

# **POLICIES RELATING TO BAIL AND PRE-TRIAL RELEASE SECOND JUDICIAL DISTRICT**

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## **POLICIES RELATING TO BAIL AND PRE-TRIAL RELEASE SECOND JUDICIAL DISTRICT**

### **STATEMENT OF GENERAL POLICY**

Bail is not to be used to insure a defendant's presence in court. It is not to be used to punish a defendant either by making him wait in jail because he cannot make an excessive bail or by making him pay a professional bondsman a large fee to put up an excessive secured appearance bond. The purpose of N.C.G.S Chapter 15A, Article 26 on bail, is to impose the least restrictive nonmonetary form of pretrial release that will reasonably assure the defendant's appearance in court, to end or minimize the abuses of 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 form of release and amount of bond in the judicial official who may know the most or can most readily learn the most about the defendant.

In setting the amount of bail and in determining the form of bail the magistrate or clerk is acting as an independent judicial officer who has the duty to the Court and the public to insure the defendant's presence in court and a duty to the public to see that bail is not excessive. Insofar as it related to appearance in court, the Magistrate or Clerk should consider the degree of danger an accused presents to the public.

### **PERSONS AUTHORIZED TO DETERMINE CONDITIONS FOR RELEASE**

The persons authorized by law to determine conditions for release of arrested persons are "Judicial Officials." (G.S. 15A-532). By definition in 15A-101(5), a "Judicial Official" is a Magistrate, Clerk, Judge or Justice for the General Court of Justice..

### **OVERCROWDING OF JAIL FACILITIES**

The judicial official should be mindful of the jail capacity and the number of persons being detained therein and shall make such reductions in bond requirements as he shall deem necessary including use of unsecured bonds, to avoid overcrowding while at the same time weighing the danger an accused presents to the public and the likelihood of appearance in court.

### **RELEASE IN CAPITAL AND NON-CAPITAL CASES**

G.S. 15A-533(a) provides that every defendant who is charged with a non-capital offense has a statutory right to pretrial release. Conditions of this release must be determined in accordance with G.S. 15A-534.

G.S. 15A-533(b) provides that, “A Judge may determine in his discretion whether a defendant charged with a capital offense may be release before trial. If he determines release is warranted, the Judge must authorize release of the defendant in accordance with G.S. 15A-534.” A Magistrate or Clerk cannot give pretrial release to a defendant charged with a capital offense.

## **RESPONSIBILITY FOR SETTING BAIL**

The primary responsibility for setting bail rests with a Magistrate or Clerk. The Magistrate or Clerk should set bail all misdemeanor cases and in non-capital felony cases. A judge must set bail in a capital case if the judge, in his discretion, has determined that bond is warranted. Neither Magistrates nor Clerks are permitted to set bail in capital cases. A District Court Judge may set bail in all cases. A Superior Court Judge may set bail in all cases. It is anticipated that a great majority of bail bonds less than \$15,000 will be the primary responsibility of the Magistrate.

## **STATUTORY BAIL POLICY OF NORTH CAROLINA DETERMINING CONDITIONS OR PRETRIAL RELEASE**

From G.S. 15A-354:

- (a) In determining conditions of pretrial release, a judicial official must impose one of the following conditions:
  - (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.
  - (3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.
  - (4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 109-25, or by at least one (1) solvent surety.

If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If a judicial official orders release of a defendant under conditions (1), (2), or (3), he may also place restrictions on the travel, associations, conduct, or place of abode of defendant.

- (b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless he 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. Upon making the determination, the judicial official must then impose condition (4) in subsection (a) above instead of condition (1), (2), or (3).
- (c) In determining which conditions or release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the

defendant's family ties employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions, his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

- (d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of his release; and advise him that his arrest will be ordered immediately upon any violation. The order of release must be filed with the Clerk and a copy given to the defendant.

## **APPROVING SURETIES**

The Clerk or Magistrate is responsible to satisfy himself as to the financial responsibility of the surety to a secured appearance bond.

If the judicial official (Clerk or Magistrate) setting bond has deemed a secured bond is necessary and the bond amount is \$15,000 or greater, the Surety is required to submit to the judicial official documentation specifically denoting value of property he owns sufficient to secure the set bond amount. The documentation required is a deed of trust, title certificate, affidavit of value, an affidavit indicating individually all payoffs for any liens of record against property submitted to secure the bond in question, and a promissory note in the amount of the bond with the State of North Carolina listed as beneficiary and the Clerk of Superior Court listed as trustee. All documentation shall be provided by the Magistrate and delivered to the Clerk of Superior Court.

This form of release may not be selected by the judicial official unless he first determines that release conditions (1), (2), or (3) above 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. Upon making such determination, the judicial official must impose this condition of release.

When bonds of \$15,000 or more are required and holidays and/or weekends prevent the surety from obtaining any or all of the required documents, the Magistrate may permit a conditional release upon the condition that the surety binds himself in writing to submit the required documentation by no later than 4:00 PM on the second working day after the bond was set. Failure of the surety to comply with this requirement will result in the Clerk of Superior Court requesting a Judge to institute procedures to revoke the bond. Notification to a Judge by the Clerk of Superior Court will occur no later than the beginning of court the day following expiration of the conditional time limit. Upon his determination that the surety has failed to comply with additional release requirements and has not otherwise posted the required bond, the Judge may issue an order for arrest of the conditionally released party.

## **MULTIPLE SURETIES**

When bonds of \$15,000 or more are required more than one surety may bind himself to secure said bond. No surety may bind himself to secure less than twenty (20%) percent of any bond. The above referenced documentation requirement is applicable in those instances when an individual surety binds himself to secure a portion of a bond when said portion is equal to or exceeds \$15,000. It does not apply when the secured portion is less than \$15,000.

## **APPROVING OUT-OF-COUNTY SURETIES**

Out-of-County Sureties must provide a Bond Certificate from the Clerk of their home county stating the maximum amount for which that surety may write. The Clerk or Magistrate is charged with the same responsibility for satisfying himself as to financial responsibility for local sureties.

## **PROFESSIONAL BONDSMEN**

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 marking or special dress and use of logos constitute soliciting business.

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 this 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 numbers of those persons, firms or corporations licensed to conduct a bail bonding business in said county and permit the defendant to call such of them as he may desire.

## **DEFENDANT ARRESTED FOR FAILURE TO APPEAR AND FOR PROBATION VIOLATION**

When a defendant is arrested upon an arrest order for failure to appear in court or for a probation violation, the judicial official shall impose as a condition of release a secure or cash bond in the amount specified in the Order of Arrest, or, if no amount is specified therein, then in an amount to be determined by the judicial official.

## **NONRESIDENT OF NORTH CAROLINA**

A judicial official should not, except under extraordinary circumstances, grant pretrial release by written promise, unsecured bond or custodial release to any person who is not a resident of North Carolina. An arrest of a non-resident for a traffic violation who resides in a reciprocal state should be considered an extraordinary circumstance under this section.

February 13, 1995

**AMENDMENT**  
TO  
POLICIES RELATING TO BAIL AND PRETRIAL RELEASE IN THE  
SECOND JUDICIAL DISTRICT

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Please add the following at the end of the first paragraph:

“The following policy is designed for the use of the judicial official setting bond in the \$15,000 or greater situation. This policy should aid the judicial official in shielding himself/herself if there is concern. However, if the judicial official, in his/her discretion so desires, this policy may be waived.”

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William C. Griffin, Jr.  
Senior Resident Superior Court Judge

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James W. Hardison  
Chief District Court Judge