

THE NORTH CAROLINA STATE LEGISLATURE HAS PROVIDED THAT A SECURED APPEARANCE BOND IS THE COURSE OF LAST CHOICE IN ESTABLISHING CONDITIONS OF PRE-TRIAL CUSTODY RELEASE IN A CRIMINAL PROCEEDING:

THE DEFENDANT MUST BE RELEASED UPON A WRITTEN PROMISE TO APPEAR, UPON AN UNSECURED APPEARANCE BOND, OR TO A PERSON OR ORGANIZATION AGREEING TO SUPERVISE HIM, UNLESS THE JUDICIAL OFFICIAL FINDS THAT SUCH OPTIONS SHALL NOT REASONABLY SECURE THE APPEARANCE OF THE DEFENDANT, WILL POSE A DANGER OF INJURY TO ANY PERSON OR ARE LIKELY TO RESULT IN DESTRUCTION OF EVIDENCE, SUBORDINATIONS OF PERJURY, OR INTIMIDATION OF A WITNESS.



General Statute 15A-534

BAIL AND PRETRIAL RELEASE POLICY FOR DISTRICT 29B

- 1. Name.** This policy shall be officially known as the "Bail and Pretrial Release Policy for District 29B." (the "Policy") (Judicial District 29B: the "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."
- 3. Purpose.** The purpose of this Policy is to provide recommendations and guidance for the implementation of Article 26 of the General Statutes, which is neither amended nor abrogated by this Policy. Certain sections of Article 26 are explained in this Policy, and they may be set forth herein almost verbatim, with rearrangement to facilitate better understanding. But in all cases the pertinent statute controls over any content of this Policy. Consistent with the intent of Article 26, this Policy 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.

This Policy is a supplement to the bond statutes (mainly contained in Article 26 of the General Statutes), and is intended to assist magistrates and other judicial officials who may be called upon to set conditions of pre-trial release. In most instances, the statutes will provide the answer to whatever questions arise. However, the statutes do not address the issue of what bond is reasonable and what bond is excessive. That issue arises because of a provision which appears in both the federal and the state constitution, saying: "Excessive bail shall not be required." Bail is excessive if it is higher than what is reasonable under the circumstances. Under the North Carolina bail statutes there are only the circumstances noted above to consider: assuring the defendant's presence in court; preventing harm to persons, property, or evidence pending trial; or preventing subordinations of perjury, or intimidation of a witness.

4. Scope. This policy shall apply in all criminal actions or proceedings in Judicial District 29B, 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 the District.

5. Definitions. The definitions set forth in G.S. 15A-531 shall apply in this policy. "Bail," "Bond," and "Bail bond" may be used interchangeably herein. 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, and also including the conditions of such release. 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. The purpose of this Policy. The purpose of this Policy shall be to promote the following goals: 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,

Excessive bail shall not be required

Eighth Amendment to the U.S. Constitution, and
Article 1, Section 27 of the N.C. Constitution

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. Opportunity to observe defendant; Video appearances. G.S. 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) Should such means become available, 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). The defendant shall be subject to the law of contempt in a video proceeding the same as if the proceeding were in person.

8. 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.

*Pre-trial release conditions must be established
without unnecessary delay following arrest . . .*

G.S. 15A-511 (a)(1)

*except in the case of an unruly or intoxicated
defendant, when his initial appearance may be
delayed temporarily, and the defendant confined,
pending a time when the defendant may
comprehend the proceeding.*

G.S. 15A-511 (a)(3)

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

(a) Unless subsection (b) of 15A-534 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 15A-534 (a) (that is, no secured bond

shall be 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) 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.

(d) If a judicial official determines the existence of one or more of the dangers set forth in section (b) of 15A-534, 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. In imposing a secured bond, the judicial official shall consult the maximum bond tables provided in this policy.

10. Factors that must be considered in every case. G.S.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.
- (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 33 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) in the case of a new felony charge: whether the defendant is on probation for a prior offense; if so, the judicial official must determine whether the defendant poses a danger to the public. If the judicial official determines that the defendant does pose a danger to the public, a secured appearance bond must be established. If the judicial official does not have sufficient information to make a determination, he must observe the following procedure:

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

(2). 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. the provision that if the additional information is acquired before the 96-hour appearance, the first available judicial official will set conditions of release.

(3). 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 if it is available:

(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 for violation of a condition of pretrial release pursuant to G.S. 15A- 401(b)(1) or (b)(2), 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 information relevant to the issue of pretrial release.

While not listed specifically among the statutory factors to be considered in setting the amount of any secured bond, the defendant's income or lack of an income, is properly taken into account if creditable information is available. An individual with no income may have more difficulty in satisfying a \$300 secured bond, than would a moderately-paid person in making a \$3,000 bond.

11. 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 the pre-conditions set out in 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).

12. Form of Release. The judicial official must issue an order using AOC-CR-200 or AOC-CR-242. Upon his release, 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.

13. 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 G.S. 15A-304 (b) which provides that a warrant for arrest may be issued, instead of or subsequent to a criminal summons, when it appears to the judicial official that the person named should be taken into custody. Circumstances to be considered in determining whether the person should be taken into custody may include, but are not limited to, failure to appear when previously summoned, facts making it apparent that a person summoned will fail to appear, danger that the person accused will escape, danger that there may be injury to person or property, or the seriousness of the offense.

When Citizen-initiated. - If the finding of probable cause by the magistrate, which proceeds the issuance of criminal process, is based solely upon an affidavit or oral testimony under oath or affirmation of a person who is not a sworn law enforcement officer, the issuing official shall not issue a warrant for arrest and instead shall issue a criminal summons, unless one of the following circumstances exists:

- (a) There is corroborating testimony of the facts establishing probable cause from a sworn law enforcement officer or at least one disinterested witness.
- (b) The official finds that obtaining investigation of the alleged offense by a law enforcement agency would constitute a substantial burden for the complainant.
- (c) The official finds substantial evidence of one or more of the circumstances which provide a basis for the person to be taken to be taken into custody, as such examples are listed in the preceding paragraph of this provision 13 of the Policy.

14. 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.

15. Authority to Determine and Modify Conditions of Pretrial Release.

*A bond should be the result of individualized decision making – there is no fixed formula for a bond.
Judicial officials are called upon to exercise their knowledge of the law, their experience, and their common sense.*

(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.

Pursuant to G.S. 15A-614, following any probable cause hearing in district court, when probable cause is found to exist, a judge must review a defendant's eligibility for release when that defendant is in custody. Typically, this review should take the form of a bond modification motion hearing, during which the defendant is permitted to offer his argument for modification. The State may also be heard during such review.

(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

Upon application of any defendant whose order of pretrial release has been revoked, the judge shall set new conditions of release in accordance with this Policy.

G.S. 15A-534 (f)

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).

(h) Violation of Conditions of Release. When a Defendant is arrested for violation of a condition of pretrial release pursuant to G.S. 15A-401(b)(1) or (2), the Magistrate at Initial Appearance shall set new conditions of release as follow: (1) in a case where the violated bond was a written promise, a new secured bond in an amount of at least \$1,000; (2) in a case where the violated bond was an unsecured bond, a new secured bond of at least the same amount as the unsecured bond, and (3) in a case where the violated bond was a secured bond, a newly secured bond of at least double the amount of the original secured bond. In all cases, any other conditions of release shall be restated in the new release order.

Under G.S. 15A-401(b)(2)f, a law enforcement officer may arrest a defendant without a warrant for violation of conditions of release. When a defendant appears before a judicial official after such an arrest, the judicial official shall first determine whether or not a valid condition of release was violated. If there is no probable cause to believe that a valid condition of release was violated, the judicial official shall order the defendant released on the existing release order. If there is probable cause to believe that a valid condition of release was violated, the judicial official shall determine the defendant's eligibility for and conditions of release as set out in this policy and, if new conditions of release are warranted, shall enter a new release order.

16. 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.

17. Suggested Maximum Bail Amounts. G.S. 15A-535(a). The circumstances of each individual case will govern the decision of a judicial official in setting conditions of bail. A rigid bail schedule is incompatible with such an individualized decision. A judicial official should set initial conditions of release that are appropriate using the release criteria set forth in the General Statutes, in Paragraph 10 above, and in the other provisions of this policy. This Policy contains suggested maximum pretrial bond amounts for individual offenses. As these are suggested *maximums*, bonds should not aggregate near the top of the maximum amounts. Whenever a judicial official requires an initial secured appearance bond in excess of the recommended maximum bond tables provided by this policy, the judicial official should record the reasons for such determination in writing. Any such written determination shall be filed in the defendant's court file.

The list of suggested *maximum* bond amounts for both misdemeanors and felonies is attached to this Policy as EXHIBIT A.

When defendants fail to appear after an initial bond is set, the new bond can easily exceed the maximum suggested amounts as a result of doubling of the bond. In this instance, and in any instance in which a judicial official with authority to do so is considering the modification of a bond amount which already exceeds the suggested maximum bond amount, the judicial official shall not be required to record the reasons for such determination.

The setting of bond based solely on the punishment level of the offense is inconsistent with the law.

18. Non-violent misdemeanors and Class I felonies. Citations, criminal summons, written promises, and unsecured bonds should ordinarily be used for non-violent misdemeanors, except DWIs, for those without a history of failing to appear for court. Secured bonds should not ordinarily be used for Class I felonies if the defendant has no criminal record and no history of failing to appear.

19. Fugitive warrants. On a fugitive warrant, a secured bond should be set near the top of this Policy's maximum bond for the general nature of the other jurisdiction's underlying offense.

20. Governor's 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.

21. Probation Violations.

(a) Except where the General Statutes require otherwise (see, for example, G. S. 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 Maximum Bail Amounts contained herein for the various offense classes, consider the nature of the violation and all relevant information provided to the judicial official, including, specifically, any relevant information provided by the probation officer. If the sole alleged probation violation is monetary, or a technical violation as opposed to an allegation of absconson or commission of a new offense, then ordinarily a secured bond should not be used initially.

(b) Seven-Day Hearings. Pursuant to G.S. 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 days after they are arrested and served with the violation report, unless waived by the defendant, or, the defendant has been released, or the defendant's violation hearing has been held.

22. Rebuttable presumptions. A defendant subject to the rebuttable presumptions in the following sections **may be released only 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) Recidivist 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 official 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) Recidivist Gang Offense. 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 from prison for the offense, whichever is later.

(c) Recidivist Firearm-Involved Offense. 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 finds there is reasonable cause to believe that the defendant committed a felony or Class A 1 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 A 1 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 A 1 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. G.S.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 any indictment of a defendant previously determined to be a habitual felon, on new charges that are not Class C or above, the suggested maximum bond range should be the same as if the new felony were four classes higher, not to exceed a Class C felony.

For purposes of considering the Maximum Bond table with respect to defendants alleged by indictment to possess habitual felon status, the relevant charge level of the offense is the level to which the "habitualized" offense would be elevated.

(b) A defendant who is, for the first time, being indicted as a habitual felon, must have a secured bond as to the substantive charge, in addition to any other conditions determined to be appropriate. As noted in following subparagraph "(c)," no separate pretrial release provisions are to be established for a charge or indictment alleging that the defendant has the status of a habitual offender.

(c) This policy does 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 a crime, and generally release may be set only in connection with a new criminal offense. Either the State or the Defendant, however, can seek to have the conditions of release modified in the underlying felony upon which the habitual felony status 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 Bonds Prohibited. The use of more than one surety upon an Appearance Bond for the purpose of "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 bond.

26. Cash Appearance Bonds. When a defendant fails to appear and fails to comply with a judgment (for which an order to appear to show cause has been issued), 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. Restrictions upon Defendants in Domestic Violence Cases. G.S. 15-534.1.

(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 a violation of an order entered pursuant to Chapter 50B (Domestic Violence) of the General Statutes.

(b) The conditions of pretrial release must be determined by a judge (unless such determination shall be made by a magistrate pursuant to part (g) below), who must consider the criminal history report, which must be presented to the judge by law enforcement or by the district attorney.

(c) The magistrate before whom the defendant in a domestic violence case initially appears may make written recommendations regarding conditions of release based upon the information available to him and forward such recommendations to the clerk to be provided to the district court judge setting the conditions of release. A form for recording the magistrate's observations, considerations, and recommendations shall be provided to the offices of the magistrates to facilitate such.

(d) 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.

(e) 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 (no written findings are required for non-monetary conditions):

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

(2). That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;

(3). That the defendant refrain from removing, damaging or injuring specifically identified property;

(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 abstain from alcohol consumption, including the possibility of requiring that such abstention be verified by the use of a continuous alcohol monitoring system, with any violation to be reported directly from the provider to the district attorney (it is noted that at present, the continuous alcohol monitoring system does not afford real-time reporting);

(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 designate some person to remove firearms from defendant's possession or control within a specified time (the availability of this provision as a condition of pre-trial release does not affect in any way the possibility of a provision in any order issued pursuant to a civil action filed pursuant to Chapter 50B, that the Sheriff is directed to seize any such firearms); or

(8). Secured appearance bond.

(f) 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.

(g) 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 requirement within 48 hours of arrest, a magistrate shall act in his stead without delay.

29. 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 only a judge shall set conditions of pretrial release during the first 48 hours of the defendant's detention. If a judge has not acted within 48 hours of the defendant's arrest, a magistrate shall act without delay, under the provisions of G.S. 15A-534.7.

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

(a) The provisions set out in part (b) below shall 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 against a minor victim;
- (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 shall impose the following conditions on pretrial release:

(1). That the defendant stay away from the home, temporary residence, school, business, or place of employment of the alleged victim;

(2). That the defendant refrain from communicating or attempting to communicate, directly or indirectly, with the victim, except under circumstances specified in an order entered by a judge with knowledge of the pending charges; and

(3). That the defendant refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.

(c) The first two conditions of the previous paragraph may be waived by the judicial official, upon the request of the defendant, **if the judicial official 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.

33. 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).

34. Detention for Communicable Diseases. G.S. 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.

35. 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.

36. Property Bonds.

(a) All Accommodation bondspersons shall execute a form AOC-CR-201, which includes references to forfeiture of the property of the accommodation bondsman in the event that the terms are not met and the Defendant fails to appear for court at any time during the pendency of the case.

(b) Property Bonds are under the authority of the Clerk, and must meet the approval of the Clerk, as well as the satisfy the standard requirements for property bonds as established by the Clerk from time to time.

(c) Such Deeds of Trust and Title Opinions as are required by the Clerk shall be prepared by a North Carolina licensed attorney. Defendants who inquire of the judicial official conducting the initial appearance concerning property bonds may be advised by the judicial official 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.

37. 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, any law-enforcement officer or custodial official having the person in custody must affect the release upon satisfying himself that the conditions of release have been met, but law-enforcement and custodial agencies may administratively direct which officers, if any, or officials, are authorized to affect such release.

(b) Upon release of the defendant, 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.

38. 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 Defendant. G.S. 15A-538. A defendant inmate 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 defendant has filed a motion for a speedy trial;
- (2). the length of time the defendant has been incarcerated on such charges;
- (3). the number of times the cases of the defendant have appeared on a trial calendar;
- (4). the number of times the cases of the defendant 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.

39. 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.

40. 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-1, Rule 101.

41. Effective Date. This Policy shall be effective January 1, 2022.



PETER KNIGHT
Senior Resident Superior Court Judge



MACK BRITTAIN
Chief District Court Judge

MAXIMUM SECURED APPEARANCE BOND AMOUNTS

THESE ARE MAXIMUMS, NOT "SUGGESTED BONDS." See this Policy "17." (G.S. 15A-534)

CLASS A	set by Judge
CLASS B1	\$150,000
CLASS B2	\$100,000
CLASS C	\$ 80,000
CLASS D	\$ 60,000
CLASS E	\$ 40,000
CLASS F	\$ 20,000
CLASS G	\$ 15,000
CLASS H	\$ 8,000
CLASS I	\$ 6,000

MAXIMUM SECURED BOND AMOUNTS FOR TRAFFICKING

See this Policy "17." (G.S. 15A-534)

MARIJUANA

0 to 49 POUNDS	\$50,000
50 to 1,999 POUNDS	\$100,000
2,000 to 9,999 POUNDS	\$200,000
10,000 POUNDS or more	\$500,000

OPIUM OR HEROIN

4 TO 13 GRAMS	\$200,000
14 TO 27 GRAMS	\$250,000
28 GRAMS or more	\$1,000,000

COCAINE

28 to 199 GRAMS	\$100,000
200 to 399 GRAMS	\$200,000
400 GRAMS or more	\$500,000

METHAMPHETAMINE

28 to 199 GRAMS	\$200,000
200 to 399 GRAMS	\$250,000
400 GRAMS or more	\$1,000,000

MDA/MDMA

28 to 199 GRAMS or 100 to 499 UNITS	\$100,000
200 to 399 GRAMS, or 500 to 999 UNITS	\$200,000
400 GRAMS or more, 1000 UNITS or more	\$500,000

LSD

100 to 499 UNITS	\$100,000
500 to 999 UNITS	\$200,000
1,000 UNITS or more	\$500,000

METHAQUALONE

1,000 to 4,999 UNITS	\$100,000
5,000 to 9,999 UNITS	\$200,000
10,000 UNITS or more	\$500,000

AMPHETAMINE

28 to 199 GRAMS	\$50,000
200 to 399 GRAMS	\$100,000
400 GRAMS or more	\$250,000

SYNTHETIC CANNEBINIDS

50 to 249 DOSAGE UNITS	\$50,000
250 to 1249 DOSAGE UNITS	\$100,000
1,250 to 3,749 DOSAGE UNITS	\$200,000
3,750 DOSAGE UNITS or more	\$500,000

MEPHEDRONE

28 to 199 GRAMS	\$200,000
200 to 399 GRAMS	\$250,000
400 GRAMS or more	\$1,000,000

MDPV

28 to 199 GRAMS	\$200,000
200 to 399 GRAMS	\$250,000
400 GRAMS or more	\$1,000,000

MISDEMEANORS/DWI

Maximum Secured Bonds

As with Felony Maximum Secured Bonds, if a secured bond for a misdemeanor is set in excess of these amounts, reasons for doing so must be recorded in writing. As with felonies, the amounts noted below are not suggested bonds, or minimum bonds, or maximum bonds. They represent the high end of the range of presumptively reasonable bonds, but if there is a reason why a bond should be set at a higher figure, it can and should be so set. However, as noted at the beginning of this Policy, not only is a secured bond not required, a secured bond, as it is with felony charges, is a course of last resort. As always, a bond that is not secured, or is less than the amounts shown below, requires no explanation. See this Policy "17." (G.S. 15A-534)

CLASS A1 written promise, or not more than \$4,000	
CLASS 1 written promise, or not more than \$750	
CLASS 2 written promise, or not more than \$200	
CLASS 3 written promise	
DWI written promise, or not more than \$1,000	

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