

19 R 345

NORTH CAROLINA  
CABARRUS COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION (19A)  
DISTRICT COURT DIVISION (19A)  
2019 JUN - 7 P 2:15

IN RE: )  
ISSUANCE OF A PRETRIAL RELEASE )  
POLICY FOR JUDICIAL DISTRICT 19A )

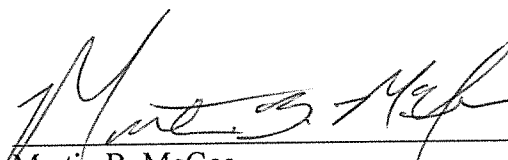
CABARRUS CO., C.S.C.  
BY ORDER

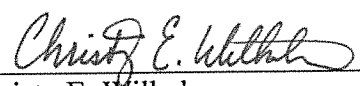
Pursuant to the authority granted by Article 26 of Chapter 15A of the North Carolina General Statutes, and specifically the requirement in said Article that the Senior Resident Superior Court Judge issue recommended policies on bail, and specified, implied and inherent powers of our respective offices,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

IT IS NOW THEREFORE, ORDERED that:

1. The "Pretrial Release Policy for Judicial District 19A," attached hereto, and incorporated herein by reference, is hereby adopted in compliance with N.C.G.S. § 15A-535.
2. These policies supersede all prior such policies and shall be effective June 15, 2019.
3. The Clerk shall maintain a copy of this Order that is available to the public.

This the 27 day of June 2019.

  
\_\_\_\_\_  
Martin B. McGee  
Senior Resident Superior Court Judge  
Judicial District 19A

  
\_\_\_\_\_  
Christy E. Wilhelm  
Chief District Court Judge  
Judicial District 19A

NORTH CAROLINA

CABARRUS COUNTY

IN THE MATTER OF PROMULGATING  
LOCAL RULES RELATING TO PRETRIAL  
RELEASE FOR JUDICIAL DISTRICT 19A

FILED  
IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION (19A)  
DISTRICT COURT DIVISION (19A)

2019 JUN - 1 15 2:15  
CABARRUS CO., C.S.C.

BY 

### PRETRIAL RELEASE POLICY FOR JUDICIAL DISTRICT 19A

1. **Name.** This policy shall be officially known as the “Pretrial Release Policy for Judicial District 19A.”
2. **Authority.** G.S. 15A-535 provides: “Subject to the provisions of this Article [26], the Senior Resident Superior Court Judge of each judicial district in consultation with the Chief District Court Judge *must* advise and issue *recommended policies* to be followed within the district in *determining whether, and upon what conditions, a defendant may be released before trial.*” (emphases added)
3. **Purpose.** The purpose of this policy is to provide recommendations and guidance for the implementation of Article 26, which is not amended, abrogated, or repealed by this policy. Certain sections of Article 26 are explained in this policy, and they may be set forth herein almost verbatim, with re-arrangement to facilitate better understanding. But in all cases the pertinent statute controls over any content of this policy. This policy shall replace the prior policy entered on August 2, 1998 and is intended to incorporate the many changes that have evolved in this District and carry forward the best practices of the prior policy such as use of prompt first appearances for misdemeanors, preliminary hearings in probation violations, use of criminal summons and citations in appropriate cases, increased days of court and flexible add-on policies to address cases that are ripe for disposition, the use of criminal summons in citizen initiated charges unrelated to domestic violence or physical injury, encouragement of the use of the court date notification system, and early appointment of counsel. This policy also continues to support the changes that have evolved over time listed above including that continued 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. Furthermore, it is the intention of the undersigned to form a committee to further review this current policy to determine if improvements can be made.
4. **Scope.** This policy shall apply in all criminal actions or proceedings in Judicial District 19A, and is recommended to be followed by all judicial officials and all other persons dealing with pretrial release of criminal defendants in this Judicial District (referred to sometimes herein as “District”).
5. **Definitions.** The definitions set forth in G.S. 15A-531 shall apply in this policy. Additional terms are defined as follows:
  - (a) **Capital Offense.** A criminal offense for which the death penalty is an authorized form of punishment. Such an offense is “capital” regardless of whether the District Attorney is seeking the death penalty in the particular case.
  - (b) **Cash.** Cash money, cashier’s check, certified check, or money order.
  - (c) **Clerk.** The clerk of superior court, acting clerk, or assistant or deputy clerk in the county where the defendant is detained. G. S. 15A-101(2).
  - (d) **Judicial Official.** A magistrate, clerk, district court judge and superior court judge.
  - (e) **Obligor.** A principal or a surety on a bail bond.
  - (f) **Post-trial Release.** Release after guilt is established in superior court.
  - (g) **Pretrial Release.** Release prior to guilt being established in superior court. This may be referred to interchangeably as “bail” or “bond.”
  - (h) **Principal.** A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.

- (i) 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).
  - (j) “He,” “his,” “she,” “her,” etc. For ease of reading, natural persons will be referred to herein in the male or female gender, but such references shall be construed in all instances to apply equally to both.
6. **Background on the purpose of pretrial release.** In general, the purpose of pretrial release is to impose the least restrictive conditions that will reasonably assure a defendant’s appearance in court. The right to pretrial release recognizes the presumption of innocence and promotes a defendant’s right to a fair trial, by allowing access to counsel, freedom of movement to secure witnesses, and the general ability to prepare a defense. It is recognized that any release on bail will create the risks that the accused will flee, commit another crime while out on bail, destroy evidence, or intimidate witnesses against him. These are calculated and accepted risks that must be taken as the price of our system of justice. Bail in an amount higher than an amount reasonably calculated to minimize these risks is “excessive” and unlawful under the Eighth Amendment to the Constitution of the United States and under Article I, Section 27 of the Constitution of the North Carolina. Bail may not be used as punishment.
7. **Opportunity to observe defendant; Video appearances. 15A-532.**
- (a) The determination of conditions of pretrial release should be made by a judicial official with a clear opportunity to witness the defendant in person and gather information about the defendant.
  - (b) Conditions of pretrial release may be made, modified, or revoked in a noncapital case by an audio and video transmission between the judicial official and the defendant in which the parties can see and hear each other. The following rules apply to such video communications:
    - 1. If the defendant has counsel, the defendant shall be allowed to communicate fully and confidentially with his attorney during the proceeding.
    - 2. Upon motion of the defendant, the court may not use an audio and video transmission.
    - 3. Prior to the use of audio and video transmission under this section, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the Senior Resident Superior Court Judge.
    - 4. If the defendant has not moved to require an in-person proceeding, the defendant shall be subject to the law of contempt in a video proceeding the same as if the proceeding were in person.
8. **Forms of Pretrial Release.** G.S. 15A-534(a). In determining conditions of pretrial release, a judicial official must impose at least one of the following conditions:
- (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 bond is executed solely by the defendant. No surety or security is required to secure the bond.
  - (c) Supervised Release. The defendant is placed into the custody of a designated person or organization agreeing to supervise him. Note that the defendant has the right to choose a secured bond in lieu of supervised release.
  - (d) Secured Appearance Bond. The bond is secured by a cash deposit of the full amount of the bond, a mortgage pursuant to G.S. 58-74-5, or at least one solvent surety.
  - (e) House Arrest with Electronic Monitoring. This requires a secured appearance bond and is currently not available in this District.
9. **Choosing the Form of Pretrial Release. G.S. 15A-534(b).**
- (a) Unless subsection (b) applies, 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 requires otherwise, the judicial official *must* grant a release under section (a) (no secured bond required) *unless* the judicial official determines the existence of at least 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 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), then the judicial official must require the execution of an appearance bond, in a specified amount, which shall be 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. In imposing a secured bond, the judicial official should consult the recommended maximum bond tables provided by this policy.
- (e) Whenever a judicial official requires a secured appearance bond in excess of the recommend maximum bond tables provided by this policy, a magistrate should record the reasons for such determination upon an approved form. Once a form is completed by a judicial official it shall be filed in the defendant's official court file.
10. **Factors that must be considered in every case. N.C.G.S. Section 15A-534(c).** In determining which conditions of pretrial release to impose, the judicial official must, on the basis of available information including the opportunity of the defendant to be heard, 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 29 below for special provisions related to impaired drivers);
  - (i) the length of defendant's residence in the community;
  - (j) the defendant's record of prior convictions, and whether the defendant's prior record level would allow for (or require) a substantial active sentence;

- (k) whether the defendant is on probation for a prior offense; if so, the judicial official must:
    - 1. Determine whether the defendant poses a danger to the public. If the judicial official does not have sufficient information to make this determination, he must follow the following procedure:
      - (A) Retain the defendant until this subsection can be completely followed;
      - (B) Set forth in writing:
        - i. that the defendant is being held for this determination;
        - ii. the basis for the determination that additional information is needed;
        - iii. the nature of the additional information needed;
        - iv. a date, within 96 hours of the time of arrest, when the defendant will be brought before a judge for a first appearance;
        - v. that if the additional information is acquired before the 96-hour appearance, the first available judicial official will set conditions of release.
      - (C) File the written determination with the Clerk.
  - (l) the defendant's history to avoid prosecution or failure to appear at court proceedings, and in this connection the judicial official must consider the following:
    - 1. The conditions of pretrial release must be at least as great as were in the order for arrest for the defendant's most recent failure to appear;
    - 2. If the order for arrest did not set forth conditions, then there must be a secured bond in an amount at least double the amount of the most recent previous bond for the charges, or if no 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 bond will normally be secured and in the amount of at least double the amount of the most recent previous bond, or if none, then at least \$1000 secured. Care should be taken to determine what bond is the *appropriate* "most recent" previous bond.
  - (n) Violations of Conditions of Release. When a Defendant is arrested pursuant to G.S. 15A-401(b)(1) or (2) for a violation of a condition of pretrial release, the Magistrate at Initial Appearance shall set new conditions of release as follows: (1) In a case where the violated bond was a written promise, a new secured bond in an amount of at least \$1000.00; (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 new 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.
  - (o) Any other evidence relevant to the issue of pretrial release.
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 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. 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.** In determining whether to issue a summons or a warrant for arrest, the magistrate shall be mindful of N.C.G.S. Section 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 the person accused will escape, danger that there may be injury to person or property, or the seriousness of the offense.
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) 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 or herself. A district court judge may modify a pretrial release order entered by a judicial official other than a superior court judge at any time prior to: (1) In a misdemeanor case tried in the district court, the noting of an appeal; and (2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable cause hearing. G.S. 15A-534(e). For good cause shown, any judge may at any time revoke an order of pretrial release and the defendant may then apply for new conditions to be set.
  - (e) Superior Court Judge. A superior court judge may determine conditions of pretrial release for misdemeanors and felonies, including capital felonies. After a case is before the superior court, and at any time prior to the guilt of the defendant being established in superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, district court judge, himself, or another superior court judge. G.S. 15A-534(e). For good cause shown, a superior court judge may at any time revoke an order of pretrial release and the defendant may then apply for new conditions to be set.
  - (f) Motions. Defense motions to modify conditions of release must be in writing and served. Once a motion to modify conditions of release is served, the motion should be calendared by the District Attorney and heard within five business days for cases pending in district court and the motion should be calendared by the District Attorney and heard within

twenty-one business days for cases pending in superior court. If the motion to modify conditions of release is not scheduled and heard within the time allotted above, then either party may contact the Chief District Court Judge for cases pending in district court and the Senior Resident Superior Court Judge for cases pending in Superior Court for the same to be scheduled for hearing by the court. Nothing herein prohibits the parties from agreeing to a different procedure in individual cases.

- (g) Substitution of Sureties. The power to modify an order includes the power to substitute sureties upon any bond. Substitution or addition of acceptable sureties may be made at the request of any obligor on a bond or, in the interests of justice, at the request of a prosecutor. G.S. 15A-538(b).
  - (h) Violations of Conditions of Release. When a Defendant is arrested pursuant to G.S. 15A-401(b)(1) or (2) for a violation of a condition of pretrial release, the Magistrate at Initial Appearance shall set new conditions of release as follows: (1) In a case where the violated bond was a written promise, a new secured bond in an amount of at least \$1000.00; (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 new 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.
  - (i) Strike Orders. Strike orders should be freely granted for good cause and the approved form available in the Clerk’s office should be used for this purpose.
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, Paragraph 10 above, and the other provisions of this Policy. This Policy contains suggested maximum pretrial release conditions for individual offenses. As these are suggested maximums, bonds should not aggregate near the top of the maximum amounts. 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 or tripling the bond. Whenever a judicial official requires a secured appearance bond in excess of the recommend maximum bond tables provided by this policy, a magistrate should record the reasons for such determination upon the approved form – Exhibit A. Once a form is completed by a judicial official, it shall be filed in the defendant’s official court file. A magistrate is also free to use the approved form at other times in the magistrate’s discretion.

**FELONIES**

| Class | SUGGESTED MAXIMUM SECURED BAIL AMOUNTS |
|-------|----------------------------------------|
| A     | Set by Judge                           |
| B1    | Not More Than \$ 1,000,000             |
| B2    | Not More Than \$ 750,000               |
| C     | Not More Than \$ 500,000               |
| D     | Not More Than \$ 250,000               |

|   |                             |
|---|-----------------------------|
| E | Not More Than \$ 125,000    |
| F | Not More Than \$ 75,000     |
| G | Not More Than \$ 40,000     |
| H | Not More Than \$ 15,000     |
| I | WP or Not More Than \$5,000 |

**MISDEMEANORS/DWI**

| <b>Class</b>     | <b>SUGGESTED MAXIMUM SECURED BOND</b>                                                                                                  |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| A1               | WP or Not More Than \$5,000                                                                                                            |
| 1                | WP or Not More Than \$3,000                                                                                                            |
| 2                | WP or Not More Than to \$2,000                                                                                                         |
| 3                | WP or Not More Than \$500                                                                                                              |
| DWI (non-felony) | WP or Not More Than \$5,000<br>(see the specific requirements of G. S. 15A-534.2)<br>(See paragraph 30, Detention of Impaired Drivers) |

**DRUG TRAFFICKING**

| Substance/amount                                    | Mandatory Minimum Active Sentence | Recommended Maximum Secured Bond Amount (per incident, not per charged offense) |
|-----------------------------------------------------|-----------------------------------|---------------------------------------------------------------------------------|
| Opium or Heroin<br>(28 grams or more)               | 225 – 279 mos.                    | Not More Than \$ 1,000,000                                                      |
| Marijuana<br>(10,000 pounds or more)                | 175 – 219 mos.                    | Not More Than \$ 500,000                                                        |
| Cocaine/Methamphetamines<br>(400 grams or more)     | 175 – 219 mos.                    | Not More Than \$ 500,000                                                        |
| Opium or Heroin<br>(14 grams to 28 grams)           | 90 – 117 mos.                     | Not More Than \$ 250,000                                                        |
| Cocaine<br>(200 – 399 grams)                        | 70 - 84 mos.                      | Not More Than \$ 200,000                                                        |
| Marijuana<br>(2,000 to 10,000 pounds)               | 70 - 84 mos.                      | Not More Than \$ 200,000                                                        |
| Methaqualone<br>(greater than 10,000 dosage units)  | 175 – 219 mos.                    | Not More Than \$ 500,000                                                        |
| Methaqualone<br>(5,000 to 10,000 dosage units)      | 70 - 84 mos.                      | Not More Than \$ 200,000                                                        |
| Methaqualone<br>(1,000 to 5,000 dosage units)       | 34 – 42 mos.                      | Not More Than \$ 100,000                                                        |
| Opium or Heroin<br>(4 grams to 14 grams)            | 70 – 84 mos.                      | Not More Than \$ 200,000                                                        |
| Cocaine/Methamphetamines<br>(28 grams to 200 grams) | 35 - 42 mos.                      | Not More Than \$ 100,000                                                        |



|                                   |              |                          |
|-----------------------------------|--------------|--------------------------|
| Marijuana<br>(50 to 2,000 pounds) | 35 – 42 mos. | Not More Than \$ 100,000 |
| Marijuana<br>(10 to 50 pounds)    | 25 – 30 mos. | Not More Than \$50,000   |

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

|                                      | <b>SUGGESTED BAIL AMOUNTS</b> |
|--------------------------------------|-------------------------------|
| Governor’s Warrant                   | NO BOND                       |
| Parole Warrant                       | NO BOND                       |
| Pre-signed Waiver of Extradition     | NO BOND                       |
| Transferred under Interstate Compact | NO BOND                       |

21. **Probation Violations.**

- (a) Except where the General Statutes require otherwise (see, e.g., N.C.G.S. Section 15A-1345(b1)), when determining conditions of bond for a defendant who has been arrested for a probation violation, the judicial official shall, in addition to the Suggested Maximum Bail Amount set forth above for the various offense classes, consider the nature of the violation and all relevant information provided to the judicial official. If the sole alleged probation violation is monetary, then ordinarily a secured bond should not be initially used.
- (b) **Seven Day Hearings.** Pursuant to N.C.G.S. Section 15A-1345(c) those defendants arrested and alleged to have violated their probation requirements shall be entitled to a hearing before a judge no later than seven (7) days after they are arrested and served with the violation report, unless waived by the defendant, he has been released or the violation hearing has been held.

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

- (a) **Drug Trafficking.** G.S. 15A-533(d). It shall be rebuttably presumed that no conditions of release will reasonably assure the appearance of the defendant and the safety of the community if a judicial finds all three of the following:

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

- (b) A defendant who is, for the first time, being indicted as a habitual felon, must have a secured bond, in addition to any other conditions determined to be appropriate.
  - (c) Consistent with best practices, 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 not a crime and generally release conditions may only be set 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 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.** “Stacking” or “splitting” of any form of a 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 bond. If multiple sureties sign, each is jointly and severally liable for the entire amount of the bond.
26. **Cash Bonds.** When a defendant fails to appear and fails to comply with a judgment (show cause), a cash 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 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 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 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 bonds in child support contempt proceedings, these shall not be modified by a magistrate.
28. **Restrictions upon Defendants in Domestic Violence Cases. G.S. 15A-534.1.**
- (a) This section applies to defendants charged with any one or more of the following offenses against a spouse, former spouse, or a person with whom the defendant lives or has lived as if married:
    1. Assault (common law);
    2. Stalking. G.S. 14-277.3A;
    3. Communicating a threat. G.S. 14-277.1;
    4. A felony under Chapter 14, Article 7A (“Rape and other Sex Offenses”);
    5. A felony under Chapter 14, Article 8 (“Assaults”);
    6. A felony under Chapter 14, Article 10 (“Kidnapping and Abductions”);
    7. A felony under Chapter 14, Article 15 (“Arson and other Burnings”);
    8. Domestic criminal trespass; and
    9. A violation of an order entered pursuant to Chapter 50B (Domestic Violence) of the General Statutes (For more specific information, please refer to the attached 48 Hour DV Chart published by the UNC SOG in December 2015.)

- (b) The conditions of pretrial release must be determined by a judge, who must consider the criminal history report, which must be presented to the judge by law enforcement or the district attorney.
- (c) The magistrate who initially processes the defendant in a domestic violence case shall complete the approved form (Exhibit B) providing recommended conditions of release based upon all information available to him or her and forward the same to the clerk to be provided to the district court judge setting the conditions of release. If available, the magistrate should attach a copy of the defendant's criminal history to the recommendation form. This provision recognizes that magistrates are often in the best position to have the best information needed to set an appropriate bond.
- (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:
  - 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, as verified by the use of a continuous alcohol monitoring system, with any violation to be reported directly from the provider to the district attorney;
  - 6. That the defendant not own, use, or possess controlled substances (except pursuant to prescription);
  - 7. That the defendant not own, use, or possess firearms, and that the defendant designate some person to remove firearms from defendant's possession or control within a specified time; 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 rule within 48 hours of arrest, a magistrate shall act in his stead.

**29. Restrictions upon Defendants in Sex Offenses and Crimes of Violence Against Child Victims. G.S. 15A-534.4. (See form AOC-CR-631).**

- (a) The following provisions apply to the following offenses:
  - 1. felonious child abuse;
  - 2. misdemeanor child abuse;
  - 3. taking indecent liberties with a minor in violation of G.S. 14-202.1;
  - 4. rape;
  - 5. any sex offense in violation of Article 7A, Chapter 14 of the General Statutes, against a minor victim;

6. incest with a minor in violation of G.S. 14-178;
  7. kidnapping;
  8. abduction;
  9. felonious restraint involving a minor victim, with a violation of G.S. 14-320.1;
  10. assault against a minor victim;
  11. any crime of violence against a minor; and
  12. communicating a threat against a minor.
- (b) For any offense listed above, a judicial official 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 if he makes written findings of fact that it is not in the best interest of the alleged victim that the condition be imposed on the defendant. The above conditions may be imposed in addition to any other conditions that the judicial official may impose under other provisions of Article 26.
- (d) For any offense listed above in which the alleged victim is a minor child and the charging documents identify the minor child by initials or pseudonym, the conditions of release shall identify the minor child in the same way as identified in the charging document.

**30. Detention of Impaired Drivers. G.S. 15A-534.2 (See form AOC-CR-270).**

- (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. In making this determination, unless there is evidence that the defendant is still impaired from a combination of alcohol and some other impairing substance or condition, a judicial official must determine that a defendant with an alcohol concentration less than 0.05 is no longer impaired; 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).

31. **Detention for Communicable Diseases. 15A-534.3.** If a judicial official conducting an initial appearance or first appearance hearing finds probable cause that an individual had an exposure to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or hepatitis B by such defendant, the judicial official shall order the defendant to be detained for a reasonable period of time, not to exceed 24 hours, for investigation by public health officials and for testing for AIDS virus infection or Hepatitis B infection if required by the public health officials pursuant to G.S. 130A-144 and G.S. 130A-148. Upon conclusion of such testing, or the expiration of 24 hours, a judicial official must then determine the appropriate conditions of pretrial release in accordance with these rules.
32. **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.
33. **Restrictions upon Defendants charged with Communicating a Threat of Mass Violence. 15A-534.7.** In all cases in which a defendant is charged with communicating a threat of mass violence on educational property or at a place of religious worship, as provided by statute, a judge shall set conditions of pretrial release during the first 48 hours of the defendant's detention. If a judge has not acted within 48 hours of arrest, a magistrate shall act under the provision of N.C.G.S. Section 15A-534.7.
34. **Property Bonds of \$5,000 or more.**
- (a) All accommodation bondspersons shall be advised by the Magistrate of the following:  
"If the Defendant fails to appear in court as required, you could lose your property as provided in G.S. 15A-544.1 through 15A-544.8 and as stated on AOC-CR-201 Appearance Bond for Pretrial Release"
  - (b) Property Bonds of \$5,000 or more must be approved by the Clerk.
  - (c) Defendants should be advised by the judicial official conducting the initial appearance to seek a non-binding preliminary approval from the Clerk before investing in a title search and attorney fees.
  - (d) The Clerk has no liability for expenses incurred for a property bond, even if the Clerk has given a preliminary approval as to a certain property.
  - (e) The following documents are required for a property bond of \$10,000 or greater:
    - 1. a recorded deed of trust as follows:
      - (A) prepared by a North Carolina licensed attorney using a standard bar form deed of trust;
      - (B) grantor(s) will be all record owners of an interest in the property or properties, and the spouses of the record owners (a "record owner" including life tenants, remaindermen, etc.);
      - (C) the trustee of the deed of trust will be the Clerk;
      - (D) the beneficiary will be the State of North Carolina f/b/o the county school board;
      - (E) the description will be adequate to describe the property conveyed, but a metes and bounds description will not be required; reference to a recorded survey will suffice.
  - (f) The following documents are required for a property bond of \$20,000 or greater:
    - 1. a recorded deed of trust prepared as described in section (d);
    - 2. a title certificate or title opinion prepared by a licensed attorney, which will state the following:

- (A) That the proposed sureties are the record owners of all interests in the property;
  - (B) That there are either no recorded liens encumbering the property or identifying any existing liens and stating that the value of the property net of said liens is sufficient to meet the bond-value ratio requirement.
3. an affidavit as to the fair market value of the subject property, prepared by a person who is not interested in the matter, action, or proceeding (G.S. 58-74-30) who has knowledge of the property's value, and who may be (but is not required to be) an appraiser, or a real estate broker;
  4. a printout from the tax office showing the tax value of the property;
  5. an affidavit of the owner of the property as to all liens and encumbrances against the property, showing the lienholder(s) and the amount of the payoff(s) (preferably the payoff information should come from the lienholder).
  6. a completed AOC-CR-201, which serves as a promissory note.
- (g) All documentation shall be provided to the Magistrate and delivered to the Clerk of Superior Court.
  - (h) Bond-Value Ratio: The fair market value of the proposed property or properties owned by the proposed surety must be sufficiently in excess of the bond amount to cover costs in the action, fines, costs of sale and existing liens. The general rule is that the value of the property, net of liens, must be at least twice the amount of the bond. (Example: If the bond is \$20,000, then the net value of the property must be at least \$40,000.) However, each bond request will be looked at on a case by case basis to insure that the property value is sufficient to satisfy the amount of the bond plus any cost of collection. Exemptions under 1C-1601 should not be considered as they are not applicable to claims for appearance bonds. G.S. 1C-1601(e).
  - (i) Proposed sureties (i.e. property owners) must be identified individuals. No bonds will be allowed on property titled to "heirs," corporations or other entities.
  - (j) A promissory note in favor of the State of North Carolina in the amount of the bond is NOT required. However, all sureties (i.e. property owners) must execute the AOC-CR-201, Appearance Bond for Pre-Trial Release, which acts as the promissory note. The parcel number(s) of the property or properties to secure the bond must be placed on the form AOC-CR-201.
  - (k) Following approval by the Clerk, the same documents must be presented to the Magistrate.
  - (l) If the property bond is not approved following recording of the Deed of Trust, the Clerk will cause the unaccepted Deed of Trust to be cancelled of record.
  - (m) Magistrates will confirm approval by the Clerk before authorizing release pursuant to a property bond and provide such documentation to the Clerk's office upon release.
  - (n) If a judicial official has determined that a secured bond is necessary, and holidays or weekends may delay completion of requisite documents to post the bond, such delay should not normally be used as a reason to withhold the requirement of a secured bond.
- 35. Persons Authorized to Effect Release. G.S. 15A-537.**
- (a) Following any authorization of release of a defendant, any judicial official must effect the release of the person upon satisfying himself that the conditions of release have been met. In the absence of a judicial official, an officer or official of a law-enforcement agency who has been previously authorized to effect release, may, upon careful determination that such authorization has in fact been given, effect the release of a defendant under the authorized conditions.
  - (b) Upon release of the person, the official or officer effecting release must file any bond, deposit or mortgage and other papers pertaining to the release with the clerk.
  - (c) Any surety posting bond for a defendant, whether licensed bondsman or unlicensed accommodation bondsman, must be given a copy of the release order.

**36. 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;
  - 5. Conflicts the prisoner may have with other prisoners.
- (b) Motions by Prisoners. G.S. 15A-538. A prisoner may apply to a superior court judge for modification of the conditions of pretrial release. In considering such an application, in addition to all other appropriate factors, the judge may consider:
  - 1. whether the prisoner has filed a motion for a speedy trial;
  - 2. the length of time the prisoner has been incarcerated on such charges;
  - 3. the number of times the cases of the prisoner have appeared on a trial calendar;
  - 4. the number of times the cases of the prisoner have appeared on a trial list;
  - 5. the number of defendants on pretrial release whose cases have been tried since the prisoner was incarcerated on such charges;
  - 6. any violations of jail rules and regulations while confined; and
  - 7. any recommendation or position of the appropriate law enforcement agency.
- (c) Motions by Prosecutor. The District Attorney may at any time apply to a judge for modification or revocation of an order of pre-trial release. G.S. 15A-539.

**37. 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.

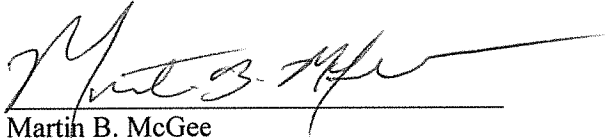
**38. Rules of Evidence.** In imposing conditions of pretrial or post-trial release and in modifying and revoking such orders, the judicial official must take into account all evidence available to him, which the judicial official considers reliable and is not strictly bound by the rules of evidence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

**39. Further Statement of General Policies.** (1) An arresting officer has no authority to fix the amount of the bond, but should furnish any information he has available to him to assist the judicial official in setting conditions of release. Of course, it is preferable for the officer with the most complete knowledge of the case to furnish information to the judicial official setting the conditions of release; (2) When there are several charges against one defendant, one bond may be set for all charges, (3) When a defendant voluntarily turns himself or herself in to law enforcement or the magistrate, this should be an additional factor to be considered by the judicial official in considering the likelihood that the defendant will appear in court, (4) In superior court, it is the general practice that those initially marked “absent” during calendar call and who are not represented by counsel and have not waived counsel will be contacted by the Clerk and reminded their court date. If a defendant is marked “absent” and he or she is represented by counsel, it is the best practice for counsel to contact and remind the client of the court date, and (5) It is also the general practice of the Clerk to enroll people upon request in to the court date notification system (NCCOURTS.GOV/SERVICES).



40. **Approved Forms.** The forms attached hereto is approved for use in this judicial district.  
41. **Effective Date.** This Policy shall be effective June 15, 2019.

This the 7<sup>th</sup> day of June 2019.



Martin B. McGee  
Senior Resident Superior Court Judge  
Judicial District 19A



Christy E. Wilhelm  
Chief District Court Judge  
Judicial District 19A

**EXHIBIT A**

**BOND INFORMATION WORKSHEET**

| FILE NUMBER(S) | CHARGE(S) | CLASS |
|----------------|-----------|-------|
|                |           |       |
|                |           |       |
|                |           |       |
|                |           |       |

CONDITIONS OF RELEASE ISSUED:

DEFENDANT NAME:

COUNTY OF RESIDENCE:

LENGTH OF TIME AT CURRENT RESIDENCE:

COMMUNITY TIES:

EMPLOYMENT:

HISTORY OF VIOLENT CRIME(S):

HISTORY OF RECENT FTAs:

DID THE DEFENDANT TURN HIM/HERSELF IN?

IS DEFENDANT REPRESENTED BY COUNSEL?

IS THE DEFENDANT CURRENTLY ON PROBATION, POST-RELEASE SUPERVISION,  
OR PRETRIAL RELEASE?

ADDITIONAL NOTES PERTAINING TO RELEASE OF DEFENDANT:

The undersigned has considered all of the factors set forth in N.C.G.S. § 15A-534(c) for which information was offered and the Pretrial Release Policy for Judicial District 19A.

\_\_\_\_\_  
MAGISTRATE

DATE: \_\_\_\_\_

**EXHIBIT B**

**DOMESTIC VIOLENCE REPORT**

TO: CABARRUS COUNTY DISTRICT COURT JUDGE

FROM:

DATE:

SUBJECT:

1. Attitude of Defendant:
2. Chance of further violence:
3. History of domestic violence:  
SEE ATTACHED
4. Is complainant willing to prosecute:
5. Recommendations as to release:
6. Is this a citizen initiated (private warrant) charge?
7. Further Notes: