

STATE OF NORTH CAROLINA  
SECOND JUDICIAL DISTRICT  
BEAUFORT, MARTIN, HYDE  
TYRRELL AND WASHINGTON  
COUNTIES

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

IN THE MATTER OF PROMULGATING  
LOCAL RULES RELATING TO BAIL  
AND PRETRIAL RELEASE FOR THE  
SECOND JUDICIAL DISTRICT

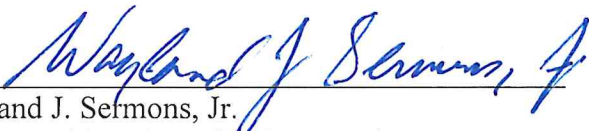
**ORDER  
BAIL AND PRETRIAL  
RELEASE POLICY**


Pursuant to the authority granted by Article 26 of Chapter 15A of the North Carolina General Statutes, and specifically the requirement in said Article that the Senior Resident Superior Court Judge issue recommended policies on bail, and the specified, implied and inherent powers of our respective offices, the undersigned, acting separately and collectively, do hereby approve and enter this order.

IT IS NOW, THEREFORE, ORDERED THAT:

1. The "Bail and Pretrial Release Policy for the Second Judicial District" attached hereto, and incorporated herein by reference, is hereby adopted in compliance with G.S. 15A-535;
2. These policies supersede all prior such policies and shall be effective January 1, 2020.
3. The Clerk shall serve copies of this Order and this Policy upon each judge, magistrate, sheriff and each chief of police in the judicial district.

ENTERED in our respective chambers on this the 13<sup>th</sup> day of December, 2019.

  
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Wayland J. Sefmons, Jr.  
Senior Resident Superior Court Judge  
Second Judicial District

  
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Regina R. Parker  
Chief District Court Judge  
Second Judicial District

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STATE OF NORTH CAROLINA  
SECOND JUDICIAL DISTRICT  
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IN THE GENERAL COURT OF JUSTICE  
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SECOND JUDICIAL DISTRICT

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### **BAIL AND PRETRIAL RELEASE POLICY FOR THE SECOND DISTRICT**

1. **Name.** This policy shall be officially known as the “Bail and Pretrial Release Policy for the Second Judicial District”.
2. **Authority.** G.S. 15A-535 provides: “Subject to the provisions of this Article [26], the Senior Resident Superior Court Judge of each judicial district in consultation with the Chief District Court Judge must advise and issue recommended policies to be followed within the district in determining whether, and upon what conditions, a defendant may be released before trial.” (emphases added)
3. **Purpose.** The purpose of this policy is to provide recommendations and guidance for the implementation of Article 26, which is not amended, abrogated, or repealed by this policy. Certain sections of Article 26 are explained in this policy, and they may be set forth herein almost verbatim, with re-arrangement to facilitate better understanding. But in all cases the pertinent statute controls over any content of this policy. This policy requires the use of the flowchart contained herein when setting conditions of pretrial release, and also supports the increased use of citation in lieu of arrest by law enforcement officers when in their discretion a citation protects the public safety and promotes the interests of justice.
4. **Scope.** This policy shall apply in all criminal actions or proceedings in the Second Judicial District and is recommended to be followed by all judicial officials and all other persons dealing with bail bonds and pretrial release of criminal defendants in this Judicial District (referred to sometimes herein as “District”).
5. **Definitions.** The definitions set forth in G.S. 15A-531 shall apply in this policy. Additional terms are defined as follows:
  - (a) Capital Offense. A criminal offense for which the death penalty is an authorized form of punishment. Such an offense is “capital” regardless of whether the District Attorney is seeking the death penalty in the particular case.
  - (b) Cash. Cash money, cashier’s check, certified check, or money order.
  - (c) Clerk. The clerk of superior court, acting clerk, or assistant or deputy clerk in the county where the defendant is detained. G. S. 15A-101(2).

- (d) Court. Court shall mean the judicial official setting conditions of pretrial release which shall include Clerks, Magistrates, District Court and Superior Court Judges.
- (e) Judicial Official. A magistrate, clerk, district court judge and superior court judge.
- (f) NC IDS. North Carolina Office of Indigent Defense Services.
- (g) Obligor. A principal or a surety on a bail bond.
- (h) Post-trial Release. Release after guilt is established in superior court.
- (i) Pretrial Release. Release prior to guilt being established in superior court. This may be referred to interchangeably as “bail” or “bond”.
- (j) Principal. A defendant obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.
- (k) Victim. A person against whom there is probable cause to believe one of the crimes has been committed as listed in 15A-830(a)(7), (a), (b), (c), (d), (e), (f), and (g).
- (l) “He”, “his”, etc. For ease of reading, natural persons will be referred to herein in the male gender, but such references shall be construed in all instances to apply equally to females.

6. **Background on the purpose of pretrial release.** The purpose of this bond policy is to ensure no defendant is held in custody prior to trial solely because the defendant cannot afford to post bail, to ensure fairness and the elimination of unjustifiable delay in the administration of justice, to facilitate the just determination of every criminal proceeding, and to preserve the public welfare and secure the rights of individuals with interests in criminal court cases. In general, the purpose of pretrial release is to impose the least restrictive conditions that will reasonably assure a defendant’s appearance in court and community safety. The right to pretrial release recognizes the presumption of innocence and promotes a defendant’s right to a fair trial, by allowing access to counsel, freedom of movement to secure witnesses, and the general ability to prepare a defense. It is recognized that any release on bail will create the risks that the accused will flee, commit another crime while out on bail, destroy evidence, or intimidate witnesses against him. These are calculated and accepted risks that must be taken as the price of our system of justice. Bail in an amount higher than an amount reasonably calculated to minimize these risks is “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.

7. **Early Involvement of Counsel for the Second Judicial District.**

Pursuant to the standing order, as set forth in paragraph 28 herein, the District and Superior Court will involve counsel at the first appearance and first detention bond hearing (if any) for defendants in custody charged with misdemeanors. The terms, conditions, and procedures are established in the standing order.

8. **Opportunity to observe defendant; Video appearances. 15A-532.**

- (a) The determination of bail and conditions of pretrial release should be made by a judicial official with a clear opportunity to witness the defendant in person and gather information about the defendant.
- (b) Conditions of pretrial release may be made, modified, or revoked in a noncapital case by an audio and video transmission between the judicial official and the

defendant in which the parties can see and hear each other. The following rules apply to such video communications:

1. If the defendant has counsel, the defendant shall be allowed to communicate fully and confidentially with his attorney during the proceeding.
2. Upon motion of the defendant, the court may not use an audio and video transmission.
3. Prior to the use of audio and video transmission under this section, the procedures and type of equipment for audio and video transmission shall be submitted for approval to the Administrative Office of the Courts by the senior resident superior court judge.
4. If the defendant has not moved to require an in-person proceeding, the defendant shall be subject to the law of contempt in a video proceeding the same as if the proceeding were in person.

9. **Forms of Pretrial Release.** G.S. 15A-534(a) authorizes the following forms of pretrial release:

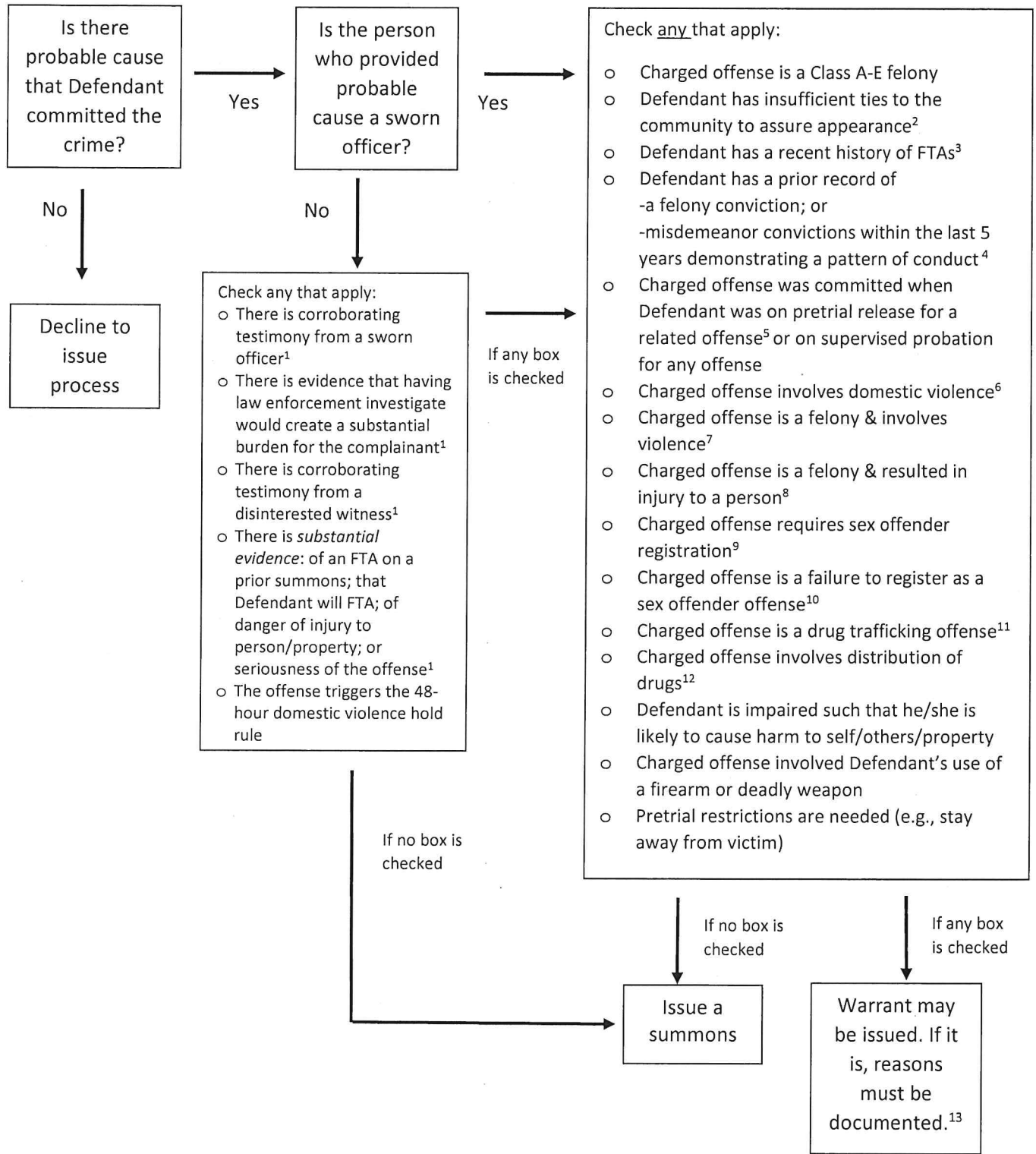
- (a) Written Promise to Appear. The defendant is released upon his execution of a written promise to appear in court as necessary.
- (b) Unsecured Appearance Bond. The Appearance Bond is executed solely by the defendant. No surety or security is required to secure the Appearance Bond.
- (c) Supervised Release. The defendant is placed into the custody of a designated person or organization agreeing to supervise him. Note that the defendant has the right to choose a secured Appearance Bond in lieu of supervised release.
- (d) Secured Appearance Bond. The Appearance Bond is secured by a cash deposit of the full amount of the Appearance Bond, a mortgage pursuant to G.S. 58-74-5, or at least one solvent surety.
- (e) House Arrest with Electronic Monitoring. This requires a secured appearance bond.

10. **Choosing the Form of Pretrial Release. G.S. 15A-534(b).**

- (a) Unless subsection (b) applies or North Carolina General Statutes or this Policy require otherwise, the judicial official in granting pretrial release must either:
  1. release the defendant on his written promise to appear;
  2. release the defendant upon his 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 (subject to the right of the defendant to elect a secured appearance bond instead).
- (b) Unless the North Carolina General Statutes or this Policy require otherwise, the judicial official must grant a release under section (a) (no secured bond required) unless the judicial official determines the existence of one of the following:
  1. That the conditions under section (a) will not reasonably assure the presence of the defendant as required;
  2. That the release of defendant under section (a) will pose a danger of injury to any person; or

3. That the release of defendant under section (a) will likely result in the destruction of evidence, subornation of perjury, or intimidation of witnesses.
- (c) Except where the North Carolina General Statutes or this Policy require otherwise, when determining conditions of pretrial release judicial officials shall consider the factors specified in Section 12 below and shall use the decision making flowchart provided in Appendix A to this Policy. Although a judicial official may deviate from the recommendations in that flowchart, reasons for the deviations must be documented in writing.
  - (d) If it is determined, in a proceeding under Article 5 of Chapter 122C of the General Statutes, that the defendant is mentally ill and dangerous to himself or others or a substance abuser and dangerous to himself or others, a judge should be the judicial official who issues an unsecured bond, or modifies a secured bond to be unsecured, on the belief that involuntary commitment of the defendant will reasonably assure defendant's presence and protect the public from the defendant, as it is possible that the defendant could be committed, and then be released by the mental health system, in which event the defendant would be at large under an unsecured Appearance Bond. The determination of conditions of release is a completely different and independent determination from the findings that would mandate confinement under the provisions of Article 5 of Chapter 122C.
  - (e) If a judicial official determines the existence of one or more of the dangers set forth in section (b), then the judicial official may impose an appearance bond, in a specified amount, which shall be secured by a cash deposit of the full amount of the Appearance Bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety and may include an additional condition of electronic house arrest. In imposing a secured bond, the judicial official shall consult the maximum bond tables provided in Appendix A.

**Figure 1: Decision-Making Framework for Magistrates: Summons Versus Warrant**





<sup>1</sup> G.S. 15A-304(b)(3) (effective October 1, 2018, as enacted by S.L. 2018-40).

<sup>2</sup> The mere fact that the Defendant is homeless and does not have a home address does not warrant checking this box; inquiry should be focused on the Defendant's connections to the community.

<sup>3</sup> FTAs within the last 2 years are most relevant.

<sup>4</sup> The pattern of conduct must relate to the present offense. For example: The current charge involves drug possession and the Defendant has 3 priors within the last 5 years for misdemeanor drug or drug paraphernalia possession.

<sup>5</sup> This factor covers situations where the Defendant continues to engage in the same type of conduct (e.g., repeat larceny) or an escalating course of conduct (e.g., the defendant is charged with injury to real property while the defendant was on pretrial release for communicating threats to the property owner).

<sup>6</sup> An offense involves domestic violence when the relationship between the parties is one of the following:

- Current or former spouses
- Currently or formerly lived together as if married
- Currently or formerly in a dating relationship
- Have a child in common
- Parent (or one in parental role)/child
- Grandparent/grandchild
- Current or former members of the same household

Note: this list is drawn from G.S. 15A-534.1, the 48-hour domestic violence hold statute.

<sup>7</sup> For example, robbery.

<sup>8</sup> This factor applies when the offense involved harm to a person (e.g., assaultive conduct). It does not apply to offenses in which property is taken or harmed (e.g., larceny, embezzlement, obtaining property by false pretenses, etc.).

<sup>9</sup> For a list of offenses requiring sex offender registration, see JAMIE MARKHAM & SHEA DENNING, NORTH CAROLINA SENTENCING HANDBOOK 2017-18 (UNC School of Government, forthcoming 2018).

<sup>10</sup> See G.S. 14-208.11(a); JESSICA SMITH, NORTH CAROLINA CRIMES: A GUIDEBOOK ON THE ELEMENTS OF CRIME 268 (7<sup>th</sup> Ed. 2012) (discussing this offense).

<sup>11</sup> See G.S. 90-95(h); NORTH CAROLINA CRIMES *supra* note 9, at 721-739 (discussing trafficking offenses).

<sup>12</sup> For example, sale and delivery of a controlled substance and possession with intent to manufacture, sell or deliver.

<sup>13</sup> If the charged offense is a Class A-E felony, the default is to issue a warrant.

11. **Factors that must be considered in every case.** N.C. Gen. Stat. §15a-534(c). 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:

- (a) the nature and circumstances of the offense charged;
- (b) the weight of the evidence against the defendant;
- (c) the defendant's family ties in the county. (Ordinarily, and especially in cases where extradition back to North Carolina is not a possibility, a person who is not a resident of the State of North Carolina or lives in another State should only be released upon a secured or cash appearance bond.)
- (d) the defendant's employment status and history;
- (e) the defendant's financial resources, including ownership of real property;
- (f) the defendant's character and reputation;
- (g) the defendant's mental condition;
- (h) whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision (see paragraph 34 below for special provisions related to impaired drivers);
- (i) the length of defendant's residence in the community;
- (j) the defendant's record of prior convictions, and whether the defendant's prior record level would allow for (or require) a substantial active sentence;
- (k) whether the defendant is on probation for a prior offense; if so, the judicial official must:

1. Determine whether the defendant poses a danger to the public. If the judicial official does not have sufficient information to make this determination, he must follow the following procedure:

(A) Retain the defendant until this subsection can be completely followed;

(B) Set forth in writing:

- i. that the defendant is being held for this determination;
- ii. the basis for the determination that additional information is needed;
- iii. the nature of the additional information needed;
- iv. a date, within 96 hours of the time of arrest, when the defendant will be brought before a judge for a first appearance;
- v. that if the additional information is acquired before the 96-hour appearance, the first available judicial official will set conditions of release.

(C) File the written determination with the Clerk.

(l) the defendant's history to avoid prosecution or failure to appear at court proceedings, and in this connection the judicial official must consider the following:

1. The conditions of pretrial release must be at least as great as were in the order for arrest for the defendant's most recent failure to appear;

2. If the order for arrest did not set forth conditions, then there must be a secured Appearance Bond in an amount at least double the amount of the

most recent previous bond for the charges, or if no Appearance Bond was set, then at least \$1000 secured; and

3. Restrictions on travel, associations, conduct, or place of abode.
- (m) Whether the defendant is on pretrial release for another charge, in which event, the Appearance Bond may be secured and in the amount of at least double the amount of the most recent previous Appearance Bond, or if none, then at least \$1000 secured. Care should be taken to determine what bond is the appropriate “most recent” previous Appearance Bond.
  - (n) Violations of Conditions of Release. When a Defendant is arrested pursuant to G.S. 15A-401(b)(1) or (2) for a violation of a condition of pretrial release, the Magistrate at Initial Appearance shall set new conditions of release as follows: (1) In a case where the violated Appearance Bond was a written promise, a new secured Appearance Bond in an amount of at least \$1000.00; (2) In a case where the violated Appearance Bond was an unsecured bond, a new secured Appearance Bond of at least the same amount as the unsecured Appearance Bond, and; (3) In a case where the violated Appearance Bond was a secured Appearance Bond, a new secured Appearance Bond of at least double the amount of the original secured Appearance Bond. In all cases, any other conditions of release shall be restated in the new release order.
  - (o) Any other evidence relevant to the issue of pretrial release.

**12. Further Conditions of Release.** In addition to an Appearance Bond, a judicial official should consider imposition of the following conditions in appropriate cases, and based upon the individualized circumstances of the defendant and the crime for which he is charged:

- (a) The provision by the defendant of fingerprints or DNA sample under G.S. 15A-534(a).
- (b) Restrictions on the defendant’s travel;
- (c) Restrictions on the persons or types of persons with whom the defendant may associate;
- (d) Restrictions on the defendant’s conduct, such as committing other crimes or possession of non-prescribed controlled substances or weapons;
- (e) Restriction on where the defendant may live;
- (f) Restriction on contact with victims and potential witnesses;
- (g) Requirement that the defendant refrain from the use of alcohol and submit to a continuous alcohol monitoring system (with violation to be reported by the provider directly to the district attorney).

**13. Form of Release.** The judicial official must issue an order using AOC-CR-200 or AOC-CR-242. The defendant must be given a copy of the release order and must be advised that his arrest will be ordered immediately upon any violation of the order. The release order must be filed with the Clerk.

**14. Summons in Lieu of Arrest.**

When determining whether to issue a summons or warrant for arrest, the magistrate shall give effect to the statutory preference of the issuance of a summons over a warrant for arrest pursuant to N.C. Gen. Stat. §15A-304 by applying the decision making framework shown in Figure 1 below.

**15. Unauthorized Absence from Involuntary Commitment in Mental Health Facility.**

**G.S. 15A-533(a).** 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 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. In lieu of pretrial release, the defendant shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of treatment pending additional proceedings on the criminal offense. No other conditions of pretrial release are to be imposed at that time.

**16. Authority to Determine and Modify Conditions of Pretrial Release.**

- (a) Magistrate. For non-capital felonies and misdemeanors, the initial responsibility for determining the conditions of pretrial release rests with a magistrate. A magistrate cannot authorize the release of a defendant charged with a capital offense. G.S. 15A-533(c).
- (b) Clerk of Superior Court. A clerk can determine conditions of pretrial release for misdemeanors and non-capital felonies.
- (c) Modification by Magistrate or Clerk. A magistrate or clerk may modify his 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 a superior court judge, a district court judge may modify a pretrial release order of a magistrate or the clerk, or himself. A district court judge may modify a pretrial release order entered by a judicial official other than a superior court 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). For good cause shown, any judge may at any time revoke an order of pretrial release and the defendant may then apply for new conditions to be set.
- (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, and at any time prior to the guilt of the defendant being established in superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, district court judge, himself, or another superior court judge. G.S. 15A-534(e). For good cause shown, a superior court judge may at any

time revoke an order of pretrial release and the defendant may then apply for new conditions to be set.

- (f) Motions. Motions to modify conditions of release must be in writing and may be made by a defendant or the district attorney.
- (g) Substitution of Sureties. The power to modify an order includes the power to substitute sureties upon any Appearance Bond. Substitution or addition of acceptable sureties may be made at the request of any obligor on an Appearance Bond or, in the interests of justice, at the request of a prosecutor. G.S. 15A-538(b).

**17. Pretrial Release in Capital Cases. G.S. 15A-533(b).**

- (a) Only a judge may determine whether a defendant charged with a capital offense may be released before trial.
- (b) If a judge determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

**18. Bond Amounts**

**a.) Maximum Secured Appearance Bond.**

The circumstances of each individual case will govern the decision of a judicial official in setting bond amounts. A rigid bail schedule is incompatible with such an individualized decision. Decisions of pretrial release shall consider all individualized factors and considerations in determining the applicable statutory factors in each case and shall consider the defendant's ability to pay, as detailed below. In setting secured bonds judicial officials should abide by the Maximum Bond Tables set out in Appendix A to this Policy. If the judicial official sets a secured bond in excess of the maximum amount recommended by those tables, the reasons for doing so must be documented in writing. When setting bail, there shall be a presumption that any conditions of release imposed shall be non-monetary in nature, and the court shall impose the least restrictive conditions or combination of conditions necessary to reasonably assure the appearance of the defendant for further court proceedings, except where statute requires otherwise.<sup>1</sup> Said conditions shall include conditions reasonably necessary to protect safety and ensure that the defendant appears in court as required. The court shall consider the defendant's social and economic circumstances when setting conditions of release.

Except as provided by the NC General Statutes or by this Policy, there shall be a presumption that <b>ALL</b> defendants shall be released on written promise, custody release, or, unsecured bond.
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**b.) Ability to Pay**

Prior to setting or modifying a condition of release that includes monetary bail, the court shall conduct an inquiry into the defendant's ability to pay monetary bail. Such inquiry shall allow the prosecutor, defense counsel, and the defendant the opportunity to provide the court with information pertinent to the defendant's ability to pay monetary bail. This information may be provided by proffer and may include statements by the defendant's relatives or other persons who are present at the hearing and have information about the defendant's ability to pay monetary bail. All

<sup>1</sup> N.C. Gen. Stat. §15A-534(d1) (Where the requirement for doubling a bond is required for a FTA).

information shall be admissible if it is relevant and reliable, regardless of whether it would be admissible under the rules of evidence applicable at criminal trials.

**c.) Findings required for monetary conditions of release**

When the court determines as required by law<sup>2</sup> that a written promise, unsecured Appearance Bond, or custody release is not appropriate, and that monetary bail is a necessary condition of release, the court shall in substance, make the following findings and state them orally, together with sufficient supporting facts, on the record in open court:

- (1) No other conditions of release except monetary bail, including a written promise to appear, unsecured Appearance Bond, or custody release, will:
  - a. Reasonably assure the defendant's appearance in court;
  - b. The defendant poses a danger of injury to any person;
  - c. Release of the defendant is likely to result in destruction of evidence;
  - d. Release of the defendant is likely to result in subornation of perjury; or
  - e. Release of the defendant is likely to result in the intimidation of witnesses;
- (2) The amount of bail is not oppressive, in consideration of the financial ability of the defendant.
- (3) The defendant will comply with the other conditions of release.

**\*\*This policy does not require the court to reduce these findings to writing. Written findings are however required when the judicial official deviates from the recommendations in Appendix A\*\***

The procedures required above are not required when the court imposes non-monetary conditions of release.

If the court is presented with insufficient information to make a finding regarding the defendant's ability to pay the ordered amount, it shall so state on the record in open court.

Nothing in this order shall limit a court's authority to revoke bail, in accordance with present law, where the defendant has violated conditions of his or her release on bail.

19. **Fugitive warrants.** On a fugitive warrant, set a secured Appearance Bond at the top of the range for the underlying offense.

20. **Other warrants.** On a Governor's warrant and a parole warrant, NO BOND is authorized. When a Governor's warrant is received, the fugitive should be rearrested if they are out on bond and issued a new release order with No Bond. If the fugitive is still in the detention center, they should be brought in front of the magistrate on duty and issued a new release order with No Bond. In both cases, the magistrate should set the fugitive a new court date on the next district court session.

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<sup>2</sup> N.C. Gen. Stat. §15A-534(b).

	<b>REQUIRED BAIL</b>
Governor's Warrant	NO BOND
Parole Warrant	NO BOND
Pre-signed Waiver of Extradition	NO BOND
Transferred under Interstate Compact	NO BOND

**21. Probation Violations.**

(a) Except where the General Statutes require otherwise (see, e.g., N.C. Gen. Stat. §15A-1345(b1)), when determining conditions of bond for a defendant who has been arrested for a probation violation, the judicial official shall, in addition to the Suggested Bail Amounts contained hereinafter, consider all factors promulgated in Appendix A and also consider any relevant information provided by the probation officer.

(b) Suggested Bail Amounts.

<b>CLASS</b>	<b>SUGGESTED BAIL AMOUNTS (NON-ABSCONDER)</b>
Felony	Minimum \$ 2,500 unsecured
Misdemeanor	Minimum \$ 500 unsecured

<b>CLASS</b>	<b>SUGGESTED BAIL AMOUNTS (ABSONDER)</b>
Felony	Minimum \$ 5,000 secured
Misdemeanor	Minimum \$ 1,000 secured

- (c) Seven Day Hearings for Misdemeanor Probation Violations. Pursuant to N.C. Gen. Stat. §15A-1345(c) those defendants arrested and alleged to have violated their probation requirements shall be entitled to a hearing before a judge no later than seven (7) days after they are arrested and served with the violation report, unless waived by the defendant or the violation hearing has been held. The seven-day hearing shall be heard at a time and in a manner as deemed appropriate by the presiding judge in the county in which the defendant is held.
- (d) First Appearance for Superior Court violations shall follow the procedures in the Second Judicial District Policy on First Appearances before the Clerk, attached hereto as Appendix D.

22. **Rebuttable presumptions.** A defendant subject to the rebuttable presumptions in the following sections may only be released by a District or Superior Court Judge upon a finding that there is reasonable assurance that the person will appear, and release does not pose an unreasonable risk of harm to the community.

- (a) Drug Trafficking. G.S. 15A-533(d). It shall be rebuttably presumed that no conditions of release will reasonably assure the appearance of the defendant and the safety of the community if a judicial finds all three of the following:
  - 1. There is reasonable cause to believe that the defendant committed an offense involving trafficking in a controlled substance; and
  - 2. The drug trafficking offense was committed while the defendant was on pretrial release for another offense; and
  - 3. The defendant has been previously convicted of a Class A, B, C, D, or E Felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of the defendant's conviction or release from prison for the offense, whichever is later.
- (b) Street Gangs. G.S. 15A-533(e). It shall be rebuttably presumed that no condition of release will reasonably assure the appearance of the defendant as required and the safety of the community, if a judicial official finds the following:
  - 1. There is reasonable cause to believe that the defendant 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; and
  - 2. The offense described in the previous paragraph was committed while the defendant was on pretrial release for another offense; and
  - 3. The person has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has elapsed since the date of defendant's conviction or release for the offense, whichever is later.
- (c) Firearms. G.S. 15A-533(f). It shall be rebuttably presumed that no condition of release will reasonably assure the appearance of the defendant as required and the safety of the community, if a judicial official find there is reasonable cause to believe that the defendant committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm and the judicial official also finds either of the following:
  - 1. The offense was committed while the defendant was on pretrial release for another felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; or
  - 2. The defendant has previously been convicted of a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm and not more than five years have elapsed since the date of defendant's conviction or release for the offense, whichever is later.
- (d) Methamphetamine Manufacture. N.C. Gen. Stat. § 15A-534.6 In all cases in which the defendant is charged with any violation of G.S. 90-95(b)(1a) or G.S. 90-95(d1)(2)(b), in determining Appearance Bond and other conditions of release, the magistrate, judge, or court shall consider any evidence that the defendant is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of



methamphetamine. A rebuttable presumption that no conditions of release on Appearance Bond would assure the safety of the community or any person therein shall arise if the State shows by clear and convincing evidence both:

1. The defendant was arrested for a violation of G.S. 90-95(b)(1a) or G.S. 90-95(d1)(2)(b), relating to the manufacture of methamphetamine or possession of an immediate precursor chemical with knowledge or reasonable cause to know that the chemical will be used to manufacture methamphetamine; and
2. The defendant is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine, and the violation referred to in subdivision (1) of this section was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner.

**23. Habitual Felons.**

- (a) For a defendant who is being indicted as a habitual felon the charge level of the offense, for purposes of applying Appendix A, is the “habitualized” charge level of the underlying felony charge.
- (b) The secured bond shall not be set in the indictment or warrant for arrest alleging the status of habitual felon has been attained; a secured bond only may be set on the “habitualized” underlying offense.
- (c) The better practice adopted in the Second District shall not authorize the setting of separate conditions of release in an Appearance Bond in the indictment in which the habitual offender is charged. Release conditions should not be set in a habitual felon indictment since being a habitual offender is a status and not a crime and generally release conditions may only set only in connection with a new a criminal offense pursuant to N.C. Gen. Stat. §§533, 534. The State shall arrange for the bond to be modified in the underlying, predicate felon upon which the habitual felon offense is based.

**24. Prison Inmates:** The setting of conditions of pretrial release for a defendant while serving an active sentence upon a commitment issued by District or Superior Court Division is not authorized. A release order should be entered by the judicial official specifying that the defendant is presently in lawful custody and denying conditions of pretrial release for such reason. The release order shall require the defendant to be brought before a judicial official upon the completion of their present active sentence for the purpose of setting pretrial release conditions.

**25. Stacking or Splitting Appearance Bonds Prohibited.** “Stacking” or “splitting” of any form of an Appearance Bond, is prohibited, unless pursuant to prior approval of the Senior Resident Superior Court Judge or his designee. Any surety, including an accommodation bondsman, is liable for the full amount of the Appearance Bond. If multiple sureties sign, each is jointly and severally liable for the entire amount of the Appearance Bond.

26. **Cash Appearance Bonds.** When a defendant fails to appear and fails to comply with a judgment (show cause), a cash Appearance Bond should be set in the amount the defendant owes to satisfy the judgment. If it is not already referenced on the OFA then it can be found on ACIS by using the CR number, if the case is a criminal case. This practice will allow the court to collect the outstanding fines in a more expedient manner. Do not set a secured Appearance Bond on these types of OFAs. Only cash will satisfy this condition, not a bondsman with insurance power-of-attorney, or another individual using real property. This applies to any orders for arrest where the cash Appearance Bond amount is pre-set.
27. **Child Support Contempt.**
- (a) In addition to the other factors listed hereinabove, 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 Appearance 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).
  - (c) Once a presiding District Court Judge sets cash Appearance Bonds in child support contempt proceedings, these shall not be modified by a magistrate.
28. **First Appearance for Defendants Detained on Secured Appearance Bonds for Misdemeanor Offenses.** A standing order shall be entered establishing the procedures for first appearances for defendants held on misdemeanors pretrial consistent with the requirements contained within this Bond Policy. A copy of the Standing Order is attached as Appendix C.
29. **Detention Bond Hearing.** In cases where the defendant is intentionally detained pretrial through an unattainably high secured bond, the court must, on its own motion or on motion by a party, hold a prompt Detention Bond Hearing affording the defendant appropriate procedural protection as approved by the United States Supreme Court in *United States v. Salerno*, 481 U.S. 739 (1987). At the hearing, the defendant has the right to counsel, to testify, to present evidence and to cross-examine witnesses. In order to continue the Detention Bond, the State must demonstrate probable cause to believe that the defendant committed the charged crime and to prove, by clear and convincing evidence that no conditions of release can reasonable assure the safety of the community or any person and the person's appearance in court as required. If the judge determines to continue the detention bond, the case shall be, to the extent practicable, placed on an expedited trial calendar and the judge must make written findings of fact and provide a written statement of reasons for the continuation of the detention bond.
30. **Restrictions upon Defendants in Domestic Violence Cases. G.S. 15A-534.1.**
- (a) This section applies to defendants charged with any one or more of the following offenses against a spouse, former spouse, or a person with whom the defendant lives or has lived as if married:
    - 1. Assault (common law);
    - 2. Stalking. G.S. 14-277.3A;
    - 3. Communicating a threat. G.S. 14-277.1;

4. A felony under Chapter 14, Article 7A (“Rape and other Sex Offenses”);
  5. A felony under Chapter 14, Article 8 (“Assaults”);
  6. A felony under Chapter 14, Article 10 (“Kidnapping and Abductions”);
  7. A felony under Chapter 14, Article 15 (“Arson and other Burnings”);
  8. Domestic criminal trespass; and
  9. A violation of an order entered pursuant to Chapter 50B (Domestic Violence) of the General Statutes (For more specific information, please refer to the attached 48 Hour DV Chart published by the UNC SOG in December 2015.)
- (b) The conditions of pretrial release must be determined by a judge, who must consider the criminal history report, which must be presented to the judge by law enforcement or the district attorney.
- (c) 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.
- (d) A judge may impose any of the following additional conditions on pretrial release if he feels that this is necessary to prevent injury to other persons or a danger to the public in general:
1. That the defendant stays 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;
  4. That the defendant may visit his child or children at times and places provided by the terms of any existing order entered by a judge;
  5. That the defendant abstains from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, with any violation to be reported directly from the provider to the district attorney;
  6. That the defendant not own, use, or possess controlled substances (except pursuant to prescription);
  7. That the defendant not own, use, or possess firearms, and that the defendant designates some person to remove firearms from defendant’s possession or control within a specified time; or
  8. Secured appearance bond.
- (e) Should the defendant be mentally ill and dangerous to himself or others or a substance abuser and dangerous to himself or others, the provisions of Article 5 of Chapter 122C of the General Statutes shall apply.
- (f) A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination by a judge. If a judge has not acted pursuant to this rule within 48 hours of arrest, a magistrate shall act in his stead.

**31. Special Conditions of Bond Revocation for Violations of Domestic Violence Release.**

It shall be the policy of the Second Judicial District that in cases where domestic violence is alleged the judges setting conditions of pretrial release shall consider all factors to ensure safety to the alleged victim, the community, and the appearance of the defendant to respond to the crimes charged. The District Court Judge may also suggest a secured appearance bond amount for consideration by the magistrate if the defendant is found to be in violation of his terms and conditions of pretrial release previously set by the court. Suggested secured appearance bonds shall be recorded in writing and set forth in detail on Appendix B, Modification of Domestic Violence Bond attached to this policy.

**32. Restrictions upon Defendants charged with Communicating a Threat of Mass Violence. G.S. 15A-534.7.**

In all cases where a defendant is charged with communicating a threat of mass violence on educational property or at a place of religious worship, as provided by statute a judge shall set conditions of pretrial release during the first 48 hours of the defendant's detention.

**33. Restrictions upon Defendants in Sex Offenses and Crimes of Violence Against Child Victims. G.S. 15A-534.4.**

- (a) The following provisions apply to the following offenses:
1. felonious child abuse;
  2. misdemeanor child abuse;
  3. taking indecent liberties with a minor in violation of G.S. 14-202.1;
  4. rape;
  5. any sex offense in violation of Article 7A, Chapter 14 of the General Statutes, against a minor victim;
  6. incest with a minor in violation of G.S. 14-178;
  7. kidnapping;
  8. abduction;
  9. felonious restraint involving a minor victim, with a violation of G.S. 14-320.1;
  10. assault against a minor victim;
  11. any crime of violence against a minor; and
  12. communicating a threat against a minor.
- (b) For any offense listed above, a judicial official may impose the following conditions on pretrial release:
1. That the defendant stays 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.
- (c) The first two conditions of the previous paragraph may be waived by the judicial official if he makes written findings of fact that it is not in the best interest of the alleged victim that the condition be imposed on the defendant. The above

conditions may be imposed in addition to any other conditions that the judicial official may impose under other provisions of Article 26.

- (d) For any offense listed above in which the alleged victim is a minor child and the charging documents identify the minor child by initials or pseudonym, the conditions of release shall identify the minor child in the same way as identified in the charging document.

**34. Detention of Impaired Drivers. G.S. 15A-534.2**

- (a) A judicial official conducting an initial appearance for an offense involving impaired driving must follow the procedure in G.S. 15A-511, except as modified by G.S. 15A-534.2. Neither statute should be interpreted to impede a defendant's right to communicate with family, friends and counsel.
- (b) 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 is released, of physical injury to himself or others or damage to property, the judicial official must order that the defendant be held in custody and inform the defendant that he will be held in custody until one of the requirements of subsection c below is met. Regardless of whether the judicial official makes the determination specified in subsection c, the judicial official must initially determine the appropriate conditions of pretrial release under G.S. 15A-511.
- (c) A defendant subject to detention for impaired driving has the right to pretrial release when the judicial official determines any of the following:
  - 1. The defendant's physical and mental faculties are no longer impaired to the extent that he presents a danger of physical injury to himself or to others or of damage to property if he is released; or
  - 2. A sober responsible adult is willing and able to assume responsibility for the defendant until his physical and mental faculties are no longer impaired; or
  - 3. The passage of 24 hours from defendant's being detained.
- (d) In making the determination whether a defendant detained under this rule remains impaired, the judicial official may follow the provisions of G.S. 15A-534.2(d) (providing for periodic breath tests).

**35. Detention for Communicable Diseases. 15A-534.3.** If a judicial official conducting an initial appearance or first appearance hearing finds probable cause that an individual had an exposure 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 AIDS virus infection or Hepatitis B infection if required by the public health officials pursuant to G.S. 130A-144 and G.S. 130A-148. Upon conclusion of such testing, or the expiration of 24 hours, a judicial official must then determine the appropriate conditions of pretrial release in accordance with these rules.

**36. Detention as Result of Terrorist Attack or Quarantine.** If a judicial official conducting an initial appearance finds by clear and convincing evidence that a person arrested for violation of an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 or G.S. 130A-145 poses a threat to the health and safety of others, the judicial official shall deny pretrial release and shall order the person to be confined in an area or facility designated by the judicial official. Such pretrial confinement shall terminate when a judicial official determines that the confined person does not pose a threat to the health and safety of others. These determinations shall be made only after the State Health Director or local health director has made recommendations to the court.

**37. Property Bonds of \$10,000 or more.**

(a) All Accommodation bondspersons shall be advised by the Magistrate of the following:

“If the Defendant fails to appear in court as required, you could lose your property as provided in G.S. 15A-544.1 through 15A-544.8 and as stated on AOC-CR-201 Appearance Bond for Pretrial Release”

(b) Property Bonds of \$25,000 or more must be approved by the Clerk.

(c) Defendants should be advised by the judicial official conducting the initial appearance to seek a non-binding preliminary approval from the Clerk before investing in a title search and attorney fees.

(d) The Clerk has no liability for expenses incurred for a property bond, even if the Clerk has given a preliminary approval as to a certain property.

(e) The following documents are required for a property bond of more than \$10,000 but less than \$25,000:

1. a printout from the tax office showing the tax value of the property;
2. an affidavit of the owner of the property as to all liens and encumbrances against the property, showing the lienholder(s) and the amount of the payoff(s) (preferably the payoff information should come from the lienholder).
3. a completed AOC-CR-201, which serves as a promissory note.

(f) The following documents are required for a property bond of \$25,000 or greater:

1. a recorded deed of trust prepared as described in section;
2. a title certificate or title opinion prepared by a licensed attorney, which will state the following:
  - (A) That the proposed sureties are the record owners of all interests in the property;
  - (B) That there are either no recorded liens encumbering the property or identifying any existing liens and stating that the value of the property net of said liens is sufficient to meet the bond-value ratio requirement.
3. In the discretion of the Clerk, an affidavit as to the fair market value of the subject property, prepared by a person who is not interested in the matter, action, or proceeding (G.S. 58-74-30) who has knowledge of the property's value, and who may be (but is not required to be) an appraiser, or a real estate broker;
4. a printout from the tax office showing the tax value of the property;

5. an affidavit of the owner of the property as to all liens and encumbrances against the property, showing the lienholder(s) and the amount of the payoff(s) (preferably the payoff information should come from the lienholder).
  6. a completed AOC-CR-201, which serves as a promissory note.
- (g) All documentation shall be provided to the Magistrate and delivered to the Clerk of Superior Court.
  - (h) Bond-Value Ratio: The fair market value of the proposed property or properties owned by the proposed surety must be sufficiently in excess of the bond amount to cover costs in the action, fines, costs of sale and existing liens. The general rule is that the value of the property, net of liens, must be at least twice the amount of the bond. (Example: If the bond is \$20,000, then the net value of the property must be at least \$40,000.) However, each bond request will be looked at on a case by case basis to ensure that the property value is sufficient to satisfy the amount of the bond plus any cost of collection. Exemptions under 1C-1601 should not be considered as they are not applicable to claims for appearance bonds. G.S. 1C-1601(e).
  - (i) Proposed sureties (i.e. property owners) must be identified individuals. No Appearance Bonds will be allowed on property titled to "heirs," corporations or other entities.
  - (j) A promissory note in favor of the State of North Carolina in the amount of the bond is NOT required. However, all sureties (i.e. property owners) must execute the AOC-CR-201, Appearance Bond for Pre-Trial Release, which acts as the promissory note. The parcel number(s) of the property or properties to secure the Appearance Bond must be placed on the form AOC-CR-201.
  - (k) Following approval by the Clerk, the same documents must be presented to the Magistrate.
  - (l) Magistrates will confirm approval by the Clerk before authorizing release pursuant to a property bond and provide such documentation to the Clerk's office upon release.
  - (m) If a judicial official has determined that a secured Appearance Bond is necessary, and holidays or weekends may delay completion of requisite documents to post the Appearance Bond, such delay should not normally be used as a reason to withhold the requirement of a secured Appearance Bond.

### **38. Professional Bondsman**

- (a) No bail bondsman or runner shall solicit business in any of the courts or on the premises of any of the courts of this District, 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.
- (b) No bail bondsman or runner shall advertise by blazer, logo on briefcases, or in any other manner whatsoever, in violation of G.S.58-71-95(6), since such marking or special dress and uses of logos constitute soliciting business.

- (c) 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 the office. If a defendant indicates that he wishes to secure the services of a professional bondsman, the magistrate shall provide him with the names and telephone number so those persons, firms or corporation licensed to conduct a bail bonding business in said county and permit the defendant to call such of them as he may desire.

**39. Persons Authorized to Effect Release. G.S. 15A-537.**

- (a) Following any authorization of release of a defendant, any judicial official must affect the release of the person upon satisfying himself that the conditions of release have been met. In the absence of a judicial official, an officer or official of a law-enforcement agency who has been previously authorized to effect release, may, upon careful determination that such authorization has in fact been given, effect the release of a defendant under the authorized conditions.
- (b) 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.
- (c) Any surety posting bond for a defendant, whether licensed bondsman or unlicensed accommodation bondsman, must be given a copy of the release order.

**40. Motions to Modify or Revoke Pretrial Release Orders.**

- (a) Motions by Sheriff. The sheriff or his representative shall have standing to apply to any appropriate judicial official for modification of the conditions of pretrial release for a person in the custody of a county detention facility (“prisoner”). In considering such an application, in addition to all other appropriate factors, such judicial official may consider:
  - 1. the number of such prisoners confined in the jail;
  - 2. the medical condition of the prisoner;
  - 3. any violations of jail rules and regulations by the prisoner; and
  - 4. whether the prisoner is cooperating with law enforcement in any ongoing criminal investigation.
- (b) Motions by Prisoners. G.S. 15A-538. A prisoner may apply to a superior court judge in writing for modification of the conditions of pretrial release imposed by a district court judge. In considering such an application, in addition to all other appropriate factors, the judge may 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 times the cases of the prisoner have appeared on a trial list;
  - 5. the number of defendants on pretrial release whose cases have been tried since the prisoner was incarcerated on such charges;
  - 6. any violations of jail rules and regulations while confined; and
  - 7. any recommendation or position of the appropriate law enforcement agency.



(c) Motions by Prosecutor. The District Attorney may at any time apply to a judge for modification or revocation of an order of pre-trial release. G.S. 15A-539.

**41. Revocation of Pretrial Release Orders. G.S. 15A-534(f).**

- (a) For good cause shown any judge may at any time revoke an order of pretrial release.
- (b) Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release.

**42. 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, 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), 15A-536(f), and 8C-1101.

**43. Approved Form.** The forms attached hereto are approved for use in the Second Judicial District.

**44. Effective Date.** This Policy shall be effective January 1, 2020.



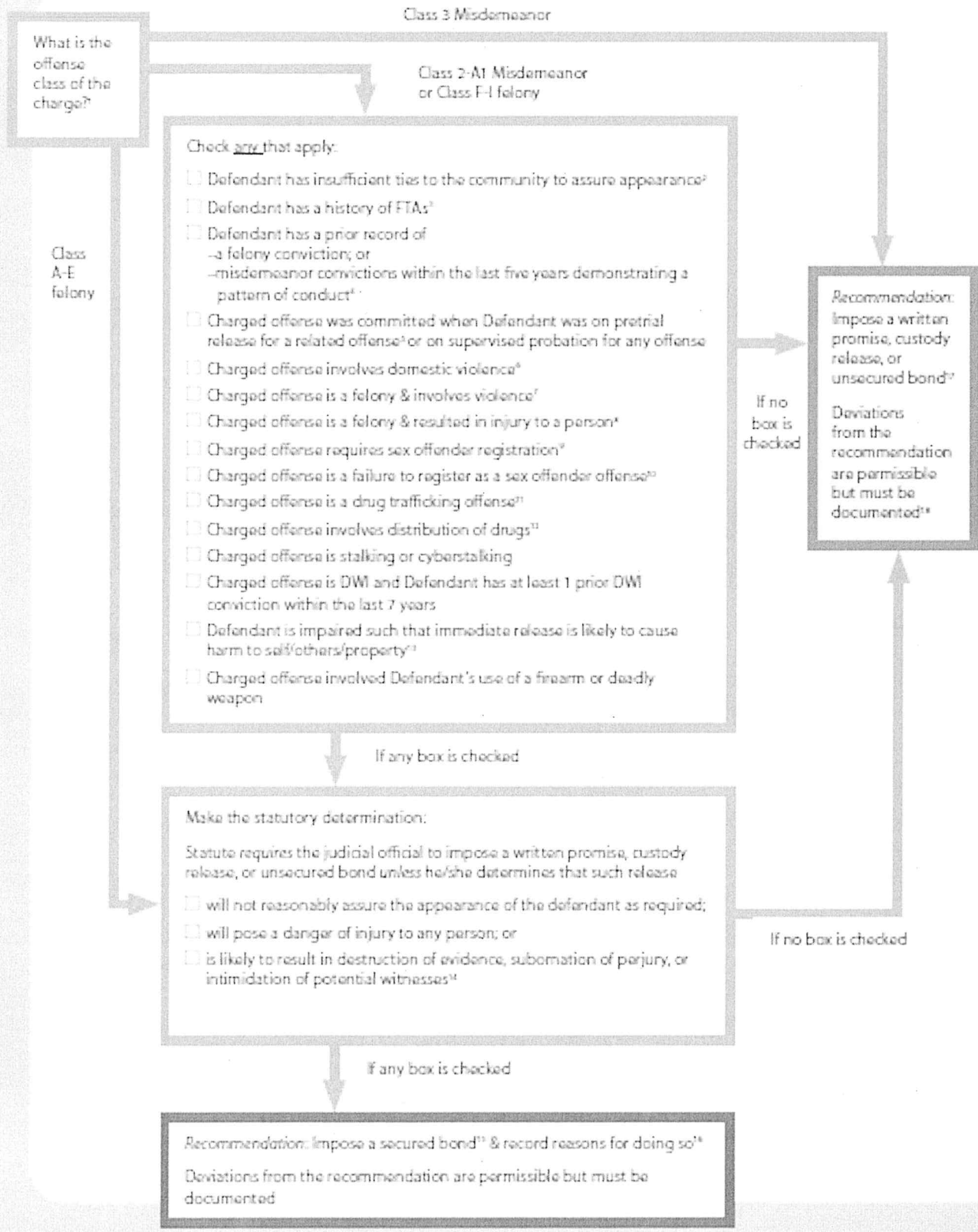
Wayland J. Sermons, Jr.  
Senior Resident Superior Court Judge  
Second Judicial District



Regina R. Parker  
Chief District Court Judge  
Second Judicial District

## JUDICIAL DISTRICT 2: DETERMINING CONDITIONS OF PRETRIAL RELEASE

Pursuant to Judicial District 2's Local Pretrial Release Policy, judicial officials must use the flowchart contained here, with accompanying footnotes and tables, when determining conditions of release in all cases except where the North Carolina General Statutes or Local Policy prescribe a different process or result.



1. If the matter is before a judge on the State's motion to increase conditions after the return of a habitual felon indictment, the judge should treat the offense at its "habitualized" offense Class level.
2. The mere fact that the Defendant is homeless and does not have a home address does not warrant checking this box; inquiry should be focused on the Defendant's connections to the community.
3. FTAs within the last 2 years are most relevant.
4. The pattern of conduct must relate to the present offense. For example: the current charge involves drug possession and the Defendant has 3 priors within the last 5 years for misdemeanor drug or drug paraphernalia possession.
5. This factor covers situations where the Defendant continues to engage in the same type of conduct (e.g., repeat larceny) or an escalating course of conduct (e.g., the defendant is charged with injury to real property while on pretrial release for communicating threats to the property owner).
6. An offense involves domestic violence when the relationship between the parties is one of the following:
  - o Current or former spouses
  - o Currently or formerly lived together as if married
  - o Currently or formerly in a dating relationship
  - o Have a child in common
  - o Parent (or one in parental role)/child
  - o Grandparent/grandchild
  - o Current or former members of the same household

Note: this list is drawn from G.S. 15A-534.1, the 48-hour domestic violence hold statute.
7. For example, robbery.
8. This factor applies when the offense involved harm to a person (e.g., assaultive conduct). It does not apply to offenses in which property is taken or harmed (e.g., larceny, embezzlement, obtaining property by false pretenses, etc.).
9. For a list of offenses requiring sex offender registration, see JAMIE MARKHAM & SHEA DENNING, NORTH CAROLINA SENTENCING HANDBOOK 2017-18 (UNC School of Government, forthcoming 2018).
10. See G.S. 14-208.11(a); JESSICA SMITH, NORTH CAROLINA CRIMES: A GUIDEBOOK ON THE ELEMENTS OF CRIME 268 (7th Ed. 2012) (discussing this offense).
11. See G.S. 90-95(h); NORTH CAROLINA CRIMES *supra* note 10, at 721-739 (discussing trafficking offenses).
12. For example, sale and delivery of a controlled substance and possession with intent to manufacture, sell, or deliver.
13. For defendants in impaired driving cases, follow impaired driving procedures. In all other cases if a secured bond is imposed only because of this factor and the defendant remains detained, conditions must be revised without consideration of this factor when the defendant's impairment no longer presents a danger of physical injury to himself or herself or others or of damage to property, but in any event, no later than 24 hours after secured bond was set.
14. G.S. 15A-534(b). When making this inquiry, judicial officials should consider whether pretrial restrictions (e.g., restrictions on travel, associations, conduct or place of abode, as well as abstention from alcohol consumption, as verified by the use of an approved continuous alcohol monitoring system), which can be imposed with a written promise, custody release or unsecured bond, can sufficiently mitigate pretrial risk. See G.S. 15A-534(a).
15. If a secured appearance bond is imposed: (1) the judicial official must consider—among other relevant factors—the defendant's ability to pay; and (2) the amount of the secured appearance bond should not exceed the amounts listed the tables shown below; if a secured bond is set in excess of these recommended maximums, reasons for doing so must be documented.
 

If a secured bond is used to detain ("detention bond"), a detention bond hearing that affords the defendant appropriate procedural protections must be held before a judge on motion by the defense.
16. See G.S. 15A-534(b) (when judicial official imposes secured bond instead of written promise, custody release or unsecured bond, the judicial official "must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge").
17. Pretrial restrictions can accompany any pretrial condition. See G.S. 15A-534(a) & note 14 above.
18. A deviation is permissible if there is a risk of continuing felony-level criminal activity.

**Maximum Secured Appearance Bond Amounts—  
Offenses Other Than Drug Trafficking**

If a bond is set in excess of these recommendations, reasons for doing so must be documented.

Type of Offense	Maximum Secured Bond
Misdemeanor, Class 2	\$500
Misdemeanor, Class 1	\$1,000
Misdemeanor, Class A1	\$3,000
Driving While Impaired	\$5,000
Felony Class I	\$10,000
Felony Class H	
Felony Class G	\$25,000
Felony Class F	
Felony Class E	\$50,000
Felony Class D	\$70,000
Felony Class C	\$100,000
Felony Class B2	\$250,000
Felony Class B1	\$300,000
Felony Class A	No Bond Unless Set by a Judge
Fugitive Warrant	For Maximum bond amount, see maximum for the underlying offense
Governor's Warrant	No Bond
Parole Warrant	No Bond

**Maximum Secured Appearance Bond  
Amounts—Drug Trafficking**

If a bond is set in excess of these recommendations, reasons for doing so must be documented.

Punishment Class	Maximum Secured Bond
H	\$75,000
G	
F	
E	
D	\$150,000
C	\$250,000

Appendix "B", Modification of Domestic Violence Bond

NORTH CAROLINA  
\_\_\_\_\_ COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO.: \_\_\_\_\_  
\_\_\_\_\_

STATE OF NORTH CAROLINA )  
 )  
VS. )  
 )  
\_\_\_\_\_ )  
\_\_\_\_\_ )

**MODIFICATION OF BOND**

CHARGES: \_\_\_\_\_  
\_\_\_\_\_

- After notice and hearing or with the consent of the State and defendant, the bond is effective this date modified from \$\_\_\_\_\_ to \$\_\_\_\_\_
- The defendant will not assault, threaten, go to the residence or workplace of \_\_\_\_\_
- The defendant shall carry a copy of this Modification of Bond Order on his/her person at all times when he/she is away from their residence. He/She must show the copy of this order to any law enforcement or probation officer upon request.
- The defendant shall not possess any firearm, explosive device or dangerous, deadly weapon.
- The defendant shall make and keep an appointment with his/her court appointed lawyer within twenty (20) days after the entry of this order.
- The defendant shall not operate a motor vehicle if his/her license is suspended or revoked.
- The defendant shall not be in the presence of or communicate with \_\_\_\_\_ except through an attorney. If the defendant shares a minor child with this person, communication through third parties about the child's welfare does not violate this order.
- The defendant shall not possess or consume any alcoholic beverages or possess or consume any controlled substances (unless the controlled substances are prescribed and maintained in their properly labeled prescription container with the name of the defendant on the label).

\_\_\_\_\_ The defendant shall reside at \_\_\_\_\_

\_\_\_\_\_ The defendant shall not be outside his/her place of residence Monday through Sunday between the hours of \_\_\_\_\_ and \_\_\_\_\_

\_\_\_\_ Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- All existing pretrial release conditions, including bail, not expressly modified herein, shall remain in effect. If you are subject to a Domestic Violence Protective Order you must comply with its terms and the terms of this Order. If you violate any of these conditions, this bond will be revoked, and order for your arrest will be issued immediately, and you will be subject to contempt of court penalties under N.C. Gen. Stat. §5A for each violation.

For any violation the court recommends a new secured appearance bond be set at  
\$ \_\_\_\_\_

This the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
District Court Judge presiding

**CONSENT:**

\_\_\_\_\_  
Assistant District Attorney

\_\_\_\_\_  
Defendant's Attorney

I acknowledge receipt of a copy of this bond order  
\_\_\_\_\_  
Defendant

APPENDIX "C"

STANDING ORDER

Seven-Day First Appearance Policy for Misdemeanor Defendants in Custody Pretrial

The following procedure is hereby adopted in the Second Judicial District, providing first appearances before a District Court Judge for individuals whose highest charge is a misdemeanor and are in custody pretrial. This policy is effective January 1, 2020.

1. In-custody defendants charged with misdemeanors or arrested after a failure to appear on a misdemeanor who are unable to post bond shall be taken before a District Court Judge within seven days of arrest for a first appearance. (In Hyde and Tyrrell Counties, the seven-day first appearance shall be conducted at the first available court session which may be more than seven days from the time of arrest).
2. The following schedule shall apply:
  - a. Beaufort County shall be every Monday at 2:00pm.
  - b. Washington County shall be every Tuesday at 2:00pm.
  - c. Martin County shall be every Wednesday at 2:00pm.
  - d. In Hyde and Tyrrell Counties, the first appearance shall be conducted at the first available court session at 2:00pm.
  - e. If the court session is canceled due to a holiday closing or inclement weather, the matter will be heard at the next first appearance date as designated herein.
3. Each business day prior to the designated court session, the county jail administrator shall provide the clerk of court with a list of misdemeanor defendants who require a first appearance no later than 1:00pm.
4. The clerk shall then prepare a calendar for first appearances for the in-custody misdemeanor defendants no later than 9:00am on the day of court. The calendar shall list existing bail conditions. The calendar shall be provided to the District Attorney's Office, Public Defender's Office and Sheriff's Office.
5. The Public Defender's Office shall represent all misdemeanor defendants entitled to a first appearance proceeding. The representation does not include however seven-day preliminary hearings on a probation violation pursuant to 15A-1345(c) or 96-hour hearings pursuant to 15A-601.
6. First appearances shall be held in open court by a District Court Judge and can be heard at an earlier time if the judge consents and all parties are ready to proceed.
7. At the first appearance the judge shall follow the District's Local Bail Policy, including but not limited to applying the District's new Flowchart for pretrial decisions; conducting ability to pay determinations; stating reasons for imposing secured bonds; following the statutory mandate to impose non-financial conditions of release unless the judicial official determines that such release will not reasonably assure the appearance of the defendant as required, will pose a danger of



injury to any person, or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses; and promptly scheduling detention bond hearings for those defendant detained on bond.

8. Nothing in this order shall limit a court's authority to revoke bond in accordance with state law.
9. Courtroom clerks shall record on the first appearance calendar (1) whether or not the case is before the court after an arrest on a FTA; (2) whether or not the judge modified conditions of release; and (3) if conditions were modified, the new conditions imposed.

This the 13<sup>th</sup> day of December, 2019.



The Honorable Regina R. Parker  
Chief District Court Judge  
Second Judicial District

Appendix "D"

Criminal Superior Court  
First Appearance Rules for Probation Violations  
For the Second Judicial District

Table of Contents

Rule 1: Authority and Purpose

Rule 2: Probation Violations

**SUPERIOR COURT CRIMINAL**  
**PROBATION VIOLATION FIRST APPEARANCE RULES**  
**SECOND JUDICIAL DISTRICT**  
**(BEAUFORT, HYDE, MARTIN, WASHINGTON AND TYRRELL COUNTIES)**

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**RULE 1. Authority and Purpose**

- 1.1** These rules are adopted pursuant to the provisions of NCGS § 15A-601 and 15A-1345 and may be cited as Criminal Superior Court Rules, Second District.
- 1.2** The purpose of these rules are to expedite the processing and hearing of probation violations by advising the probationers of their right to counsel, and if appropriate, appointment of counsel for indigent probationers prior to the first setting in Superior Court.
- 1.3** A copy of these Rules shall be maintained by each Clerk of Court and made available by request. A copy of the Rules will also be posted to the web site [www.nccourts.org](http://www.nccourts.org).

**RULE 2. Probation Violations**

**2.1** Advising Probationers Upon Arrest

When a probation violation is issued and the Defendant arrested, he shall be taken before the Magistrate for the setting of bond. In addition to the

regular conditions of bond, the Magistrate shall impose the additional condition that the probationer shall appear at a set time before either a Superior or District Court Judge or the Clerk of Superior Court for purposes of advising the probationer of their right to counsel.

**2.2** Appearance before Superior Court Judge

If Superior Court is sitting the Defendant shall be brought before the Court for the purpose of advising of their right to Counsel.

**2.3** Appearance before the District Court Judge or the Clerk of Superior Court

- (a) If neither the Superior Court nor District Court is sitting, the Magistrate shall set the Probationer's appearance before the Clerk of Superior Court at a time and place designated by the Clerk for the purpose of advising the Probationer of their right to counsel.
  
- (b) If the probationer fails to make bond they shall be brought before either the District Court Judge or Clerk of Superior Court, whichever is available at the earliest possible time for advising as to their right to Counsel.

**2.4** Procedure to Advise and Appoint/ Waive Counsel

- (a) If the probationer requests Court appointed counsel, they shall fill out the Affidavit of Indigent, AOC-CR-226. Pursuant to N.C.G.S. § 7A-450, the Judge or Clerk shall determine by that application if the probationer is indigent, and enter an Order of Assignment or Denial of Counsel, AOC-CR-224. All Personal Inquiry Waivers shall be done by the Superior Court Judge.

- (b) Should the probationer elect to waive all counsel, the Judge or Clerk of Superior Court shall prepare the standard Waiver of Counsel form, AOC-CR-27
- (c) In all probation violations the hearing shall be set at the earliest available Superior Court session to be held in the County. The Petitioner and any appointed counsel shall be notified in writing of the violation hearing date immediately.

**2.5** Advising Probationers when not arrested

- (a) If the Probationer is not arrested, but served with a probation violation, it shall be the duty of the probation officer to serve upon the probationer a Notice of Appearance before the Clerk of Superior Court at a designated time and place for advising of rights to counsel, and the Clerk of Superior Court shall be so notified. The procedures set forth in Rule 2.4 shall be followed.
- (b) Should the Probationer fail to appear at such time and place before the Clerk of Superior Court the probationer shall be arrested on the probation violation and brought before the Magistrate for bond purposes and the requirements of this rule shall be followed.

Adopted this the 9<sup>th</sup> day of May, 2011

*Wayland J. Sermons, Jr. ///*ess

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Wayland J. Sermons, Jr.

Senior Resident Superior Court Judge