magistrate might include a condition that the defendant adequately identify themselves or that an identification of the defendant be determined before permitting release.

Unruly, Intoxicated, or Disruptive Persons

A magistrate may delay the initial appearance when the person arrested is so unruly that they disrupt and impede the proceeding, when the person becomes unconscious, or when the person is so intoxicated that they are otherwise unable to understand their procedural rights.⁷ An important note about this delay is that the discretion to begin the initial appearance should

6. [G.S. 15A-511\(a\)\(2\)](#).

7. *Id.* § 511(a)(3).

remain with the magistrate and not be transferred to a deputy or jailer. This is best accomplished by having frequent check-ins with the defendant and by setting an outer limit to the delay. A magistrate may delay an initial appearance due to the defendant's intoxication for any offense, unlike the detention of impaired drivers pursuant to [G.S. 15A-534.2](#), which applies only to implied consent offenses (discussed further below). As soon as the person can understand the proceedings and their procedural rights, the magistrate should conduct the initial appearance.

Foreign Language Interpretation

An initial appearance must be delayed when it is apparent that the arrested person will not be able to understand or participate in the proceeding without an interpreter.⁸ In this circumstance, the initial appearance can be accomplished with the assistance of a interpreter service, either in person or telephonically, as long as the judicial official is reasonably certain that the arrested person is able to understand the legal and procedural rights and information that are conveyed during the first appearance.

Step 2: Determining Whether the Person Was Arrested with a Warrant or Order for Arrest

One of the first inquiries the magistrate should make when a person is arrested is whether they were arrested pursuant to existing criminal process. Whether a person has been arrested pursuant to a warrant or an order for arrest determines whether the magistrate must evaluate if probable cause exists for the underlying offense.

Arrested with a Warrant for Arrest or Order for Arrest

The arrest of a person pursuant to a valid warrant for arrest means probable cause has already been established as part of the issuance of that warrant. As a result, the magistrate during the initial appearance should not reevaluate or reconsider whether probable cause exists for the underlying offense. Similarly, if the arrested person has been brought in pursuant to a valid order for arrest, the magistrate should not reevaluate or reconsider the issuance of the order for arrest, as it has already been issued by a magistrate or other judicial official.⁹

Arrested Pursuant to a Warrant or Order Not in Law Enforcement's Possession

Sometimes a person is brought in pursuant to a warrant for arrest or an order for arrest, but the arresting officer does not have the process with them and has not already served the arrested person.¹⁰ When that happens, the magistrate may locate and provide the warrant for arrest or order for arrest to law enforcement, and then proceed with the initial appearance.

8. [Id.](#)

9. [Id.](#) § 511(d).

10. See [Id.](#) § 401(a)(2).

Fugitives

If the person has been arrested pursuant to a fugitive warrant that has already been issued, the magistrate does not have to determine whether the officer had grounds for the arrest. Instead, the magistrate must only inform the arrested person of the charges, and set pretrial release conditions.¹¹ If the person has been arrested pursuant to a governor's warrant, the procedure is the same except the arrested person must be held without bond.¹² Determining release conditions for fugitives is discussed further in Step 5, Setting Conditions of Pretrial Release.

If a person has been arrested without a fugitive warrant on the basis that they are a fugitive, the magistrate must determine whether the officer had lawful grounds for the arrest. This is not a determination of whether probable cause exists for the out-of-state offense. Rather, the magistrate must only determine (1) whether the person has been charged with a crime in another state and (2) whether that crime is punishable in the other state by death or more than one year in prison. When the answer to both of those questions is yes, the arrest was lawful, and the magistrate should issue a magistrate's order.¹³ At that point, the magistrate should proceed as if the person was arrested pursuant to a fugitive warrant (described above).

Step 3: Determining Whether Probable Cause Exists

If a person has been arrested pursuant to a warrant for arrest or order for arrest, the magistrate should skip this step and, if the offense is an implied consent offense, proceed to Step 4 (Additional Procedures for Implied Consent Offenses). If it is not an implied consent offense, the magistrate should proceed to Step 5 (Setting Conditions of Pretrial Release). When a person has been arrested without a warrant for arrest or order for arrest, the magistrate should proceed with Step 3 and determine whether probable cause exists for the arrest.¹⁴

If the person is arrested without a warrant or order for arrest, then a magistrate should determine whether probable cause exists for the offense(s) alleged. When a magistrate determines that probable cause exists, the magistrate must issue a magistrate's order.¹⁵ A common consideration for magistrates is whether to issue charges only for the offenses law enforcement is seeking or for every offense for which probable cause exists. As discussed at the beginning of this bulletin, the magistrate's role during initial appearances is that of a neutral and detached official. As a representative of the judicial branch, a magistrate's role is better described as reviewing probable cause for criminal allegations brought by law enforcement rather than initiating criminal allegations based on information provided by law enforcement.

Certainly, at times law enforcement may not be fully aware of what criminal offenses are implicated by the information they provide. In these circumstances, it can be beneficial to inform law enforcement what offenses may be implicated and to ask which offense or offenses they are seeking. While it is appropriate for a magistrate to have a conversation with law enforcement and ensure that they are aware of all their options, issuing charges not requested by the applicant

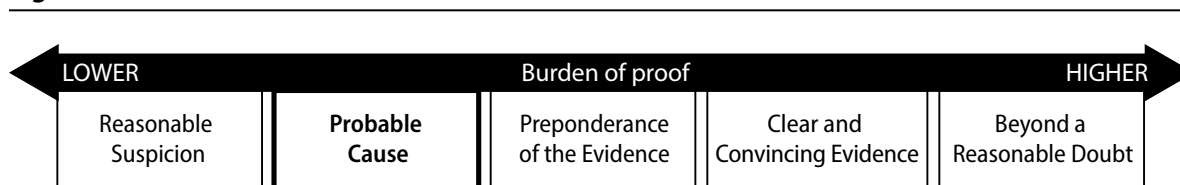
11. [G.S. 15A-736](#) provides that unless the offense is punishable by death or life imprisonment under the laws of the state in which the offense was committed, the magistrate may set a secured bond with sureties.

12. ROBERT L. FARB, STATE OF NORTH CAROLINA EXTRADITION MANUAL 39 (3d ed., UNC School of Government, 2013).

13. The proper magistrate's order in these cases is the Magistrate's Order for Fugitives ([AOC-CR-909](#)).

14. [G.S. 15A-511\(c\)](#).

15. *Id.* § 511(c)(3).

Figure 1. The Burdens of Proof

may be a departure from the magistrate's role as a neutral and detached judicial official. North Carolina appellate courts have not yet addressed this issue. After determining what offenses to consider, the magistrate must determine whether probable cause exists for every element of each offense, and whether there is probable cause that the arrested person committed the offense(s).

Defining Probable Cause

Probable cause is best described as a "fair probability."¹⁶ It is also helpful to consider probable cause in relation to other legal standards (see Figure 1). The most rigorous standard is *beyond a reasonable doubt*, the standard that must be met to sustain a criminal conviction. Less certain than beyond a reasonable doubt is *clear and convincing evidence*, the standard that must be met for the termination of a person's parental rights. After that, *a preponderance of the evidence*, or the greater weight of the evidence, is the standard required in most civil proceedings. This standard is also easily quantified as any amount over 50 percent certainty. The least rigorous legal standard is *reasonable suspicion*, which is the level of certainty required for law enforcement to seize and/or frisk a person. Reasonable suspicion is commonly described as a particularized and objective basis for suspecting criminal activity, that is, as something more than a hunch.¹⁷

Probable cause requires more certainty than reasonable suspicion but less than a preponderance of the evidence. In terms of probable cause to arrest, the U.S. Supreme Court has defined probable cause as "whether, at the moment the arrest was made, the facts and circumstances within [the officer's] knowledge and of which [the officer] had reasonably trustworthy information were sufficient to warrant a prudent [person] in believing that the [defendant] had committed or was committing an offense."¹⁸ As a result, a magistrate may apply this definition when considering the basis for an arrest by examining the facts and circumstances within the magistrate's knowledge and of which the magistrate has reasonably trustworthy information. If the facts and circumstances are sufficient to cause a prudent person to believe that the defendant committed the offense, then probable cause exists.

Proper Considerations

The probable cause determination is based on the "totality of the circumstances."¹⁹ This approach permits magistrates to consider broad factors and evidence in determining probable cause. These factors include, among others, whether the applicant or witness is credible, whether any physical

16. *State v. Crawford*, 125 N.C. App. 279, 282 (1997).

17. *United States v. Cortez*, 449 U.S. 411, 417 (1981).

18. *Beck v. Ohio*, 379 U.S. 89, 91 (1964).

19. *State v. Bullin*, 150 N.C. App. 631, 638 (2002).

evidence corroborates the applicant's testimony, whether law enforcement has corroborated any claims by lay witnesses, whether there is any scientific evidence, whether the alleged defendant engaged in any attempts to flee or evade capture, and the level of training and experience of law enforcement applicants. With few exceptions (described at the end of this section), the law permits magistrates to consider anything they deem relevant in determining probable cause.

Most notably, the rules of evidence do not apply to probable cause determinations at initial appearances.²⁰ While this permits broader forms of evidence to be presented than would be admissible at trial, the weight and significance of any evidence remains entirely within the magistrate's discretion.

Hearsay

The law enforcement officer bringing the arrested person to the initial appearance is not required to have personal knowledge of the evidence they present.²¹ It is entirely permissible for a law enforcement officer or other person to repeat what someone else told them, without that other person being present for the determination of probable cause (otherwise known as hearsay). While hearsay is admissible, the magistrate's inability to inquire further or seek clarification may reduce the weight of that evidence. Namely, a magistrate may listen to hearsay testimony but later choose not to give it any weight when determining whether probable cause exists. A magistrate may need additional indications of reliability or nonhearsay evidence before finding that the applicant has provided probable cause.

Law Enforcement and Identifiable Witnesses

Law enforcement officers and witnesses who provide their identities (either as victims of an offense or as bystanders) may be presumed to be truthful and are not required to provide any additional indicators of reliability.²² At the same time, the regular assessment of credibility still applies, and this presumption may be overturned if there is reason to doubt the witness's credibility.²³

Confidential Informants

Law enforcement officers often work with confidential informants, who assist in investigations and evidence-gathering. When an informant's identity is kept confidential, the information provided may not be presumed to be truthful without additional indicators of reliability. This is due, in part, to the lack of attribution of the information and the likelihood that the informant is assisting in exchange for pay or a more favorable outcome of their own pending charges. When

20. *Brinegar v. United States*, 338 U.S. 160 (1949) (hearsay that would be otherwise inadmissible at trial is admissible when determining probable cause if it is reliable).

21. *Id.* at 160.

22. *State v. Horner*, 310 N.C. 274 (1984); *State v. Crawford*, 104 N.C. App. 591 (1991); *State v. Sanders*, 327 N.C. 319 (1990).

23. Regular factors of credibility to consider are whether the witness has a history of lying or making false charges, whether they have a bias or interest in the outcome, whether they are able to provide details, and whether they are consistent in their recitation of the facts. Corroboration through the testimony of other witnesses or documentary evidence is another commonly used indicator of credibility. Witness demeanor is also commonly cited as a test of credibility. Factors such as nervousness, lack of eye contact, and the inability to sit still or appear confident may also be attributable to a person's lack of familiarity and comfort with the legal system or to cultural differences. As a result, magistrates may want to consider factors related to demeanor with caution when assessing credibility.

evaluating information provided by a confidential informant, a magistrate should consider the “totality of the circumstances.”²⁴ In doing so, a magistrate is able to give appropriate weight to various pieces of information and assess different indicators of credibility in finding whether the applicant has established that the informant’s information is reliable.

When providing evidence of the informant’s reliability, it is not sufficient for law enforcement to provide only a conclusory statement that the informant is reliable.²⁵ One way of establishing reliability is for the applicant to provide a “track record,” or instances where the informant has been reliable in the past.²⁶ This information does not necessarily have to have led to convictions. Past correct information that led to arrests may suffice.²⁷ Another way to establish reliability is for the information to be corroborated. When providing corroboration, it is not sufficient for law enforcement to provide only widely available, general information. The corroboration should be based on information the informant would only know if they were providing reliable information. For example, accurately predicting future drug transactions or corroborating details of a suspect’s behavior or practices (such as accurately predicting travel plans) would weigh in favor of the reliability of the informant.

Anonymous Tipsters

Anonymous tips may be considered as part of the totality of the circumstances when determining probable cause. Like information from confidential informants, they must be accompanied by additional indications of reliability. Because they are anonymous and cannot provide a track record, anonymous tips must normally be corroborated before they may be considered reliable. Even once corroborated, anonymous tips are unlikely to provide probable cause on their own. The U.S. Supreme Court considered an anonymous tip and whether it provided reasonable suspicion—a lower standard than probable cause—in *Navarette v. California*.²⁸ In *Navarette*, an anonymous 911 caller stated that they had been run off the road by another vehicle and provided the location of the incident and the other vehicle’s make, model, color, and license plate. The Court found that it was a “close case” and that the detailed and contemporaneous nature of the call gave it enough reliability to be considered in determining reasonable suspicion to stop the offending vehicle. Because probable cause is a higher burden of proof than reasonable suspicion, anonymous tips should almost always be accompanied by other sources of information in order to provide probable cause.

Improper Considerations

While magistrates may broadly consider information brought before them in determining probable cause, there are also improper considerations. Magistrates should not consider whether evidence or information will be admissible at trial or most defenses when determining whether probable cause has been established.

24. *Illinois v. Gates*, 462 U.S. 213 (1983); *State v. Arrington*, 311 N.C. 633 (1984).

25. *State v. Hughes*, 353 N.C. 200 (2000).

26. *State v. Riggs*, 328 N.C. 213, 219 (1991).

27. *Arrington*, 311 N.C. at 633.

28. 572 U.S. 393 (2014).

Admissibility at Trial

As mentioned earlier, the rules of evidence do not apply when determining probable cause for a criminal offense. Evidence that might otherwise be inadmissible at trial (such as hearsay) may be considered. It is also improper to consider whether the evidence provided was itself obtained illegally. While the exclusionary rule prohibits the admission of illegally obtained evidence at trial, like the rules of evidence, it does not apply when determining probable cause for a criminal offense.²⁹

Defenses

Generally, a magistrate should not consider defenses that may be argued later at trial. A magistrate has broad discretion in considering information that weighs both for and against probable cause in reviewing the totality of the circumstances, but whether a defense to the charge may exist or be raised later at trial is outside of this consideration. This is not always easily applied. There are times when, after finding probable cause for every element, a defense may justify denying the issuance of process. For example, in clear, undisputed cases of self-defense or misdemeanor offenses brought after the two-year statute of limitations has passed,³⁰ it may be appropriate to deny the issuance of a magistrate's order.

Finding Probable Cause

If the magistrate determines that probable cause exists for the arrest and that there is probable cause that the arrested person committed the offense(s), then the magistrate must issue a magistrate's order charging the offense(s) and initiating the criminal case.³¹ The magistrate's order must contain a statement of the crime charged and a finding that the person has been arrested without a warrant and that there is probable cause for their detention.³² If the magistrate does not find probable cause, they must release the arrested person.³³

Step 4: Additional Procedures for Implied Consent Offenses and Offenses Involving Impaired Driving

For implied consent offenses, initial appearances may be held anywhere in the county. While this may facilitate processing for law enforcement actions such as mobile sobriety checkpoints, these initial appearances may be conducted only "to the extent practicable."³⁴ Practical issues with conducting mobile initial appearances include reliable access to computer systems and electronic

29. *United States v. Calandra*, 414 U.S. 338 (1974) (permitting illegally obtained evidence to be considered by a grand jury issuing an indictment).

30. Under [G.S. 15-1\(a\)](#), misdemeanors must be charged within two years of the date of offense. [G.S. 15-1\(b\)](#) extends the time limit to ten years for violations of [G.S. 7B-301\(b\)](#) and of [G.S. 14-27.33](#), [14-202.2](#), [14-318.2](#), and [14-318.6](#).

31. [G.S. 15A-511\(c\)\(3\)](#).

32. For more on the issuance of magistrate's orders, see Belal Elrahal, [Applications for Process Before North Carolina Magistrates](#), ADMIN. OF JUST. BULL. No. 2026/01 (Jan. 2026), <https://www.sog.unc.edu/sites/default/files/reports/2026-01-22a-2026001-AOJB-tagged.pdf>.

33. [G.S. 15A-511\(c\)\(2\)](#).

34. [G.S. 20-38.4\(a\)\(1\)](#).

records and the ability of witnesses to observe implied consent testing. Additionally, magistrates may wish to take extra steps to emphasize their role as neutral, independent judicial officials, and that they are not working with or for law enforcement.

When a person has been arrested for an implied consent offense³⁵ or an offense involving impaired driving³⁶ and the magistrate finds probable cause, there are additional procedures the magistrate may be required to follow. In any implied consent offense case, the magistrate must consider whether the person is subject to a civil license revocation, whether they must be given an implied consent offense notice, and whether an impaired driver hold must be imposed. Additionally, for offenses involving impaired driving, the magistrate must also consider whether the arrested person's vehicle is subject to seizure.

Civil License Revocations

A civil license revocation is an immediate revocation of a person's driver's license if they meet certain criteria. When there is probable cause that a person committed an implied consent offense, the person has been charged with that offense, and the law enforcement officer and chemical analyst complied with the implied consent testing procedures in [G.S. 20-16.2](#) and [G.S. 20-139.1](#), then the magistrate must revoke the arrested person's driver's license if

- they willfully refused to submit to chemical analysis;
- they had an alcohol concentration of .08 or more within a relevant time after driving;
- they had an alcohol concentration of .04 or more at any relevant time after the driving of a commercial vehicle; or
- they are under 21 years old and had any alcohol concentration at any relevant time after driving.³⁷

Magistrates accomplish this revocation by completing form [AOC-CVR-2](#) and seizing the arrested person's driver's license.³⁸ The magistrate must also inform the person at this time of their right to a hearing before a magistrate or judge to contest the validity of the revocation. When a person's license is revoked at an initial appearance, the term of the revocation begins immediately. For these revocations implemented by a magistrate, there are two possible lengths for the revocation. If the arrested person has no other pending offenses for which their license had been revoked pursuant to a civil license revocation, then the revocation lasts

35. An implied consent offense is any offense involving impaired driving, any offense involving a violation of [G.S. 20-141.4\(a2\)](#) (misdemeanor death by vehicle), or any alcohol-related offense made subject to the implied consent testing procedures. Some of these other offenses include driving by a person less than 21 years old after consuming alcohol or drugs, violating a no-alcohol condition of a limited driving privilege, operating a commercial vehicle after consuming alcohol, transporting an open container of alcohol, and driving in violation of a restriction requiring an ignition interlock device.

36. Offenses involving impaired driving are a subset of implied consent offenses. They include impaired driving; any death by vehicle or serious injury by vehicle offense under [G.S. 20-141.4](#) when the conviction is based on impaired driving; first degree murder, second degree murder, or involuntary manslaughter when the conviction is based on impaired driving; any offense committed in another jurisdiction that prohibits substantially similar conduct; any repealed or superseded offense similar to impaired driving; impaired driving in a commercial vehicle; and habitual impaired driving. [G.S. 20-4.01\(24a\)](#).

37. [G.S. 20-16.2\(b\)](#).

38. This applies to driver's licenses issued by the North Carolina Division of Motor Vehicles and licenses issued by similar agencies in any other jurisdiction. [Id. § 16.5\(a\)\(5\)](#).

at least thirty days from the day the arrested person surrenders their license.³⁹ If the arrested person has another pending offense for which their license had been revoked pursuant to a civil license revocation, then the revocation lasts until final disposition of both the pending and contemporary offenses. Once the revocation period has passed, the person may retrieve their driver's license after paying the restoration fee with the clerk's office.⁴⁰

Implied Consent Offense Notices

After finding probable cause for any implied consent offense, the magistrate must inform the arrested person in writing of the procedure to have others appear at the jail to observe the person's condition or administer an additional chemical analysis "if the person is unable to make bond."⁴¹ The magistrate must also give the person the opportunity to list the individuals they would like to contact on a form that contains the procedure for contacting those individuals, a copy of which must be included in the case file.⁴² The arrested person should also be provided a copy of the form after they complete it, when they are given the local procedures for contacting outside witnesses.

The arrested person is not required to list individuals or complete the form. If they do not wish to contact anyone, they may check the corresponding box on the form and return it. If the person does not return the form or refuses to participate at all, the magistrate may use another copy of the form to check the box labeled "the defendant failed to return this form at the initial appearance."

Although the statute requires this notice to be given only if the arrested person is unable to make bond, in any circumstance where the person will remain in custody after the initial appearance, providing these notices is both the best protection for the defendant's rights and the best way of making sure to comply with the statute. This includes circumstances where the person has been given a secured bond and plans to post it immediately or has been given an unsecured bond and is being held pursuant to an impaired driver hold.

Impaired Driver Holds

After finding probable cause for any implied consent offense, the magistrate must evaluate whether to impose an impaired driver hold pursuant to [G.S. 15A-534.2](#).⁴³ Impaired driver holds are imposed after the magistrate has determined the conditions of pretrial release, and when imposed, delay the effective time of those conditions. They are discussed below under the subheading [Delaying the Effective Time of Conditions](#) in Step 5.

39. License surrender is most often accomplished at the same time as the revocation when a license is seized by the magistrate. License surrender may also be accomplished by the arrested person completing an affidavit that they lost their driver's license or by showing that they are not currently licensed. If a person does not surrender their license and does not attest that they lost their license, the thirty-day countdown will not begin until they bring their driver's license to be surrendered. If the person does not surrender their license within five business days, the clerk is directed by [G.S. 20-16.5\(e\)](#) to issue a pick-up order for law enforcement to retrieve the license.

40. [G.S. 20-16.5\(h\)](#).

41. [Id. § 38.4\(a\)\(4\)\(a\)](#).

42. This is accomplished by form [AOC-CR-271](#).

43. [G.S. 20-38.4\(a\)\(3\)](#).

Motor Vehicle Seizures

Within the greater category of implied consent offenses, if a person has been charged with an offense involving impaired driving, their motor vehicle may be subject to seizure and forfeiture.⁴⁴

A motor vehicle is subject to seizure in two circumstances:

1. at the time of the offense, the arrested person's driver's license was revoked pursuant to an impaired driving license revocation;⁴⁵ or
2. at the time of the offense, the arrested person was driving without a valid driver's license and without automobile liability insurance.

When a person meets these eligibility requirements, law enforcement must seize and impound the motor vehicle. The only exceptions are when the officer determines prior to seizure that the vehicle had been reported stolen or that the vehicle was a rental vehicle and the driver was not listed as an authorized driver on the rental contract.⁴⁶ There are no exceptions based on the value or condition of the motor vehicle. If law enforcement determines at a later time that the person's motor vehicle was subject to seizure, they must appear before a magistrate and seek a seizure and impound order.

Whether the motor vehicle was seized at the time of arrest or law enforcement is later seeking a seizure-and-impoundment order, a magistrate must review the basis for seizure and impoundment.⁴⁷ For this review, law enforcement must complete a seizure and impoundment affidavit, from which the magistrate will determine whether the motor vehicle is subject to seizure.⁴⁸ If the magistrate determines that the motor vehicle is subject to seizure, and it has already been seized, the magistrate only needs to order the vehicle impounded. If the magistrate determines the motor vehicle is subject to seizure and it has not been seized yet, the magistrate must order its seizure and impoundment. Finally, if the magistrate determines the motor vehicle is not subject to seizure, the magistrate must order the vehicle released upon payment of all towing and storage charges by the arrestee.⁴⁹

44. [Id.](#) §§ 28.2, 28.3.

45. Impaired driving license revocations are defined by [G.S. 20-28.2\(a\)](#) and include revocations pursuant to driving after consuming alcohol or drugs while under 21 ([G.S. 20-13.2](#)), military driving while impaired ([G.S. 20-16\(a\)\(8b\)](#)), refusing implied consent chemical testing ([G.S. 20-16.2](#)), a civil license revocation ([G.S. 20-16.5](#)), driving while impaired and driving while impaired in a commercial vehicle ([G.S. 20-17\(a\)\(2\)](#)), habitual driving while impaired ([G.S. 20-138.5](#)), a second or subsequent conviction of transporting an open container of alcohol ([G.S. 20-17\(a\)\(12\)](#)), an out-of-state offense similar to driving while impaired resulting in North Carolina revocation ([G.S. 20-16\(a\)\(7\)](#)), manslaughter involving driving while impaired ([G.S. 20-17\(a\)\(1\)](#)), any felony in the commission of which a motor vehicle is used involving impaired driving ([G.S. 20-17\(a\)\(3\)](#)), any offense set forth under [G.S. 20-141.4](#) based on impaired driving ([G.S. 20-17\(a\)\(9\)](#)), a conviction of assault with a motor vehicle involving impaired driving ([G.S. 20-17\(a\)\(11\)](#)), and revocations pursuant to the laws of another state when the offense for which the person's license is revoked is substantially similar to an offense in North Carolina that would result in an impaired driving revocation if committed ([G.S. 20-28.2\(a\)\(3\)](#)).

46. [G.S. 20-28.3\(b\)](#).

47. *Id.* § 28.3(c).

48. Form [AOC-CR-323A](#) contains both an officer's affidavit for seizure and impoundment and the corresponding magistrate's order.

49. The requirement for paying all towing and storage fees, including in circumstances where the motor vehicle is not subject to seizure and impoundment, may not be waived. [G.S. 20-28.3\(n\)](#).

Step 5: Setting Conditions of Pretrial Release

Next, the magistrate evaluates whether the arrested person is eligible for pretrial release conditions. If the person is, the magistrate determines what those conditions should be and imposes them. The first determination a magistrate should make is whether the magistrate has authority to impose conditions of pretrial release or whether the determination must be delayed for a judge to determine conditions instead. If the magistrate is not required to delay determining conditions of release, or they have delayed setting conditions and the defendant has been returned to them because a judge has not acted within the time period prescribed by statute, the magistrate should then determine whether they are required to deny conditions of release or set conditions of pretrial release. Finally, after setting conditions of release, the magistrate must determine whether to delay the effective time of those conditions.⁵⁰

Delaying Determining Conditions of Pretrial Release

The first step a magistrate should take is establish whether they should immediately determine pretrial release conditions. There are a number of circumstances where the magistrate must delay the determination of pretrial release conditions for a judge to make the determination instead. If a judge has not made the determination during the time of the delay, then the person must be brought back in front of a magistrate for the magistrate to make the determination.

Certain New Offenses Committed While the Person Was on Pretrial Release

When a person has been arrested for committing an offense while they were on pretrial release for another pending proceeding, the magistrate must delay determining conditions of pretrial release in order for a judge to set conditions instead.⁵¹ This does not apply when the new offense is a violation of Chapter 20 of the General Statutes, unless the person was charged with an impaired driving offense⁵² or a violation of [G.S. 20-141.4](#).⁵³ If they were charged with one of these offenses, the magistrate must delay setting conditions of pretrial release as with other non–Chapter 20 offenses.⁵⁴ This delay also likely does not apply when the person has been arrested for a probation violation because a probation violation is not, in itself, a “new offense” as stated by the statute.⁵⁵

50. Special thanks to my colleague Brittany Bromell for her written work, substantive review, and numerous discussions regarding setting conditions of pretrial release.

51. This applies to offenses committed on or after October 1, 2023. S.L. 2023-75 (H.B. 813).

52. Violations of [G.S. 20-138.1](#) (impaired driving), [20-138.2](#) (impaired driving in a commercial vehicle), [20-138.2A](#) (operating a commercial vehicle after consuming alcohol), [20-138.2B](#) (operating a school bus, school activity bus, child-care vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle after consuming alcohol), and [20-138.5](#) (habitual impaired driving), are treated like non–Chapter 20 offenses for the purposes of [G.S. 15A-533\(h\)](#).

53. [G.S. 20-141.4](#) establishes the offenses of felony and misdemeanor death by vehicle, felony serious injury by vehicle, aggravated felony death by vehicle, aggravated felony serious injury by vehicle, and repeat felony death by vehicle.

54. [G.S. 15A-533\(h\)](#).

55. See *id.* For more on probation violations and [G.S. 15A-533\(h\)](#), see Brittany Bromell, [Probation Violations and the Pretrial Integrity Act](#), N.C. CRIM. L. BLOG (Nov. 1, 2023), <https://nccriminallaw.sog.unc.edu/2023/11/01/probation-violations-and-the-pretrial-integrity-act/>.

In making this determination, the two dates that magistrates should focus on are the date of offense of the new offense, and the date the person was on pretrial release for the pending proceeding. The date of offense for the new offense must be after the person was on pretrial release for the pending proceeding for this delay to be imposed. If the date of offense was before the person was on pretrial release for the pending proceeding, this delay would not apply, even though the initial appearance is occurring after the person was on pretrial release for the pending proceeding.⁵⁶ The pending proceeding may be another pending criminal offense, and likely also includes a probation violation hearing.⁵⁷

This delay may only last up to forty-eight hours. If, after forty-eight hours, a judge has not determined conditions of pretrial release, the person must be returned before a magistrate for conditions to be determined.

Certain Probation Violations

When a person on probation has been arrested for a probation violation, and they either have a pending charge for a felony offense or have been convicted at any time of an offense that would be a reportable sex crime if committed today, and the magistrate has insufficient information to determine whether the probationer poses a danger to the public, the magistrate must delay setting conditions of pretrial release. This delay may only last up to seven days for more information to be gathered, after which the person must be returned to any judicial official for the determination of pretrial release conditions.⁵⁸

Certain Domestic Violence Offenses

For certain domestic violence offenses, the magistrate must delay setting conditions of pretrial release for up to forty-eight hours for a judge to determine conditions of release instead. There are two categories of offenses that qualify for this delay. The first is offenses that require the defendant and victim to be or have been in a qualifying relationship. The second is offenses that do not require the defendant and victim to have a qualifying relationship.

In cases in which the defendant is charged with assault, stalking, communicating a threat, or committing a felony provided in G.S. Chapter 14, Articles 7B, 8, 10, or 15, and the defendant has a qualifying relationship with the victim, the magistrate must delay setting conditions of pretrial

56. Being on pretrial release for a pending proceeding likely means being out of custody. Even when there is a release order in effect, a person would not be considered to be on pretrial release until they have satisfied the conditions of release and are out of custody. For more on the Pretrial Integrity Act, see Brittany Bromell, [The Pretrial Integrity Act](https://www.sog.unc.edu/sites/default/files/reports/AOJB_2024-01.pdf), ADMIN. OF JUST. BULL. No. 2024/01 (Feb. 2024), https://www.sog.unc.edu/sites/default/files/reports/AOJB_2024-01.pdf.

57. See generally Brittany Bromell, [Pretrial Release and Rebuttable Presumptions](https://nccriminallaw.sog.unc.edu/2026/01/06/pretrial-release-and-rebuttable-presumptions/), N.C. CRIM. L. BLOG (Jan. 6, 2026), <https://nccriminallaw.sog.unc.edu/2026/01/06/pretrial-release-and-rebuttable-presumptions/> (discussing determination of whether a new offense was committed after pretrial release).

58. [G.S. 15A-1345\(b1\)](#).

release. Qualifying relationships for these offenses are that of a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship.⁵⁹

In cases in which the defendant is charged with domestic criminal trespass, a violation of [G.S. 14-32.5](#),⁶⁰ or a violation of an order entered pursuant to G.S. Chapter 50B (Domestic Violence), the magistrate must delay setting conditions of pretrial release regardless of the relationship between the defendant and the victim.

When delaying conditions of release, magistrates should schedule the defendant to appear in front of the first available judge.⁶¹ [G.S. 15A-534.1](#) authorizes magistrates to set conditions only after forty-eight hours have passed and a judge has not yet set conditions of pretrial release. The magistrate should complete form [AOC-CR-630](#), Conditions of Release for Person Charged with a Crime of Domestic Violence, when setting conditions.

Threats or Assaults on Public Officers

The magistrate must delay setting conditions of pretrial release in order for a judge to set them when a person has been arrested for

- assaulting an executive, legislative, court, or local elected officer;⁶²
- threatening an executive, legislative, court, or local elected officer;⁶³ or
- intimidating or attempting to intimidate any chief judge, judge of election, or other election officer in the discharge of (or because of) their duties in the registration of voters or in conducting an election.⁶⁴

The magistrate should schedule the person to be taken in front of the first available judge. If a judge has not set conditions of release within forty-eight hours, the person must be brought back before a magistrate in order for the magistrate to set conditions of release. If the magistrate determines that the immediate release of the defendant will pose a danger of injury to persons and that an appearance bond will not reasonably prevent injury, the magistrate may detain the defendant in custody for a reasonable time while the magistrate determines the appropriate conditions of pretrial release.⁶⁵ The magistrate should complete form [AOC-CR-664](#), Conditions of Release for Person Charged with Assault or Threat Against Officer, when setting conditions.

59. [Id. § 534.1](#). *Dating relationship* is defined by [G.S. 50B-1\(b\)\(6\)](#) as “one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.” While the definition is limited to members of the opposite sex, at least one case has found that restriction to be unconstitutional. *M.E. v. T.J.*, 380 N.C. 539 (2022). As a result, magistrates should evaluate opposite-sex and same-sex relationships in the same manner.

60. Misdemeanor crime of domestic violence.

61. *State v. Thompson*, 349 N.C. 483 (1998).

62. In violation of [G.S. 14-16.6](#).

63. In violation of [G.S. 14-16.7](#).

64. In violation of [G.S. 163-275\(11\)](#).

65. [G.S. 15A-534.9](#). This subsection applies to offenses committed on or after December 1, 2025.

Communicating a Threat of Mass Violence

When a person has been arrested for communicating a threat of mass violence on educational property⁶⁶ or at a place of religious worship,⁶⁷ the magistrate must delay setting conditions of pretrial release and should schedule the person to be taken in front of the first available judge. If a judge has not set conditions of release within forty-eight hours, the person must be brought back before a magistrate in order for the magistrate to set conditions of release. If the magistrate determines that the immediate release of the defendant will pose a danger of injury to persons and that an appearance bond will not reasonably prevent injury, the magistrate may detain the defendant in custody for a reasonable time while the magistrate determines the appropriate conditions of pretrial release.⁶⁸ The magistrate should complete form [AOC-CR-660](#), Conditions of Release for Person Charged with Threat of Mass Violence, when setting conditions.

Rioting or Looting

When a person has been arrested for rioting⁶⁹ or looting,⁷⁰ the magistrate must delay setting conditions of pretrial release and should schedule the person to be taken in front of the first available judge. If a judge has not set conditions of release within twenty-four hours, the person must be brought back before a magistrate in order for the magistrate to set conditions of release. If the magistrate determines that the immediate release of the defendant will pose a danger of injury to persons and that an appearance bond will not reasonably prevent injury, the magistrate may detain the defendant in custody for a reasonable time while the magistrate determines the appropriate conditions of pretrial release.⁷¹ The magistrate should complete form [AOC-CR-661](#), Conditions of Release for Person Charged Under [G.S. 14-288.2](#) or [14-288.6](#), when setting conditions.

Certain Probationers Charged with a Felony

When a person is arrested for a felony offense while on probation for a prior offense, the magistrate must determine whether the person poses a danger to the public before setting conditions of pretrial release. This determination must be recorded in writing. If the magistrate determines that the person does not pose a danger to the public, they may set conditions of pretrial release as otherwise provided by [Article 26 of Chapter 15A](#). If the magistrate determines that the person does pose a danger to the public, the magistrate's discretion is limited in what conditions they may set. They should proceed below to [Certain Probationers Charged with a Felony](#) under the subheading Limits on Discretion.

If there is insufficient information for the magistrate to make this determination, they may delay setting conditions of release in order to obtain more information. In doing so, the magistrate must put in writing that the defendant is being held for this reason, the basis for the magistrate's decision that more information is needed to determine whether the defendant poses a danger, and the defendant's first-appearance date. The date of the first appearance must

66. In violation of [G.S. 14-277.6](#).

67. In violation of [G.S. 14-277.7](#).

68. [G.S. 15A-534.7](#).

69. In violation of [G.S. 14-288.2](#).

70. In violation of [G.S. 14-288.6](#).

71. [G.S. 15A-534.8](#) (effective for offenses committed on or after December 1, 2023).

be within seventy-two hours, although if the additional information sought is provided to the court before then, the defendant must be brought before any judicial official to set conditions of pretrial release.⁷²

Denying Conditions of Pretrial Release

After any delay described above has passed and a judge has not determined conditions of pretrial release, or when there is no such delay, the magistrate should then determine whether the defendant is entitled to conditions of release at all. In the following circumstances, the magistrate must deny conditions of pretrial release and schedule the defendant for their first appearance in front of a judge.⁷³

Offenses Listed in [G.S. 15A-533\(b\)](#)

Only a judge may set pretrial release conditions for offenses listed in [G.S. 15A-533\(b\)](#). If a defendant is charged with one of these offenses, the magistrate may not set pretrial release conditions and must detain the defendant and schedule them for their first appearance in front of a judge. These offenses are

- first or second degree murder (or an attempt to commit first or second degree murder) ([G.S. 14-17](#)),
- first degree forcible rape ([G.S. 14-27.21](#)),
- second degree forcible rape ([G.S. 14-27.22](#)),
- statutory rape of a child by an adult ([G.S. 14-27.23](#)),
- first degree statutory rape ([G.S. 14-27.24](#)),
- statutory rape of person who is 15 years of age or younger ([G.S. 14-27.25](#)),
- first degree forcible sexual offense ([G.S. 14-27.26](#)),
- second degree forcible sexual offense ([G.S. 14-27.27](#)),
- statutory sexual offense with a child by an adult ([G.S. 14-27.28](#)),
- first degree statutory sexual offense ([G.S. 14-27.29](#)),
- statutory sexual offense with a person who is 15 years of age or younger ([G.S. 14-27.30](#)),
- assault with a deadly weapon with intent to kill inflicting serious injury ([G.S. 14-32\(a\)](#)),
- discharging certain barreled weapons or a firearm into occupied property ([G.S. 14-34.1](#)),
- first or second degree kidnapping ([G.S. 14-39](#)),
- human trafficking ([G.S. 14-43.11](#)),
- first degree burglary pursuant to [G.S. 14-51](#),
- first degree arson pursuant to [G.S. 14-58](#), and
- robbery with firearms or other dangerous weapons ([G.S. 14-87](#)).

Certain Drug Trafficking, Gang Related, or Firearm Related Offenses

When a person is charged with a drug trafficking, gang related, or firearm related offense and certain other conditions exist, a magistrate may not set pretrial release conditions. Instead, the magistrate must deny pretrial release conditions and schedule the person for their first appearance in front of a judge.

72. [Id. § 534\(d2\)](#).

73. [Id. §§ 511\(e\)](#), [601](#).

Drug Trafficking Offenses

When a magistrate finds probable cause that a person committed a drug trafficking offense, the magistrate may not set pretrial release conditions when

- the drug trafficking offense was committed while the person was on pretrial release for another offense, and
- the person was previously convicted of a Class A through E felony or an offense involving drug trafficking, and less than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.⁷⁴

Gang Related Offenses

When a magistrate finds probable cause that a 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 magistrate may not set pretrial release conditions when

- the offense was committed while the person was on pretrial release for another offense and
- the person has been convicted previously of a gang related offense set out in [G.S. 14-50.16](#) through [G.S. 14-50.20](#)⁷⁵ or has received an enhanced sentence for a criminal offense pursuant to [G.S. 15A-1340.16E](#),⁷⁶ and less than five years have elapsed since the date of conviction or the person's release for that offense, whichever is later.⁷⁷

Firearm Related Offenses

If the person is charged with a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm, the magistrate may not set pretrial release conditions when

- 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.⁷⁸

74. [Id. § 533\(d\)](#).

75. These offenses are the following: soliciting another to participate in criminal-gang activity, soliciting a person under 16 years old to participate in criminal-gang activity, communicating a threat with the intent to deter a person from assisting another to withdraw from gang membership, injuring a person with the intent to deter a person from assisting another to withdraw from gang membership, communicating a threat as punishment or retaliation for withdrawing from gang membership, and injuring a person as punishment or retaliation against a person for withdrawing from gang membership.

76. These enhancements apply when a person commits an offense as part of criminal-gang activity or when the person commits an offense as part of criminal-gang activity and is found to be a gang leader or organizer as defined in [G.S. 14-50.16A\(3\)](#).

77. [G.S. 15A-533\(e\)](#).

78. [Id. § 533\(f\)](#).

Violent Offenses, Rebuttable Presumption Not Overcome

“Violent offense[s]” are offenses (or attempts to commit offenses) that are

1. Class A through G felonies that include “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”;
2. felony offenses that require “registration pursuant to [Article 27A of Chapter 14 of the General Statutes](#), whether or not the person is currently required to register”;
3. offenses listed in [G.S. 15A-533\(b\)](#);
4. offenses under [G.S. 14-18.4](#), [14-34.1](#), [14-51](#), [14-54\(a1\)](#), [14-202.1](#), [14-277.3A](#), [14-415.1](#); or
5. offenses under [G.S. 90-95\(h\)\(4c\)](#) that involve fentanyl.⁷⁹

For a chart of violent offenses, see [Appendix B](#).

When a person has been charged with a violent offense, there is a rebuttable presumption that no condition of release will reasonably ensure the appearance of the defendant and the safety of the community.⁸⁰ For some of these offenses, a magistrate will already be prohibited from setting pretrial release conditions as described above (offenses listed under [G.S. 15A-533\(b\)](#) and certain drug trafficking, gang related, and firearm related offenses). If a violent offense does not fall within any of these categories, then a magistrate must determine whether this rebuttable presumption has been overcome. Determining how, and whether, the rebuttable presumption has been overcome in any particular case is within the magistrate’s discretion. This can be accomplished by a review of the documents and records of the case, by inquiry of the defendant, by inquiry of law enforcement, or any combination of these approaches.⁸¹

When a person has been charged with a violent offense, and the magistrate does not find that the rebuttable presumption has been overcome, then the magistrate must deny conditions of release and schedule the defendant for a first appearance. If the magistrate does find that the rebuttable presumption has been overcome, and they can otherwise set conditions of pretrial release, they should proceed below to [Limits on Discretion](#) under the subheading Determining the Defendant’s Conditions.

79. [Id. § 531\(9\)](#).

80. A rebuttable presumption is an assumption that is considered to be true unless and until a determination is made that it is not true. The rebuttable presumption is that no condition of release will reasonably assure the defendant’s appearance and the safety of the community. This means that it is assumed to be true, unless and until the magistrate (in this case) determines that it is not true. Determining the assumption not to be true is what is known as “overcoming” the rebuttable presumption.

81. See generally Bromell, *supra* [note 57](#) (discussing rebuttable presumptions and overcoming them).

Certain Probation Violations

When a person on probation has been arrested for a probation violation, and either they have a pending charge for a felony offense or they have been convicted at any time of an offense that would be a reportable sex crime if committed today,⁸² the magistrate must determine whether the person poses a danger to the public.⁸³ See [Appendix B](#) for a list of crimes requiring sex offender registration.

If the magistrate finds that the probationer poses a danger to the public, they must deny conditions of release and commit the person to custody pending a probation revocation hearing.⁸⁴ If the magistrate has insufficient information to determine whether the probationer poses a danger to the public, they must delay setting conditions of pretrial release⁸⁵ (see below in [Delaying Determining Conditions of Pretrial Release](#)). If the magistrate determines that the probationer does not pose a danger to the public, then, if otherwise permitted, the magistrate must set conditions of pretrial release in accordance with [G.S. 15A-534](#).⁸⁶

Certain Methamphetamine Offenses

If a person was arrested for manufacturing, packaging, repackaging, labeling, or relabeling methamphetamine⁸⁷ or for possessing or distributing an immediate precursor of methamphetamine that the person knew or had reasonable cause to believe would used to manufacture methamphetamine,⁸⁸ then the magistrate must deny conditions of pretrial release if (1) the person is dependent on methamphetamine or has a pattern of regularly using it illegally and (2) the underlying offense was committed or attempted in order to maintain or facilitate that dependence or pattern.⁸⁹

Military Deserters

If the arrested person is a military deserter, the magistrate must deny conditions of pretrial release and contact military authorities as soon as possible to take custody of the deserter.⁹⁰

Out-of-State Probationers

If the arrested person is an out-of-state probationer supervised in North Carolina under the Interstate Compact for Adult Offender Supervision and has been arrested for a retaking hearing, the magistrate must deny conditions of pretrial release and notify the local probation office.⁹¹

82. Reportable sex crimes that meet this requirement are those that require registration under [Article 27A of Chapter 14 of the General Statutes](#) or those that would have required registration had they been committed at the time the magistrate is determining whether to set conditions of pretrial release. [G.S. 15A-1345\(b1\)](#).

83. These findings must be recorded in writing and may be memorialized using form [AOC-CR-272](#), side 2, which should be used for any probationer arrested while they have a pending charge for a felony offense and for any probationer who has ever been convicted of a reportable sex crime.

84. [G.S. 15A-1345\(b1\)\(1\)](#).

85. *Id.* § 1345(b1)(3).

86. *Id.* § 1345(b1)(2).

87. In violation of [G.S. 90-95\(b\)\(1a\)](#).

88. In violation of [G.S. 90-95\(d1\)\(2\)\(b\)](#).

89. [G.S. 15A-534.6](#).

90. *Huff v. Watson*, 99 S.E. 307 (Ga. 1919).

91. [G.S. 148-65.8\(a\)](#).

*Person Charged with Committing a Crime while
Involuntarily Committed to / on Escape from a Mental Health Facility*

If the arrested person has been charged with committing a crime while involuntarily committed or while on escape from a licensed or designated mental health facility, the magistrate must first determine whether the person's commitment is still valid. If the commitment is still valid, the person must be denied conditions of pretrial release and returned to the facility. If the commitment is not valid, the magistrate may otherwise set conditions of pretrial release consistent with the remainder of this section.⁹²

Violations of a Health Control Measure

If a person was arrested for a violation of an order limiting freedom of movement or access issued pursuant to [G.S. 130A-145](#)⁹³ or [G.S. 130A-475](#),⁹⁴ and the magistrate finds by clear and convincing evidence that the person poses a threat to the health and safety of others, the magistrate must deny conditions of pretrial release. This detention may be terminated only after the state health director or local health director has made recommendations to the court and a judicial official finds that the confined person does not pose a threat to the health and safety of others.⁹⁵

Certain Fugitives from Other States

The magistrate must deny conditions of release if the arrested person is a fugitive from another state and has been either arrested pursuant to a governor's warrant⁹⁶ or charged with an offense punishable by life in prison or by death.⁹⁷

Violations of Post-Release Supervision or Parole Conditions

If a person was arrested for a violation of a condition of post-release supervision⁹⁸ or for a violation of a condition of parole,⁹⁹ then the magistrate should ensure that the local probation office is aware of the arrest and must deny conditions of pretrial release.

Determining the Defendant's Conditions

If the magistrate is not barred from setting conditions of release, and they are not required to delay setting conditions of release (or they have delayed setting conditions, and the delay has expired), then the magistrate must set conditions of release. Generally speaking, the conditions of pretrial release are within the magistrate's discretion. There are four conditions of pretrial release: an unsecured bond, custody release, a secured bond, and house arrest with electronic monitoring and a secured bond.¹⁰⁰

92. [G.S. 15A-533\(a\)](#).

93. [G.S. 130A-145](#) establishes quarantine and isolation authority when public health is endangered.

94. [G.S. 130A-475](#) establishes authority of the state health director to issue orders when a public health threat may exist as the result of a terrorist incident using nuclear, biological, or chemical agents.

95. [G.S. 15A-534.5](#).

96. [Id.](#) § 730.

97. [Id.](#) § 736.

98. [Id.](#) § 1368.6.

99. [Id.](#) § 1376.

100. [Id.](#) § 534(a).

Limits on Discretion

In certain circumstances, although a magistrate is required to determine conditions of pretrial release, there are limits on the magistrate's discretion.

Violent Offenses, Rebuttable Presumption Overcome

When a person has been charged with a violent offense, there is a rebuttable presumption that no condition of release will reasonably ensure the appearance of the defendant and the safety of the community. For many of these offenses, a magistrate will already be prohibited from setting pretrial release conditions as described above (offenses listed under [G.S. 15A-533\(b\)](#) and certain drug trafficking, gang related, and firearm related offenses). If a violent offense does not fall within any of these categories, then a magistrate must determine whether this rebuttable presumption has been overcome. Determining how, and whether, the rebuttable presumption has been overcome in any particular case is within the magistrate's discretion. This can be accomplished by a review of the documents and records of the case, by inquiry of the defendant, by inquiry of law enforcement, or by any combination of these approaches.¹⁰¹

When a person has been charged with a violent offense and the magistrate finds that the rebuttable presumption has been overcome, then the magistrate may set conditions of release. If it is that person's first violent offense, the magistrate may only set either a secured bond or house arrest with electronic monitoring and a secured bond.¹⁰² If the defendant is charged with a second or subsequent violent offense after being convicted of a prior violent offense or after being released on pretrial release conditions for a prior violent offense, the magistrate must impose house arrest with electronic monitoring and a secured bond "if available."¹⁰³ The magistrate must make written findings explaining why the imposed conditions are appropriate for the defendant. The statute does not establish what must be done when a magistrate finds that the rebuttable presumption has been overcome and electronic monitoring is not available. In those circumstances, setting a secured bond and noting that electronic monitoring is not available avoids potential due-process violations of keeping individuals in custody who would otherwise be released based on the state's inability to provide electronic monitoring.

Three or More Qualifying Convictions in the Previous Ten Years

When a person has been charged with any offense, and they have been convicted of three or more offenses that are Class 1 misdemeanors¹⁰⁴ or higher in separate sessions of court within the previous ten years, the magistrate's discretion is limited in setting conditions of pretrial release. In these circumstances, the magistrate must impose either a secured bond or a house arrest with electronic monitoring and a secured bond.¹⁰⁵

Convictions in district court are considered to be in the same session when they occur on the same day. As a result, if a person has more than one conviction of a Class 1 misdemeanor or higher in district court on the same day, those convictions would count as a single qualifying

101. See generally Bromell, *supra* [note 57](#) (discussing rebuttable presumptions and overcoming them).

102. [G.S. 15A-534\(b1\)\(1\)](#).

103. *Id.* § 534(b1)(2).

104. The statute does not state how to consider convictions of driving while impaired. [G.S. 14-3](#) provides that for misdemeanors that are not classified, if the maximum punishment allowed by law is more than six months' imprisonment, that offense is a Class 1 misdemeanor. DWIs sentenced at Levels A1, 1, and 2 have a maximum allowable punishment greater than six months and therefore qualify as Class 1 misdemeanors. DWIs sentenced at Levels 3, 4, and 5 do not have a maximum allowable punishment greater than six months and therefore would not be considered qualifying convictions for the purposes of [G.S. 15A-534\(b\)](#).

105. [G.S. 15A-534\(b\)](#).

conviction for the purposes of [G.S. 15A-534\(b\)](#). Convictions in superior court are considered to be in the same session when they occur in the same calendar week. If a person has more than one conviction of a Class 1 misdemeanor or higher in superior court on the same day, or even on different days during the same calendar week, those convictions would also count as only one qualifying conviction.¹⁰⁶

Certain Probationers Charged with a Felony

When a person is arrested for a felony offense while on probation for a prior offense, the magistrate must determine whether the person poses a danger to the public before setting conditions of pretrial release. This determination must be recorded in writing. If the magistrate determines that the person does pose a danger to the public, the magistrate's discretion is limited in what conditions they may set. In these circumstances, the magistrate must either set a secured bond or impose house arrest with electronic monitoring and a secured bond.¹⁰⁷

Orders for Arrest Issued by a Judge

When a person has been arrested pursuant to an order for arrest issued by a judge for failure to appear, the magistrate's approach to setting conditions of release will differ based on whether the underlying offense is a violent offense as defined earlier.

If the underlying offense is not a violent offense, the magistrate must, at a minimum, impose the conditions of release that are recommended in the order for arrest. If there are no recommended conditions, the magistrate must set a secured bond in an amount at least double the amount of the most recent previous bond or, if no bond has been set yet, at least one thousand dollars.¹⁰⁸ If the underlying offense is a violent offense, the provisions of [G.S. 15A-534\(d1\)](#) do not apply, and the magistrate should set or deny conditions of pretrial release in the same manner as when a person is initially arrested for such an offense.

When an order for arrest includes a bond amount entered by a judge, the statute does not compel the magistrate to set the bond at that amount when issuing the conditions of release. Subject to the rules set out above, when that bond amount entered by a judge is a lawful condition of pretrial release for the magistrate to set, the magistrate may want to consult their local bond policy or consult with that judge before deviating from the bond entered on the order for arrest.

Factors that Must Be Considered

When the magistrate is authorized to set conditions of release, whether their discretion is limited or not, there are statutory factors that they must consider in making their determination. These factors are

- the nature and circumstances of the offense;
- the weight of the evidence against the defendant;
- the defendant's
 - family ties,
 - employment,
 - financial resources,
 - character,

106. [Id. § 1340.14\(d\)](#).

107. [Id. § 534\(d2\)\(1\)](#).

108. [Id. § 534\(d1\)](#).

- housing situation, and
- mental condition;
- whether the defendant is so intoxicated that the defendant would be endangered by being released without supervision;
- the length of the defendant's residence in the community;
- the defendant's history of flight or failures to appear in court; and
- any other evidence relevant to the issue of pretrial release.

In addition to these factors, the magistrate must direct the arresting law enforcement officer, a pretrial services program, or a district attorney to provide a criminal history report and must consider the report in determining conditions of pretrial release.¹⁰⁹ Magistrates should also follow the written pretrial release policy issued by the senior resident superior court judge pursuant to [G.S. 15A-535](#).

Statutory Preference for Release

When a magistrate has discretion to decide between all available conditions of release, there is a statutory preference for magistrates to impose an unsecured bond or custody release. Magistrates must impose one of these two conditions unless they determine that such conditions will not reasonably ensure the appearance of the defendant, will pose a danger of injury to any person, or are likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses.

If a magistrate does determine that neither an unsecured bond nor a custody release are appropriate, the magistrate must impose a secured bond or house arrest with electronic monitoring and a secured bond, and the magistrate must make written findings explaining the reasoning for doing so.¹¹⁰

Pretrial Release Programs

The senior resident superior court judge may, where available, order that defendants may be released to pretrial release programs where they would otherwise have been given unsecured bonds or custody release. A defendant may only be released to the supervision of a pretrial release program with the defendant's consent and upon the defendant's acceptance by the program.¹¹¹

Additional Conditions in Certain Sex Offenses and Crimes Involving Children

When the defendant has been charged with certain offenses, [G.S. 15A-534.4](#) requires additional conditions of release to be imposed. These offenses are

- felony or misdemeanor child abuse;
- indecent liberties with a minor in violation of [G.S. 14-202.1](#);
- rape or any other sex offense against a minor victim in violation of [Article 7B, Chapter 14](#);
- incest with a minor in violation of [G.S. 14-178](#);
- kidnapping, abduction, or felonious restraint involving a minor victim;

109. *Id.* § 534(c).

110. *Id.* § 534(b).

111. *Id.* § 535(b).

- 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; and
- communicating a threat against a minor victim.

When the defendant has been charged with one of these offenses, the magistrate must impose the following conditions of release:

1. The defendant must stay away from the home, temporary residence, school, business, or place of employment of the alleged victim.
2. The defendant must refrain from communicating or attempting to communicate, directly or indirectly, with the victim, except under circumstances specified in an order entered by a judge with knowledge of the pending charges.
3. The defendant must refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.

Of the conditions listed above, the magistrate may waive the first condition, second condition, or both upon request of the defendant if the magistrate finds that they are not in the best interest of the alleged victim. When the magistrate makes this determination, they must make written findings.¹¹²

Fingerprinting and DNA Samples

In certain circumstances, the magistrate must make the collection of the defendant's fingerprints or DNA sample a condition of the defendant's release.¹¹³

When fingerprints have not been taken or the defendant has refused to provide them, the magistrate must make the collection of fingerprints mandatory when

1. the defendant has been charged with a felony;¹¹⁴
2. they have been charged with
 - a. the misdemeanor crime of domestic violence in violation of [G.S. 14-32.5](#),
 - b. domestic criminal trespass in violation of [G.S. 14-134.3](#),
 - c. an offense that involves domestic violence in violation of [G.S. 15A-1382.1](#),
 - d. the violation of a domestic violence protective order in violation of [G.S. 50B-4.1](#),
 - e. impaired driving in violation of [G.S. 20-138.1](#),
 - f. impaired driving in a commercial vehicle in violation of [G.S. 20-138.2](#),
 - g. operating a commercial vehicle after consuming alcohol in violation of [G.S. 20-138.2A](#),
 - h. operating various school, child-care, EMS, firefighting, or law enforcement vehicles after consuming alcohol in violation of [G.S. 20-138.2B](#), or
 - i. possession of a controlled substance in violation of [G.S. 90-95\(a\)\(3\)](#);¹¹⁵
3. they have been charged with a misdemeanor offense of assault, stalking, or communicating a threat and held under [G.S. 15A-534.1](#),¹¹⁶ or

112. *Id.* § 534.4. These additional conditions may be imposed using form [AOC-CR-631](#).

113. *Id.* § 534(a).

114. *Id.* § 502(a1).

115. *Id.* § 502(a2).

116. *Id.* § 502(a4).

4. they cannot be identified by a valid form of identification and they have been charged with any offense involving impaired driving as defined in [G.S. 20-4.01\(24a\)](#) or driving while license revoked, if the revocation is for an impaired driving license revocation as defined in [G.S. 20-28.2](#).¹¹⁷

When DNA has not been taken or the defendant has refused to provide it, the magistrate must make the collection of DNA mandatory when

1. the defendant has been charged with committing (or attempting to commit, soliciting another to commit, conspiring to commit, or aiding and abetting another to commit) an offense listed in [G.S. 15A-266.3A\(f\)](#),¹¹⁸ or
2. they have been convicted of the following crimes or found not guilty by reason of insanity and committed to a mental health facility for the following crimes:
 - a. any felony,
 - b. assault on an individual with a disability in violation of [G.S. 14-32.1](#),
 - c. assault on a female in violation of [G.S. 14-33\(c\)\(2\)](#),
 - d. assault on a child under the age of 12 in violation of [G.S. 14-33\(c\)\(3\)](#),
 - e. stalking in violation of former [G.S. 14-277.3](#),
 - f. any offense listed in [G.S. 15A-266.3A](#),¹¹⁹ or
 - g. any violation of a valid protective order in violation of [G.S. 50B-4.1](#).

Other Additional Conditions

In addition to selecting and setting one of the conditions of release listed in [G.S. 15A-534\(a\)](#), magistrates may set conditions on the defendant's travel, associations, conduct, or residence.¹²⁰ This broad authority should be limited to conditions that are reasonable and related to the purposes of pretrial release.

Examples of additional conditions are included in [G.S. 15A-534.1](#), "Crimes of domestic violence; bail and pretrial release." These are optional additional conditions for the magistrate to consider imposing when a defendant has been charged with certain crimes listed in the statute. They apply to defendants charged with an assault on, communicating a threat to, or committing a felony against a current or former spouse or a person with whom the defendant lives or has lived with as if married. They also apply to defendants charged with domestic criminal trespass or a violation of a 50B order. Under these conditions, the defendant must

- stay away from the home, school, business, or place of employment of the alleged victim;
- refrain from assaulting, beating, molesting, or wounding the alleged victim;
- refrain from removing, damaging, or injuring specifically identified property;
- visit the defendant's child or children only at times and places provided by the terms of any existing order entered by a judge; and
- abstain from alcohol consumption and be monitored by an approved continuous-alcohol-monitoring system.

117. *Id.* § 502(a6).

118. These offenses are listed in [Appendix C](#).

119. See [Appendix C](#).

120. [G.S. 15A-534\(a\)](#).

While these conditions are provided as examples for individuals subject to the provisions of [G.S. 15A-534.1](#), these or similar conditions may be imposed in any case when they are reasonable and related to the purposes of ensuring the defendant's return to court and the safety of the defendant, other individuals, and property.

Delaying the Effective Time of Conditions

After a magistrate sets conditions of pretrial release, there are two circumstances where the effective time of those conditions must be delayed. These delays function to detain the defendant for some additional amount of time. Even though delaying the effective time of release conditions would have no effect if the magistrate has denied or delayed pretrial release conditions, the statutes in both of these circumstances require the magistrate to impose the delay if the magistrate finds the prerequisites to be met.

Detention of Impaired Drivers

When a magistrate is conducting an initial appearance for an implied consent offense,¹²¹ they must determine whether an impaired driver hold is appropriate.¹²² This is not the same as determining whether to delay the initial appearance entirely due to the defendant's intoxication (discussed earlier in "Determining Whether to Begin the Initial Appearance"). The two key distinctions are that these detentions apply only when a person has been charged with an implied consent offense, and that they apply after a person has been able to have their initial appearance.

After setting conditions of pretrial release, a magistrate is required to impose an impaired driver hold when the magistrate determines by clear and convincing evidence that if the defendant were released, the impairment of the defendant's physical or mental faculties would present a danger of physical injury to the defendant, physical injury to others, or damage to property.¹²³ As a burden of proof, clear and convincing evidence requires more evidence than reasonable suspicion, and less evidence than probable cause. This determination must be made based on findings particularized to the defendant and based on the defendant's specific behavior.¹²⁴

Once a magistrate makes the requisite findings, the conditions of pretrial release that have been set will not go into effect until one of three requirements has been met, whichever occurs first. First, a magistrate may remove the impaired driver hold when the defendant is no longer impaired to the extent that they present a danger of physical injury to themselves or others or damage to property.¹²⁵ Second, a magistrate may remove the impaired driver hold when there is

121. See [note 36](#), *supra*.

122. [G.S. 20-38.4\(a\)\(3\)](#).

123. [G.S. 15A-534.2](#).

124. *State v. Labinski*, 188 N.C. App. 120 (2008) (finding that the magistrate violated the defendant's statutory right to pretrial release by imposing an impaired driver hold based on the defendant's blood-alcohol concentration, without any testimony regarding the behavior of the defendant or any findings that specifically demonstrated the defendant "would possibly harm herself or someone else.").

125. [G.S. 15A-534.2\(c\)\(1\)](#). In making this determination, the magistrate may utilize portable breath tests authorized by [G.S. 20-16.3](#) or instruments utilized for chemical analysis. When they do so, unless there is evidence that the defendant is still impaired by a combination of alcohol and other substances, the magistrate must remove the impaired driver hold when the defendant shows an alcohol concentration below .05. [G.S. 15A-534.2\(d\)](#).

a sober, responsible adult who is willing and able to assume responsibility for the defendant.¹²⁶ Finally, the conditions of pretrial release that have been set will go into effect after twenty-four hours if neither of the first two conditions have been met yet.¹²⁷ Notably, these three requirements are judicial determinations, and making any of these determinations may not be delegated to another person who is not a judicial official. The detention order and release are recorded on side 1 of form [AOC-CR-270](#), Detention of Impaired Driver.

Communicable Disease Detentions

During the initial appearance, if the magistrate determines that any individual had a nonsexual exposure to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or hepatitis B, the magistrate must impose a detention for communicable diseases.¹²⁸ The magistrate may accomplish this by using side 2 of AOC-CR-270, Detention for Communicable Disease Testing, and must order the person held to allow for investigation by public health officials. This detention may last only twenty-four hours or until public health officials have completed their investigation and any testing, whichever occurs first.

Modifying Conditions of Release

A magistrate may modify conditions of release set by themselves or another magistrate. This modification may occur at any time prior to the first appearance before the district court judge.¹²⁹ When modifying conditions of release set by another magistrate, consulting with that magistrate ensures mutual understanding and context for the most appropriate conditions of release.

Two instances where magistrates must determine conditions of release after the first appearance are when the defendant has been arrested pursuant to an order for arrest and when the defendant has been arrested without a warrant for violating conditions of their release. When a defendant has been arrested pursuant to an order for arrest, see the subsection [Orders for Arrest Issued by a Judge](#), under the section Limits on Discretion, above. [G.S. 15A-401](#) gives law enforcement the authority to arrest a person when there is probable cause that the person violated a condition of their release. When a person has been arrested pursuant to this authority, the arrest requires the magistrate to conduct an initial appearance.¹³⁰

Fugitives

Arrest Pursuant to a Fugitive Warrant or Warrantless Arrest

After determining that a fugitive from another state has been lawfully arrested without a warrant or pursuant to a fugitive warrant, the magistrate must determine whether to set conditions of release. In order to make this determination, the magistrate should examine the offense charged and the severity of that charge in the state in which it was alleged to have been committed.

126. [Id. § 534.2\(c\)\(2\)](#). The determination of sobriety, responsibility, willingness, and ability are in the magistrate's discretion and must all be satisfied in order to remove the impaired driver hold. If one or a combination of these qualities is missing, a magistrate may refuse to remove the impaired driver hold.

127. [Id. § 534\(c\)](#).

128. [Id. § 534.3](#).

129. [Id. § 534\(e\)](#).

130. [Id. §§ 501\(2\), 511\(a\)\(1\)](#).

If the offense is punishable by death or life imprisonment under the laws of the state in which it was committed, the defendant is not entitled to conditions of release. Otherwise, the magistrate must set a secured bond, conditioned upon the person's appearance at their next court date and their surrender upon the issuance of a governor's warrant.¹³¹

Arrest Pursuant to a Governor's Warrant

When a person has been arrested pursuant to a governor's warrant, they are not entitled to conditions of release. The magistrate should inform the defendant what crime(s) they are charged with in the other state, that the governor of North Carolina has issued a warrant for their extradition, and that they have the right to communicate with counsel and friends.

The defendant should then be committed to custody and scheduled for a first appearance in front of a district court judge.¹³²

Term of the Bond

Once posted, a secured bond covers the defendant until judgment is entered in district court from which no appeal is taken or until judgment is entered in superior court. The bond may end earlier upon any of the following events:

- a judge authorized to do so releases the obligor from the bond;
- the defendant is arrested by a surety in accordance with [G.S. 15A-540](#);
- voluntary dismissal by the state terminates the proceeding before forfeiture of the bond has been entered;
- an indefinite prayer for judgment continued is entered in district court;
- the defendant is placed on probation pursuant to a deferred prosecution or conditional discharge; or
- the court reviews a juvenile's custody status pursuant to a remand under [G.S. 7B-2603](#) or removal under [G.S. 15A-960](#) for disposition as a juvenile case.¹³³

Surrender by a Surety

A surety is a person who is liable (along with the defendant) for the amount of the bail bond upon forfeiture of bail.¹³⁴ When a surety shares responsibility for the bail bond amount, they may surrender the defendant before or after the defendant breaches a condition of the bond. The surety completes form [AOC-CR-214](#), Surrender of Defendant by Surety.

Surrender Before Breach

In circumstances where the defendant has not violated a condition of their bond, a surety may surrender the defendant to the sheriff of the county where the defendant was bonded.¹³⁵ The consequence of this surrender is for the surety to be removed from liability for the bond. When no breach of bond conditions has occurred, [G.S. 15A-540](#) does not require the defendant

131. *Id.* § 736.

132. For more on procedures and guidance when presiding over fugitives, see FARB, *supra* [note 12](#), at 36–41.

133. [G.S. 15A-534\(h\)](#).

134. [G.S. 58-71-1\(10\)](#).

135. [G.S. 15A-540\(a\)](#); [G.S. 58-71-20](#).

to be taken before a judicial official again. As a result, the defendant remains in custody under the original conditions of pretrial release unless and until they are able to satisfy those conditions again.

Surrender After Breach

If the defendant has breached a condition of the bond, the surety may surrender the defendant one of two ways. Firstly, if the defendant is not in custody, the surety may arrest the defendant and surrender them to the sheriff of the county in which the defendant was bonded in the same manner as if a breach had not occurred.¹³⁶ Secondly, if the defendant has already been arrested and is in custody, the surety may surrender their liability for the bond by appearing in person and informing the sheriff's office that they wish to surrender the defendant.¹³⁷

When the defendant has been arrested after breaching a condition of the bond, they must be taken before a judicial official without unnecessary delay for a determination of whether they are entitled to conditions of release, and if they are, for a determination of new conditions of release.¹³⁸

Orders for Arrest

When surrendering a defendant, a surety may arrest them or make a written request to any judicial official for the issuance of an order for arrest.¹³⁹ At the same time, [G.S. 15A-305](#) specifically lists the circumstances in which an order for arrest may be issued. If one of the listed circumstances has not been met, the conflict between Chapter 15A and Chapter 58 is resolved by Chapter 15A controlling and having full effect.¹⁴⁰ When presented with a written request from a surety, a magistrate should consult with their chief district court judge or senior resident superior court judge before issuing an order for arrest. If one of the circumstances in [G.S. 15A-305](#) has been met, a magistrate may or may not be authorized to issue an order for arrest, depending on whether the defendant has had their first appearance in district court. If they have not had their first appearance, the magistrate may issue an order for arrest. If they have had their first appearance, jurisdiction may be vested with the district court, and any application for an order for arrest should be heard by a judge.¹⁴¹

Step 6: Conducting the Involuntary Commitment Inquiry

Effective December 1, 2028, when a person appears before a magistrate for the determination of conditions of pretrial release, the magistrate must determine whether to order an initial examination by a commitment examiner for the purpose of establishing whether there are grounds to petition for the involuntary commitment of the defendant.¹⁴²

136. [G.S. 15A-540\(b\)](#).

137. *Id.*

138. *Id.* § 540(c).

139. [G.S. 58-71-30](#).

140. *Id.* § 71-195.

141. [G.S. 15A-534\(e\)](#). See also Elrahal, *supra* [note 32](#), at 21.

142. S.L. 2026-38, § 14.(a); [G.S. 15A-533\(b1\)](#).

Applicability

There are two situations in which magistrates must conduct this inquiry. The first is when the defendant has been charged with a violent offense¹⁴³ and the magistrate finds that the defendant has previously been subject to an order of involuntary commitment after a search of the defendant's court records. The second is when the defendant has been charged with any offense and the magistrate has reasonable grounds to believe that the defendant is a danger to themselves or others.

Order

When the magistrate determines that one of the two circumstances above has been met, they must set conditions of pretrial release and issue an additional order that includes the following five provisions:

1. The defendant must receive an initial examination by a commitment examiner to determine whether there are grounds to petition for involuntary commitment of the defendant.¹⁴⁴
2. The arresting officer must immediately transport (or arrange for transportation by an officer of the arresting officer's agency) the defendant to a hospital emergency department or other crisis facility with certified commitment examiners for the initial examination.¹⁴⁵
3. The commitment examiner must either petition for involuntary commitment of the defendant or provide written notice to the magistrate who ordered the initial examination that there are no grounds to petition for involuntary commitment.
4. If the defendant has not met all other pretrial release conditions and a petition for involuntary commitment has not been filed, a custody order has not been issued pursuant to [G.S. 122C-261](#), or [Article 5 of Chapter 122C](#) would otherwise require release of the defendant, the defendant must be transported to and held in the local confinement facility where the conditions of release were set unless and until all pretrial release conditions have been met.
5. Except as directed in the previous provision, whether or not the defendant has met their other conditions of pretrial release, if a petition for involuntary commitment is filed pursuant to Article 5 of Chapter 122C, their custody status must be determined pursuant to the provisions of Article 5 while the petition is pending and through any hearings and orders under that article.

Implementation

As of the publication date of this bulletin, open questions remain about the implementation of the involuntary commitment inquiry. These include what method of access magistrates should use to review histories of involuntary commitment orders, whether the category of "danger to

143. See [Appendix A](#).

144. The commitment examiner, as defined in [G.S. 122C-3](#), must conduct the examination in accordance with the requirements of initial examinations as provided in [G.S. 122C-263\(c\)](#).

145. If the defendant has otherwise met their conditions of pretrial release, and either no petition for involuntary commitment is filed or one is filed but no custody order has been issued pursuant to [G.S. 122C-261](#), the defendant may be released after the initial examination.

themselves or others” requires a mental health nexus, and what procedures to follow for the administration of the requirements included in the order. As the effective date approaches, we will endeavor to publish any new guidance or updates on the N.C. Criminal Law Blog.¹⁴⁶

Step 7: Conducting the Citizenship Inquiry

When determining conditions of pretrial release, the magistrate must also attempt to determine whether the person is a legal resident or citizen of the United States when the person has been charged with certain offenses. Based on this inquiry, the magistrate may be required to order a two-hour detention of the defendant in order for the local detention facility to perform a query of Immigration and Customs Enforcement (ICE) of the U.S. Department of Homeland Security.

Applicability

Magistrates must attempt to determine whether the defendant is a legal resident or citizen of the United States when they are determining conditions of pretrial release for

- any felony;
- a Class A1 misdemeanor under [G.S. Chapter 14, Articles 6A](#) (unborn victims), [7B](#) (rape and other sex offenses), or [8](#) (assaults);
- any violation of [G.S. 50B-4.1](#) (violation of a domestic violence protective order); or
- any offense involving impaired driving as defined in [G.S. 20-4.01](#).¹⁴⁷

As a practical note, the magistrate must conduct this inquiry even if, as part of their determination of conditions of pretrial release, they determine that they are not authorized to set conditions of pretrial release at the moment.

Inquiry

Magistrates are directed to determine legal residency “by an inquiry of the defendant, or by examination of any relevant documents, or both.”¹⁴⁸ Subject to this guidance, magistrates have discretion in creating how they will go about making this determination. In establishing the method of inquiry, magistrates may consider applying the method uniformly to individuals appearing before them to avoid equal-protection concerns.

Result

When the magistrate is able to determine that the person is a legal resident or citizen of the United States, this inquiry ends and there are no more steps required by [G.S. 15A-534\(d4\)](#). If the magistrate is unable to determine that the person is a legal resident or citizen, the magistrate must then (1) set conditions of pretrial release if the person is entitled to them and (2) commit the person to the local detention facility for fingerprinting and for a query of ICE. From the time of the query, this detention may not last longer than two hours.¹⁴⁹ If, at the expiration of

146. See generally [N.C. CRIM. L. BLOG](#), <https://nccriminallaw.sog.unc.edu/>.

147. [G.S. 15A-534\(d4\)](#).

148. *Id.*

149. This detention is ordered using the [AOC-CR-663](#) form.

the two hours, a detainer and administrative warrant are not received by the detention facility, the two-hour hold is lifted and the conditions of pretrial release, if conditions have been set, go into effect.

If a detainer and administrative warrant are received by the detention facility, the person must be brought back before a judicial official (usually a magistrate). When this occurs, the magistrate should proceed as described in the next section.

ICE Detainers and Administrative Warrants

When a person is brought before a magistrate with an existing ICE detainer and administrative warrant, the magistrate must proceed pursuant to [G.S. 162-62](#). This may occur after a two-hour hold has been imposed for a query of ICE, or may occur when a person is arrested for any offense and has an already existing ICE detainer and administrative warrant. After establishing the person's identity, the person must be detained in order for ICE to have an opportunity to take custody.

Establishing Identity

The first step the magistrate must take when the person has been brought before them with an ICE detainer and administrative warrant is to determine that the person before them is the person sought by the detainer and warrant. The magistrate must be provided with a copy of the ICE detainer and administrative warrant. The magistrate may rely on a valid passport or a state driver's license to make this determination. The magistrate may not rely on a document issued by a consulate or embassy of another country, like a *matricula consular*.¹⁵⁰ If the magistrate does not determine that the person before them is the same as the person sought by the ICE detainer and administrative warrant, the magistrate must note this on an Order After Receipt of ICE Detainer and Administrative Warrant.¹⁵¹ When this occurs, there are no more steps required by [G.S. 162-62](#) and the magistrate should proceed as usual with the initial appearance.

Imposing the Hold

When the magistrate does determine that the person before them is the person sought by the ICE detainer and administrative warrant, they must detain the person in order for ICE to have an opportunity to take the person into its custody. The magistrate imposes this hold by making the appropriate findings on form [AOC-CR-662](#), directing that the defendant be held in custody and transferred to the custody of an ICE officer upon that officer's timely appearance. The hold lasts until forty-eight hours have passed from the time the defendant would otherwise have satisfied their conditions of release and been released, until ICE takes custody of the defendant, or until ICE rescinds the detainer, whichever occurs first.¹⁵²

150. [G.S. 15A-311\(a\)](#).

151. Form [AOC-CR-662](#).

152. [G.S. 162-62\(b1\)\(3\)](#).

After the determination of the defendant's identity and the imposition of the hold, the remaining obligations of [G.S. 162-62](#) are met by the local detention facility, and there are no further steps needed by the magistrate. For more on immigration detainees, see [Detention of Noncitizens](#), by Brittany Bromell.¹⁵³

Appointing Counsel

A magistrate may be authorized by the chief district court judge to appoint counsel and accept waivers of counsel at the initial appearance.¹⁵⁴ With permission from the chief district court judge, the chief magistrate may also designate a magistrate with this authority. Even when authorized, magistrates may only appoint counsel or accept waivers of counsel for cases that are not potentially capital cases as defined by the rules adopted by the Office of Indigent Services.

Determining Eligibility

The scope of eligibility for appointed counsel is set out in [G.S. 7A-451](#). Among the circumstances listed, the most likely to occur before a magistrate at the initial appearance are

- cases in which either imprisonment or a fine of at least five hundred dollars may be adjudged,¹⁵⁵
- cases in which probation may be revoked,¹⁵⁶ and
- cases in which extradition to another state is sought.¹⁵⁷

If a person is brought before a magistrate during an initial appearance and does not meet one of these criteria, a magistrate authorized to appoint counsel should review the remaining circumstances that establish eligibility for appointed counsel in [G.S. 7A-451](#).

Determining Indigence

After determining that the defendant is eligible for appointed counsel, the magistrate must determine whether the defendant is indigent.¹⁵⁸ An eligible defendant may establish indigent status by completing an affidavit of indigency¹⁵⁹ in which they provide their income, expenses, assets, and liabilities. There are no strict monetary guidelines that require approval or rejection. Determinations of indigence must be made case-by-case, taking into account the defendant, the charges, and the affordability of hiring an attorney for those proceedings in that jurisdiction.

153. Brittany Bromell, [Detention of Noncitizens: Understanding North Carolina Law on Immigration Detainers](#), ADMIN. OF JUST. BULL. No. 2025/07 (Nov. 2025), https://www.sog.unc.edu/sites/default/files/reports/AOJB_2025-07_tagged.pdf.

154. [G.S. 7A-146\(11\)](#).

155. [Id. § 451\(a\)\(1\)](#).

156. [Id. § 451\(a\)\(4\)](#).

157. [Id. § 451\(a\)\(5\)](#).

158. [Section 450\(a\)](#) defines *indigent person* as “a person who is financially unable to secure legal representation and to provide all other necessary expenses of representation in an action or proceeding” for which they are eligible for appointed counsel.

159. This affidavit can be filed using form [AOC-CR-226](#).

Waiver of Counsel

Defendants who are otherwise eligible and entitled to appointed counsel may waive that right. Magistrates that are authorized to appoint counsel in noncapital cases may also accept waivers of counsel.¹⁶⁰ In order to accept a defendant's waiver of counsel, the magistrate should ensure that the person is acting with full awareness of their rights and the consequences of their waiver. In making this determination, the magistrate must consider the person's age, education, familiarity with the English language, and mental condition. The magistrate must also consider the complexity of the crime charged and any other relevant factor.¹⁶¹ The acknowledgement of rights, the waiver of counsel, and the certificate of the magistrate are recorded on form [AOC-CR-227](#).

160. [G.S. 7A-146\(11\)](#).

161. [Id. § 457](#).

Appendix A. Quick Guide to Setting Conditions of Pretrial Release

When to Delay Determination of Conditions

- Offenses committed while on pretrial release
- Certain probation violations
- Certain domestic violence offenses
- Threats or assaults on public officers
- Communicating a threat of mass violence
- Rioting or looting
- Certain probationers charged with a felony

When to Deny Conditions

- Offenses listed in G.S. 15A-533(b)
- Certain drug trafficking offenses
- Certain gang related offenses
- Certain firearm related offenses
- Violent offenses, rebuttable presumption not overcome
- Certain probation violations
- Certain methamphetamine offenses
- Military deserters
- Out-of-state probationers
- Persons charged with committing a crime while involuntarily committed to / on escape from a mental health facility
- Violations of a health-control measure
- Certain fugitives from another state
- Violations of post-release supervision or parole conditions

When Discretion Is Limited

- Violent offenses, rebuttable presumption overcome
- Three or more qualifying convictions in the prior ten years
- Certain probationers charged with a felony
- Orders for arrest issued by a judge

When to Delay the Effective Time of Conditions

- Detention of impaired drivers
- Communicable-disease detentions

Determine Whether to Conduct Certain Inquiries

- Involuntary commitment inquiry¹
- Citizenship inquiry

1. Set to go in effect December 1, 2028.

Appendix B. Chart of Violent Offenses

The following chart and additional notes list violent offenses as defined by G.S. 15A-531(9) and indicate the qualifying subsection identifying the offense as a violent offense. Credit and thanks go to my colleague Brittany Bromell for the creation and sharing of this resource.¹ As a reminder, G.S. 15A-531(9) defines “[v]iolent offense” as an offense (or an attempt to commit an offense) that is any of the following:

1. a Class A through Class G felony whose essential elements include assault, the use of physical force against a person, or the threat of physical force against a person;
2. a felony offense that requires registration pursuant to G.S. 14, art. 27A;
3. an offense listed in G.S. 15A-533(b);
4. an offense under G.S. 14, §§ 17, 18.4, 34.1, 51, 54(a1), 202.1, 277.3A, or 415.1; or
5. an offense under G.S. 90-95(h)(4c) that involves fentanyl.

Violent Offenses Under G.S. 15A-531(9)

Offense	Class A–G felony involving assault or use of physical force as an essential element	Felony requiring sex offender registration	Offense listed in G.S. 15A-533(b)	Otherwise specifically enumerated
G.S. 14-16.6(b)–(c): Assault on executive, legislative, court, or local elected officers	●			
G.S. 14-17: Murder in the first and second degree			●	●
G.S. 14-18: Voluntary manslaughter	●			
G.S. 14-18.4: Death by distribution				●
G.S. 14-23.2(a)(1)–(a)(2): Murder of an unborn child	●			
G.S. 14-23.3: Voluntary manslaughter of an unborn child	●			
G.S. 14-23.5: Assault inflicting serious bodily injury on an unborn child	●			
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(a): Statutory rape of person who is 15 years of age or younger		●	●	

1. The chart is reprinted from Brittany Bromell, *Iryna’s Law and Pretrial Release*, ADMIN. OF JUST. BULL. No. 2026/02 (UNC School of Government, 2026), 15–18, <https://www.sog.unc.edu/sites/default/files/reports/AOJB%202026-02.pdf>.

Violent Offenses Under G.S. 15A-531(9) (continued)

Offense	Class A–G felony involving assault or use of physical force as an essential element	Felony requiring sex offender registration	Offense listed in G.S. 15A-533(b)	Otherwise specifically enumerated
G.S. 14-27.25(b): 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(a): Statutory sexual offense with a person who is 15 years of age or younger		•	•	
G.S. 14-27.30(b): Statutory sexual offense with a person who is 15 years of age or younger			•	
G.S. 14-27.31: Sexual activity by a substitute parent or custodian		•		
G.S. 14-27.32: Sexual activity with a student		•		
G.S. 14-28: Malicious castration	•			
G.S. 14-28.1: Female genital mutilation of a child	•			
G.S. 14-29: Castration or other maiming without malice aforethought	•			
G.S. 14-30: Malicious maiming	•			
G.S. 14-30.1: Malicious throwing of corrosive acid or alkali	•			
G.S. 14-31: Maliciously assaulting in a secret manner	•			
G.S. 14-32(a): Felonious assault with deadly weapon with intent to kill and inflicting serious injury	•		•	
G.S. 14-32(b)–(e): Felonious assault with deadly weapon with intent to kill or inflicting serious injury	•			
G.S. 14-32.1(e): Assaults on individuals with a disability	•			
G.S. 14-32.4: Assault inflicting serious bodily injury	•			
G.S. 14-34.1: Discharging certain barreled weapons or a firearm into occupied property			•	•

Violent Offenses Under G.S. 15A-531(9) (continued)

Offense	Class A–G felony involving assault or use of physical force as an essential element	Felony requiring sex offender registration	Offense listed in G.S. 15A-533(b)	Otherwise specifically enumerated
G.S. 14-34.2: Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers	●			
G.S. 14-34.5: Assault with a firearm on a law enforcement, probation, or parole officer; on a member of the North Carolina National Guard; or on a person employed at a state or local detention facility	●			
G.S. 14-34.6(b)–(c): Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel	●			
G.S. 14-34.7(a), (a1), (b): Certain assaults on a law enforcement, probation, or parole officer, on a member of the North Carolina National Guard; or on a person employed at a state or local detention facility	●			
G.S. 14-34.9: Discharging a firearm from within an enclosure	●			
G.S. 14-34.10: Discharge firearm within enclosure to incite fear	●			
G.S. 14-39: Kidnapping		*	●	
G.S. 14-41: Abduction of children		*		
G.S. 14-43.3: Felonious restraint		*		
G.S. 14-43.11: Human trafficking		*	●	
G.S. 14-43.13: Sexual servitude		●		
G.S. 14-49(a): Malicious use of explosive or incendiary	●			
G.S. 14-50.19(a1): Intimidation to deter from gang withdrawal	●			
G.S. 14-50.20(a1): Punishment or retaliation for gang withdrawal	●			
G.S. 14-51(a): First degree burglary			●	●
G.S. 14-51(b): Second degree burglary				●
G.S. 14-54(a1): Breaking or entering with intent to terrorize or injure an occupant				●
G.S. 14-58: First-degree arson			●	
G.S. 14-87: Robbery with firearms or other dangerous weapons			●	

* only when committed against a minor (less than 18 years old) and the defendant is not the minor's parent

Violent Offenses Under G.S. 15A-531(9) (continued)

Offense	Class A–G felony involving assault or use of physical force as an essential element	Felony requiring sex offender registration	Offense listed in G.S. 15A-533(b)	Otherwise specifically enumerated
G.S. 14-87.1: Common-law robbery	●			
G.S. 14-88: Train robbery	●			
G.S. 14-178: Incest between near relatives		●		
G.S. 14-190.6: Employing or permitting minor to assist in offenses against public morality and decency		●		
G.S. 14-190.9(a1): Felonious indecent exposure		●		
G.S. 14-190.16: First-degree sexual exploitation of a minor		●		
G.S. 14-190.17: Second-degree sexual exploitation of a minor		●		
G.S. 14-190.17A: Third-degree sexual exploitation of a minor		●		
G.S. 14-190.17C: Obscene visual representation of sexual exploitation of a minor		●		
G.S. 14-202.1: Taking indecent liberties with children		●		●
G.S. 14-202.3: Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act		●		
G.S. 14-202.4(a): Taking indecent liberties with a student		●		
G.S. 14-205.2(c) or (d): Patronizing a prostitute who is a minor or has a mental disability		●		
G.S. 14-205.3(b): Promoting prostitution of a minor or a person who has a mental disability		●		
G.S. 14-258.4(a): Malicious conduct by prisoner	●			
G.S. 14-277.3A: Stalking				●
G.S. 14-288.22(a): Unlawful use of a nuclear, biological, or chemical weapon of mass destruction	●			
G.S. 14-288.22(b): Unlawful use of a nuclear, biological, or chemical weapon of mass destruction (attempt only)	●			
G.S. 14-288.9(d)-(f): Assault on emergency personnel	●			
G.S. 14-318.4(a): Felony child abuse	●			

Violent Offenses Under G.S. 15A-531(9) (continued)

Offense	Class A–G felony involving assault or use of physical force as an essential element	Felony requiring sex offender registration	Offense listed in G.S. 15A-533(b)	Otherwise specifically enumerated
G.S. 14-318.4(a1): Felony child abuse—prostitution		•		
G.S. 14-318.4(a2): Felony child abuse—sexual act		•		
G.S. 14-318.4(a3): Felony child abuse	•			
G.S. 14-415.1: Possession of firearms by a felon				•
G.S. 90-95(h)(4c): Trafficking in fentanyl				•

Violent offenses also include the following:

- Attempts to commit any of the listed offenses
- Solicitation or conspiracy to commit a **felony offense that requires sex offender registration**, so long as the solicitation or conspiracy is punishable as a felony

The following felony offenses require sex offender registration only when a sentencing court rules that the person is a danger to the community and that the person should register. The offenses are likely not violent offenses at the time they are charged but may be considered “prior violent offenses” for purposes of G.S. 15A-534(b1)(2) following the judicial determination at sentencing.

- G.S. 14-43.14: Unlawful sale, surrender, or purchase of a minor
- G.S. 14-202(c): Second/subsequent conviction for misdemeanor peeping
- G.S. 14-202(d), (e1), (f), (g), or (h): Felony peeping

Appendix C. Reportable Convictions

Sexually Violent Offenses (G.S. 14-208.6(5))

- First-degree forcible rape (14-27.21)
- Second-degree forcible rape (14-27.22)
- Statutory rape of a child by an adult (14-27.23)
- Statutory rape of person ≤ 15 by D 6+ yrs. older (14-27.25(a))
- First-degree forcible sexual offense (14-27.26)
- Second-degree forcible sexual offense (14-27.27)
- Statutory sexual offense with a child by an adult (14-27.28)
- First-degree statutory sexual offense (14-27.29)
- Statutory sexual offense with person ≤ 15 yrs. old (14-27.30(a))
- Sexual activity by substitute parent or custodian (14-27.31)
- Sexual activity with a student (14-27.32)
- Sexual battery (14-27.33)
- Human trafficking (if victim < 18 yrs. old or for sexual servitude) (14-43.11)
- Sexual servitude (14-43.13)
- Incest between near relatives (14-178)
- Employing minor in offense against public morality (14-190.6)
- Felony indecent exposure (14-190.9(a1))
- First-degree sexual exploitation of minor (14-190.16)
- Second-degree sexual exploitation of minor (14-190.17)
- Third-degree sexual exploitation of minor (14-190.17A)
- Taking indecent liberties with children (14-202.1)
- Solicitation of child by computer (14-202.3)
- Taking indecent liberties with student (14-202.4(a))
- Patronizing prostitute (if prostitute is minor or mentally disabled) (14-205.2(c), (d))
- Promoting prostitution (if victim is minor or mentally disabled child) (14-205.3(b))
- Parent/caretaker prostitution (14-318.4(a1))
- Parent/guardian committing or allowing sexual act (14-318.4(a2))
- Former first-degree rape (14-27.2)
- Former rape of a child by an adult offender (14-27.2A)
- Former second-degree rape (14-27.3)
- Former first-degree sexual offense (14-27.4)
- Former sexual offense with a child by an adult offender (14-27.4A)
- Former second-degree sexual offense (14-27.5)
- Former sexual battery (14-27.5A)
- Former attempted rape / sexual offense (14-27.6)
- Former intercourse / sexual offense with certain victims (14-27.7)
- Former stat. rape/Sexual off. (13–15yo/D 6+ yrs. older) (14-27.7A(a))
- Former promoting prostitution of minor (14-190.18)
- Former participating in prostitution of minor (14-190.19)

Offenses Against a Minor (G.S. 14-208.6(1m))

These offenses are reportable only if the victim is a minor and the offender is not the victim's parent.

- Kidnapping (14-39)
- Abduction of children (14-41)
- Felonious restraint (14-43.3)

Peeping Crimes (G.S. 14-208.6(4)(d))

These offenses are reportable only if the court decided that registration furthers purposes of the registry and that the offender is a danger to the community.

- Felony peeping (14-202(d), (e), (f), (g), or (h))
- Second/subsequent conviction of
 - misdemeanor peeping under 14-202(a) or (c) or
 - misdemeanor peeping w/ mirror or device under 14-202(a1)

Sale of a Child (G.S. 14-208.6(4)(e))

This offense is only reportable if the sentencing court rules under G.S. 14-43.14(e) that the defendant is a danger to the community and is required to register.

Attempt (G.S. 14-208.6(4)(a))

Final convictions for attempts to commit an offense against a minor or a sexually violent offense as listed above require registration.

Conspiracy/Solicitation (G.S. 14-208.6(1m), (5))

Conspiracy and solicitation to commit an offense against a minor or a sexually violent offense as listed above require registration.

Aiding and Abetting (G.S. 14-208.6(4)(a))

Aiding and abetting an offense against a minor or a sexually violent offense as listed above are reportable only if the court found that registration furthers the purpose of the registry.

Appendix D. Offenses Subject to G.S. 15A-266.3A

- Assault with a deadly weapon on executive, legislative, or court officer (G.S. 14-16.6(b))
- Assault inflicting serious bodily injury on executive, legislative, or court officer (14-16.6(c))
- First and second degree murder (14-17)
- Manslaughter (14-18)
- Any felony offense in Article 6A, Unborn Victims (14, art. 6A)
- Any offense in Article 7B, Rape and Other Sex Offenses (14, art. 7B)
- Malicious castration (14-28)
- Castration or other maiming without malice aforethought (14-29)
- Malicious maiming (14-30)
- Malicious throwing of corrosive acid or alkali (14-30.1)
- Maliciously assaulting in a secret manner (14-31)
- Felonious assault with deadly weapon with intent to kill or inflicting serious injury (14-32)
- Aggravated assault or assault and battery on an individual with a disability (14-32.1(e))
- Patient abuse and neglect, intentional conduct proximately causes death (when punishable pursuant to G.S. 14-32.2(b)(1)) (14-32.2(a))
- Domestic abuse of disabled or elder adults resulting in injury (14-32.3(a))
- Assault inflicting serious bodily injury or injury by strangulation (14-32.4)
- Habitual misdemeanor assault (14-33.2)
- Discharging certain barreled weapons or a firearm into occupied property (14-34.1)
- Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers (14-34.2)
- Adulterated or misbranded food, drugs, etc.; intent to cause serious injury or death; intent to extort (14-34.4)
- Assault with a firearm on a law enforcement, probation, or parole officer or on a person employed at a state or local detention facility (14-34.5)
- Assault or affray on a firefighter, an emergency-medical technician, medical responder, emergency-department nurse, or emergency-department physician (14-34.6)
- Assault inflicting serious injury on a law enforcement, probation, or parole officer or on a person employed at a state or local detention facility (14-34.7)
- Discharging a firearm from within an enclosure (14-34.9)
- Discharge firearm within enclosure to incite fear (14-34.10)
- Any offense in Article 10, Kidnapping and Abduction (14, art. 10)
- Any offense in Article 10A, Human Trafficking (14, art. 10A)
- Any offense in Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material.
- First- and second-degree burglary (14-51)
- Breaking-out-of-dwelling-house burglary (14-53)
- Breaking or entering buildings with intent to terrorize or injure (14-54(a1))
- Breaking or entering a place of religious worship (14-54.1)
- Burglary with explosives (14-57)
- Any offense in Article 15, Arson (14, art. 15)
- Armed robbery; common law robbery punishable pursuant to G.S. 14-87.1 (14-87)

- Train robbery (14-88)
- Assaulting a law-enforcement-agency animal, an assistance animal, or a search-and-rescue animal, willfully killing the animal (14-163.1(a1))
- Any offense which would require the person to register under the provisions of Article 27A, Sex Offender and Public Protection Registration Programs (14, art. 27A)
- Cyberstalking (14-196.3)
- Secretly peeping into room occupied by another person (14-202)
- Possession of dangerous weapon in prison resulting in bodily injury or escape (14-258.2)
- Taking of hostage, etc., by prisoner (14-258.3)
- Malicious conduct by prisoner (14-258.4)
- Stalking (14-277.3A)
- Assault on emergency personnel with a dangerous weapon or substance (14-288.9)
- Unlawful manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a nuclear, biological, or chemical weapon of mass destruction (14-288.21)
- Unlawful use of a nuclear, biological, or chemical weapon of mass destruction (14-288.22)
- Child abuse inflicting serious injury (14-318.4(a))
- Child abuse inflicting serious bodily injury (14-318.4(a3))
- Cruelty to animals: maliciously killing by intentional deprivation of necessary sustenance (14-360(a1))
- Cruelty to animals: maliciously torturing, mutilating, maiming, cruelly beating, disfiguring, poisoning, or killing (14-360(b))
- Attempt to conceal evidence of nonnatural death by dismembering or destroying remains (14-401.22(e))
- Any attempt, solicitation of another to commit, conspiracy to commit, or aid and abetment of another to commit any of the violations listed above