

## Pretrial Release -- Part 2: Who Sets Conditions? What Are the Options?

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In my [first post](#) in this series, I addressed the issue of who is entitled to conditions of pretrial release. In this post, I'll address who can set conditions and what pretrial release options are available.

### Who Sets Conditions

Conditions of pretrial release are set by a judicial official G.S. 15A-532(a). Typically, conditions are set by a magistrate or a district or superior court judge, but the term judicial official also includes clerks and appellate judges and justices. G.S. 15A-101(5). However, there are certain situations when only a specific judicial official is authorized to set conditions. Those situations include:

- **Forty-Eight-Hour Rule Cases.** As Jeff noted in a previous post [here](#), only a judge can set conditions of release for a defendant charged with certain domestic violence crimes in the first forty-eight hours after arrest.
- **Capital Offenses.** It is within the discretion of a judge (and only a judge) to decide whether a defendant charged with a capital offense will be released before trial. G.S. 15A-533(c). If a person brought before a magistrate is charged with a capital offense, the magistrate must commit the person to jail for a judge to determine the conditions of release at the first appearance.
- **Certain Drug Trafficking Offenses.** As noted in my first post in this series, G.S. 15A-533(d) provides a rebuttable presumption of no release for drug trafficking offenders if certain findings are made. If the relevant findings are made, only a district or superior court judge may set pretrial release conditions after finding that there is a reasonable assurance that the defendant will appear and that the release does not pose an unreasonable risk of harm to the community. G.S. 15A-533(e).
- **Certain Gang Offenses.** As noted in my first post in this series, G.S. 15A-533(e) provides a rebuttable presumption of no release for gang-related offenders if certain findings are made. If the relevant findings are made, only a district or superior court judge may set pretrial release conditions after finding that there is a reasonable assurance that the defendant will appear and that the release does not pose an unreasonable risk of harm to the community. G.S. 15A-533(e).

### Pretrial Release Options

G.S. 15A-534 provides that in determining conditions of pretrial release, a judicial official must impose at least one of the following five conditions listed immediately below. Because that statute authorizes imposition of at least one of these conditions, multiple conditions may be imposed.

- **Release on written promise to appear.** This release involves no money. The defendant simply is released on his or her written promise to appear in court. G.S. 15A-534(a)(1).
- **Custody release.** A custody release is a release to a designated person who or organization that agrees to supervise the defendant. G.S. 15A-534(a)(3). Like a release on a written promise to appear, no money secures this condition of release. G.S. 15A-534(a) provides that if this condition is imposed, the defendant may elect to execute a secured appearance bond instead.
- **Release on unsecured appearance bond.** G.S. 15A-534(a)(2). An unsecured bond is one that is backed only by the integrity of the defendant; it is not backed by assets or collateral.
- **Release on secured appearance bond.** A secured appearance bond is one that is backed by a cash deposit in the full amount of the bond, by a mortgage, or by at least one solvent surety. G.S. 15A-534(a)(4).
- **House arrest with electronic monitoring.** In this form of pretrial release, the defendant is required to remain at his or her residence unless the court authorizes departure for employment, counseling, a course of study, or vocational training. G.S. 15A-531(5a). The defendant must be required to wear a device which permits the supervising agency to electronically monitor compliance with the condition. *Id.* If this condition is imposed, the judicial official also must impose a secured appearance bond. G.S. 15A-534(a).

Effective February 1, 2011, *see* S.L. 2010-94, G.S. 15A-534 provides that if a defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to new G.S. 15A-266.3A or revised G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official must make the collection of the fingerprints or DNA sample a condition of pretrial release.

Effective December 1, 2011, and applying to offenses committed on or after that date, S.L. 2011-191 added a new subsection to G.S. 15A-534 providing that in addition to any other condition of pretrial release, a judicial official may order a defendant (i) charged with an offense involving impaired driving (as defined by G.S. 20-4.01(24a)), and (ii) having a prior conviction for an offense involving impaired driving that occurred within seven years before the date of the offense for which the defendant is being placed on pretrial release to abstain from alcohol consumption as verified by an approved continuous alcohol monitoring system for the period of pretrial release or until the condition is removed.

In addition to the forms of release specified above, G.S. 15A-535(b) provides that in any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such programs for supervision must, with their consent, be released by judicial officials to supervision of such programs, and subject to their rules and regulations, as an alternative to release on a written promise, unsecured bond, or a custody release.