§ 15A-533. Right to pretrial release in capital and noncapital cases.

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A judge shall determine in the judge's discretion whether a defendant charged with any of the following crimes may be released before trial:

(1) G.S. 14-17 (First or second degree murder) or an attempt to commit first or second degree murder.
(2) G.S. 14-27.21 (First degree forcible rape).
(3) G.S. 14-27.22 (Second degree forcible rape).
(4) G.S. 14-27.23 (Statutory rape of a child by an adult).
(5) G.S. 14-27.24 (First degree statutory rape).
(6) G.S. 14-27.25 (Statutory rape of person who is 15 years of age or younger).
(7) G.S. 14-27.26 (First degree forcible sexual offense).
(8) G.S. 14-27.27 (Second degree forcible sexual offense).
(9) G.S. 14-27.28 (Statutory sexual offense with a child by an adult).
(10) G.S. 14-27.29 (First degree statutory sexual offense).
(11) G.S. 14-27.30 (Statutory sexual offense with a person who is 15 years of age or younger).
(12) G.S. 14-32(a) (Assault with a deadly weapon with intent to kill inflicting serious injury).
(13) G.S. 14-34.1 (Discharging certain barreled weapons or a firearm into occupied property).
(14) G.S. 14-39 (First or second degree kidnapping).
(15) G.S. 14-43.11 (Human trafficking).
(16) First degree burglary pursuant to G.S. 14-51.
(17) First degree arson pursuant to G.S. 14-58.
(18) G.S. 14-87 (Robbery with firearms or other dangerous weapons).

There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community for a defendant charged with a crime listed under any of the subdivisions of this subsection. However, if the judge determines that release is warranted for a defendant charged with a crime listed under any of the subdivisions of this subsection, the judge shall set conditions of pretrial release in accordance with G.S. 15A-534.

A defendant charged with a noncapital offense that is not listed under any of the subdivisions of this subsection, must otherwise have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(b1) **(Effective July 1, 2028 – see editor's note.)** If a defendant is (i) charged with a violent offense and, after a search of the court records for the defendant, the judicial official determines that the defendant has previously been subject to an order of involuntary commitment, pursuant to Article 5 of Chapter 122C of the General Statutes, within the prior three years, or (ii) charged with any offense and the judicial official has reasonable grounds to believe the defendant is a danger to themselves or others, the judicial official shall set conditions of

pretrial release in accordance with this Article and shall issue an order that includes all of the following:

(1) Require the defendant to receive an initial examination by a commitment examiner, as defined in G.S. 122C-3, to determine if there are grounds to petition for involuntary commitment of the defendant pursuant to Article 5 of Chapter 122C of the General Statutes. This examination shall comply with and satisfy the requirements of the initial examination as provided in G.S. 122C-263(c).

(2) Require the arresting officer to immediately transport, or cause to be transported 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. If the defendant has met all other conditions of pretrial release, the transporting officer may release the defendant after the initial examination is conducted if one of the following criteria is met:
   a. No petition for involuntary commitment is filed pursuant to Article 5 of Chapter 122C of the General Statutes.
   b. A petition for involuntary commitment is filed pursuant to Article 5 of Chapter 122C of the General Statutes, but no custody order is issued pursuant to G.S. 122C-261.

(3) Require the commitment examiner, after conducting the initial examination, to do one of the following:
   a. Petition for involuntary commitment of the defendant pursuant to Article 5 of Chapter 122C of the General Statutes, if there are grounds for that petition.
   b. Provide written notice to the judicial official that entered the order for initial examination that there are no grounds to petition for involuntary commitment of the defendant.

(4) Provide that, except as provided in subdivision (5) of this subsection, whether or not the defendant has met all other conditions of pretrial release, if a petition for involuntary commitment is filed pursuant to Article 5 of Chapter 122C of the General Statutes, the custody of the defendant shall be determined pursuant to the provisions of that Article during the pendency of that petition and any hearings and orders issued pursuant to that Article.

(5) Provide that if a defendant has not met all other conditions of pretrial release, if one of the following criteria is met, the defendant shall be transported to and held in the local confinement facility of the county where the conditions of pretrial release were set until all conditions of pretrial release have been met:
   a. A petition for involuntary commitment is not filed pursuant to Article 5 of Chapter 122C of the General Statutes.
   b. A custody order is not issued pursuant to G.S. 122C-261.
   c. At any other time, the provisions of Article 5 of Chapter 122C of the General Statutes would result in the release of the defendant.

(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

(1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;
(2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and
(3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds all of the following:
(1) There is reasonable cause to believe that the 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).
(2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense.
(3) The person (i) has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20 or (ii) has been convicted of a criminal offense and received an enhanced sentence for that offense pursuant to G.S. 15A-1340.16E, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

(f) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds there is reasonable cause to believe that the person committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; and the judicial official also finds any of the following:
(1) 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.
(2) 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.

(g) Persons who are considered for bond under the provisions of subsections (d), (e), and (f) of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community.

(h) If a defendant is arrested for a new offense allegedly committed while the defendant was on pretrial release for another pending proceeding, the judicial official who determines the conditions of pretrial release for the new offense shall be a judge. The judge shall direct a law enforcement officer, pretrial services program, or a district attorney to provide a criminal history report and risk assessment, if available, for the defendant and shall consider the criminal history when setting conditions of pretrial release. After setting conditions of pretrial release, the judge shall return the report to the providing agency or department. No judge shall unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the defendant's criminal history report. Notwithstanding the provisions of this subsection, a magistrate or the clerk of superior court may set the conditions of pretrial release at any time if the new offense is a violation of Chapter 20 of the General Statutes, other than a violation of G.S. 20-138.1, 20-138.2, 20-138.2A, 20-138.2B, 20-138.5, or 20-141.4.

A defendant may be retained in custody pursuant to this subsection not more than 48 hours from the time of arrest without a judge making a determination of conditions of pretrial release. If a judge has not acted pursuant to this subsection within 48 hours from the time of arrest of the defendant, the magistrate shall set conditions of pretrial release in accordance with G.S. 15A-534. (1973, c. 1286, s. 1; 1981, c. 936, s. 2; 1997-443, s. 11A.118(a); 1998-208, s. 1; 2008-214, s. 4; 2013-298, s. 1; 2017-194, s. 19; 2023-75, s. 2(a); 2024-33, s. 12(a); 2025-93, s. 1(c); 2025-97, s. 5.3(b); 2026-38, s. 14(a).)