

NORTH CAROLINA
CABARRUS COUNTY

IN THE GENERAL COURT OF JUSTICE
FILED SUPERIOR COURT DIVISION
DISTRICT COURT DIVISION

2024 MAY 10 A 9:04

IN RE:)
)
MODIFICATION OF PRETRIAL)
RELEASE POLICY AND)
SCHEDULING ORDER)

CABARRUS CO. C.S.C.
ADMINISTRATIVE ORDER
BY LS 24-R-_____

Pursuant to the authority granted by Article 26 of Chapter 15A of the North Carolina General Statutes, and in light of the enactment of the Pretrial Integrity Act, and the requirement that the Senior Resident Superior Court Judge issue recommended policies on bail, and the specified, implied and inherent powers of our respective offices, the undersigned, acting separately and collectively, do hereby approve and enter this order, which, in part, modifies the Pretrial Release Policy entered June 7, 2019.

IT IS NOW THEREFORE, ORDERED that:

1. Holds for Certain High-Level Felonies (G.S. 15A-533(b)). Effective for offenses committed on or after October 1, 2023, a magistrate conducting an initial appearance after the arrest of a defendant charged with any of the offenses listed below must deny conditions of release and order the defendant to be taken before a district court judge at the earliest reasonable opportunity. This rule applies to the following offenses:
 - a. First and second-degree murder, G.S. 14-17, and attempts to commit those offenses;
 - b. First and second-degree kidnapping, G.S. 14-39;
 - c. First-degree forcible rape and sexual offenses, G.S. 14-27.21 and -27.26;
 - d. Second-degree forcible rape and sexual offenses, G.S. 14-27.22 and -27.27;
 - e. Statutory rape of and sexual offense with a child by an adult, G.S. 14-27.23 and -27.28;
 - f. First-degree statutory rape and sexual offenses, G.S. 14-27.24 and -27.29;
 - g. Statutory rape and sexual offenses with a person 15 years old or younger, G.S. 14-27.25 and -27.30;
 - h. Human trafficking, G.S. 14-43.11;
 - i. Assault with a deadly weapon with intent to kill inflicting serious injury, G.S. 14-32(a);
 - j. Discharging barreled weapons or a firearm into occupied property, G.S. 14-34.1;
 - k. First-degree burglary, G.S. 14-51;
 - l. First degree arson, G.S. 14-58; and
 - m. Armed robbery, G.S. 14-87.

Defendants held for these offenses are entitled to a timely first appearance in accordance with G.S. 15A-601. These in-custody defendants must be brought before a district court judge within seventy-two hours of arrest or at the first regular session of

district court in the county, whichever occurs first. G.S 15A-601(c): If the Courthouse is closed for longer than seventy-two hours (holiday weekends for example), the first appearance before a district court judge must be held within ninety-six hours after arrest. The district court judge conducting the first appearance of a defendant should also consider conditions of release of the defendant at this hearing consistent with G.S. 15A-533 (c).

2. Holds for Defendants Charged for a New Offense While on Pretrial Release for Another Pending Proceeding. (G.S. 15A-533 (h)). Effective for offenses committed on or after October 1, 2023, a magistrate conducting an initial appearance after the arrest of a defendant charged with a new offense (excluding certain Chapter 20 offenses) while on pretrial release for another pending proceeding must deny conditions of release and order the defendant to be taken before a district court judge at the earliest reasonable opportunity. A magistrate, however, may set conditions within the first forty-eight hours after arrest for new offenses involving violations of Chapter 20 of the General Statutes, except for Chapter 20 offenses involving impaired driving or death, including:
 - a. Impaired driving, G.S. 20-138.1;
 - b. Impaired driving in a commercial vehicle, G.S. 20-138.2;
 - c. Operating a commercial vehicle after consuming alcohol, G.S. 20-138.2A;
 - d. Operating a school bus, school activity bus, childcare vehicle, ambulance, other EMS vehicle, or law enforcement vehicle after consuming alcohol, G.S. 20-138.2B;
 - e. Habitual impaired driving, G.S. 20-138.5; and
 - f. Death or injury by vehicle, G.S. 20-141.4.

During the first forty-eight hours, only a judge may set conditions of release. These cases should be scheduled following the procedures previously established for setting bonds for certain domestic violence offences (G.S. 15A-534.1). In other words, such a defendant must be brought before a judge at the earliest, reasonable opportunity.

If district court is not scheduled within the forty-eight-hour period, then after said period, a magistrate shall consider conditions of release unless otherwise prohibited by law.

3. Probation Violations. A probation violation is not a “new criminal offense” requiring a judge to set conditions of release and a magistrate has immediate authority to set conditions of release for the alleged violation of probation.

If a defendant is out on pretrial release for a probation violation and is arrested for a new offense allegedly committed while on pretrial release, then the conditions of release for the new offense must be set by a judge within forty-eight hours of arrest, as provided above.

- Probation violation while on pretrial release = No PIA. Magistrate sets bond.
- New offense while on probation = PIA. Judge sets bond in first 48 hours, then magistrate may set unless new offense is one for which ONLY a judge can set bond.

Those held in custody for probation violations are still entitled to Probable Cause Hearings within seven days of arrest and these should continue to be scheduled under our current procedure.

4. When a district court judge sets an initial bond in one of these matters, it is akin to an extension of the initial appearance of the magistrate. This extension of the initial appearance can be combined with other hearings such as a first appearance in a felony, advisement of counsel, or a probable cause hearing in a probation matter.

The individuals whose release is not authorized in Paragraphs 1, 2, and 3 above – like those held for domestic violence (G.S. 15A-534.1) – should be produced by the custodian of the detention center at the first session of district criminal court.

5. As provided in G.S. 15A-533(h), law enforcement and/or the prosecutor shall provide a criminal history report and risk assessment, if available, for the defendant to the district court judge considering conditions of release.

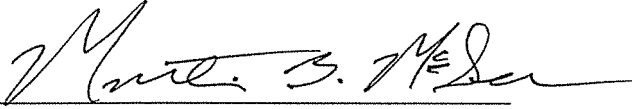
To assist in providing the court with appropriate information, the magistrate who initially processes the defendant shall complete the attached form (Exhibit A) providing recommended conditions of release based upon all information available to him or her and forward the same to the district court judge setting the conditions of release. (This form is in addition to the Domestic Violence Report in paragraph 28(c) of the Bond Policy.)

6. Denial of Release. In considering conditions of release, judicial officials shall take into consideration the rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if certain conditions are met regarding trafficking in controlled substances, gang offenses, and offenses involving firearms as provided in G.S. 15A-533(d), (e), and (f).
7. Courtroom Scheduling. Magistrates should follow the plan and direction of the Chief District Court Judge in scheduling matters covered by the Pretrial Integrity Act in the proper courtroom. Unless restricted by law, remote hearings shall be utilized.
8. Chart. The attached chart (applying the Pretrial Integrity Act by Brittany Bromell) (Exhibit B) is incorporated by reference to assist in implementing this order.

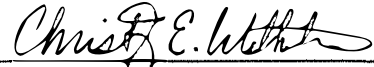
[SIGNATURE PAGE TO FOLLOW]

9. Judicial officials are encouraged to review the UNC School of Government's Administration of Justice Bulletin, the Pretrial Integrity Act, No. 2024/1, February 2024, by Brittany Bromell.

This the 9th day of May 2024.



Martin B. McGee
Senior Resident Superior Court Judge
Judicial District 25



Christy E. Wilhelm
Chief District Court Judge
Judicial District 25

Exhibit A

Pretrial Integrity Act

Conditions were not set by a magistrate because: (check all that apply)

- Certain High-Level Felony (15A-533(b))
- New Offense While on Pretrial Release (15A-533(h))
- Domestic Violence (15A-534.1)
- Threat of Mass Violence (15A-534.7)
- Rioting or Looting (15A-534.8)

1. Current High-Level Felony Charge(s):

2. Is Defendant currently on probation, post-release supervision, or pretrial release?

3. What other charges are pending against Defendant:

4. Any prior record? (Attach)

5. History of a violent crime?

6. History of recent FTAs?

7. Did the Defendant turn him/herself in?

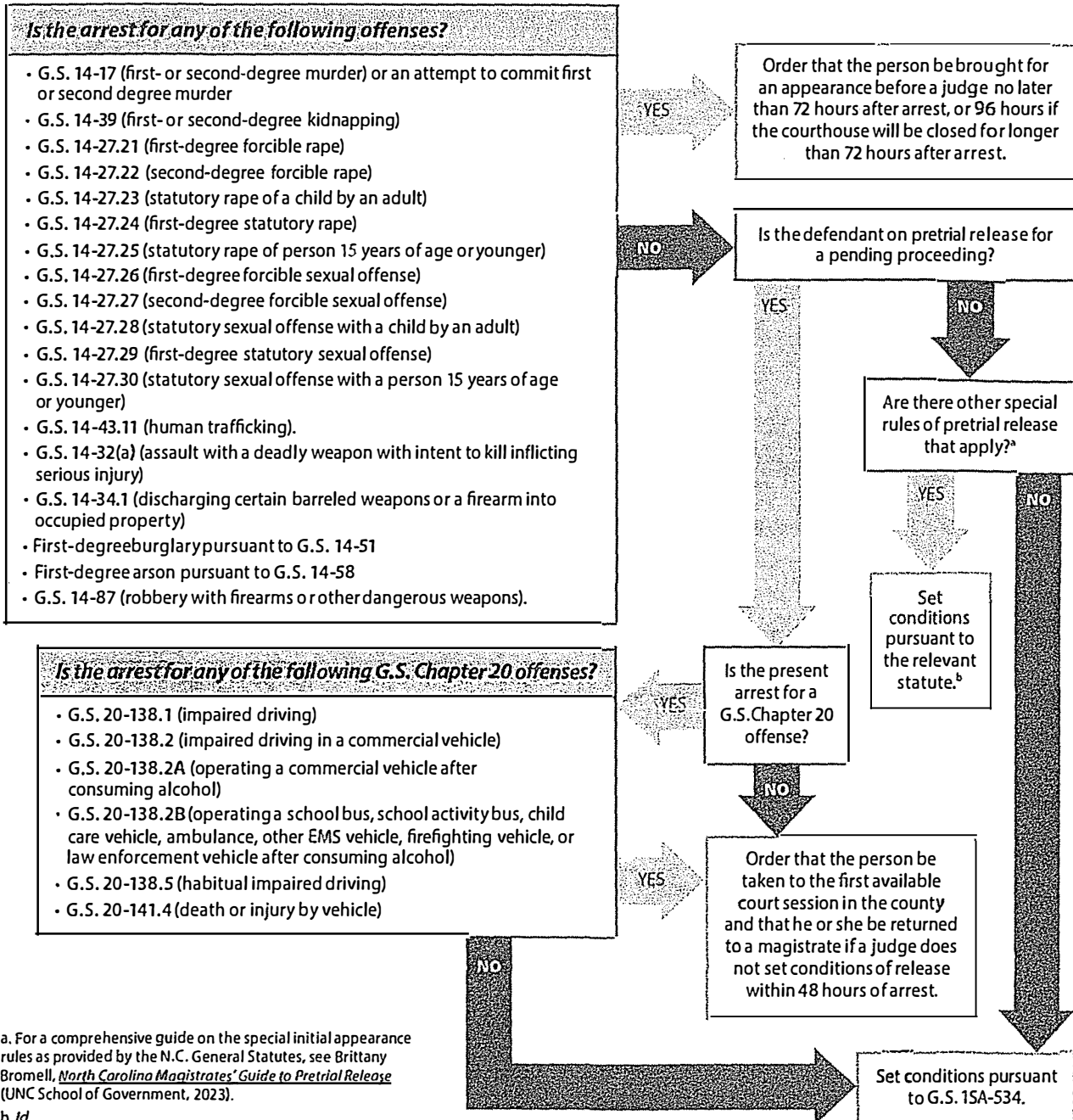
8. Recommendations as to release:

9. Further notes:

Applying the Pretrial Integrity Act

Brittany Bromell

The Pretrial Integrity Act of 2023 made significant changes to the state’s pretrial release laws. The following flowchart sets out the new procedure for determining when and by whom conditions of pretrial release are to be set for newly arrested defendants.



a. For a comprehensive guide on the special initial appearance rules as provided by the N.C. General Statutes, see Brittany Bromell, *North Carolina Magistrates' Guide to Pretrial Release* (UNC School of Government, 2023).

b. *Id.*