

ADMINISTRATIVE ORDER

Pursuant to the provisions of Article 26 of Chapter 15A of the North Carolina General Statutes the following policies and recommended guidelines shall be utilized in the 17A Judicial District:

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) and G.S. 15A-535(b), the following policies are adopted as a guide in determining conditions of pretrial release in the 17A Judicial District.

II. Conditions of Pretrial Release

A. G.S. 15A-534(a) requires that (except in capital cases) at least one of the following five 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 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.
- (5) House arrest with electronic monitoring

B. If condition (5) is imposed, the defendant must execute a secured bond under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S.15A-266.4, and (i) the fingerprints or DNA samples have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode on the defendant as conditions of pretrial release pursuant to G.S. 15A-543(a).

C. In granting pretrial release, the judicial official must impose condition (1), (2), or (3) above unless he determines that one of these first three conditions (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 witnesses. If and only if a judicial official determines that any one of more of the factors set out in (a), (b), or (c) apply, the judicial official must then impose condition (4) or (5) in subsection (A) above instead of condition (1), (2), or (3), and must record the reasons for doing so in writing.

III. 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.

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

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

This means release on an appearance bond secured by cash deposit of the full amount of the bond, mortgage, or at least one solvent surety.

This form of release must not be selected by the magistrate unless he first determines that the release under A, B, or C above:

- (1) Will not reasonably assure the appearance of the defendant as required;
 - (2) Will pose a danger of injury to any person. See G.S. 15A-534(b), (d2) below;
or
 - (3) Is likely to result in the destruction of evidence;
 - (4) Subornation of perjury; or
 - (5) Intimidation of potential witnesses.
2. Bonds may not be split or stacked. When there is more than one surety, whether it is a professional surety, a representative of an insurance company, or a private individual, each shall post and be jointly and severally liable for the entire amount of the authorized bond.
 3. When the amount of a secured bond is \$20,000.00 or greater, the person or persons seeking to post such surety bond for a defendant's appearance in court shall employ an attorney to prepare a **First Deed of Trust with a Power of Sale provision** describing the realty that is to serve as security by a sufficient legal description, together with a Promissory Note in the full amount of the bond. The Deed of Trust shall be the first lien on the real estate and there may be no other liens or judgments against the property recorded or docketed prior to the date of recording the Deed of Trust. The Deed of Trust and Note shall name the Clerk of Superior Court of Rockingham County as the Trustee for the State of North Carolina and the beneficiary shall be the State of North Carolina. The Deed of trust shall be recorded in the county where the property is located, and the surety or person posting the bond shall be responsible for paying all recording fees and cancellation costs when the Final Order discharging the surety is entered, if any are due. The attorney preparing the Note and Deed of Trust shall submit an Opinion of the Title showing all liens and encumbrances and verifying the Deed of Trust is a First Deed of Trust. A certificate from the Tax Supervisor Office in the county where the real property is located shall also be submitted showing the most recent value as indicated on the Tax

Records. Form AOC-CR-201 shall be completed and said Note and Deed of Trust shall be attached to the form.

Nothing herein shall exclude or prevent any individual from posting a secured bond by means of cash in the full amount of the bond or utilizing a professional bail bondsman, or an insurance company authorized to execute appearance surety bonds in North Carolina. The purpose of this policy is to ensure that the State of North Carolina has a superior lien or encumbrance on the real property used as collateral or security in the event the defendant fails to appear as required and the bond is ordered forfeited.

IV. Factors to Consider for Pretrial Release

A. Pursuant to §15A-543(c), when determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the following before setting the terms of pretrial release:

- (1) The nature and circumstances of the offense charged;
- (2) The weight of the evidence against the defendant;
- (3) The defendant's family ties, employment, financial resources, character, and mental condition;
- (4) Whether the defendant is intoxicated to such a degree that he or she would be endangered by being released without supervision;
- (5) The defendant's length of residence in the community;
- (6) The defendant's record of convictions;
- (7) The defendant's history of flight to avoid prosecution or failure to appear at court hearings; and
- (8) Any other evidence relevant to the issue of pretrial release.

Consistent with §15A-543(c), the judicial official should also take into consideration any of the following circumstances regarding the defendant:

- (9) Protect public health/known communicable diseases;
- (10) Pending charges in court at the time of the alleged offense;
- (11) History of substance abuse;
- (12) Gang involvement;
- (13) Outstanding warrants, holds, or detainers; and

(14) Designation as a priority offender by law enforcement.

B. Failure to Appear

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.

C. 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-534.6: Bail in Cases of Manufacture of Methamphetamine

(7) 15A-533 (d): Drug Trafficking (see § IV, D infra)

(8) 15A-533 (e): Street Gang Activity (see § IV, E infra)

(9) Chapter 15A, Article 37: Uniform Criminal Extradition Act

(10) 15A-534(d2): Where conditions of pretrial release being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, the judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing.

(11) 15A-1345(b1): If the probationer is arrested for violation of any of the conditions of probation and (i) has a pending charge for a felony offense or (ii) has been convicted of an offense at any time that requires registration under Article 27A of Chapter 14 of the General Statutes or an offense that would have required registration but for the effective

D. 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). 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 arresting officer should have established the identity of the person arrested.

E. Drug Trafficking

If a judicial official finds the following:

There is reasonable cause to believe that a person has committed a drug trafficking offense; and

(i) the drug trafficking offense was committed while the person was on pretrial release for another offense; and

(ii) 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)].

F. 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.***

15A-533(e) provides that “[t]here shall be a rebuttable presumption that no condition of release will be 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 a reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.16;
- (2) the offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and
- (3) the person has been previously convicted of an offense described in G.S. 14-50.20, and not more than five years have elapsed since the date of conviction or the person's release for the offense, whichever is later."

Persons who are considered for bond under the provision of subsection (D) (drug trafficking) and (E) (gang activity) 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.

G. 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 on the appropriate form. 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.

H. Pretrial Services

Pretrial Services shall make recommendations for release to the court and provide investigation, monitoring and supervision services for moderate and high risk defendants. Other defendants may be placed on pretrial supervision or monitoring only upon order by the court.

Pretrial Services shall interview all defendants held in custody prior to initial appearance. Pretrial Services shall conduct an investigation, assess risk using a research-based instrument, and make a recommendation to the court for supervision or monitoring. A pretrial report shall be provided to the court, prosecution and defense if applicable.

Release Orders

- a. G.S. 15A-534(5)(d) requires that the judicial official authorizing pretrial release on house arrest with electronic monitoring, must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of his/her release; and advise him/her that his/her arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy be given to the defendant.

- b. Order of release by Magistrate for pretrial supervision or monitoring
 - (1) The Magistrate shall provide notification to Pretrial Services when a defendant is ordered to pretrial supervision or monitoring.
 - (2) The Magistrate shall instruct the defendant to report to the Pretrial Services office within 72 hours of release from jail. A written notification with the address and phone number of the Pretrial Services office shall be provided to the defendant by the Magistrate.

- c. Order of release by Judge for pretrial supervision or monitoring
 - (1) The clerk shall notify Pretrial Services and provide the program with a copy of the Order of Release.
 - (2) If ordering House Arrest with electronic monitoring or GPS monitoring, the Judge shall order the jail to detain the defendant until Pretrial Services makes contact with the defendant.
 - (3) If ordering any other type of pretrial supervision or monitoring, the Judge shall order the defendant to report to the Pretrial Services office the next business day following release from jail.

Appeal and/or Modifications of Pretrial Release Orders

- a. Pursuant to G.S. 15A-538(a), a person who is detained or objects to the conditions required for his release which were imposed or allowed to stand by order of a district court judge may apply in writing to a superior court judge to modify the order.
- b. Pursuant to G.S. 15A-539(a), a prosecutor may at any time apply to an appropriate district court judge or superior court judge for modification or revocation of an order of release under the Article.
- c. When a modification of conditions of release is requested due to reasons related to the defendant's compliance or non-compliance with conditions of release and/or supervision, the requestor shall complete a *Modification of Conditions of Release form* and provide a copy to the court, Pretrial Services, the prosecution and the defense attorney. Consent shall be granted by affixing the signature of the appropriate party and returning the form to Pretrial Services within four (4)

business days. If consent from all parties is not received within four (4) business days the case will be forwarded to the District Attorney’s Office to be calendared.

Violations of Conditions of Release and Non-Compliance with Pretrial Supervision

- a. Pursuant to G.S. 15A-534(5)(d) an order for arrest will be ordered immediately upon any violation of the defendant’s pretrial release. A violation shall be defined as a willful failure to appear or an arrest for alleged new criminal activity while on pretrial release.
- b. Non-Compliance is defined as a technical infraction related to conditions of pretrial supervision. Pretrial Services shall have administrative discretion in addressing issues non-compliance.

17A Judicial District Release Guidelines*

Class 1, 2 and 3 Non-Violent Misdemeanor Only

Risk Level	Release Type	Range	Supervision	Conditions of Release
Low (0-3)	Written Promise	\$0	None	None
Moderate(4-6)	Written Promise	\$0	None	None
High(7-9)	Unsecured	\$500	Monitoring	None

Class A1 & Violent Misdemeanors, Impaired Driving Charges & Non-Violent Felony

Risk Level	Release Type	Range	Supervision	Conditions of Release
Low (0-3)	Unsecured	\$500	Monitoring	None
Moderate(4-6)	Unsecured	\$1000	Monitoring	As Needed
High(7-9)	Unsecured/Secured	\$1000-5000	Intermediate	As Needed

Violent Felony & Drug Trafficking

Risk Level	Release Type	Range	Supervision	Conditions of Release
Low (0-3)	Secured	\$5000	Intermediate	As Needed
Moderate(4-6)	Secured	\$5000-25000	Intermediate/Intensive	As Needed
High(7-9)	Secured	\$25000 & UP	Intensive	As Needed

***These Guidelines are suggestions only and are based upon the Pretrial Risk Assessment Tool. Judicial discretion considering all factors shall be exercised.**

These policies and recommended guidelines shall become effective for all matters arising on and after September 1, 2012 and shall supersede and replace any prior existing policies and guidelines in the 17A Judicial District.

This the _____ day of August, 2012.

Edwin G Wilson, Jr.
Senior Resident Superior Court Judge
17A Judicial District

Frederick B. Wilkins, Jr.
Chief District Court Judge
17A Judicial District