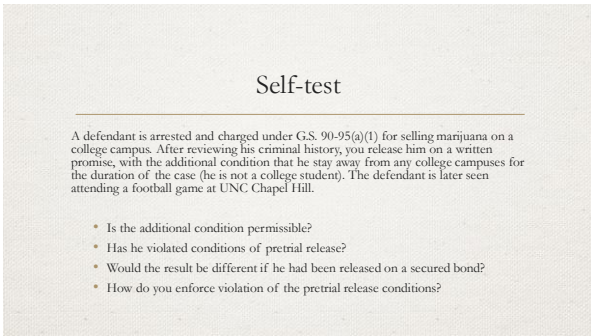
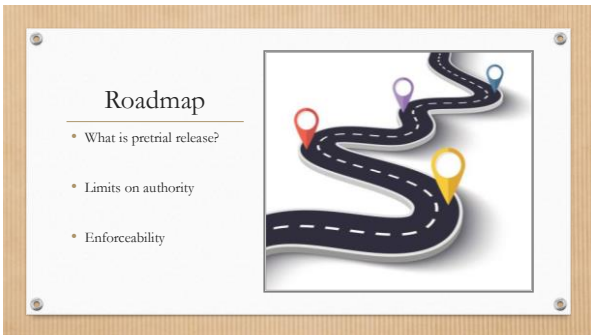


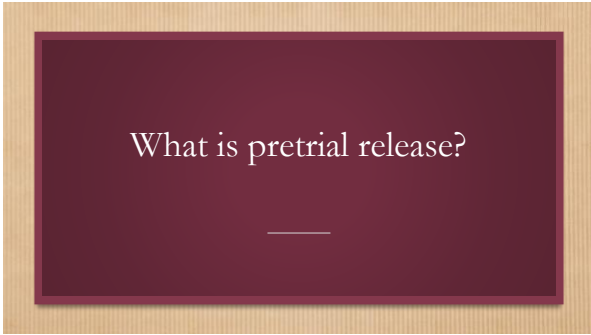
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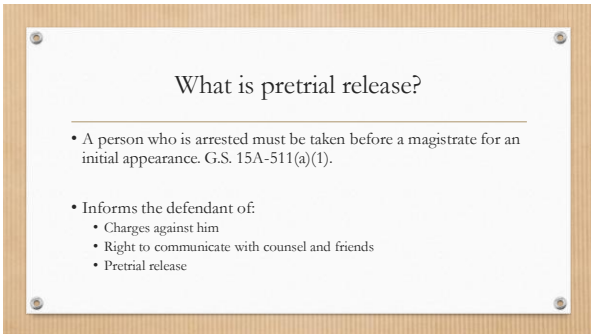
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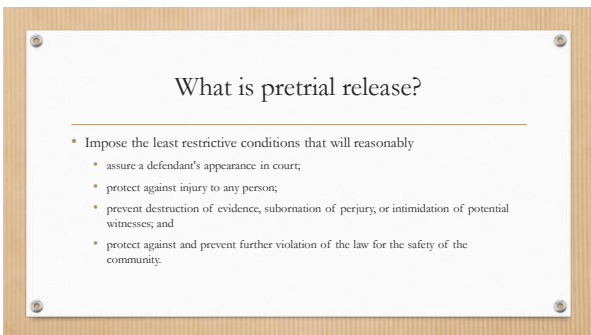
3



4



5



6

5 types

- Written promise to appear
- Unsecured appearance bond
- Custody release
- Secured appearance bond
- House arrest with electronic monitoring

7

5 types

Secured bond is not the only type of pretrial release, even if it is the most common.

Secured bond is not the only type of pretrial release that can lead to violations.

8

Self-test

A defendant is arrested and charged under G.S. 90-95(a)(1) for selling marijuana on a college campus. After reviewing his criminal history, you release him on a written promise, with the additional condition that he stay away from any college campuses for the duration of the case (he is not a college student). The defendant is later seen attending a football game at UNC Chapel Hill.

- Has he violated conditions of pretrial release?
YES
- Would the result be different if he had been released on a secured bond?
NO

9

Making the decision

- Legally, most pretrial release decisions at the initial appearance are left to you as the judicial official.
- Locally, you may be guided by pretrial release policies.
 - Example: If imposing secured bond or EHA, may be required to record the reasons for doing so in writing. G.S. 15A-534(b).

10

Limits on magistrates' authority

11

Limits on magistrates' authority

- May typically impose any restrictions that are reasonable and related to the purpose of pretrial release.
- Restrictions shall not be used as punishment.

12

Self-test

A defendant is arrested and charged under G.S. 90-95(a)(1) for selling marijuana on a college campus. After reviewing his criminal history, you release him on a written promise, with the additional condition that he stay away from any college campuses for the duration of the case (he is not a college student). The defendant is later seen attending a football game at UNC Chapel Hill.

- Is the additional condition permissible?
YES

13

Usually permissible in all cases

- May place restrictions on:
 - Travel
 - Associations
 - Conduct
 - Place of abode
- May require the defendant to abstain from alcohol consumption, as verified using a continuous alcohol monitoring system. G.S. 15A-534(a).

14

Statutorily MANDATED conditions

DNA & Fingerprinting – G.S. 15A-534(a)

- If the defendant is statutorily required to provide fingerprints 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, you **MUST** make the collection of the fingerprints or DNA sample a condition of pretrial release.

15

To The Defendant Named Above, you are ORDERED to appear before the Court as provided above and at all subsequent continued dates. If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear. You also may be arrested without a warrant if you violate any condition of release in this Order or in any document incorporated by reference.

The defendant has been advised of charge(s) against her/him and her/his right to communicate with counsel and friends.

Your release is authorized upon execution of your WRITTEN PROMISE to appear UNSECURED BOND in the amount shown above

CUSTODY RELEASE SECURED BOND (in the amount shown above) (NOTE: See a copy of this order in any scrolls into your case.)

HOUSE ARREST with ELECTRONIC MONITORING administered by (agency) _____ and the SECURED BOND above. You may leave your residence for the purpose(s) of employment counseling course of study vocational training

Your release is not approved.

The defendant is required to provide (one) of that asset: Fingerprint(s) under G.S. 15A-510, a DNA sample under G.S. 15A-266.3A

Prior to release, the defendant shall provide further asset or that asset: Fingerprint(s) DNA sample

Pre-arrest or release restrictions are hereby imposed on the defendant as follows:

This Order is entered upon defendant's surrender/ arrest for violation of conditions of release entered previously for the above-captioned case in the Order dated: _____

The defendant is charged with an offense subject to G.S. 15A-534.1, and no judge has acted under that statute within 48 hours of defendant's arrest.

The defendant was arrested or surrendered after failing to appear as required under a prior release order.

This was the defendant's second or subsequent failure to appear in this case.

Your release is subject to the conditions as shown on the attached: AOC-CR-242 AOC-CR-276 AOC-CR-630 AOC-CR-631 AOC-CR-690 Other: _____

16

Statutorily
MANDATED
conditions

FTAs – G.S. 15A-534(d1)

- * Impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear

17

Statutorily
MANDATED
conditions

**Sex offenses and crimes of violence against child victims
– G.S. 15A-534.4**

- * Stay away from the home, temporary residence, school, business, or place of employment of the alleged victim*
- * Refrain from communicating or attempting to communicate, directly or indirectly, with the victim, except under circumstances specified in an order entered by a judge with knowledge of the pending charges*
- * Refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim

* *May waive these conditions after making written findings that it is not in the best interest of the alleged victim that the condition be imposed on the defendant

18

To the Defendant Named Above, you are ORDERED to appear before the Court as provided above and at all subsequent continued dates.
If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear. You also may be arrested without a warrant if you violate any condition of release in this Order or in any document incorporated by reference.

The defendant has been advised of charge(s) against [defendant] and his/her right to communicate with counsel and friends.

Your release is authorized upon execution of your: WRITTEN PROMISE to appear, UNSECURED BOND in the amount shown above

CUSTODY RELEASE SECURED BOND (in the amount shown above) **NOTE:** Use a copy of this order in any court or agency case in the

HOUSE ARREST with ELECTRONIC MONITORING administered by (agency) _____ and the SECURED BOND above. You may leave your residence for the purpose(s) of: employment counseling course of study vocational training

Your release is not authorized.

The defendant is required to provide (show) at that event: Fingerprint(s) under G.S. 15A-802 DNA sample under G.S. 15A-266.3A.

Prior to release, the defendant shall provide his/her arrest at that event: Fingerprint(s) DNA sample

The defendant has been: charged with a felony while on probation, pursuant to AOC-CR-272, (see Clerk) arrested for violation of probation with a pending felony charge or prior conviction requiring registration under G.S. 14, Article 27A, (pursuant to AOC-CR-272, (see Clerk))

This Order is entered upon defendant's appearance or for violation of conditions of release entered previously for the above-captioned case in the Order dated: _____

The defendant is charged with an offense subject to G.S. 15A-804.1, and no judge has acted under that statute within 48 hours of defendant's arrest.

The defendant was arrested or surrendered after failing to appear as required under a prior release order.

This was the defendant's second or subsequent failure to appear in this case.

Your release is subject to the conditions as shown on the attached: AOC-CR-242 AOC-CR-276 AOC-CR-430 AOC-CR-631

19

STATE VERBS **CONDITIONS OF RELEASE FOR PERSON CHARGED WITH SEX OFFENSE OR CRIME OF VIOLENCE AGAINST CHILD VICTIM**

NOTE: Use this form in conjunction with form AOC-CR-300, Conditions Of Release and Release Order.

The undersigned judicial officer has that the defendant named above is charged with [felony or misdemeanor] (M2) above, with being present together with a minor or victim of G.S. 14-202.1, with [sex] or any other sex offense in violation of Article 14 of the General Statutes, or in violation of Chapter 14 of the General Statutes against a minor victim, with [sex] with a victim or victim of G.S. 14-179, with kidnapping, abduction, or otherwise required to register a minor victim, with a violation of G.S. 14-202.1, with sexual or any other crime of violence against a minor victim, or in violation of G.S. 14-202.1.

The undersigned judicial officer, upon review of the defendant, has reviewed one or more of the conditions required by 2 or by 3 of the following findings that imposing the conditions on the defendant would not be in the best interest of the alleged victim (victim):

ORDER

Based upon the findings herein, the undersigned judicial officer hereby is hereby issuing the terms of release in ADDITION TO the conditions of release set forth on the attached form AOC-CR-300.

The defendant shall remain free from associating, communicating, meeting, fraternizing, or having the alleged victim.

The defendant shall stay away from the home, temporary residence, school, business, or place of employment of the alleged victim. (Does change and address of record constitute a place of residence for the purposes of this order?)

The defendant shall refrain from communicating or attempting to communicate, directly or indirectly, with the victim, except under circumstances specified in an order entered by a judge with knowledge of the pending charges, after thorough consultation with the victim (victim's name or address, not or contact number).

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Crimes of domestic violence – G.S. 15A-534.1

- Stay away from the home, school, business or place of employment of the alleged victim
- Refrain from assaulting, beating, molesting, or wounding the alleged victim
- Refrain from removing, damaging or injuring specifically identified property
- May visit his or her child or children at times and places provided by the terms of any existing order entered by a judge
- Abstain from alcohol consumption, as verified using a continuous alcohol monitoring system

Statutorily AUTHORIZED conditions

21

Communicating a threat of mass violence – G.S. 15A-534.7

- * Stay away from the educational property or place of religious worship against which the threat was communicated
- * Stay away from any other educational property or place of religious worship unless permission to be present is granted by the person in control of the property

Statutorily
AUTHORIZED
conditions

22

Rioting or looting – G.S. 15A-534.8

- * Stay away from specific locations or property where the offense occurred

Statutorily
AUTHORIZED
conditions

23

Enforceability

24

Enforceability

Are conditions/restrictions imposed in a release order enforceable against a defendant who is in custody?

25

Enforceability

- *State v. Mitchell*, 259 N.C. App. 866 (2018)
- "Form AOC-CR-200 ... is a comprehensive order which includes **both conditions of release and commitment**. This order can be modified but 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... But the order remains in effect during the entire prosecution. At each step of the process, this order memorializes the trial court's determinations governing the defendant, whether the defendant is held in a detention facility or released."

26



What are your options?

27

Enforceability – Contempt

- G.S. 5A-11(a)(3)
 - Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.

- Indirect criminal contempt because committed outside the presence of the court
 - Issue an order to show cause
 - Proceedings occur before a judge
 - Magistrates have no authority to institute indirect criminal contempt proceedings

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Enforceability – Modify the CR-200

- G.S. 15A-534(e)
 - A magistrate or a clerk may modify his pretrial release order at any time prior to the first appearance before the district court judge.

29


Enforceability – Notify the jail

- Notify the jail that defendant has made contact after being ordered not to. Jail may consider revoking defendant's phone privileges.

30

Enforceability after release

- G.S. 15A-401(b)
 - An officer may arrest with or without a warrant any person who the officer has probable cause to believe has violated a pretrial release order, in or out of the officer's presence.
- G.S. 15A-534(c)
 - Before first appearance – magistrate can revoke conditions and issue an OFA
 - After first appearance – judge can revoke conditions and issue an OFA



31

Self-test

A defendant is arrested and charged under G.S. 90-95(a)(1) for selling marijuana on a college campus. After reviewing his criminal history, you release him on a written promise, with the additional condition that he stay away from any college campuses for the duration of the case (he is not a college student). The defendant is later seen attending a football game at UNC, Chapel Hill.

- How do you enforce violation of the pretrial release conditions?
 - **WARRANTLESS ARREST –or– OFA BY MAGISTRATE –or– OFA BY JUDGE**
- Would the result be different if he had been released on an unsecured bond?
 - **NO**

32