

NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
DISTRICT COURT DIVISION

IN THE MATTER OF }
PROMULGATING OR AMENDING }
RULES RELATING TO BAIL AND)
PRETRIAL RELEASE FOR }
JUDICIAL DISTRICT 16B }

ORDER

THIS CAUSE, coming on to be heard and being heard before the undersigned Senior Resident Superior Court Judge and Chief District Court Judge of Judicial District 16B. After careful consideration of the matter of promulgating or amending policies relating to Bail and Pretrial Release — pursuant to the authority granted by Article 26 of Chapter 15A of the North Carolina General Statutes; the General Rules of Practice for the Superior and District Courts; the Casflow Management Plan adopted by the Supreme Court of North Carolina on 1 May 1996; and the specified, implied and inherent powers of our respective offices--the undersigned, acting separately and jointly, do hereby approve and enter this order.

IT IS NOW, THEREFORE, ORDERED:

1. The Local Rules of Bail and Pretrial Release attached hereto, and incorporated herein by reference, are hereby adopted as the official policies and standards concerning Bail and Pretrial Release in the criminal courts of Judicial District 16B.
2. These policies supersede all prior such policies and shall be effective on 1 July 2001.
3. The Superior Court Trial Court Coordinator shall file this order, including the local rules, with the Clerk of Superior Court and thereafter shall file the same with the Administrative Office of the Courts.
4. The Clerk shall serve copies of this order and these rules upon each judge, magistrate, sheriff, and chief of police in the judicial district, as well as each attorney or law firm maintaining a mailbox in the county courthouse, and shall enter hereon a certificate of such service.

ENTERED in our respective chambers in Robeson County on this the ____ day of June 2001.

Promulgating or Amending

Rules relating to Bail and
Pretrial Release for Judicial
District 16B

THE HONORABLE DEXTER BROOKS
Senior Resident Superior Court Judge

THE HONORABLE GARY LOCKLEAR
Chief District Court Judge

LOCAL RULES OF BAIL AND PRETRIAL RELEASE

Rule 1. Name.

These rules shall be officially known as the “Local Rules of Bail and Pretrial Release.” When clear from the context the rules may be referred to as the “Local Rules of Bail” or the “Local Rules.”

Rule 2. Authority.

These rules were promulgated pursuant to the authority of Article 26 of Chapter 15A of the North Carolina General Statutes, including G.S. §15A-535(a); the General Rules of Practice for the Superior and District Courts; the Caseflow Management Plan adopted by the Supreme Court of North Carolina on 1 May 1996; and the specified, implied and inherent powers of the Senior Resident Superior Court Judge and the Chief District Court Judge of Judicial District 16B.

Rule 3. Scope.

These rules shall apply in all criminal actions or proceedings in this Judicial District and shall be followed by all judicial officials and all other persons dealing with bail bonds and pretrial release of criminal defendants in this Judicial District.

Rule 4. General Considerations.

a) **Terminology.** When the text uses “shall” or “shall not” the terms are used in the imperative. When the text uses “should” or “should not” the terms are used to indicate local policy which should be followed by judges and which shall be followed by others. When “may” is used, it denotes permissible discretion.

b) **Comments.** When a Comment accompanies any Rule its language is intended to explain and illustrate the meaning and purpose of the Rule. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

c) **Local Policy and Visiting Judges.** Visiting judges presiding in this judicial district are guests and shall be accorded the respect due their position and status. By the same token, just

as these judges expect other judges presiding in their home districts to observe their local rules and policies, visiting judges are expected to respect and observe this district's local rules and policies. It is certainly easier for one person to adjust than it is for a judicial district to temporarily change.

d) **Amendments.** These Local Rules may be amended through the entry of subsequent orders describing the amendments without the necessity of incorporating such amendments into the text of the Rules and entry of an order regarding the Rules as revised as was done on 9 September 1998. See File No. 98 R 199, Office of the Clerk of Superior Court. Any such orders of amendment shall be numbered and shall refer to the effective date of the revision of the Rules being amended. For example, see Amendment No. 1, dated 31 May 1999 (File No. 99 R 131), amending the Local Rules adopted on 29 March 1999 (File No. 99 R 89).

Rule 5. Definitions.

a) **Bail Bond.** An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. G.S. §15A-531(4).

b) **Capital Offense.** A criminal offense for which the death penalty is an authorized form of punishment. Such an offense is capital regardless whether the District Attorney is seeking the death penalty in the particular case. See State v. Sparks, 297 N.C. 314,320-21(1979).

c) **Clerk.** The clerk of superior court, acting clerk, or assistant or deputy clerk. G. S. §15A-101(2).

d) **Defendant.** A person charged with a criminal offense under the laws of the State of North Carolina who is obligated to appear in court as required upon penalty of forfeiting bail under a bail bond. G.S. §15A-531(5).

e) **Entry of Judgment.** Judgment is entered when sentence is pronounced. Prayer for judgment continued upon payment of costs, without more, does not constitute entry of judgment. G. S. §15A-101(4a).

f) **Habitual Felon.** For purposes of these rules, any person who meets the requirements of G.S. §14-7.1, or who is subject to indictment or has already been indicted as a habitual felon on pending charges, shall be considered a habitual felon.

g) **Judicial Official.** A magistrate, clerk, district court judge and superior court judge. G.S. §15A-101(5).

h) **Justify.** To determine that a surety owns sufficient property exclusive of indebtedness and exemptions to satisfy a bond upon forfeiture.

i) **Post-trial Release.** Release after guilt is established in superior court. G.S. §15A-536(a).

j) **Pretrial Release.** Release prior to guilt being established in superior court. G.S. §15A-535(a).

k) **Surety.** An insurance company, professional bondsman or accommodation bondsman as appropriate. G.S. §15A-531(8).

COMMENT

In subsection (f) relating to habitual felons, any person who has been convicted of or pled guilty to three felony offenses in any federal court or any state court or combination thereof is a habitual felon. G.S. §14-7.1. The second felony must have been committed after the conviction or plea of guilty to the first felony. Id. The third felony must have been committed after the conviction or plea of guilty to the second felony. Id. Multiple felonies with the same conviction date, therefore, only count as one felony for purposes of this definition. Being a habitual felon is not a crime but is a status, the attaining of which subjects a person thereafter convicted of a felony to an increased punishment for that crime. State v. Allen, 292 N.C. 431(1977). The primary purpose of a recidivist statute is to deter repeat offenders and to separate that person from society for an extended period of time. This separation and its duration are based on the propensities the person has demonstrated to commit felony offenses. State v. Aldridge, 76 N.C. App. 638(1985). Given the serious nature of habitual felon status, it is appropriate to consider such status when considering the conditions of pretrial release. See G.S. §15A-534(c).

Other definitions relating to bail bonds are set forth in G.S. §15A-531. The statute was amended effective 1 January 2001 by S.L. 2000-133, s.1.

Rule 6. Policy.

a) **Purpose of Bail.** The traditional purpose of bail is to assure the defendant's appearance in court. This traditional rule has been modified to some extent in order to protect certain important societal interests. The modern purpose of the law on bail is to impose the least restrictive non-monetary form of pretrial release that will reasonably assure the defendant's appearance in court consistent with the protection these specified societal interests; to end or to minimize stereotyped ex parte bail-fixing policies calling for secured bonds in predetermined amounts in all cases charging certain offenses; and to vest the decision-making process as to the form of release and amount of bond in the judicial official who can most readily learn the most about the peculiar circumstances of each individual case.

b) **Presumption of Innocence.** The right to pretrial release preserves the presumption of innocence and promotes the defendant's right to a fair trial. According to the Supreme Court of the United States:

This traditional right to freedom before the conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction.

*** Unless this right to bail before trial is preserved, the presumption of innocence, secured only through centuries of struggle, would lose its meaning. State v. Boyle, 342 U.S. 1(1951).

The spirit of the procedure is to enable them (persons charged with a crime) to stay out of jail until a trial has found them guilty. Without this conditional privilege, even those wrongfully accused are punished by a period of imprisonment while awaiting trial, and are handicapped in consulting counsel, searching for evidence and witnesses, and preparing a defense. Id. Concurring Opinion of Justice Jackson.

c) **Risk of Flight and New Crimes.** It is recognized that any “admission to bail always involves a risk that the accused will take flight”, and a risk that the defendant released may “commit a fresh crime while out on bail”. These are calculated and accepted risks taken “as the price of our system of justice” by the North Carolina legislature and courts. A judicial official may only absolutely deny bail to a defendant charged with a capital offense i.e. first degree murder.

d) **Defendant’s Right to Bail.** The law unequivocally provides that a defendant charged with a noncapital offense must be accorded their right to pretrial release. G.S. §15A-533(b). A judicial official cannot deny a bond to such a defendant for preventive detention except as otherwise expressly provided by law. See, e.g., G.S. §15A-533(d)(1998)(In certain drug trafficking cases, “it shall be presumed that no condition of release will reasonably assure the appearance of the person as required and the safety of the community.”).

e) **Amount of Bail.** The amount of the bail bond should be such as to reasonably assure the presence in court of the defendant as needed. Bail in an amount higher than an amount reasonably calculated to fulfill its purpose of the preventing flight and assuring presence may be considered “excessive” and unlawful under the Eighth Amendment to the Constitution of the United States and under Article I, Section 27 of the Constitution of the North Carolina. Bail may not be used as punishment.

f) **Independence of Judicial Officials.** A judicial official must act independently of law enforcement, the prosecution and the defendant in setting bail. The judicial official must be neutral in determining the conditions of pretrial release and take into consideration the purpose of bail, the rights of the defendant, and the rights of the public.

g) **Right to Speedy Trial.** Innocent people should not have to bear the burden, hardship and humiliation of imprisonment awaiting trial. The public should not have to bear the risk of guilty defendants committing further crimes while on pretrial release. A partial solution to the pretrial dilemma is a speedy trial. When preparing trial calendars prosecutors should consider giving preference to defendants awaiting trial who are unable to make bond. If such preference is not accorded then judicial officials, upon request or upon the court’s own motion, should reconsider the conditions of pretrial release of such defendants and, if appropriate, modify such conditions.

Rule 7. Authority to Determine Conditions of Pretrial Release.

a) **Magistrate.** Generally, the responsibility for determining the conditions of pretrial release rests with a magistrate. The magistrate may determine such conditions for misdemeanors and noncapital felonies. A magistrate cannot authorize the release of a defendant charged with a capital offense. G.S. §15A-532(a); G. S. §15A-533(c).

b) **Clerk of Superior Court.** A clerk can determine conditions of pretrial release for misdemeanors and noncapital felonies. Id.

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

d) **District Court Judge.** A district court judge may determine conditions of pretrial release for misdemeanors and felonies, including capital felonies. Except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. §15A-539, at or after the first appearance, a district court judge may modify a pretrial release order of a magistrate or the clerk. A district court judge may modify a pretrial release order entered by such judge at any time prior to: (1) In a misdemeanor case tried in the district court, the noting of an appeal; and (2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable cause hearing. G.S. §15A-534(e).

e) **Superior Court Judge.** A superior court judge may determine conditions of pretrial release for misdemeanors and felonies, including capital felonies. After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by such superior court judge, at any time prior to the guilt of the defendant being established in superior court. G.S. §15A-534(e).

Rule 8. Forms of Pretrial Release (G.S. §15A-534(a)).

a) **Written Promise to Appear.** The defendant is released upon his or her execution of a written promise to appear in court as necessary.

b) **Unsecured Appearance Bond.** The bond is executed solely by the defendant. No surety or security is required to secure the bond.

c) **Supervised Release.** The defendant is placed into the custody of a designated person or organization agreeing to supervise him or her.

d) **Secured Appearance Bond.** The bond is secured by a cash deposit of the full amount of the bond, a mortgage pursuant to G.S. § 58-74-5, or at least one solvent surety.

e) **Cash Appearance Bonds.** The bond requires a cash deposit of the full amount of the bond. A professional bondsman, who is a surety bondsman, as defined by G.S. §58-71-1, acting on behalf of an insurer, may satisfy the cash deposit requirement by becoming a surety on the bond in that amount; however, cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash. G.S. §15A-531(1).

Rule 9. Choosing the Form of Pretrial Release (G.S. §15A-534(b)).

a) **General.** The judicial official in granting pretrial release must either: (1) release the defendant on his or her written promise to appear; (2) release the defendant upon his or her execution of an unsecured appearance bond in an amount specified by the judicial official; or (3) place the defendant in the custody of a designated person or organization agreeing to supervise him or her, unless the judicial official determines that such release either: (1) will not reasonably assure the presence of the defendant as required; (2) will pose a danger of injury to any person; or (3) is likely to result in the destruction of evidence, subornation of perjury, or intimidation of witnesses. Upon making the determination, the judicial official must require the execution of a secured appearance bond in an amount specified by the judicial official. G.S. §15A-534(b).

b) **Secured Bond in Lieu of Custody of Designated Person.** If the judicial official places the defendant in the custody of a designated person or organization, the defendant may elect to execute a secured appearance bond in which event the judicial official must impose such a bond. G.S. §15A-534(a).

COMMENT

As a matter of public policy, the North Carolina General Assembly has determined that judicial officials, when setting bail bonds, should consider each of the forms of pretrial release in the order of priority specified in G.S. §15A-534(a). G.S. §15A-534.

Rule 10. Factors to Consider in the Pretrial Release Process.

a) **General.** In determining which conditions of pretrial release to impose, the judicial official must, on the basis of available information, take into account the following factors: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) the defendant's family ties in the county; (4) the defendant's employment status and history; (5) the defendant's financial resources; (6) the defendant's character and reputation; (7) the defendant's mental condition; (8) whether the defendant is intoxicated to such a degree that he or she would be endangered by being released without supervision; (9) the length of his or her residence in the community; (10) the defendant's record of convictions; (11) whether the defendant is a habitual felon; (12) the defendant's history of flight to avoid prosecution or failure to appear at court proceedings; and (13) any other evidence relevant to the issue of pretrial release. See G.S. §15A-534(c).

b) **Acts or Threats of Violence, Including Bomb Threats.** When setting conditions of pretrial release on charges involving acts or threats of violence, especially where large groups of people are involved such as in bomb threats, a judicial official should consider the safety of the victim(s) and/or the general public pending the trial of the defendant. See G.S. §15A-534 (b); see also G.S. §15A-534(c).

c) **New Felony Charges While on Pretrial Release.**

1) **General Charges.** If an accused is charged with new non-capital felony offenses which allegedly occurred while on pretrial release on felony charges, then the judicial official, for the purpose of utilizing the chart in Rule 14 (Suggested Bail Amounts), should consider the new felony charges as being 2 classes higher than the class of such new charges. If the accused is thereafter charged with new non-capital felony charges which allegedly occurred after being released on pretrial release a second time, then the judicial official, for the purpose of utilizing the chart in Rule 14 (Suggested Bail Amounts), should consider the new felony charges as being 4 classes higher than the class of such new charges. If the accused is thereafter charged with new non-capital felony charges which allegedly occurred after being released on pretrial release a third time, then the judicial official, for the purpose of utilizing said chart, should consider the new felony charges as being B1 class felonies. In no event, however, shall such new felony charges be considered class A felonies hereunder, but rather such charges should be considered as class B1 felonies.

2) **Drug Charges.** If an accused is charged with new felony drug offenses which allegedly occurred while on pretrial release on felony charges, then the judicial official, for the purpose of utilizing the chart in Rule 14 (Suggested Bail Amounts), should consider the new felony charges as being 4 classes higher than the class of such new charges. If the accused is thereafter charged with new felony drug charges which allegedly occurred after being released on pretrial release, then the judicial official, for the purpose of utilizing said chart, should consider the new drug charges as being B1 class felonies. In no event, however, shall such new felony charges be considered class A felonies hereunder, but rather such charges should be considered as class B1 felonies. See also G.S. §15A-533(d) and Local Rule 18 (Detention of Certain Defendants Charged with Drug Trafficking).

d) **No Right to Pretrial Release in Capital Cases.** See G.S. §15A-533(c) and Local Rule 14.

e) **Unauthorized Absence from Involuntary Commitment in Mental Health Facility.** See G.S. §15A-533(a) and Local Rule 15.

f) **Child Support Contempt.** See G.S. §15A-531(4) and Local Rule 16.

g) **Domestic Violence Cases.** See G.S. §15A-534.1 and Local Rule 17.

- h) **Drug Trafficking.** See G.S. §15A-533(d) and Local Rule 18.
- i) **Sex Offenses and Crimes of Violence Against Child Victims.** See G.S. §15A-534.4 and Local Rule 19.
- j) **Impaired Drivers.** See G.S. §15A-534.2 and Local Rule 20.
- k) **Communicable Diseases.** See G.S. §15A-534.3 and Local Rule 21.

COMMENT

Subsection (b) was added in order to expressly address the growing problem of bomb threats to public buildings, including schools and courthouses. Although the defendant is clearly entitled to pretrial release in such cases, the conditions of pretrial release may be influenced by concerns about the safety of the public or victims. This is in accord with the modern trend altering the traditional purpose of bail--assuring the defendant's appearance in court--in order to protect important societal interests. See, e.g., G.S. §15A-534(d) (In certain drug trafficking cases, "it shall be presumed that no condition of release will reasonably assure the appearance of the person as required and the safety of the community."); G.S. §15A-534.1(Crimes of domestic violence.); and G.S. §15-534.3(Detention for communicable diseases.).

Subsection(c) was added to address repeat offenders, especially in drug cases. The judicial official determining conditions of pretrial release should first consider using Local Rule 18. If it does not apply, then Local Rule 11(b)(2) should be used.

Rule 11. General Restrictions upon Defendant on Pretrial Release. ;

Regardless as to the form of pretrial release selected, the judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release. G.S. §15A-534(a).

Rule 12. General Policies in Setting Bonds(G.S. §15A-535(a)).

a) **Citations.** Law enforcement officers are encouraged to use citations in those misdemeanor cases in which it appears that the defendant will appear in court as scheduled. See G.S. §15A-302.

b) **Criminal Summons.** Clerks and magistrates are encouraged to use a criminal summons instead of warrants for arrest in appropriate misdemeanor and felony cases. G.S. §15A-303.

c) **Independent and Neutral.** An arresting officer has no authority to fix the amount of the bond, but the officer should furnish information to assist the judicial official in determining

the conditions of pretrial release. In setting the conditions of pretrial release, however, the judicial official acts as an independent and neutral official who has the duty to follow applicable law in setting an appropriate bond and who has a duty to the defendant not to require an excessive bail while protecting the interests of victims and the general public.

d) **Written Promise to Appear.** The written promise to appear is the statutorily recommended form of pretrial release and should be imposed, except where it would be inappropriate under applicable law. See G.S. §15A-534(a) & (b).

e) **Unsecured Appearance Bond.** If the written promise to appear is inappropriate then an unsecured appearance bond is the next recommended form of pretrial release and should be imposed, except where such a bond would be inappropriate under applicable law. See G.S. §15A-534(a) & (b).

f) **Non-Residents.** Ordinarily, a person who is not a resident of the State of North Carolina should only be released upon a secured or cash appearance bond.

Rule 13. Suggested Bail Amounts (G.S. §15A-535(a)).

a) **Individualized Decision.** The circumstances of each individual case will govern the decision of a judicial official in setting conditions of bail. A rigid bail schedule is incompatible with such an individualized decision. The chart below is merely the starting point, not necessarily the final answer. The final decision belongs to the judicial official considering the conditions of pretrial release.

b) **Habitual Felons.** In utilizing the Guidelines below for habitual felons each pending felony charge shall be considered as a Class C felony except for Class A, B1, or B2 charges.

c) **Prior Felony Convictions.** Where a defendant has prior felony convictions which are not utilized in establishing habitual felon status, the suggested maximum bond shall be increased for each such felony conviction by the amount specified in the column entitled “Increase for Each Felony Conviction” in the felony guidelines chart.

d) **New Felony Charges While on Pretrial Release.** For new general non-capital felonies see Local Rule 10(b)(1) and for new drug charges see Local Rule 10(b)(2). For new drug trafficking charges see Local Rule 18.

e) **Multiple Charges.** The Guidelines may be consulted for each pending charge for a defendant with multiple charges.

f) **Guidelines.** As general guidelines only, and not to be blindly followed, the following criteria may be considered by judicial officials in making their decision in setting amounts in unsecured and secured bonds:

MISDEMEANORS

Class	Minimum Punishment	Maximum Punishment	Suggested Bond		
A1	1-60 Days	1-150 Days	\$400-\$500	C/I/A	C/I/A
1	1-45 Days	1-120 Days	\$300-\$400	C	C/I/A
2	1-30 Days	1-60 Days	\$100-\$200	C	C/I/A
3	1-10 Days	1-20 Days	\$100	C	C/I/A

FELONIES

Class	Minimum Punishment	Maximum Punishment	Presumptive Set by Judge	Suggested Bond Felony	Increase For Each Only Conv.
A	Life w/o Parole	Death			
B1	144 months	Life w/o Parole	192-480 months	\$30-\$50,000	\$5,000
B2	94 months	392 months	125-313 months	\$25-\$40,000	\$4,000
C	44 months	210 months	58-168 months	\$20-\$30,000	\$3,500
D	38 months	183 months	51-146 months	\$15-\$25,000	\$3,000
E	15 months	74 months	20-59 months	\$5-\$15,000	\$2,500
F	10 months	49 months	13-39 months	\$3-\$10,000	\$2,000
G	8 months	36 months	10-29 months	\$1-\$5,000	\$1,500
H	4 months	25 months	5-20 months	\$500-\$1,000	\$1,000
I	3 months	12 months	4-10 months	\$500-\$800	\$ 500

Rule 14. Right to Pretrial Release in Capital and Noncapital Cases.

a) **Noncapital Cases.** A defendant charged with a noncapital offense must have conditions of pretrial release determined by a judicial official pursuant to applicable law. G.S. §15A-533(b). A judicial official cannot deny bail for the purpose of preventive detention except as otherwise expressly provided by law. See, e.g., G.S. §15A-533(d)(1998). However, if appropriate, such defendants may be detained or retained in custody pursuant to applicable law. See, e.g., G.S. §15A-534.3.

b) **Capital Cases.** Only a judge may determine whether a defendant charged with a capital offense may be released before trial. G.S. §15A-533(c). If the judge determines, in his or her discretion, release is warranted, the judge must determine the conditions of pretrial release pursuant to applicable law. Id.

Rule 15. Unauthorized Absence from Involuntary Commitment in Mental Health Facility (G.S. §15A-533(a)).

a) **No Right to Pretrial Release.** A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed the crime while still residing in or subsequent to his or her escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Human Resources, and whose commitment is determined to be still valid by the judicial official authorized to determine pretrial release, has no right to pretrial release. G.S. §15A-533(a).

b) **Return to Treatment Facility.** In lieu of pretrial release, the defendant shall be returned to the treatment facility in which he or she was residing at the time of the alleged crime or from which he or she escaped or absented himself or herself for continuation of treatment pending additional proceedings on the criminal offense. Id.

Rule 16. Child Support Contempt.

a) **Amount of Arrearage and Payment Record.** In addition to other appropriate factors, in determining conditions of pretrial release in child support contempt proceedings, the judicial official may consider the amount of the arrearage of such child support and the payment record of the person charged with contempt.

b) **Cash Bonds.** Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash. G.S. §15A-531(4).

Rule 17. Restrictions upon Defendants in Domestic Violence Cases (G.S. §15A-534.1).

a) **Judge.** When the defendant is charged with assault on or communicating a threat to a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B (Domestic Violence) of the General Statutes, the conditions of pretrial release must be determined by a judge. G.S. §15A-534.1(a).

b) **Retain Defendant in Custody.** Upon a determination by the judge that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and upon a further determination that the execution of an appearance bond will not reasonably assure that such injury or intimidation will not occur, a judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release, subject to the time limit below. G.S. §15A-534.1(a)(1).

c) **Conditions on Pretrial Release.** In addition for other appropriate conditions, a judge may impose the following conditions on pretrial release: (1) That the defendant stay away from the home, school, business or place of employment of the alleged victim; (2) That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim; (3) That the defendant refrain from removing, damaging or injuring specifically identified property; and (4) That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge. G.S. §15A-534.1(a)(2).

d) **Mental Illness or Substance Abuse.** Should the defendant be mentally ill and dangerous to himself or herself or others or a substance abuser and dangerous to himself or herself or others, the provisions of Article 5 of Chapter 122C of the General Statutes shall apply. G.S. §15A-534.1(a)(3).

e) **Time Limit on Retaining in Custody.** A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination as to the conditions of pretrial release being made by a judge. If a judge has not acted within 48 hours of arrest, a magistrate shall act to determine such conditions. G.S. §15A-534.1(b).

COMMENT

The North Carolina Supreme Court held in State v. Thompson, 349 N.C. 483(1998) that the purpose of the statute was not to “punish domestic-violence offenders” but rather ensure that “a judge, rather than a magistrate, consider the terms of...pretrial release.” Id. at 492. The Court concluded that an “arrestee...should receive a hearing...as soon possible following his or her arrest and no later than forty-eight hours after arrest.” (emphasis supplied) Id. at 495.

The Court held that the statute was unconstitutional as applied to the defendant where the defendant was arrested at 3:45 p.m. on a Saturday, the order of commitment did not authorize his release from jail for a bond hearing until 3:45 p.m. the following Monday, he was not brought before a judge upon the opening of a court on Monday morning, and it was clear that at least two district court judges were available. The magistrate’s order automatically detaining defendant without a hearing well into the afternoon while available judges spent several hours conducting other business violated defendant’s procedural due process rights to a timely pretrial release hearing. Id. at 502-3. The Court ordered that the charges against the defendant be dismissed.

The rule of the case is that a defendant charged with a domestic violence offense is entitled to a pretrial release hearing before a judge as soon as possible. If such a hearing is not possible or not held, then a magistrate must hold such a hearing immediately after 48 hours have elapsed. Any failure to follow the rule of the Thompson case may require the dismissal of the charges.

Rule 18. Detention of Certain Defendants Charged with Drug Trafficking (G.S. §15A-533(d)).

a) **Presumption.** Subject to rebuttal by the accused, it shall be presumed that no condition of release will reasonably assure the appearance of an accused as required and the safety of the community if a judicial official finds that the conditions specified below exist. G.S. §15A-533(d).

b) **Conditions.**

- 1) There is reasonable cause to believe that the accused committed an offense involving trafficking in a controlled substance. Id.
- 2) The drug trafficking offense was committed while the accused was on pretrial release for another offense. Id.
- 3) The accused has previously been 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 accused's release from prison for the offense, whichever is later. Id.

c) **Rebutting the Presumption.** The presumption may be rebutted and appropriate conditions of pretrial release determined for the accused only upon a finding by a district or superior court judge that there is a reasonable assurance that the accused will appear and their release does not pose an unreasonable risk of harm to the community. Id.

COMMENT

G.S. §15A-533 was amended by adding a new subsection(d) applicable to offenses committed on or after 1 January 1999. See S.L. 1998-208.

Rule 19. Restrictions upon Defendants in Sex Offenses and Crimes of Violence Against Child Victims (G.S. §15A-534.4).

a) **General.** When the defendant is charged with felonious or misdemeanor child abuse, with taking indecent liberties with a minor in violation of G.S. §14-202.1, with rape or any other sex offense in violation of Article 7A, Chapter 14 of the General Statutes, against a minor victim, with incest with a minor in violation of G.S. §14-178, with kidnapping, abduction, or felonious restraint involving a minor victim, with a violation of G.S. §14-320.1, with assault or any other crime of violence against a minor victim, or with communicating a threat against a minor victim, a judicial official may impose the following conditions on pretrial release: (1) That the defendant stay away from the home, temporary residence, school, business, or place of employment of the alleged victim; (2) That the defendant 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; and (3) That the defendant refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim. G.S. §15A-534.4.

b) **Other Conditions.** The above conditions may be imposed in addition to any other conditions that the judicial official may impose on pretrial release. Id.

Rule 20. Detention of Impaired Drivers (G.S. §15A-534.2).

a) Impaired driving must follow the procedure in Article 24 (Initial Appearance) of Chapter 15A of the General Statutes except as modified by G.S. §15A-534.2. Id.

b) **Defendant's Right to Communicate.** This rule may not be interpreted to impede a defendant's right to communicate with family, friends and counsel. Id.

c) **Detention of Defendant in Custody.** If at the time of the initial appearance the judicial official finds by clear and convincing evidence that the impairment of the defendant's physical or mental faculties presents a danger, if he or she is released, of physical injury to himself or herself or others or damage to property, the judicial official must order that the defendant be detained or held in custody and inform the defendant that he or she will be held in custody until one of the requirements of subsection (e) is met. G.S. §15A-534.2(b).

d) **Conditions of Pretrial Release.** Regardless whether the judicial official makes the determination specified in subsection(c), the judicial official must at this time determine the appropriate conditions of pretrial release. Id.

e) **Defendant Entitled to Release.** A defendant subject to detention under this statute has the right to pretrial release when the judicial official determines either that: (1) The defendant's physical and mental faculties are no longer impaired to the extent that he or she presents a danger of physical injury to himself or herself or to others or of damage to property if he or she is released; or (2) A sober responsible adult is willing and able to assume responsibility for the defendant until his or her physical and mental faculties are no longer impaired. G.S. §15A-534.2(c).

f) **Time Limit on Detention of Defendant.** The defendant may be detained under this statute for a period no longer than 24 hours. Id.

g) **Tests for Impairment.** In making the determination whether a defendant detained under this statute remains impaired, the judicial official may follow the provisions of G.S. §15A-534.2(d).

Rule 21. Detention for Communicable Diseases (G.S. §15A-534.3).

a) **Procedure.** If a judicial official conducting an initial appearance or first appearance hearing finds probable cause that an individual was exposed to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by such

defendant, the judicial official shall order the defendant to be detained for a reasonable period of time, not to exceed 24 hours, for investigation by public health officials and for testing for AID virus infection or Hepatitis B infection if required by the public health officials pursuant to G.S. §130A-144 and G.S. §130A-148. G.S. §15A-534.3.

b) **Conditions of Pretrial Release.** Regardless whether the judicial official finds such probable cause, the judicial official must at this time determine the appropriate conditions of pretrial release, subject to any order of detention entered pursuant to subsection (a) above.

Rule 22. Pretrial Release Order (G.S. §15A-534(d)).

The judicial official authorizing pretrial release must issue an appropriate order containing a statement of the conditions imposed, if any. There is no general requirement that the judicial official make any record as to why any specified conditions of pretrial release were imposed in any particular case. See State v. O’Neal, 108 N.C. App. 661(1993); see also G.S. §15A-534(b). The judicial official must also inform the defendant in writing of the penalties applicable to violations of the conditions of his or her release; and advise the defendant that his or her arrest will be ordered immediately upon any such violation. The pretrial release order must be filed with the clerk and a copy given to the defendant. G.S. §15A-534(d).

Rule 23. Justification of Secured Appearance Bonds (G. S. §15A-537(a)).

a) **Mortgage.** When an appearance bond is ordered to be secured by a mortgage the bond may be justified by the clerk. G.S. §15A-537(a).

b) **Accommodation Bondsman.** If a secured appearance bond is secured by a surety who is not an individual or a corporation licensed as a bail bondsman in Robeson County, the bond may be justified by the clerk. Id.

c) **Professional Bondsman.** If a secured appearance bond is secured by a surety who is an individual or a corporation licensed as a bail bondsman in Robeson County, then further justification is not required. G.S. §15A-531(4).

d) **Custodial Official.** In the absence of a judicial official, a law enforcement officer or custodial official having the person in custody may perform the justification required under subsections (b) and (c) above. G.S. §15A-537(a).

e) **Procedure.** Any judge or magistrate may perform the justification required for any bond under this rule; however, ordinarily judges and magistrates should defer to the clerk. For purposes of these rules, a judge or the clerk is unavailable when the courthouse is closed, or under other appropriate circumstances.

Rule 24. Persons Authorized to Effect Release (G.S. §15A-537).

a) **Authorization of Release.** Following any authorization of release of any person pursuant to these rules, any judicial official must effect the release of the person upon satisfying himself or herself that the conditions of release have been met. G.S. §15A-537(a).

b) **Custodial Official.** In the absence of a judicial official, any law enforcement officer or custodial official having the person in custody must effect the release upon satisfying himself or herself that the conditions of release have been met. Law enforcement and custodial agencies may administratively direct which officers or officials are authorized to effect such release. Id.

c) **Satisfaction of Conditions of Release.** Satisfying oneself whether conditions of release are met includes determining if sureties are sufficiently solvent to meet the bond obligation. No judicial official, law enforcement officer, or custodial official may be held civilly liable for actions taken in good faith under this rule. Id.

d) **Filing Release Documents.** Upon release of the person, the official or officer effecting release must file any bond, deposit, or mortgage and other papers pertaining to the release with the clerk. G.S. §15A-537(b).

e) **Appropriate Actions to Carry Out Duties.** For the limited purpose of this statute, any law enforcement or custodial official may administer oaths to sureties and take other actions necessary in carrying out the duties imposed by G.S. §15A-537. Any surety bond so taken is to be regarded in every respect as any other bail bond. G.S. §15A-537(c).

Rule 25. Persons Prohibited from Becoming Surety (G.S. §15A-541).

a) **General.** No sheriff, deputy sheriff, other law enforcement officer, judicial official, attorney, parole officer, probation officer, jailer, assistant jailer, employee of the General Court of Justice, other public employee assigned to duties relating to the administration of criminal justice, or spouse of any such person may in any case become surety on a bail bond for any person other than a member of his or her immediate family. G.S. §15A-541.

b) **Agent for or Interest in Bonding Enterprise.** In addition no such person may act as agent for any bonding company or professional bondsman. No such person may have any interest, directly or indirectly, in the financial affairs of any firm or corporation whose principal business is acting as bondsman. Id.

Rule 26. False Qualification by Surety (G.S. §15A-542).

No person may sign an appearance bond as surety knowing or having reason to know that he or she does not own sufficient property over and above his or her exemption allowed by law to enable him or her to pay the bond should it be ordered forfeited. G.S. §15A-542.

Rule 27. Motions to Modify or Revoke Pretrial Release Orders.

- a) **Appeal from District Court Judge to Superior Court Judge.** A defendant who objects to the conditions of pretrial 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. G.S. §15A-538(a).
- b) **Defendant.** A defendant who objects to the conditions of pretrial release may apply in writing to modify the order. The motion shall be directed to an appropriate judicial official or court having the authority to modify the order of pretrial release.
- c) **Prosecutor.** A prosecutor may at any time apply to an appropriate district court judge or superior court judge for modification or revocation of a pretrial release order. G.S. §15A-539.
- d) **Substitution of Sureties.** The power to modify an order includes the power to substitute sureties upon any bond. Substitution or addition of acceptable sureties may be made at the request of any obligor on a bond or, in the interests of justice, at the request of a prosecutor. G.S. §15A-538(b).

Rule 28. Jail Facilities.

- a) **Policy.** The taxpayers of this county are responsible for the expense of caring for prisoners, including medical expense. Once such a prisoner has been tried and found not guilty he or she is no longer a burden on the taxpayers. A defendant who is found guilty is transferred to the State Division of Prisons and the expense of caring for the inmate, including medical expense, is the responsibility of the State rather than the County of Robeson. Every bed at the jail not being used for county prisoners is available for lease to other counties, the State and the federal government with resulting benefits to local taxpayers from the revenue derived from such leasing.
- b) **Priority for Trial of Jail Cases.** It is in the public interest for the number of county prisoners confined in the jail to be kept at a minimum consistent with the policy constraints of applicable law. In preparing criminal trial calendars, the District Attorney should consider according priority to those cases where the defendant is in jail. See Rule 3, General Rules of Practice. Resident and presiding judges, in appropriate cases, should consider exercising their authority over the calling of cases for trial to ensure the observance of this policy. G.S. §7A-49.4(h); Simeon v. Hardin, 339 N.C. 358(1994).
- c) **List of Prisoners.** In order to facilitate the observance of this policy, the sheriff should prepare each week a list of prisoners confined in the county jail who have criminal charges pending in the superior and district courts of this judicial district. The list should contain the following information: (1) The name of the prisoner; (2) His or her race; (3) Sex; (4) The charges

pending; (5) The amount and type of bond; and (4) The date since the prisoner has been continuously incarcerated on the charges. The list should be distributed to each resident and presiding superior court judge, each resident and presiding district court judge, the district attorney, public defender, County Attorney and County Manager. See G.S. §7A-109.1 and G.S. §153A-225.1

d) **Motions by Sheriff.**

- 1) **General** . The Sheriff or his or her representative shall have standing to apply to any judicial official for modification of the conditions of pretrial release for any prisoner confined in the county jail on criminal charges pending in this judicial district.
- 2) **Factors to Consider**. In considering such an application, in addition to all other appropriate factors, such judicial official should consider the following factors: (1) the total number of prisoners confined in the county jail; (2) the medical condition of the prisoner; (3) any violations of jail rules and regulations by the prisoner; (4) whether the prisoner is cooperating with law enforcement in any ongoing criminal investigation; (5) whether the prisoner may be transferred to the State Department of Correction for safekeeping; (6) whether the prisoner is a habitual criminal; and (7) the interests of the general public.
- 3) **Standard**. In considering such motions, the judicial official should not automatically grant the request. The judicial official should consider all relevant circumstances in making his or her decision. If the defendant is a habitual felon such motions ordinarily should be denied. Other considerations may outweigh the expense of keeping such a defendant confined.

e) **Motions by Prisoners**. Any such prisoner may apply to any appropriate judicial official for modification of the conditions of bail. In considering such an application, in addition to all other appropriate factors, such judicial official should consider: (1) whether the prisoner has filed a motion for a speedy trial; (2) the length of time the prisoner has been incarcerated on such charges; (3) the number of times the cases of the prisoner have appeared on a trial calendar; (4) the number of defendants on pretrial release whose cases have been tried since the prisoner was incarcerated on such charges; (5) any violations of jail rules and regulations while confined; and (6) any recommendation or position of the appropriate law enforcement agency. The moving party shall make a good faith effort to obtain any such recommendation or position of such law enforcement agency and to obtain a proposed consent order from the District Attorney prior to filing any such application.

Rule 29. Revocation of Pretrial Release Orders (G.S. §15A-534(f)).

a) **General.** For good cause shown any judge may at any time revoke an order of pretrial release. G.S. §15A-534(f).

b) **New Conditions of Pretrial Release.** Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release. Id. A defendant charged with a noncapital offense is absolutely entitled to an order authorizing pretrial release, except as otherwise provided for certain defendants charged with drug trafficking. See G.S. §15A-533(d) and Local Rule 18.

COMMENT

Under G.S. §15A-534(f) a district court judge may revoke pretrial release orders of superior court judges whether the case is then pending in superior or district court. Likewise, a superior court judge may revoke such orders of district court judges whether the case is then pending in district or superior court.

...Because of the need on occasion to act swiftly to revoke conditions of release which may not be adequate to keep a defendant from fleeing prior to trial, subsection (f) allows revocation by any judge at any time. Presumably a district court judge would not revoke an order of release of a superior court judge without excellent cause. Official Commentary, G.S. §15A-534(f).

Rule 30. Bail Bond Binding (G.S. §15A-534(h)).

A bail bond duly posted is effective and binding upon the defendant and surety throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. G.S. §15A-534(h).

Rule 31. Termination of Obligation on Bond (G.S. §15A-534(h)).

The obligation of an surety is terminated whenever : (1) A judge authorized to do so releases the defendant or surety from his or her bond; (2) The defendant is surrendered by a surety pursuant to G.S. §15A-540; (3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered; or (4) Prayer for judgment has been continued indefinitely in the district court. Id.

Rule 32. Surrender of Defendant by Surety (G.S. §15A-540).

a) **Surrender Before Breach of Conditions.** At any time before there has been a breach in the conditions of pretrial release the surety may surrender the defendant to the official to whose custody the defendant was committed at the time bail was taken, or the official into whose custody the defendant would have been given had he/she been committed. Upon application by the surety after such surrender, the clerk must exonerate the surety from the bond. G.S. §15A-540(a); G.S. §58-71-20.

b) **Surrender After Breach of Conditions.** After there has been a breach in the conditions of pretrial release the surety may surrender the defendant to the sheriff of the county in which the defendant is bonded to appear or to the sheriff where the defendant was bonded. Alternatively, a surety may surrender a defendant who is in the custody of a sheriff by appearing in person and so informing the sheriff. G.S. §15A-540(b).

c) **Pretrial Release Hearing After Surrender.** A defendant so surrendered by a surety is entitled to a hearing without necessary delay on whether they are again entitled to release and, if so, upon what conditions. G.S. §15A-540(c).

Rule 33. Release After Conviction in Superior Court (G.S. §15A-536).

a) **General.** A defendant whose guilt has been established in superior court and is either awaiting sentence or has filed an appeal from the judgment entered may be released upon conditions determined pursuant to applicable law. G.S. §15A-536(a).

b) **Discretionary.** After conviction, post-trial release is discretionary and may only be authorized by a superior court judge. State v. Sparks, 297 N.C. 314,335(1979); G.S. §15A-534(e).

c) **Conditions of Post-Trial Release.** If the judge approves post-trial release of the defendant the judge must impose the conditions authorized for pretrial release which will (1) reasonably assure the presence of the defendant when required; and (2) provide adequate protection to persons and the community. G.S. §15A-536(b). If no single condition gives such assurance and such protection, the judge may also impose any or all of the following conditions: (1) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant; and (2) Place restrictions on the travel, associations, conduct, or place of abode of the defendant. Id.

d) **Factors to Consider.** In determining what conditions of post-trial release to impose, the judge must, on the basis of available information, consider the same factors considered in determining conditions of pretrial release. G.S. §15A-536(c).

e) **Order.** The judge authorizing post-trial release of a defendant must issue an appropriate order containing a statement of the conditions imposed, if any. The judge must also inform the defendant in writing of the penalties applicable to violations of the conditions of his or her release; and advise the defendant that his or her arrest will be ordered immediately upon any such violation. The post-trial release order must be filed with the clerk and a copy given to the defendant. G.S.§15A-536(d).

f) **Modification or Revocation of Order.** A post-trial release order may only be modified or revoked at any time by the judge who entered the order unless that judge is absent from this judicial district. If such judge is so absent, then any other superior court judge residing or presiding in this judicial district may modify or revoke such an order. G.S.§15A-536(e).

g) **Immediate Hearing After Revocation.** If a defendant is placed in custody as a result of a revocation or modification of an order of post-trial release, the defendant is entitled to an immediate hearing on whether he or she is again entitled to release and, if so, upon what conditions. Id.

COMMENT

This section parallels §15A-534, except that after conviction in superior court release is discretionary with the judge....This section would authorize bail to be set or denied in a judge's discretion in all cases-including capital cases.

It should be noted that §15A-534(h) continues the original bail bond in force until final judgment in superior court unless the judge sooner releases the obligor. Presumably, in a case in which there would be a delay between the verdict or plea of guilty and the sentencing, and the judge determined that the risk of flight had materially increased, the judge would terminate the original conditions of pretrial release and allow release, if at all, under this section. Official Commentary, G.S.§15A-536.

Rule 34. Rules of Evidence.

In imposing conditions of pretrial or post-trial release and in modifying and revoking such orders, the judicial official must take into account all evidence available to him or her which the judicial official considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials. G.S. §15A-534(g); G.S. §15A-536(f).

Rule 35. Penalties for Failure to Appear (G.S. §15A-543).

a) **General.** Any person released pursuant to an order of pretrial release who willfully fails to appear before any court or judicial official as required is subject to the criminal penalties set out below. G.S.§15A-543(a).

b) **Felony.** A violation is a Class I felony if: (1) The violation was released in connection with a felony charge against him or her; or (2) The violator was released after conviction in superior court. G.S.§15A-543(b).

c) **Misdemeanor.** Except as provided in subsection (b) above, if a violator was released in connection with a misdemeanor charge against him or her, a violation is a Class 2 misdemeanor. G.S.§15A-543(c).

Rule 36. Professional Bondsmen.

a) **Regulation by the Commissioner of Insurance.** Professional bondsmen are regulated by the Commissioner of Insurance. See Article 71 of Chapter 58 of the General Statutes.

b) **Regulation by the Court.** A court has inherent authority to regulate the conduct of professional bondsmen in that court. See In Re Johnson, 26 N.C. App. 745(1975), cert denied 288 N.C. 241.

- 1) **Solicitation.** No bail bondsman or runner shall solicit business in any of the Courts or on the premises of any of the Courts of this State, in the office of any magistrate and in or about any place where prisoners are confined. Loitering in or about a magistrate's office or any place where prisoners are confined shall be prima facie evidence of soliciting.

No bail bondsman or runner shall advertise by blazer, logo on briefcases, or in any other manner whatsoever, in violation of G.S.§85C-20, since such markings or special dress and use of logos constitute soliciting business.

- 2) **Magistrates.** No magistrate shall in any way or manner recommend the services of a particular bondsman to a defendant, or permit any bondsman or any agent or employee of a bondsman to loiter in and about his office. If a defendant indicates that he wishes to secure the services of a professional bondsman, the magistrate shall provide him or her with the names and telephone numbers of those persons, firms or corporations licensed to conduct a bail bonding business in Robeson County, and permit the defendant to call such of them as he or she may desire.

Rule 37. Bail Bond Forfeiture.

The procedure for dealing with bail bond forfeitures shall be as provided in G.S. §15A-544.1 et seq.

Rule 38. Enforcement.

a) **Judicial Officials.** These rules constitute an order of the court duly adopted pursuant to applicable law. They are binding upon and must be observed and enforced by all judicial officials exercising their official duties in this judicial district. Rule 22, General Rules of Practice for the Superior and District Courts.

b) **Contempt.** These rules may be enforced through the contempt powers of the court. See G.S. §5A-11(a)(3); G.S. §5A-21(a); see also G.S. §15A-546.

c) **Visiting Judges.** In order to insure uniformity in this judicial district, all visiting judges shall observe and enforce these local rules. Each such visiting superior court judge shall be provided with a copy of these rules by the Superior Court Judicial Assistant or Trial Court Coordinator at or before the commencement of the judge's assignment. Each such visiting district court judge shall be provided with a copy of these rules by the District Court Judicial Assistant or Trial Court Coordinator at or before the commencement of the judge's assignment. Rule 22, General Rules of Practice.

Rule 39. Approved Forms.

a) **General.** The forms attached hereto are approved for use in this judicial district. The approved forms, or an equivalent, should be used by all persons dealing with matters covered by these rules.

- b) **Forms.**
- 1) Order Recalling Arrest Order/Striking Forfeiture.

Rule 40. Effective Date.

These rules shall be effective on 1 July 2001.