

Brittany Williams
UNC School of Government
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The 48-Hour Rule

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Pretrial release: 48-hour rule

- A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.
- During the first 48 hours after arrest for certain domestic violence crimes, only a judge can set conditions of pretrial release.
- A magistrate may set conditions of release if the first 48 hours pass without a judge setting the conditions.

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48-hour rule

Applies to:

- When there is a covered offense and a qualifying victim (G.S. 15A-534.1)
- Domestic criminal trespass
- Violation of valid protective order

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Application

Offense:

- “In all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes...

Relationship:

- upon 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 as defined in G.S. 50B-1(b)(6)...

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Article 7B

Article 7B - Rape and Other Sex Offenses	
G.S. 14-27-20	§ 14-27-20. Definitions.
G.S. 14-27-21	§ 14-27-21. First-degree forcible rape.
G.S. 14-27-22	§ 14-27-22. Second-degree forcible rape.
G.S. 14-27-23	§ 14-27-23. Statutory rape of a child by an adult.
G.S. 14-27-24	§ 14-27-24. First-degree statutory rape.
G.S. 14-27-25	§ 14-27-25. Statutory rape of person who is 15 years of age or younger.
G.S. 14-27-26	§ 14-27-26. First-degree forcible sexual offense.
G.S. 14-27-27	§ 14-27-27. Second-degree forcible sexual offense.
G.S. 14-27-28	§ 14-27-28. Statutory sexual offense with a child by an adult.
G.S. 14-27-29	§ 14-27-29. First-degree statutory sexual offense.
G.S. 14-27-30	§ 14-27-30. Statutory sexual offense with a person who is 15 years of age or younger.
G.S. 14-27-31	§ 14-27-31. Sexual activity by a substitute parent or custodian.
G.S. 14-27-32	§ 14-27-32. Sexual activity with a student.
G.S. 14-27-33	§ 14-27-33. Sexual battery.
G.S. 14-27-33A	§ 14-27-33A. Sexual contact or penetration under pretext of medical treatment.
G.S. 14-27-34	§ 14-27-34. No defense that victim is spouse of person committing act.
G.S. 14-27-35	§ 14-27-35. No presumption as to incapacity.
G.S. 14-27-36	§ 14-27-36. Evidence required in prosecutions under this Article.

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Article 8

Article 8 - Assaults	
G.S. 14-28	§ 14-28. Mutilous castration.
G.S. 14-28.1	§ 14-28.1. Female genital mutilation of a child.
G.S. 14-29	§ 14-29. Castration or other mutilation without malice aforethought.
G.S. 14-30	§ 14-30. Mutilous maiming.
G.S. 14-30.1	§ 14-30.1. Mutilous throwing of corrosive acid or alkali.
G.S. 14-31	§ 14-31. Mutilously assaulting in a secret manner.
G.S. 14-32	§ 14-32. Felonious assault with deadly weapon with intent to kill or inflicting serious injury.
G.S. 14-32.1	§ 14-32.1. Assaults on individuals with a disability: punishments.
G.S. 14-32.2	§ 14-32.2. Patient abuse and neglect: punishments; definitions.
G.S. 14-32.3	§ 14-32.3. Domestic abuse, neglect, and exploitation of disabled or elder adults.
G.S. 14-32.4	§ 14-32.4. Assault inflicting serious bodily injury: strangulation penalties.
G.S. 14-33	§ 14-33. Misdemeanor assaults, batteries, and affrays, simple and aggravated: punishments.
G.S. 14-33.1	§ 14-33.1. Evidence of former threats upon plea of self-defense.
G.S. 14-33.2	§ 14-33.2. Habitual misdemeanor assault.
G.S. 14-34	§ 14-34. Assaulting by pointing gun.
G.S. 14-34.1	§ 14-34.1. Discharging certain licensed weapons or a firearm into occupied property.
G.S. 14-34.2	§ 14-34.2. Assault with a firearm or other deadly weapon upon governmental officers or employees, police officers, or campus police officers.

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G.S. 14-34.5	§ 14-34.5. Assault with a firearm on a law enforcement, probation, or parole officer, or 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	§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel.
G.S. 14-34.7	§ 14-34.7. Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility; penalty.
G.S. 14-34.8	§ 14-34.8. Criminal use of laser device.

Article 8

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Article 10 - Kidnapping and Abduction.

G.S. 14-39	§ 14-39. Kidnapping.
G.S. 14-40	§ 14-40. Enticing minors out of the State for the purpose of employment.
G.S. 14-41	§ 14-41. Abduction of children.
G.S. 14-42	§ 14-42: Repealed by Session Laws 1993, c. 539, s. 1358.2.
G.S. 14-43	§ 14-43: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 29(2).
G.S. 14-43.1	§ 14-43.1. Unlawful arrest by officers from other states.
G.S. 14-43.2	§ 14-43.2: Repealed by Session Laws 2006-247, s. 20(a), effective December 1, 2006, and applicable to offenses committed on or after that date.

Article 10

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Article 15 - Arson and Other Burnings.

G.S. 14-108	§ 14-108. Punishment for arson.
G.S. 14-108.1	§ 14-108.1. Definition of "house" and "building".
G.S. 14-108.2	§ 14-108.2. Burning of mobile home, manufactured-type house or recreational trailer home.
G.S. 14-109	§ 14-109. Burning of certain public buildings.
G.S. 14-109	§ 14-109. Burning of schoolhouses or buildings of educational institutions.
G.S. 14-110	§ 14-110. Burning of certain bridges and buildings.
G.S. 14-110	§ 14-110. Burning of certain buildings.
G.S. 14-102.1	§ 14-102.1. Burning of building or structure in process of construction.
G.S. 14-102.2	§ 14-102.2. Burning of churches and certain other religious buildings.
G.S. 14-103	§ 14-103. Burning of boats and barges.
G.S. 14-104	§ 14-104. Burning of ginhouses and tobacco houses.
G.S. 14-105	§ 14-105. Fraudulently setting fire to dwelling houses.
G.S. 14-106	§ 14-106. Burning of personal property.
G.S. 14-107	§ 14-107: Repealed by Session Laws 1993, c. 539, s. 1358.2.
G.S. 14-107.1	§ 14-107.1. Burning other buildings.
G.S. 14-107.2	§ 14-107.2. Burning caused during commission of another felony.
G.S. 14-108	§ 14-108. Failure of owner of property to comply with orders of public authorities.
G.S. 14-109	§ 14-109. Failure of officers to investigate incendiary fires.
G.S. 14-109.1	§ 14-109.1. Making a false report concerning incendiary devices.
G.S. 14-109.2	§ 14-109.2. Reporting on houses in care of State boards or other entities.
G.S. 14-109.3	§ 14-109.3. Arson or other unlawful burning that results in serious bodily injury to a firefighter, law enforcement officer, or emergency medical technician.

Article 15

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Examples of non-qualifying offenses

- G.S. 15-54 - Break or enter to terrorize or injure occupant
 - Chapter 14, **ARTICLE 14**
- G.S. 14-286 - Interfering with emergency communication
 - Chapter 14, **ARTICLE 36**

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Application

Offense:	Relationship:
<ul style="list-style-type: none"> • "In all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes... 	<ul style="list-style-type: none"> • upon 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 as defined in G.S. 50B-1(b)(6)..."

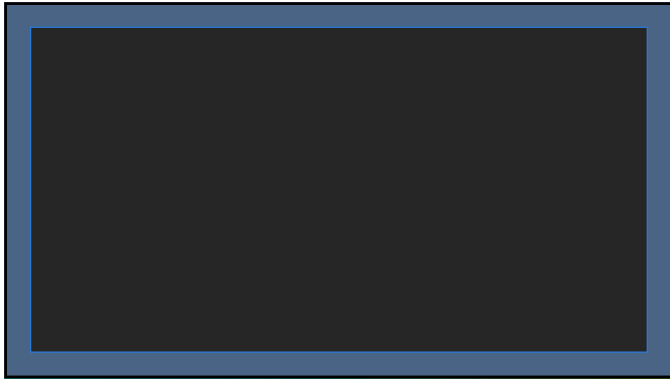
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Example

An 18-year-old male, who lives with his mother, brutally attacked his mother and stabbed her numerous times in the neck, chest and back.

Would the male be subject to the 48-hour rule?

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Scenario	Act	Relationship
A man trespasses on the property of his ex-wife and her new husband	Domestic criminal trespass	Former spouse (although no relationship required)
A man assaults his sister, with whom he lives	Assault	NO QUALIFYING RELATIONSHIP
A man assaults his pregnant fiancée	Assault	Dating relationship
A woman shows up to her son's school in violation of a valid DVPO	Violation of a valid protective order	No relationship required

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- No carte blanche to hold the defendant for 48 hours; the defendant must be brought before a judge at the earliest, reasonable opportunity.
- A violation of procedural due process occurs where the defendant is held without conditions of pretrial release and a judge was available to set them.
- Considerations:
 - at what point a judge was available to set conditions of pretrial release, and
 - how long after that point the defendant was held without conditions.

48-hour rule

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Venue

- If a person is arrested in a different county, the appropriate judicial official in the county of arrest must set the pretrial release conditions
- Being held on an out-of-county charge is not a basis for denying or delaying the setting of pretrial release conditions

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Pretrial release conditions

- The judicial official must consider the defendant's criminal history when setting pretrial release conditions.
- If judge determines that the immediate release of the defendant poses danger of injury or intimidation the victim, judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.

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Pretrial release conditions

- That the defendant stay away from the home, school, business or place of employment of the alleged victim
- That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim
- That the defendant refrain from removing, damaging or injuring specifically identified property
- That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge
- That the defendant abstain from alcohol consumption

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