

# North Carolina Criminal Law Blog

## Violation of Conditions Before Release

October 1, 2024 [Brittany Bromell](#)

<https://nccriminallaw.sog.unc.edu/author/bwilliams/>

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I recently taught a session at the magistrates' conference about arrestable conditions of pretrial release. The session sparked a lot of discussion about the law surrounding pretrial conditions for in-custody defendants. It is well understood that when a defendant violates pretrial release conditions *after* being released from custody, the law allows several mechanisms for enforcement, including revocation of pretrial release, arrest of the defendant, and the setting of new, potentially stricter conditions of pretrial release. What's less clear is (1) whether or not conditions of release are enforceable if a defendant has not yet been released, and (2) if they are, what tools judicial officials have for enforcement. This post addresses these questions.

### **Are conditions of release enforceable while a defendant is still in custody?**

Yes. This position finds support in *State v. Mitchell*

<https://appellate.nccourts.org/opinions/?c=2&pdf=35969>, 259 N.C. App. 866

(2018). My colleague, Shea Denning, wrote about the case [here](#)

<https://nccriminallaw.sog.unc.edu/does-a-no-contact-order-apply-while-the-defendant-is-in-jail/> when the opinion was first issued. In *Mitchell*, the court determined

that a condition of no contact with the victim, imposed by a magistrate at the start of the 48-hour domestic violence period and twice readopted by a judge, was binding on the defendant even though the defendant remained in jail.

The no-contact condition was imposed on the “Conditions of Release and Release Order” [AOC-CR-200](#)

[https://www.nccourts.gov/assets/documents/forms/cr200\\_1.pdf?](https://www.nccourts.gov/assets/documents/forms/cr200_1.pdf?VersionId=VZoCoybvYxUPJamOVXyLK6LadBpOzo1)

[VersionId=VZoCoybvYxUPJamOVXyLK6LadBpOzo1](#)> form. In addition to establishing conditions of release, the orders issued in *Mitchell* committed the defendant to a detention facility; noted that he was subject to a domestic violence hold; directed when he was to again be produced before a judicial official; and, for one of the orders, required that he provide fingerprints.

The court noted that such orders “memorialize[] the trial court’s determinations governing the defendant, whether the defendant is held in a detention facility or released.” The court explained that some of the terms of such an order apply whether a defendant is committed or released, while others apply only in one circumstance or the other. The court stated that the directive in *Mitchell* ordering that the defendant have no contact with the victim contained no language indicating that the provision applied only upon the defendant’s release. Thus, the court concluded contact with the victim was barred as long as the orders were in effect, and the orders were in effect until the charges were disposed of, whether the defendant remained confined in jail or was released.

### **Can a magistrate impose valid conditions of confinement during a time when the magistrate isn’t authorized to set conditions of release?**

Unclear. This issue has not been addressed directly by the appellate courts. To clarify, this question addresses situations in which the defendant is committed to the jail pending an appearance before a judge, as in domestic violence cases under [G.S. 15A-534.1](#)

[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_15A/GS\\_15A-534.1.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_15A/GS_15A-534.1.pdf)> or in pretrial integrity act cases under [G.S. 15A-533\(h\)](#)

[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_15A/GS\\_15A-533.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_15A/GS_15A-533.pdf)>. In these cases, and a few others, a magistrate cannot set conditions of release until 48 hours after arrest, and only if a judge has not done so. The question is: if a magistrate imposes a no-contact restriction in the release order before the defendant has conditions of release set by a judge, is the restriction valid?

On the one hand, the plain language of the statutes is that “the judicial official who determines the conditions of pretrial release shall be a judge.” Based on this clear delineation of authority, there is an argument that restrictions set by a magistrate before the magistrate’s authority kicks in will not be valid. Note that in *Mitchell*, the no contact condition imposed by the magistrate was at the start of a 48-hour period, during which the magistrate generally has no authority. However, the condition was twice readopted by a judge before the defendant’s alleged violations. So, the defendant was presumably punished for violating the conditions as imposed by the judge. It is not clear whether the outcome would have been the same had the alleged violation occurred before the case went before the judge.

On the other hand, although the violations in *Mitchell* took place after the judge readopted the conditions, the court’s opinion several times seems to indicate that the conditions were lawfully in effect from the moment the magistrate issued them. The court explained, “This order . . . remains in effect from the time a defendant is arrested until the charges upon which the order is based are dismissed or the defendant is convicted of the crime” and “Order 1 was ‘in effect’ as of 26 December 2014,” the date of the initial appearance.

Given that a magistrate is required to complete the “Conditions of Release and Release Order” form to commit a defendant to a detention facility, it could be argued that such restrictions are effective immediately and remain in effect until amended or adopted by a judge. The alternative interpretation—that a defendant is not bound by conditions of confinement set by a magistrate—would allow conduct such as contact with the victim to go unrestricted, which could exacerbate the circumstances under which a defendant was arrested in the first place.

### **What tools do judicial officials have for enforcement?**

If the conditions and restrictions imposed in the release order are effective at the time the order is signed, then how does a judicial official address an in-custody violation of those conditions? There are a few available mechanisms, but the answer largely depends on which judicial official is acting.

*Institute contempt proceedings*

It is unclear whether violation of a pretrial release order would constitute contempt. There is no specific provision for contempt under these circumstances, although there is an argument that it could be covered under **G.S. 5A-11(a)(3)**.

[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_5A/GS\\_5A-11.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_5A/GS_5A-11.pdf), under which “willful disobedience of, resistance to, or interference with a court’s lawful process, order, directive, or instruction or its execution” is criminal contempt.

Assuming that a violation of a pretrial release condition could be considered a contempt, it would be an indirect criminal contempt because it is committed outside the presence of the court. Magistrates ordinarily have no authority to hear and rule in indirect criminal contempt proceedings. See **G.S. 7A-292(2)** ([https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_7A/GS\\_7A-292.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7A/GS_7A-292.pdf)) (authorizing magistrates to punish for direct criminal contempt only). A magistrate may, however, issue an order to show cause against the defendant. The contempt proceedings are then held before a judge. **G.S. 5A-15** ([https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_5A/GS\\_5A-15.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_5A/GS_5A-15.pdf)).

If a judge finds the defendant in contempt for an in-custody violation of the release order, the judge may censure, imprison for up to 30 days, impose a fine of up to \$500, or any combination of those three. **G.S. 5A-12** ([https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_5A/GS\\_5A-12.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_5A/GS_5A-12.pdf)). This punishment is separate from the potential punishment for the underlying offense as well as the conditions set forth in the release order for the underlying offense.

*Modify the release order*

Another option for addressing an in-custody violation of a release order is to modify the release order. This could potentially be the most useful tool in the magistrate's toolbelt. A magistrate may modify a pretrial release order at any time before the defendant's first appearance before the district court judge.

**G.S. 15A-534(e)**

[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_15A/GS\\_15A-534.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_15A/GS_15A-534.pdf). Thus, if an in-custody defendant violates pretrial release conditions before he or she appears in court for the first time, a magistrate may modify the order, presumably with stricter conditions. For example, a magistrate may wish to increase the amount of a secured bond for a defendant if the magistrate determines that, if the defendant makes bond, the higher amount will deter the defendant from violating the conditions of pretrial release, including a no-contact condition.

If the in-custody defendant has already had an appearance before a judge, then only a judge has authority to revoke the release order. In that case, the magistrate might consider making a note for the judge on the release order or on a supplemental form describing how and when the condition was being violated.

*Charge a new offense*

Sometimes in-custody violations of a release order can constitute new offenses. For example, in *Mitchell*, the defendant was charged with felony stalking for his repeated attempts to contact the victim in violation of the no-contact condition. A defendant in a similar situation might also be charged with violation of a DVPO under **G.S. 50B-4.1**

[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_50b/GS\\_50b-4.1.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_50b/GS_50b-4.1.pdf) if there is one in effect; intimidating or interfering with witnesses under **G.S. 14-226**

[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_14/GS\\_14-226.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_14/GS_14-226.pdf) ; or perhaps even violating a court order under **G.S. 14-226.1**

[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_14/GS\\_14-226.1.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_14/GS_14-226.1.pdf) . Whether this last offense would apply raises some of the questions discussed above, such as whether magistrates have the authority to issue a no-contact order before they have the authority to determine pretrial release, as well as whether the wording of G.S. 14-226.1 applies in this context. A magistrate would have immediate authority to address pretrial release conditions for the new offense unless the new offense is one for which a judge must set conditions, such as violation of a DVPO.

### *Notify the jail*

Perhaps the simplest tool for addressing in-custody violations is to notify the jail that defendant has made contact with a person after being ordered not to. Although the judicial official cannot order the jail staff to do so, the jail staff may consider revoking or limiting the defendant's phone privileges.

Our general statutes limit the options magistrates have to enforce in-custody violations of release conditions; most mechanisms for enforcement are left for the judge. The options offered above are the ones best supported by current law. Magistrates should be sure that they are acting within their authority when attempting to address these violations.

Knapp-Sanders Building  
Campus Box 3330, UNC Chapel Hill  
Chapel Hill, NC 27599-3330  
T: (919) 966-5381 | F: (919) 962-0654

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