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STATE OF NORTH CAROLINA
2024 JAN COUNTY OF ROWAN

IN THE GENERAL COURT OF JUSTICE
27th JUDICIAL DISTRICT

File: 24 R 1

ROWAN CO., C.S.C.

BY



**ADMINISTRATIVE ORDER ADOPTING
27th JUDICIAL DISTRICT
OFFICIAL POLICIES ON PRETRIAL RELEASE
Revised January 1, 2024**

Pursuant to G.S. 15A-535, the Senior Resident Superior Court Judge and Chief District Court Judge, having met after drafting proposed modifications to the existing bond guidelines to conform to the requirements of the Pretrial Integrity Act effective October 1, 2023, and after having circulated them among a working group of stakeholders for comment or other input, it is hereby ORDERED that these attached policies shall be used to determine whether a Defendant shall be given pretrial release, what form of pretrial release is appropriate, and upon what conditions such pretrial release shall be granted in this District.


It is ORDERED that these policies shall apply to ALL Judicial Officials presiding in this District who are authorized by law to set conditions of pretrial release.

It is further ORDERED that copies of these Policies attached hereto to be distributed to the Clerk of Superior Court of Rowan County, 19C Judicial District, all Judicial Officials of the 19C District, to the Sheriff of Rowan County, the Commander, Troop E, North Carolina State Highway Patrol, the chiefs of police of each agency in the District, and that a copy thereof to be placed in each courtroom within the District and in the Magistrate's Office for the District. The Clerk shall enter the Order and cause the Policies to be published as part of the Local Rules of Court and placed on the AOC website.

The Policies attached hereto are ratified, adopted by this Order, and remain in effect until further notice.

ENTERED in chambers on the 29th day of December, 2023.


The Honorable Michael Adkins
Senior Resident Superior Court Judge


The Honorable Beth Dixon
Chief District Court Judge

27th JUDICIAL DISTRICT
OFFICIAL POLICIES ON PRETRIAL RELEASE

Revised June 2023, amended September 2023 & January 2024 (The January 1, 2024, revision is revised solely to change the Judicial District Number from 19C to 27 to conform to the renumbering of Judicial Districts.)

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General Provisions Regarding Pretrial Release

G. S. 15A-535(a) provides: "Subject to the provisions of this Article, (Article 26, Bail), the Senior Resident Superior Court Judge of each judicial district, in consultation with the Chief District Court Judge, must devise and issue recommended policies to be followed within the District in determining whether and upon what conditions a defendant may be released before trial."

G. S. 15A-535(b) provides: "That in any county in which there is a pretrial release program, the Senior Resident Superior Court Judge may, after consultation with the Chief District Court Judge, order that defendants accepted by such program for supervision shall, with their consent, be released by judicial officials to supervision of such programs, and subject to its rules and regulations, in lieu of releasing the defendants on conditions (1), (2), or (3) of G. S. 15A-534(a)."

Amended effective October 1, 2023, as follows:

The Pretrial Integrity Act, S.L. 2023-75, codified and amending or rewriting sections of G.S. 7B-1906(b1) prescribes procedures with respect to juveniles being held in secure custody, and G.S. 15A-533, determines when Defendants have a right to pretrial release, what judicial official is authorized to set conditions of pretrial release and when, and the form of pretrial release authorized under 15A-534. Those provisions are incorporated into and made a part of this policy by reference.

I. Definitions.

Certain terms used in bail practice have now acquired statutory definitions. G. S. 15A-531 says that the following definitions apply unless the context clearly requires otherwise:

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. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G. S. 109-25, and an appearance bond secured by at least one solvent surety. A bail bond signed by any surety as defined in G.S. 15A-531(8) (a) and (b) is the same as a cash deposit, except in child support cases.

B. **Obligor.** A principal or a surety on a bail bond.

C. **Principal.** A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.

D. **Surety.** One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.

E. **Judicial Official.** Includes Magistrates, District Court Judges, and Superior Court Judges and, if Clerks are empowered to set conditions of release, the Clerk, Assistant Clerks and Deputy Clerks of Superior Court.

II. Purpose of Bail.

The traditional purpose of bail is to assure the defendant's appearance in court.

The purpose of the law on bail, N. C. G. S., Chapter 15A, Article 26, is to impose the least restrictive nonmonetary form of pretrial release that will reasonably assure the defendant's appearance in court, to end or to minimize the abuses of generalized ex parte bail setting 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 officer who may know the most, or can most readily learn the most about the defendant at the earliest practicable stage of the proceedings in which bail may be set.

III. Guidelines for Selecting Form of Pretrial Release.

A. A Judicial Official should not, except under extraordinary circumstances, grant pretrial release by personal recognizance, unsecured bond or custodial release to any person who is not a resident of North Carolina.

B. A Judicial Official may, but is not required to, accept the defendant's oral and unconfirmed answers to the eleven release criteria on misdemeanor charges.

C. A Judicial Official should not grant pretrial release by personal recognizance, unsecured bond, or custodial release to any person charged with a felony except upon careful review of the nature of the charge pursuant to 15A-533 as amended effective October 1, 2023, whether the person was on pretrial release as outlined in 15A-533, the facts supporting the charge, the totality of the circumstances, the eleven factors set forth in 15A-534(c) and upon the Judicial Official determining in their discretion, as may be allowed by statute or case law, that such should be done to meet due process considerations, or in their discretion they determine that the interests of justice so require, to the extent discretion is allowed.

D. A Judicial Official should not, except under exceptional circumstances, grant pretrial release by written promise to appear, unsecured bond, or custodial release to any defendant who has already failed to appear in court and is then in custody by a warrant for failure to appear on citation or an Order for Arrest.

E. A magistrate should not grant pretrial release contrary to the order of any judge except as authorized below under Section XIII, Errors and Emergencies.

F. A Judicial Official should not grant pretrial release by written promise to appear or unsecured bond to any defendant who is intoxicated or in a highly emotional condition. However, for persons charged with local ordinances or Class III misdemeanors, a pretrial release should be reviewed by a Judicial Official once the person is sober.

G. A Judicial Official should be mindful of the Victim's Rights requirements with respect to conducting bond hearings.

Amendment effective October 1, 2023:

H. A Judicial Official must take into account the Pretrial Integrity Act and must set conditions of pretrial release, if authorized, in accordance with the provisions and restrictions set forth in G.S. 15A-533.

1. 15A-533(h) If a defendant is arrested for a new offense allegedly committed while the defendant was on pretrial release for another pending proceeding, the judicial official who determines the conditions of pretrial release for the new offense shall be a judge.

2. Notwithstanding the provisions of 15A-533(h), a magistrate may set the conditions of pretrial release at any time if the new offense is a violation of Chapter 20 of the General Statutes, other than a violation of G.S. 20-138.1, 20-138.2, 20-138.2A, 20-138.2B, 20-138.5, or 20-141.4.

3. A defendant may be retained in custody pursuant to this subsection not more than 48 hours from the time of arrest without a judge making a determination of conditions of pretrial release. If a judge has not acted pursuant to this subsection within 48 hours from the time of arrest of the defendant, the magistrate shall set conditions of pretrial release in accordance with G.S. 15A-534.

A magistrate may therefore not set bond for individuals charged with a new crime (excepting Chapter 20 violations other than those listed above in H.2.) while the individual was on pretrial release unless more than 48 hours have passed since the person was arrested and circumstances have prevented the person from being brought before a judge for setting of bond.

This is similar to the domestic violence procedure as found in G.S. 15A-534.1 and other statutes restricting pretrial release for the first 48 hours of custody to determination by a judge.

Likewise, where possible, such persons must be set a court date before a judge at the earliest court session following their arrest and processing.

H. Recommendation on Orders.

Judicial Officials in this district will observe the following procedures:

1. Transmittal forms from all judges containing the word, "recommendations", will be treated as orders unless the judge clearly indicates a different purpose.

2. Transmittal forms from other magistrates and from Superior Court clerks will be viewed as recommendations only, to be given due weight, but subject to a different form of release or a different amount of bond if the receiving Judicial Official's information about the defendant on the release criteria clearly indicates a form of a release or amount of bond that differs from the transmittal form.

3. Any Judicial Official, in transmitting warrants out-of-county for service, will avoid making any recommendations as to conditions of release unless:

(a) The Judicial Official expects the defendant to be arrested in a county where he is not known, or

(b) the said Judicial Official's prior knowledge of the defendant's record and standing as to the eleven release criteria is sufficient to justify a recommendation, or

(c) experience with the release practices of a particular county has been found to be unsatisfactory if recommendations or orders are not given.

IV. Forms of Pretrial Release (Adult Defendants).

- A. Release on a written promise to appear.
- B. Release on unsecured bond.
- C. Release to the custody of a designated person or organization agreeing to supervise the defendant.
- D. Pretrial House Arrest with electronic monitoring as provided for in G.S. 15A-531(5a) and as authorized by G.S. 15A-535(b).
- E. Release on a bail bond (which term includes secured appearance bond, whether secured by a cash deposit, mortgage, or at least one solvent surety).

A citation is a criminal process, per G. S. 15A-302. It is not a form of release.

Persons charged with crimes allegedly committed while (a) still residing in, (b) subsequent to escape or unauthorized absence from, an involuntary commitment in a mental health facility designated or licensed by the NC DHHS **shall not be entitled to bail if** their commitment is determined to still be valid by the judicial official authorized to determine the condition of pretrial release. Such person shall be returned to the facility in which they were residing at the time of the alleged crime or escape/unauthorized absence therefrom pending further proceedings.

V. Forms of Pretrial Release (Defendants Under 18 Years of Age and Defendants Under 18 at Time of Offense)

Pursuant to the provisions of Raise the Age, aka the Juvenile Justice reinvestment Act, **effective December 1, 2019**, the cut-off age for juveniles is raised from 16 to 18. For offenses committed on or after this date, if the offender is **under the age of 18 on the date of offense**, the case must be initiated in juvenile court. Exceptions exist for emancipated minors, 16- and 17-year-olds charged with Chapter 20 offenses, and juveniles with prior criminal convictions in district or superior court.

Amended effective October 1, 2023:

Judges in both trial divisions should note well the provisions of 7B-1906 as rewritten by the Pretrial Integrity Act:

(b1) For a juvenile who was 16 years of age or older at the time the juvenile allegedly committed an offense that would be a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult, further hearings to determine the need for secure custody shall be held at intervals of no more than 30 calendar days, days for a juvenile who satisfies either of the following criteria: (1) Was 16 years of age or older at the time the juvenile allegedly committed an offense that would be a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult, (2) Was 13, 14, or 15 years of age at the time the juvenile allegedly committed an offense that would be a Class A felony if committed by an adult. Further hearings may be waived only with the consent of the juvenile, through counsel for the juvenile. Upon request of the juvenile, through counsel for the juvenile, and for good cause as determined by the court, further hearings to determine the need for secure custody may be held at intervals of 10 days."

When Offense Within the District Court Juvenile Jurisdiction

Magistrates or Clerks should contact a Juvenile Court Counselor and follow the current guidelines for housing juveniles separate from adult offenders pending further instructions.

District Court Judges shall set the conditions of nonsecure or secure custody as provided in G.S. 7B-1903.

When Case Has Been Transferred to Superior Court

Raise the Age juveniles between the ages of 16 and 18 generally have the same right to pretrial release as an adult once the case has been transferred to Superior Court, as provided in G.S. 15A-533 (which includes the Pretrial Integrity Act) and G.S. 15A-534.

The release order shall specify the person or persons to whom the juvenile may be released. The Judicial Official handling pretrial conditions of release may specify that, for those forms of release where a signature is required, that the signature be of the juvenile's parent or guardian.

If the juvenile is determined to be one for whom secured bail is appropriate under the statutes and under these rules, the court shall order that the juvenile be detained in a detention facility while awaiting trial, or until conditions of release are satisfied. If the person charged was a juvenile at the time of commission of the alleged offense but is over 18 years of age at the time of arrest, the adult pretrial release procedures should be followed.

Juveniles charged with Chapter 20 violations

The conditions for pretrial release will be determined in the same fashion as for adult defendants, except that where bail is required under Section V(D.), they will be housed at a juvenile detention center or other secure detention area and not in jail with adult offenders until they obtain release.

VI. Selection of Form of Pretrial Release (Adult Defendants) - G. S. 15A-534.

A. Written Promise to Appear.

The written promise to appear is the recommended form of pretrial release except in cases in which the defendant is charged with a violation under N. C. G. S., Chapter 20 (Motor Vehicles).

The written promise to appear may be selected by the magistrate as the form of pretrial release upon the judicial official's finding that such form will reasonably assure the defendant's court appearance **after** the judicial official has taken into account the eleven release criteria set out in G. S. 15A-534(c), to the extent such are known at the time the Defendant appears in front of the Judicial Official, namely:

- (1) The nature and circumstances of the offense charged,
- (2) the weight of the evidence,
- (3) the defendant's family ties,
- (4) employment,
- (5) financial resources,

- (6) character,
- (7) mental condition,
- (8) length of residence in the community,
- (9) record of convictions,
- (10) history of flight to avoid prosecution, or failure to appear at court proceedings, and
- (11) any other evidence relevant to the issue of pretrial release.

Amended effective October 1, 2023:

Written Promises to Appear is not an available condition of pretrial release for Defendants who are out on pretrial release and commit a new offense while on pretrial release, unless the new offense is a Chapter 20 violation, pursuant to G.S. 15A-533. If that Chapter 20 violation is a driving while impaired charge, or a death by vehicle charge, a Written Promise to Appear should not be considered absent unusual and compelling circumstances.

B. Unsecured Bond in a Specified Amount.

The unsecured bond in a specified amount is the recommended form of pretrial release in cases arising under N. C. G. S., Chapter 20 (Motor Vehicles) other than infractions where no detention is involved, and upon the judicial official's finding that this form of release will reasonably assure the defendant's court appearance on the basis of the release criteria set out above.

C. Release to the Custody of a Designated Person or Organization Agreeing to Supervise the Defendant.

This form of release may be selected in cases other than motor vehicle offenses if the judicial official finds: (1) That by reason of defendant's age or mental condition, a custodial release is most likely to assure defendant's court appearance, and (2) such custodian and the defendant are both before the judicial official, and both agree in writing to the terms of release. Under G.S. 15A-534(a)(3) if this condition is imposed the defendant may instead elect to execute an appearance bond as provided in 15A-534 (a)(4) and as set forth in Part D, below. **Note:** therefore, pretrial release form D below must be selected if the defendant objects to the custodial form of release.

D. Release on a Bail Bond (which term includes secured appearance bond, whether secured by a cash deposit, mortgage, or at least one solvent surety).

This form of release must not be selected by the judicial official unless he/she first determines that release form A, B, or C 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, or is required by 15A-533 or other provision of law.

Upon making such determination, the judicial official must impose this form of release, if release is determined to be appropriate.

[Amended effective October 1, 2023:

Pursuant to the provisions of 15A-533(b) pretrial release for the following offenses may only be determined by a judge within the first 48 hours of custody and then release is in the discretion of the judge:

A judge shall determine in the judge's discretion whether a defendant charged with any of the following crimes may be released before trial:

- (1) G.S. 14-17 (First or second degree murder) or an attempt to commit first or second degree murder.
- (2) G.S. 14-39 (First or second degree kidnapping).
- (3) G.S. 14-27.21 (First degree forcible rape).
- (4) G.S. 14-27.22 (Second degree forcible rape).
- (5) G.S. 14-27.23 (Statutory rape of a child by an adult).
- (6) G.S. 14-27.24 (First degree statutory rape).
- (7) G.S. 14-27.25 (Statutory rape of person who is 15 years of age or younger).
- (8) G.S. 14-27.26 (First degree forcible sexual offense).
- (9) G.S. 14-27.27 (Second degree forcible sexual offense).
- (10) G.S. 14-27.28 (Statutory sexual offense with a child by an adult).
- (11) G.S. 14-27.29 (First degree statutory sexual offense).
- (12) G.S. 14-27.30 (Statutory sexual offense with a person who is 15 years of age or younger).
- (13) G.S. 14-43.11 (Human trafficking).
- (14) G.S. 14-32(a) (Assault with a deadly weapon with intent to kill inflicting serious injury).
- (15) G.S. 14-34.1 (Discharging certain barreled weapons or a firearm into occupied property).
- (16) First degree burglary pursuant to G.S. 14-51.
- (17) First degree arson pursuant to G.S. 14-58.
- (18) G.S. 14-87 (Robbery with firearms or other dangerous weapons).

If the judge determines that release is warranted for a defendant charged with a crime listed under any of the subdivisions of this subsection, the judge shall set conditions of pretrial release in accordance with G.S. 15A-534.

A defendant charged with a noncapital offense that is not listed under any of the subdivisions of this subsection, must otherwise have conditions of pretrial release determined, in accordance with G.S. 15A-534.]

When determining conditions of such pretrial release under this section, a judicial official must impose at least one of the following conditions: G.S. 15A-534(a)(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. 58-74-5, or by at least one solvent surety.; or G.S. 15A-534(a)(5) House arrest with electronic monitoring.

If condition (5) is imposed, the defendant must execute a secured appearance bond under G.S. 15A-534(a)(4).

The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

The judicial official may include as a condition of pretrial release that the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction, and that any violation of this condition be reported by the monitoring provider to the district attorney.

Under 15A-534(d2) when imposing conditions of release for a Defendant charged with a Felony and currently on probation for a prior offense, a Judicial Official shall determine whether the Defendant poses a danger to the public prior to imposing conditions of release and must record that determination in writing. If the Judicial Official so determines, they must impose conditions of release as set forth in this Section, Section D. If they do not so determine, the Judicial Official may in their discretion and after considering the eleven factors set forth in G.S. 15A-534(c), impose pretrial release conditions as set forth in Sections A-C. If the Judicial Official is unable to make such a determination due to insufficient information, the Defendant shall be held in custody until a determination may be made in accordance with G.S. 15A-534(d2)(3), and shall state that Defendant is being held pursuant to this subdivision, the basis for determination that additional information is needed, and a date with 72 hours or 96 hours if the courthouse is closed for a period longer than 72 hours, within which Defendant will be brought before a Judge for a First Appearance.

Items required to be noted in writing may be noted on the Release Order either by checking the appropriate block on the form, if any, or by noting it under "additional information".

NOTE: 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. See forms AOC-CR-200, 201, 242, 270, 630, 631, 660 or other appropriate AOC forms.

VII. Suggested Bail Bonds (Felony Cases)

When a release under Section V. is imposed, the bond amounts set out below are applicable to both secured and unsecured bonds. These bond amounts are not minimums. They are merely suggested bonds.

The circumstances of each individual case will govern each decision; and the judicial official will select a bond amount that is appropriate and indicated by using the same release criteria set out in Section IV A above, using those criteria here for determination of amount of bond in the same manner as they are used to determine the form of release.

SUGGESTED BOND AMOUNTS

IN ALL MATTERS, WHENEVER ALLOWED BY STATUTE, THE JUDICIAL OFFICIAL MUST USE THEIR BEST JUDGMENT AND DISCRETION AND KEEP IN MIND DUE PROCESS CONSIDERATIONS AND THE STATUTORY BOND FACTORS IN SETTING PRETRIAL RELEASE CONDITIONS. THIS MEANS SOME CASES MAY VARY HIGHER AND OTHERS LOWER.

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

<u>Offense Level</u>	<u>Minimum*</u>	<u>Maximum Punishment</u>	<u>Suggested Amounts</u>
Local Ordinance		\$50.00 Fine or 30 Days	Written Promise
Class A Felony	Life Without Parole	Death, Life Without Parole	Judge Only
Class B1 Felony	144 Months	Life Without Parole	\$50,000 - \$500,000
Class B2 Felony	94 Months	484/532* Months	\$25,000 - \$400,000
Class C Felony	44 Months	231/279* Months	\$15,000 - \$300,000
Class D Felony	38 Months	204/252* Months	\$10,000 - \$200,000
Class E Felony	15 Months	88/136* Months	\$ 7,500 - \$100,000
Class F Felony	10 Months	59 Months	\$ 5,000 - \$ 50,000
Class G Felony	8 Months	44 Months	\$ 3,500 - \$ 25,000
Class H Felony	4 Months	39 Months	\$ 2,500 - \$ 15,000
Class I Felony	3 Months	24 Months	\$ 1,000 - \$ 10,000

*sex offenses

VIII. Types of Felony Offenses Requiring Additional Consideration

A. Special Provisions for Gang-related Offenses.

HOWEVER, there is **a rebuttable presumption** under G.S. 15A-533(e) **that no condition of release will reasonably assure the attendance of the Defendant or the safety of the community if** (1) reasonable cause exists to believe that the Defendant committed an offense for the benefit of, at the direction of, or in association with, any criminal gang as defined in G.S. 14-50.16A(1), and (2) the offense was committed while on pretrial release, and (3) the person has previously been convicted of an offense set forth in G.S. 14-50.16-50.20 (or has committed an offense and received an enhanced sentence pursuant to G.S. 15A-1340.16E) and within five years of the date of conviction thereof or the release from prison for the offense, whichever is later.

B. Special Provisions for Firearms Offenses.

HOWEVER, there is **a rebuttable presumption** under G.S. 15A-533(f) **that no condition of release will reasonably assure the attendance of the Defendant or the safety of the community if:**

Reasonable cause exists to believe that the Defendant committed an offense which is a Felony or Class A1 Misdemeanor involving the illegal use, possession or discharge of a firearm, **and EITHER** (a) the offense was committed while the Defendant was on pretrial release for another felony or Class A1 Misdemeanor involving the illegal use, possession, or discharge of a firearm, **OR** (b) the Defendant has previously been convicted of an offense which is a Felony or Class A1 Misdemeanor involving the illegal use, possession or discharge of a firearm within five years of the date of conviction thereof or the release from prison for the offense, whichever is later.

Persons who are considered for bond under the provisions of subsections (e), and (f) of G.S. 15A-533 may **only be released by a district or superior court judge** upon a finding that there is a reasonable assurance that the person will appear, and release does not pose an unreasonable risk of harm to the community.

C. Special Provisions for Communicating a Threat of Mass Violence

HOWEVER, under G.S. 15A-534.7, in all cases in which the defendant is charged with communicating a threat of mass violence on educational property in violation of G.S. 14-277.6 or communicating a threat of mass violence at a place of religious worship in violation of G.S. 14-277.7, except as provided in G.S. 15A-534.7(b), the judicial official who determines the conditions of pretrial release **shall be a judge**.

The judge shall direct a law enforcement officer or a district attorney to provide a criminal history report for the defendant and shall consider the criminal history when setting conditions of release. After setting conditions of release, the judge shall return the report to the providing agency or department and *it shall not be made part of the court file*. No judge shall **unreasonably delay** the determination of conditions of pretrial release for the purpose of reviewing the defendant's criminal history report.

The following provisions **shall apply in addition to the provisions of G.S. 15A-534:**

(1) Upon a determination by the judge that the immediate release of the defendant will pose a danger of injury to persons and upon a determination that the execution of an appearance bond as required by G.S. 15A-534 will not reasonably assure that such injury will not occur, a judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.

(2) A judge may impose the following conditions on pretrial release:

a. That the defendant stay away from the educational property or place of religious worship against which the threat was communicated.

b. That the defendant stay away from any other educational property or place of religious worship unless permission to be present is granted by the person in control of the property. The conditions set forth in this subdivision may be imposed in addition to requiring that the defendant execute a secured appearance bond.

(3) 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.

A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination being made under this section by a judge. If a judge has not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the provisions of this section.

D. Special Provisions for Drug Offenses

1. Methamphetamine Offenses:

HOWEVER, under G.S. 15A-534.6, in all cases in which the defendant is charged with any violation of G.S. 90-95(b)(1a), Class C Manufacture of or Class H Packaging/Labeling of Methamphetamine, or G.S. 90-95(d1)(2)b, Possession or Distribution of Immediate Precursor Chemical, when determining bond and other conditions of release, the Judicial Official shall consider any evidence that the person 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 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 person 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 person 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.

2. Trafficking Offenses

	Class	Minimum	Maximum	Min. Mandatory Fine
Trafficking Felonies:	H	25	39	\$ 5,000
	G	35	51	\$ 25,000 (\$50,000 cocaine)
	F	70	93	\$ 50,000 (\$100,000 cocaine)
	E	90	120	\$100,000
	D	175	222	\$200,000 (\$250,000 cocaine)
	C	225	282	\$250,000

A rebuttable presumption under G.S. 15A-533 (d) **that no condition of release may be set that will reasonably assure Defendant's appearance or the safety of the community arises if** (1) reasonable cause exists to believe person committed a trafficking offense, (2) while on pretrial release and (3) has previously been convicted of a Class A-E felony or a trafficking offense within five years of date of conviction or release from prison, whichever is later.

Persons who are considered for bond under the provisions of subsections (d), of G.S. 15A-533 **may only be released by a district or superior court judge** upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community

If Bail is appropriate in the discretion of the Judicial Official, after all of the circumstances set forth in Section VI. A, above, and the additional provisions of G.S. 15A-533(d), have been considered, the Judicial Official shall consider imposing an amount **3 to 7 times the mandatory minimum fine prescribed for the class of trafficking offense charged.**

E. Sex Offenses and Violent Crimes Against Child Victims

Under G.S. 15A-534.4, in all cases in which the defendant is charged with

- a. felonious child abuse,
- b. taking indecent liberties with a minor in violation of G.S. 14-202.1,
- c. rape or any other sex offense in violation of Article 7B, Chapter 14 of the General Statutes, against a minor victim,
- d. incest with a minor in violation of G.S. 14-178,
- e. kidnapping, abduction, or felonious restraint involving a minor victim,
- f. a violation of G.S. 14-320.1,
- g. with assault or any other crime of violence against a minor victim

in addition to the provisions of G.S. 15A-534 a judicial official **shall impose** the following conditions on pretrial release in addition to any other conditions that the judicial official may impose 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.
- (3) That the defendant refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.

F. Cases enumerated in the Pretrial Integrity Act as codified in 15A-533 effective 10/1/23

Pursuant to the provisions of 15A-533(b) pretrial release for the following offenses may only be determined by a judge within the first 48 hours of custody and then release is in the discretion of the judge:

A judge shall determine in the judge's discretion whether a defendant charged with any of the following crimes may be released before trial:

- (1) G.S. 14-17 (First or second degree murder or attempt to commit first or second degree murder).
- (2) G.S. 14-39 (First or second degree kidnapping).
- (3) G.S. 14-27.21 (First degree forcible rape).
- (4) G.S. 14-27.22 (Second degree forcible rape).
- (5) G.S. 14-27.23 (Statutory rape of a child by an adult).
- (6) G.S. 14-27.24 (First degree statutory rape).
- (7) G.S. 14-27.25 (Statutory rape of person who is 15 years of age or younger).
- (8) G.S. 14-27.26 (First degree forcible sexual offense).
- (9) G.S. 14-27.27 (Second degree forcible sexual offense).
- (10) G.S. 14-27.28 (Statutory sexual offense with a child by an adult).
- (11) G.S. 14-27.29 (First degree statutory sexual offense).
- (12) G.S. 14-27.30 (Statutory sexual offense with a person who is 15 years of age or younger).
- (13) G.S. 14-43.11 (Human trafficking).
- (14) G.S. 14-32(a) (Assault with a deadly weapon with intent to kill inflicting serious injury).
- (15) G.S. 14-34.1 (Discharging certain barreled weapons or a firearm into occupied property).
- (16) First degree burglary pursuant to G.S. 14-51.
- (17) First degree arson pursuant to G.S. 14-58.
- (18) G.S. 14-87 (Robbery with firearms or other dangerous weapons).

If the judge determines that release is warranted for a defendant charged with a crime listed under any of the subdivisions of this subsection, the judge shall set conditions of pretrial release in accordance with G.S. 15A-534. A defendant charged with a noncapital offense that is not listed under any of the subdivisions of this subsection, must otherwise have conditions of pretrial release determined, in accordance with G.S. 15A-534.

Whether set by Judge within the first 48 hours or subsequently, or whether initial conditions of pretrial release are set by a magistrate or clerk after the first 48 hours in custody, once the Judicial Official has determined in their discretion that conditions of pretrial release should be set, the policies and procedures set forth within these guidelines and the applicable law referenced therein should thereafter be followed in determining the conditions of release.

IX. Suggested Bail Bonds (Misdemeanor Cases).

Impaired Driving	3 Years	\$1,000 - \$25,000
Class A1 Misdemeanor	150 Days	\$1,000 - \$20,000
Class 1 Misdemeanor	120 Days	\$1,000 - \$15,000
Class 2 Misdemeanor	60 Days	\$1,000- \$2,500
Class 3 Misdemeanor	20 Days	\$1,000- \$1,500

A. Special Provisions for Driving While Impaired or Intoxicated Defendants

1. Commitments for the Intoxicated.

A defendant being held for public intoxication must be released as soon as the defendant is able to meet the magistrate's conditions of pretrial release.

2. Detention of Impaired Drivers.

The procedures as outlined in G.S. 15A-511 must be followed except as modified by G.S. 15A-534.2, or G.S. 15A-533 if on pretrial release for another charge, as set out below.

A. A defendant subject to detention under the provisions of G. S. 15A-534.2, has the right to pretrial release when the judicial official (magistrate) determines either that:

(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 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. If the defendant is released to the custody of another, the judicial official may impose any other condition of pretrial release authorized by G. S. 15A-534, including a requirement that the defendant execute a secured appearance bond.

B. The defendant may be denied pretrial release under this section for a period of no longer than 24 hours, and if the defendant is detained for 24 hours, a judicial official must immediately determine the appropriate conditions of pretrial release under G. S. 15A-534.

C. In making the determination whether a defendant remains impaired, the judicial official may request that the defendant submit to periodic tests to determine the defendant's alcohol concentration. Unless there is evidence that the defendant is still impaired from a combination of alcohol and some other impairing substance, the judicial official must determine that a defendant with an alcohol concentration less than 0.05 is no longer impaired.

D. G. S. 15A-534.2 may not be interpreted to impede a defendant's right to communicate with counsel and friends.

B. Pretrial Release for Crimes of Domestic Violence or Against Minors.

1. Domestic Violence Offenses

A. In all cases in which 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 following provisions shall apply in addition to the provisions of G. S. 15A-534:

(1) Upon a determination by the judicial official 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 determination that the execution of an appearance bond as required by G. S. 15A-534 will not reasonably assure that such injury or intimidation will not occur, a judicial official may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.

(2) A judicial official may impose the following conditions of pretrial release:

(a) That the defendant stay away from the home, school, business, or place of employment of the alleged victim;

(b) that the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;

(c) that the defendant refrain from removing, damaging, or injuring specifically identified property; and

(d) 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.

The conditions set forth above may be imposed in addition to requiring that the defendant execute a secured appearance bond.

B. Should the defendant be an inebriate, mentally ill, or imminently dangerous to himself or others, the provisions of Article 5A of Chapter 122, "Involuntary Commitment", shall apply.

C. Effective July 29, 1995, G. S. 15A-534.1 provides that for crimes of domestic violence, "The judicial official who determines the conditions of pretrial release shall be a judge," and that, "A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination being made under this section by a judge. If a judge has not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under this section."

The cases to which G. S. 15A-534.1 applies are cases in which the defendant is charged with:

- Assault, when the victim is a spouse, former spouse, or person with whom the defendant lives or has lived as if married.
- Communicating threats, when the victim is a spouse, former spouse, or person with whom the defendant lives or has lived as if married.
- Domestic criminal trespass, or
- Violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes.

Under G. S. 15A-534.1, the judge may detain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release upon the judge's determinations:

(1) That the release of the defendant will:

- (a) Pose a danger of injury to the alleged victim or any other person, or
- (b) is likely to result in intimidation of the alleged victim, and

(2) that the execution of an appearance bond will not reasonably assure that such injury or intimidation will not occur.

Under G. S. 15A-534.1, the judge (or after 48 hours, the magistrate) may impose conditions of pretrial release in addition to those otherwise available. These conditions, which may be imposed in addition to a secured appearance bond, may require the defendant to:

- (a) Stay away from the alleged victim's home, school, business, or place of employment.
- (b) Refrain from assaulting, beating, molesting, or wounding the alleged victim.
- (c) Refrain from removing, damaging, or injuring specifically identified property.
- (d) Visit his or her children only at the times and places specified in an existing court order.
- (e) Abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction, with any violation thereof to be reported by the monitoring provider to the District Attorney.

A Defendant charged under 15A-534.1 shall be brought before a judge as soon as practicable.

2. Child Victims

D. Under G.S. 15A-534.4, in all cases in which the defendant is charged with:

- a. misdemeanor child abuse,
- b. assault or any other crime of violence against a minor victim,
- c. communicating a threat against a minor victim,

in addition to the provisions of G.S. 15A-534 a judicial official shall impose the following conditions on pretrial release in addition to any other conditions that the judicial official may impose on pretrial release:

- (3) That the defendant stay away from the home, temporary residence, school, business, or place of employment of the alleged victim.
- (4) 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.
- (3) That the defendant refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.

X. Suggested Bail Bonds Probation Violation and other Warrants.

Fugitive Warrant	Set amount appropriate for the underlying offense
Governor's Warrant	No Bond
Parole Warrant	No Bond
Probation Violation	Set amount appropriate for the underlying offense considering the nature of the violations. <ul style="list-style-type: none">- Purely Technical Violations should receive lower bond amounts- Substantive violations that could lead to revocation, such as absconding or commission of subsequent offenses should have bail set per the criteria in Section IV A above.

XI. Suggested Bail Bonds for Failure to Appear.

Failure to Appear Per G.S. 15A-534(d1). When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount **at least double** the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least one thousand dollars (\$1,000) secured, absent extraordinary circumstances. The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

XII. Capital Offenses and Habitual Felonies.

A. Capital Offenses

A magistrate does not have authority to grant pretrial release to any defendant charged with a capital offense.

A District Court judge or a Superior Court judge may fix bail in all eligible cases.

B. Habitual Felon Charges

Charging an individual as a Habitual Felon changes the punishment level for the underlying felony by enhancing the underlying felony four classes for sentencing purposes, but not to exceed a Class C Felony, as follows:

For underlying felony offenses Class I to a Class E,
 For underlying felony offenses Class H to a Class D, and
 For all other underlying felony offenses Class G through Class D to Class C.

However, being a Habitual Felon is a status and not a separate offense. This is true even though the Habitual Felon charge is contained in a separate warrant or indictment.

Therefore, persons charged as a Habitual Felon should be placed under release conditions appropriate for the underlying charge. Judicial Officials should not impose other than nominal additional release conditions, such as a WP per the standing Administrative Order, upon an individual being charged as a Habitual Felon. If the judicial official believes the conditions of release need to be modified, the appropriate modification should be to the release order for the underlying offense.

XIV. Errors and Emergencies.

A. Superior Courts.

Magistrates are not authorized to modify pretrial release orders or recommendations of judges of the Superior Court.

B. District Courts.

Magistrates are not authorized to modify pretrial release orders or recommendations of District Court judges except under limited circumstances set forth below.

Magistrates are authorized to modify pretrial release orders of District Court judges in their said counties in misdemeanor cases involving process for service only after consultation with and pursuant to the direction of the said District Court judge. Magistrates exercising such authority to modify a District Court judge's pretrial release order will staple an attachment to the process setting out the reasons for the action along with the date and their signature.

C. Change of Conditions.

If, at any time subsequent to release of a defendant in accordance with a magistrate's pretrial release order, it should appear to any magistrate that the defendant is going to violate the conditions of release or abscond, such magistrate may issue an Order for Arrest under G. S. 15A-305(5) and make such new pretrial release order as may be appropriate.

D. Public Health.

Under 15A-534.3, if a judicial official conducting an initial appearance or first appearance determines that the Defendant has a communicable disease transmissible by nonsexual conduct such as, but not limited to, Hepatitis B or AIDS, then the judicial official shall order the Defendant detained for a reasonable period not to exceed 24 hours to allow investigation by public health officials and testing if they so require.

Under G.S. 15A-534.5, 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.

E. States of Emergency

The magistrate on duty or other Judicial Official setting conditions of release will be mindful of the jail capacity and the number of persons being detained therein, and shall make such adjustment in bond requirements as shall be necessary, including use of unsecured bonds, to avoid overcrowding, public health reasons, or other emergent situations.

In this connection, the magistrate will begin bond reductions with the lesser offenses, but the magistrate may not make a reduction in a bond previously set by a judge except as authorized under this section. This procedure should be executed with care.

XV. Termination.

A bail bond posted pursuant to this section is effective and binding upon the obligor 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. The obligation of an obligor, however, is terminated at an earlier time if:

- (1) a judge authorized to do so releases the obligor from his bond; or
- (2) the principal is surrendered by a surety in accordance with G. S. 15A-540; or
- (3) the proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G. S. 15A-544(b); or
- (4) prayer for judgment has been continued indefinitely in the District or Superior Court.
- (5) the court has placed the defendant on probation pursuant to a deferred prosecution or conditional discharge.

XVI. Further Statement of General Policies.

(1) The law enforcement officers are encouraged to use citations in those misdemeanor cases in which they feel confident that the defendant will appear in court on the days they are due to appear.

(2) The clerks and magistrates are encouraged to use the criminal summons instead of warrants in non-support, certain worthless check, failure to return rental property, and other appropriate misdemeanor cases. G. S. 15A-303.

(3) The arresting officer has no authority to fix the amount of the bond, but he should furnish any information he has available to him to assist the judicial official in determining the amount of the bond. In setting the amount of bond, the clerk or magistrate acts as an independent judicial official who has the duty to the defendant to see that the bond is not excessive.

(4) When brought before a magistrate to set conditions of release, if an attorney representing the Defendant is present that attorney shall not be barred from accompanying the Defendant before the magistrate when the conditions of release are being set and shall be given an opportunity to be heard on the Defendant's behalf as to the conditions of release. This shall be done in such a manner as to not compromise the security of the operation of the Magistrate's Office.

(5) When there are several charges against one defendant, one bond may be set for all charges. Such bond may be set as an aggregate amount of the appropriate bond amounts for all charges or at the level appropriate to the highest charge for which bond is being set, in the discretion of the judicial official setting the bond.

XVII. Release After Conviction in Superior Court. G. S. 15A-536.

- (1) There is no constitutional right to release at this stage. Defendant whose guilt has been established and who is awaiting sentence, or has filed an appeal, may be released in the judge's discretion. *State v. Sparks, 297 N.C. 314 (1979).*
- (2) In addition to usual conditions, a Superior Court judge may impose supervisory custody, or restrictions on travel, associations, conduct, or place of abode, or both.
- (2) Judge's release order must specify conditions, inform defendant of penalty for violation, and advise him violation will result in arrest.
- (3) Release Order may be modified or revoked by a judge who has ordered release, or if that judge is out-of-district, by any other Superior Court judge. Defendant whose release is revoked is entitled to an immediate hearing.
- (4) Judge may consider any reliable evidence, including hearsay, under this section.

This official policy on Pretrial Release as adopted on June 15, 2023, is hereby revised and amended by adoption of this Amended policy on this the _____ day of _____, 2023, effective October 1, 2023.

Michael S. Adkins
Senior Resident Superior Court Judge
Judicial District 19C

Beth A Dixon
Chief District Court Judge
Judicial District 19C

§ 15A-534. Procedure for determining conditions of pretrial release.

(a) In determining conditions of pretrial release a judicial official must impose at least 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. 58-74-5, or by at least one solvent surety.
- (5) House arrest with electronic monitoring.

If condition (5) is imposed, the defendant must execute a secured appearance bond under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1), (a2), (a4), or (a6), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release. The judicial official may include as a condition of pretrial release that the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, of a type approved by the Division of Community Supervision and Reentry of the Department of Adult Correction, and that any violation of this condition be reported by the monitoring provider to the district attorney.

(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) or (5) in subsection (a) above instead of condition (1), (2), or (3), and 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 pursuant to G.S. 15A-535(a).

(c) In determining which conditions of 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 the defendant and any surety, or the agent thereof who is executing the bond for the defendant's release pursuant to that order.

(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at

least one thousand dollars (\$1,000). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter. [The following applies:]

- (1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition (1), (2), or (3).
- (2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.
- (3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in custody shall set forth, in writing, the following at the time that the order is entered:
 - a. The defendant is being held pursuant to this subdivision.
 - b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.
 - c. A date, within 72 hours or 96 hours if the courthouse is closed for transactions for a period longer than 72 hours, of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.

(d3) When conditions of pretrial release are being determined for a defendant who is charged with an offense and the defendant is currently on pretrial release for a prior offense, the judicial official may require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least one thousand dollars (\$1,000).

(e) A magistrate or a clerk may modify his pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him 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.

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 him, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order 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 in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor 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. The obligation of an obligor, however, is terminated at an earlier time if:

- (1) A judge authorized to do so releases the obligor from his bond; or
- (2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or
- (3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544.3; or
- (4) Prayer for judgment has been continued indefinitely in the district court; or
- (5) The court has placed the defendant on probation pursuant to a deferred prosecution or conditional discharge.

(i) Repealed by Session Laws 2012-146, s. 1(b), effective December 1, 2012. (1973, c. 1286, s. 1; 1975, c. 166, s. 13; 1977, 2nd Sess., c. 1134, s. 5; 1987, c. 481, s. 1; 1989, c. 259; 2001-487, s. 46.5(b); 2009-412, s. 1; 2009-547, ss. 3, 4, 4.1; 2010-94, s. 12.1; 2010-96, s. 3; 2011-191, s. 5; 2012-146, s. 1(a), (b); 2013-298, s. 2; 2015-195, s. 11(n); 2015-247, s. 9(a); 2016-107, s. 1; 2017-186, s. 2(ww); 2021-180, s. 19C.9(t); 2021-182, s. 2.5(b).)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2023

SESSION LAW 2023-75

HOUSE BILL 813

AN ACT TO MODIFY LAWS RELATING TO PRETRIAL RELEASE.

The General Assembly of North Carolina enacts

15A-533. Right to pretrial release in capital and noncapital cases. ... (b) A judge shall determine in the judge's discretion whether a defendant charged with any of the following crimes may be released before trial: (1) G.S. 14-17 (First or second degree murder) or an attempt to commit first or second degree murder. (2) G.S. 14-39 (First or second degree kidnapping). (3) G.S. 14-27.21 (First degree forcible rape). (4) G.S. 14-27.22 (Second degree forcible rape). (5) G.S. 14-27.23 (Statutory rape of a child by an adult). (6) G.S. 14-27.24 (First degree statutory rape). (7) G.S. 14-27.25 (Statutory rape of person who is 15 years of age or younger). (8) G.S. 14-27.26 (First degree forcible sexual offense). (9) G.S. 14-27.27 (Second degree forcible sexual offense). (10) G.S. 14-27.28 (Statutory sexual offense with a child by an adult). (11) G.S. 14-27.29 (First degree statutory sexual offense). (12) G.S. 14-27.30 (Statutory sexual offense with a person who is 15 years of age or younger). (13) G.S. 14-43.11 (Human trafficking).

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(14) G.S. 14-32(a) (Assault with a deadly weapon with intent to kill inflicting serious injury). (15) G.S. 14-34.1 (Discharging certain barreled weapons or a firearm into occupied property). (16) First degree burglary pursuant to G.S. 14-51. (17) First degree arson pursuant to G.S. 14-58. (18) G.S. 14-87 (Robbery with firearms or other dangerous weapons). If the judge determines that release is warranted for a defendant charged with a crime listed under any of the subdivisions of this subsection, the judge shall set conditions of pretrial release in accordance with G.S. 15A-534. A defendant charged with a noncapital offense that is not listed under any of the subdivisions of this subsection, must otherwise have conditions of pretrial release determined, in accordance with G.S. 15A-534. ... (h) If a defendant is arrested for a new offense allegedly committed while the defendant was on pretrial release for another pending proceeding, the judicial official who determines the conditions of pretrial release for the new offense shall be a judge. The judge shall direct a law enforcement officer, pretrial services program, or a district attorney to provide a criminal history report and risk assessment, if available, for the defendant and shall consider the criminal history when setting conditions of pretrial release. After setting conditions of pretrial release, the judge shall return the report to the providing agency or department. No judge shall unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the defendant's criminal history report. Notwithstanding the provisions of this subsection, a magistrate may set the conditions of pretrial release at any time if the new offense is a violation of Chapter 20 of the General Statutes, other than a violation of G.S. 20-138.1, 20-138.2, 20-138.2A, 20-138.2B, 20-138.5, or 20-141.4. A defendant may be retained in custody pursuant to this subsection not more than 48 hours from the time of arrest without a judge making a determination of conditions of pretrial release. If a judge has not acted pursuant to this subsection within 48 hours from the time of arrest of the defendant, the magistrate shall set conditions of pretrial release in accordance with G.S. 15A-534." SECTION 2.(b) This section becomes effective October 1, 2023, and applies to offenses committed on or after that date.

N.C.G.S. 15A-534(c) Factors to Consider When Setting Conditions of Release

- (1) the nature and circumstances of the offense charged,
- (2) the weight of the evidence,
- (3) the defendant's family ties,
- (4) employment,
- (5) financial resources,
- (6) character,
- (7) mental condition,
- (8) length of residence in the community,
- (9) record of convictions,
- (10) history of flight to avoid prosecution, or failure to appear at court proceedings, and
- (11) any other evidence relevant to the issue of pretrial release.

Bond Amount Tables

Suggested Bond Amounts Felony Cases

Offense Level	Minimum*	Maximum Punishment	Suggested Amounts
Class A Felony#	Life Without Parole	Death, Life Without Parole	Judge Only
Class B1 Felony#	144 Months	Life Without Parole	\$50,000 - \$500,000
Class B2 Felony#	94 Months	484/532* Months	\$25,000 - \$400,000
Class C Felony#	44 Months	231/279* Months	\$15,000 - \$300,000
Class D Felony#	38 Months	204/252* Months	\$10,000 - \$200,000
Class E Felony#	15 Months	88/136* Months	\$ 7,500 - \$100,000
Class F Felony	10 Months	59 Months	\$ 5,000 - \$ 50,000
Class G Felony	8 Months	44 Months	\$ 3,500 - \$ 25,000
Class H Felony	4 Months	39 Months	\$ 2,500 - \$ 15,000
Class I Felony	3 Months	24 Months	\$ 1,000 - \$ 10,000

#= possible 15A-533 case

*sex offenses

Suggested Bail Bonds (Misdemeanor Cases).

Impaired Driving	3 Years	\$1,000 - \$25,000
Class A1 Misdemeanor	150 Days	\$1,000 - \$20,000
Class 1 Misdemeanor	120 Days	\$1,000 - \$15,000
Class 2 Misdemeanor	60 Days	\$1,000 - \$2,500
Class 3 Misdemeanor	20 Days	\$1,000 - \$1,500

Trafficking Offenses

Trafficking Felonies:	Class:	Minimum	Maximum	Min. Mandatory Fine
	H	25	39	\$ 5,000
	G	35	51	\$ 25,000 (\$50,000 cocaine)
	F	70	93	\$ 50,000 (\$100,000 cocaine)
	E	90	120	\$100,000
	D	175	222	\$200,000 (\$250,000 cocaine)
	C	225	282	\$250,000

If Bail is appropriate in the discretion of the Judicial Official, after all of the circumstances set forth in Section VI. A, above, and the additional provisions of G.S. 15A-533(d), have been considered, the Judicial Official shall consider imposing an amount **3 to 7 times the mandatory minimum fine prescribed for the class of trafficking offense charged.**

Suggested Bail Bonds Probation Violation and other Warrants.

Fugitive Warrant	Amount appropriate to offense
Governor's Warrant	No Bond
Parole Warrant	No Bond
Probation Violation	Set amount appropriate for the underlying offense considering the nature of the violations.

All subject to the provisions of 15A-533