

**PRETRIAL RELEASE POLICIES IN THE
EIGHTEENTH JUDICIAL DISTRICT
GUILFORD COUNTY**

I. General Policy

The Constitution of the United States (Amendment VIII) and North Carolina (Article I, Section 27) each state that “excessive bail shall not be required.”

To this end, and pursuant to G.S. 15A-535(a), the following policies are adopted as a guide in determining conditions of pretrial release in the Eighteenth Judicial District.

G.S. 15A-534(a) requires that (except in capital cases) one of the following four conditions of pretrial release must be imposed:

- (1) Release the defendant on a written promise to appear;
- (2) Release the defendant upon execution of an unsecured appearance bond;
- (3) Place the defendant in the custody of a designated person or organization agreeing to supervise him/her;
- (4) Require the execution of an appearance bond secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by a solvent surety.

The judicial official setting conditions of pretrial release may impose condition (4) if, and only if, one of the other three conditions of pretrial release (a) will not reasonably assure the appearance of the defendant as required; (b) will pose a danger of injury to any person; or (c) is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. If condition (4) is imposed the judicial official must record the reasons for so doing in writing. Other statutes apply in limited specific circumstances (see § III, B, *infra*)

II. Forms of Pretrial Release

A. Written Promise to Appear

A written promise to appear is the recommended form of pretrial release for defendants of sound mind, with strong ties to the State of North Carolina, and who are charged with a misdemeanor if the statutory criteria are predominantly favorable to the defendant, neutral or unknown.

A written promise to appear should not be used if there is any significant question as to whether it will reasonably assure the defendant's appearance as required.

B. Unsecured Bond

An unsecured bond is a recommended form of pretrial release for defendants of sound mind if such release will reasonably assure the appearance as required even if not all statutory criteria are favorable, neutral, or unknown.

Judicial officials are encouraged to emphasize to defendants released on an unsecured bond that a judgment can be entered against them in the amount of the unsecured bond upon any failure to appear as required.

C. Supervised Custodial Release

Placement in the custody of a sober and responsible person or organization is a recommended form of release if the accused is a minor, in the legal custody of another person, is not mentally sound, is under the influence of an impairing substance, is ill, or is otherwise in need of care and supervision if the designated custodian agrees in writing to all terms and conditions of the custodial release.

If a judicial official finds a defendant is otherwise appropriate for a supervised custodial release but does not have proper identification, the defendant may still be released when the designated custodian produces proper identification of their own identity and positively identifies the defendant.

A judge may place a defendant with Pretrial Services as a form of Supervised Custodial Release. Monitoring by Pretrial Services may be imposed in addition to other conditions of release or may be the only condition of release. **Defendants may be placed with Pretrial Services only after Pretrial Services has interviewed the defendant and approved a contract to monitor the defendant.** Magistrates are not authorized to impose Pretrial Services monitoring as a condition of release.

A defendant subject to supervised custodial release may later elect to execute a secured appearance bond before an appropriate judicial official pursuant to G.S. 15A-534 (a).

D. Secured Bond

A defendant charged only with an offense which can not result in incarceration should not be placed under a secured bond unless they have failed to appear or absconded supervision.

III. Determining the Form of Pretrial Release

In determining the form of pretrial release, judicial officials must take into account, based upon available information, the following criteria:

- (1) the nature and circumstances of the offense charged;
- (2) the weight of the evidence against the defendant;
- (3) the defendant's family ties;
- (4) the defendant's employment status and history;
- (5) the defendant's financial resources;
- (6) the defendant's character;
- (7) the defendant's mental condition;
- (8) the defendant's degree of intoxication and whether or not this would endanger the defendant if released without supervision;
- (9) the defendant's length of residence in the community;
- (10) the defendant's record of convictions, including whether the defendant is currently on probation;
- (11) the defendant's history of flight to avoid prosecution;
- (12) the defendant's history of failure to appear at court proceedings;
- (13) Any other evidence relevant to the issue of pretrial release (e.g. any other factors that bear on the risk of nonappearance, injury to any person, destruction of evidence, subornation of perjury, or intimidation of any potential witness).

A. Failure to Appear

The more serious the nature of the crime charged, the worse the prior criminal record of a defendant, the number and nature of other existing pending charges, the more aggravated the circumstances of the offense charged, and the greater the weight of the evidence against the defendant, the more likely s\he will not appear as required. A person properly charged with failure to appear or absconding probation supervision should be released only on a secured bond unless the judicial official is presented with clear and convincing evidence of justification.

A defendant who has no history of flight to avoid prosecution or unjustified failure to appear at court proceedings is more likely to appear as required. A defendant with strong ties to North Carolina and the Guilford County area is more likely to appear as required than a defendant with lesser ties. A person who has lived in the state, who has held lengthy employment in the state, and whose family and close friends have similar ties would have very strong ties to the state. A person with lesser ties but with strong reasons to be in the state on a regular, frequent and predictable basis for significant lengths of time could also have strong ties to the state.

When placing conditions of pretrial release on a defendant who has failed to appear on charges, the judicial official shall impose the conditions recommended on the order for arrest issued for that failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall set a secured bond in the amount of at least double the amount of the most recent secured or unsecured bond on the charges. If no bond has yet been required on the charges, bond should be set at a minimum of \$500.

B. Other Statutes That Must Be Considered

When selecting the form of pretrial release, North Carolina General Statutes provide specific instructions and restrictions for certain types of crimes. Judicial officials should be aware of these statutes and follow them when applicable.

- (1) 15A-534.1: Crimes of Domestic Violence
- (2) 15A-534.2: Detention of Impaired Drivers
- (3) 15A-534.3: Detention for Communicable Diseases
- (4) 15A-534.4: Sex Offenses and Crimes of Violence Against Child Victims
- (5) 15A-534.5: Detention to Protect Public Health
- (6) 15A-434.6: Bail in Cases of Manufacture of Methamphetamine
- (7) 15A-533 (d): Drug Trafficking (see § III, D infra.)
- (8) 15A, Article 37: Uniform Criminal Extradition Act

C. Imposing Other Restrictive Conditions

A judicial official imposing one of the four statutory forms of pretrial release may also place restrictions on the travel, associations, conduct, or place of abode of the defendant. A defendant may be required to maintain periodic contact with Court designated persons as a condition of release (e.g. Pretrial staff, Day Reporting Center staff). Requiring the defendant to produce identification as a condition of release may be appropriate in circumstances where there is a real question about the identity of the person arrested. Requiring the defendant to produce identification as a condition of release should not be used if the defendant has been arrested on an outstanding process, as the identity of the person arrested should have been established by the arresting officer.

D. Drug Trafficking

If a judicial official finds the following:

- (1) there is reasonable cause to believe that a person has committed a drug trafficking offense; and
- (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 any drug trafficking offense, and not more than 5 years has passed since the conviction (or release from prison for the offense, whichever is later);

then the person can 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 [G.S. 15A-533(d)].

E. Gang Activity

When determining the form of pretrial release, verified gang activity is an appropriate factor to consider. However, in making this determination, judicial officials may only consider specific and verified incidents of gang activity. Conclusory statements that the defendant is a known gang member or associates with known gang members are not sufficient for including this factor in a determination of pretrial release.

IV. Other Items

A. The use of "dollar" bonds

The use of "dollar" bonds serves a valuable purpose of ensuring that defendants incarcerated in the jail are not called and failed while in custody. However, the processing and collection of bond forfeitures in the amount of one dollar is not cost effective. Therefore, when setting a bond, the amount should be set at a minimum of ten (\$10) dollars.

B. Cash Bonds

Any "cash" bond set by a judge continues to mean either cash money deposited and receipted by the magistrate or a "cash" bond posted by an authorized bail agent acting on behalf of an solvent surety (excepting child support contempt proceedings), unless the Magistrate is presented with a valid Court Order that:

- (1) contains Findings of Fact by the Judge;
- (2) has one or more Conclusions of Law, one of which must indicate that accepting any other security other than actual currency will not reasonably assure the appearance of the defendant; and
- (3) orders that a cash bond be set and the amount thereof be secured by US currency in that face amount.

The Magistrate is then required to enforce that Order by accepting only cash money on behalf of that defendant.

The above requirement for “cash” bonds does not apply to child support contempt proceedings. In this type of proceeding, cash always means cash and a bail agent may not secure a defendant’s release with a bail bond.

C. Magistrates

Magistrates may not determine whether or upon what conditions a defendant charged with a capital offense may be released before trial pursuant to G.S. 15A-533.

Magistrates may not determine whether or upon what conditions a defendant charged with domestic violence as defined by G.S. 15A-534.1(a) may be released before trial, unless a judge has not done so within 48 hours of the defendant’s arrest (G.S. 15A-534.1). In this instance, a magistrate must make a determination as to imposition of pretrial release conditions.

If a magistrate is imposing conditions of release (1)-(3) [WPA, Custody Release, and Unsecured Bond] then no written findings need to be made pursuant to G.S. 15A-511. However, when magistrates impose a secured bond, they must record the reasons for doing so in writing on the attached “Written Determination of a Judicial Official on the Imposition of a Secured Bond” form (18JD-CR-M1). This form shall be securely attached to and accompany the original release order form setting forth conditions of pretrial release which is forwarded to the District Court. This form should not be modified in any form or fashion.

Magistrates should use the existing forms for Implied Consent Offenses (currently AOC-CR-271) and Detention of Impaired Drivers (currently AOC-CR-270). Magistrates should also use the attached “Findings Supporting the Detention of an Impaired Driver G.S. 15-A-534.2” form (18JD-CR-M2). However, if a secured bond is set in these cases, magistrates should also use the “Written Determination of a Judicial Official on the Imposition of a Secured Bond” form (18JD-CR-M1).

When making a determination as to the appropriate form of pretrial release, magistrates should always review a defendant’s history of convictions. When setting a secured bond, the conviction history results should be securely attached to the “Written Determination of a Judicial Official on the Imposition of a Secured Bond” form (18JD-CR-M1).

Magistrates should encourage all Law Enforcement Officers to fill out the “Law Enforcement Officer Information” form (18JD-CR-M3). While not all information on this form is applicable to the setting of pretrial release conditions, it does provide information that may be helpful to the Court, Jail, Pretrial Services, or Drug and Mental Health Courts. This form should also be securely attached to and accompany the original release order form setting forth conditions of pretrial release which is forwarded to the District Court.

SUGGESTED BOND AMOUNTS

PLEASE NOTE: Judicial Officials are vested with discretion in the settings of conditions of pretrial release. Judicial Officials are expected to use their discretion. The suggested bond amounts are suggested ranges only and are NOT mandatory. The suggested bond amounts are NOT limitations on judicial discretion.

The following are guidelines for the setting of secured bonds when that condition of pretrial release is imposed:

TYPE OF OFFENSE	MAXIMUM PUNISHMENT	SUGGESTED SECURED BONDS
Local Ordinance	\$50 fine or 30 days	Written Promise
Class 3 Misdemeanor	20 days	Written Promise
Class 2 Misdemeanor	60 days	\$0 to \$500
Class 1 Misdemeanor	120 days	\$0 To \$1,000
Class A1 Misdemeanor	150 days	\$0 to \$2,000
Driving While Impaired	24 months	\$0 to \$5,000
Class I Felony	15 months	\$0 to \$2,500
Class H Felony	30 months	\$0 to \$10,000
Class G Felony	44 months	\$1,000 to \$15,000
Class F Felony	59 months	\$2,500 to \$25,000
Class E Felony	98 months	\$5,000 to \$50,000
Class D Felony*	229 months	\$10,000 to \$250,000
Class C Felony*	261 months	\$15,000 to \$250,000
Class B2 Felony*	480 months	\$25,000 to \$500,000
Class B1 Felony*	Life without Parole	\$50,000 to \$1,000,000
Class A Felony*	Death, Life without Parole	No Bond (unless set by Judge)
Habitual DWI*	59 months	\$5,000 to \$50,000
NC Probation Violation		Set amount appropriate for underlying offense with consideration for the nature of any violations and any new charges
Fugitive Warrant		
Governor's Warrant		No Bond
Interstate Compact		
Parole Warrant		

*Each of these offenses carries a mandatory minimum active sentence

DRUG TRAFFICKING **

TYPE OF OFFENSE	MINIMUM SENTENCE	MAXIMUM SENTENCE	SUGGESTED SECURED BONDS
Class H Drug-Trafficking Felony	25 months	30 months	\$5,000-\$25,000
Class G Drug-Trafficking Felony	35 months	42 months	\$25,000-\$100,000
Class F Drug-Trafficking Felony	70 months	84 months	\$25,000-\$200,000
Class E Drug-Trafficking Felony	90 months	117 months	\$50,000-\$200,000
Class D Drug-Trafficking Felony	175 months	219 months	\$200,000-\$500,000
Class C Drug-Trafficking Felony	225 months	279 months	\$200,000-\$1,000,000

**Please see reverse page for classes of drugs and quantities and please see "Drug Trafficking" section of the 18th Judicial District's Pretrial Release Policies

DRUG TRAFFICKING (continued) ***

STATUTE	DESCRIPTION OF OFFENSE	PUNISHMENT
90-95(h)(1): Trafficking in marijuana	More than 10 and less than 50 pounds	Class H drug-trafficking felony; fine of not less than \$5,000
	50 – 1,999 pounds	Class G drug-trafficking felony; fine of not less than \$25,000
	2,000 – 9,999 pounds	Class F drug-trafficking felony; fine of not less than \$50,000
	10,000 pounds or more	Class D drug-trafficking felony; fine of not less than \$200,000
90-95(h)(2): Trafficking in methaqualone	1,000 – 4,999 dosage units	Class G drug-trafficking felony; fine of not less than \$25,000
	5,000 – 9,999 dosage units	Class F drug-trafficking felony; fine of not less than \$50,000
	10,000 dosage units or more	Class D drug-trafficking felony; fine of not less than \$200,000
90-95(h)(3): Trafficking in cocaine	28 – 199 grams	Class G drug-trafficking felony; fine of not less than \$50,000
	200 – 399 grams	Class F drug-trafficking felony; fine of not less than \$100,000
	400 grams or more	Class D drug-trafficking felony; fine of not less than \$250,000
90-95(h)(3b): Trafficking in amphetamine or methamphetamine	28 – 199 grams	Class F drug-trafficking felony; fine of not less than \$50,000
	200 – 399 grams	Class E drug-trafficking felony; fine of not less than \$100,000
	400 grams or more	Class C drug-trafficking felony; fine of not less than \$250,000
90-95(h)(4): Trafficking in opium or heroin	4 – 13 grams	Class F drug-trafficking felony; fine of not less than \$50,000
	14 – 27 grams	Class E drug-trafficking felony; fine of not less than \$100,000
	28 grams or more	Class C drug-trafficking felony; fine of not less than \$500,000
90-95(h)(4a): Trafficking in LSD	100 – 499 dosage units	Class G drug-trafficking felony; fine of not less than \$25,000
	500 – 999 dosage units	Class F drug-trafficking felony; fine of not less than \$50,000
	1,000 dosage units or more	Class D drug-trafficking felony; fine of not less than \$200,000
90-95(h)(4b): Trafficking in MDA/MDMA	100 – 499 dosage units or 28 – 199 grams	Class G drug-trafficking felony; fine of not less than \$25,000
	500 – 999 dosage units or 200 – 399 grams	Class F drug-trafficking felony; fine of not less than \$50,000
	1,000 dosage units, or 400 grams, or more	Class D drug-trafficking felony; fine of not less than \$250,000

***Source: UNC School of Government, *Punishments for North Carolina Crimes and Motor Vehicle Offenses*, 3rd edition, 2005, p. 63.

**WRITTEN DETERMINATION OF A JUDICIAL OFFICIAL
ON THE IMPOSITION OF A SECURED BOND**

State v. _____

A SECURED BOND IS SET IN THE AMOUNT OF \$ _____

THE REASONS FOR REQUIRING A SECURED BOND ARE AS FOLLOWS:

(One or more of the following must be checked)

- (1) ___ Necessary to reasonably assure the appearance of the defendant.
- (2) ___ The defendant poses a danger of injury to another person or persons.
- (3) ___ The defendant is likely to destroy evidence, suborn perjury, or intimidate a witness or witnesses.

EXPLANATION OF FACTORS CONSIDERED (This section must be completed)

() Nature and circumstances of the offense(s) charged:

() The weight of the evidence against the defendant:

() The defendant's degree of intoxication, and/or mental condition:

() The defendant's employment status and history, and financial resources:

() The defendant's character, family ties, and length of residence in the community:

() The defendant's record of convictions (attach a copy of any available record):

() The defendant's history of flight or failure to appear:

() Any other evidence relevant to the issue of pretrial release (e.g. any other factors that bear on the risk of nonappearance, injury to any person, destruction of evidence, subornation of perjury or intimidation of any potential witness):

A secured bond is set in an amount higher than the recommended amount has been set for the following extraordinary reasons:

Signature of Judicial Official: _____

IN THE MATTER OF:

FINDINGS SUPPORTING THE DETENTION
OF AN IMPAIRED DRIVER [G.S. 15A-534.2]

Defendant

DEFENDANT DETAINED FOR REASONS OTHER THAN IMPAIRMENT

The undersigned finds that the defendant named above was arrested for an offense involving impaired driving as defined in N.C.G.S. §20-4.01(24a) on the date below. At the time of the defendant's initial appearance before me, and from my observations as indicated below, there is clear and convincing evidence that the defendant's physical and/or mental faculties were so impaired that defendant's release would present a danger to himself/herself, to others or to property. Therefore, pursuant to N.C.G.S. §15A-534.2, I have ordered the detention of the defendant as an impaired driver until the conditions of N.C.G.S. §15A-534.2(c) have been met.

MENTAL FACULTIES

STATE OF MIND

Defendant's state of mind could be described as:

- Hostile and Argumentative
- Belligerent
- Aggressive
- Combative
- Anxious
- Worried
- Concerned
- Ashamed
- Frivolously Unconcerned
- Unaware of Surroundings
- Other: _____

BEHAVIOR

Defendant's behavior could be described as:

- Unruly
- Disruptive
- Shouting
- Cursing
- Screaming
- Crying
- Noisily Defiant
- Threatening
- Lethargic
- Sluggish
- Unconscious
- Other: _____

COMPREHENSION & JUDGEMENT

Defendant is impaired to the extent that he/she
 is able may not be able is unable
to understand the procedural rights afforded by
this initial appearance and

is able may not be able is unable
to have the capacity to make sound and
reasonable decisions.

PHYSICAL FACULTIES

SPEECH

Defendant's speech is:

- Slow
- Confused
- Thick-tongued
- Slurred
- Mumbled
- Incomprehensible
- Other: _____

COORDINATION

Defendant's coordination could be
described as:

- Slow Body Movement
- Unsteady on feet
- Swaying
- Stumbling
- Falling
- Cannot walk without
support or assistance
- Other: _____

PHYSICAL APPEARANCE

Defendant's physical appearance is
characterized by having:

- Glassy-eyes
- Red-eyes
- Bloodshot eyes
- Dilated pupils
- Red/flushed face
- A moderate odor of
alcohol
- A strong odor of alcohol
- A very strong odor of
alcohol
- Other: _____

OTHER FACTORS

NATURE AND CIRCUMSTANCES OF
OFFENSE CHARGED:

AVAILABILITY OF A SOBER ADULT, 18
YEARS OR OLDER, WHO IS WILLING
TO TAKE CUSTODY OF DEFENDANT:

COMMENTS OF DEFENDANT:

DATE:

TIME:

- A.M.
- P.M.

MAGISTRATE:

PLEASE ATTACH ADDITIONAL SHEETS TO THIS FORM IF NEEDED

LAW ENFORCEMENT OFFICER INFORMATION

Defendant's Name: _____

Date: _____

Arresting Officer: _____

Agency: _____

Offense(s) Charged: _____

Condition of defendant at time of arrest (check all that apply):

- | | | |
|------------------------------------------------------|----------------------------------------|-----------------------------------------------------|
| <input type="checkbox"/> Cooperative | <input type="checkbox"/> Uncooperative | <input type="checkbox"/> Emotional/Distraught |
| <input type="checkbox"/> Verbally Abusive | <input type="checkbox"/> Combative | <input type="checkbox"/> Confused |
| <input type="checkbox"/> Impaired (Alcohol or Drugs) | | <input type="checkbox"/> Possible Mental Problems |
| <input type="checkbox"/> Threatening Towards Victim | | <input type="checkbox"/> Threatening Towards Others |

Defendant's identity in question due to (check all that apply):

- | | |
|-------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| <input type="checkbox"/> No Identification | <input type="checkbox"/> Gave False Information to LEO |
| <input type="checkbox"/> Defendant Using Alias(es) | <input type="checkbox"/> Fake or Multiple IDs on Person |
| <input type="checkbox"/> Unable to Gain Confirmation of Identification by Family, Friend, Employer, or Criminal History | |

Defendant may be a flight risk due to (check all that apply):

- | | |
|-------------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> Prior History of Failing to Appear | <input type="checkbox"/> Prior History of Absconding |
| <input type="checkbox"/> Has no Ties to the Community | |

Defendant's criminal status (check all that apply):

- | |
|--------------------------------------------------------------------------------|
| <input type="checkbox"/> Has Prior History of Convictions for Similar Offenses |
| <input type="checkbox"/> Has Other Pending Charges |
| <input type="checkbox"/> Additional Charges may be Forthcoming |

Please list below any other information the presiding judicial official should know:

