FILED
DATE: December 2, 2025
TIME: 4:47:11 PM
YADKIN COUNTY
CLERK OF SUPERIOR COURT
BY: T. York

NORTH CAROLINA

34th JUDICIAL DISTRICT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR & DISTRICT COURT DIVISON
25 R_____

25R001122-980

IN RE:

ADMINISTRATIVE ORDER

ISSUANCE OF PRETRIAL RELEASE/)
BAIL POLICY FOR JUDICIAL DISTRICT 34th)

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

NOW, THEREFORE, IT IS ORDERED that:

1. The "Pretrial Release/Bail Policy" for the 34th Judicial District is 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 ___ December 1, 2025
3. The Clerk shall maintain a copy of this Order which shall be available to the public.

This the 2 day of December 2025

12/2/2025 4:42:38 PM

MICHAEL D. DUNCAN
Senior Resident Superior Court Judge

12/2/2025 3:31:22 PM

ROBERT J. CRUMPTON
Chief District Court Judge

FILED
DATE: December 2, 2025
TIME: 3:54:25 PM
YADKIN COUNTY
CLERK OF SUPERIOR COURT
BY: T. York

25R001122-980

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

34th JUDICIAL DISTRICT

SUPERIOR COURT DIVISION

DISTRICT COURT DIVISION

PRETRIAL RELEASE/BAIL POLICY FOR THE 34th JUDICIAL DISTRICT

1. **AUTHORITY.** Pursuant to North Carolina General Statutes 15A-535, the undersigned Senior Resident Superior Court Judge in consultation with the Chief District Court Judge for the 34th Judicial District (hereinafter referred to as "District"), which is comprised of Alleghany, Ashe, Wilkes and Yadkin counties, orders the following policies be followed within the District in determining the conditions of pretrial release of a defendant charged with a crime.

2. **PURPOSE.** The purpose of policy is to recognize the basic principle that a defendant is entitled to the presumption of innocence. 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 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 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 United States Constitution and under Article I, Section 27 of the North Carolina Constitution. Bail may not be used as punishment. The following policy shall replace and supersede all prior Pretrial Release and/or Bail policies.

3. **SCOPE.** This policy shall apply in all criminal actions/proceedings in the 34th Judicial District and is recommended to be followed by all judicial officials and all other persons dealing with pretrial release of criminal defendants in the District.

4. **DEFINITIONS.** The definitions set forth in G.S. 15A-531 shall apply.

5. **PERSONS AUTHORIZED TO DETERMINE CONDITIONS OF RELEASE. 15A-532.** Judicial officials may determine conditions for release of persons in proceedings over which they are presiding, in accordance with Article 26 of the North Carolina General Statutes. 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 audio and video communications:

a. If the defendant has counsel, the defendant shall be allowed to communicate fully and confidentially with his attorney during the proceeding.

b. Upon motion of the defendant, the court may not use an audio and video transmission.

c. The audio and video transmission shall be through the CRAVE system unless otherwise approved by the Senior Superior Court Judge, and/or Chief District Court Judge and the Administrative Office of the Courts.

d. If the defendant has not moved the Court 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.

6. **RIGHT TO PRETRIAL RELEASE IN CAPITAL AND NONCAPITAL CASES. G.S. 15a-533(b) and (b1).** REBUTTABLE PRESUMPTION AGAINST RELEASE. There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community for:

a. Defendant's charged with any of the (1) through (18) offenses listed in 15A-533(b) for which only a judge may determine pretrial release; or

b. Defendant's charged with any violent offense as defined under G.S. 15A-531(9). See "Exhibit 1" for a list of violent offenses.

7. **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) Unsecured Appearance Bond. The bond is executed solely by the defendant. No surety or security is required to secure the bond.

(b) 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.

(c) 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.

(d) House Arrest with Electronic Monitoring. This requires a secured appearance bond and is currently not available in this District.

8. **CHOOSING THE FORM OF PRETRIAL RELEASE. G.S. 15A-534(b).**

(a) Except for a defendant charged with a violent offense, the judicial official in granting pretrial release must either:

1. Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official; or

2. 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) 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 the defendant under section (a) will pose a danger of injury to any person; or

3. That the release of the 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, an 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 under 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 impose condition (c) or (d) in paragraph 7 above. Any appearance bond, in a specified amount, 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) Secured bond or house arrest with electronic monitoring must be imposed for any defendant convicted within the previous 10 years of three or more offenses which are Class 1 misdemeanors or higher (convictions must

be counted from separate sessions of court). The judicial official must make written findings of fact explaining why the imposed conditions are appropriate for defendant. G.S. 15A-534(d). The findings of fact must show that the judicial official considered defendant's criminal history and other factors described in G.S. 15A-534(c).

(f) Where the presumption against pretrial release has been rebutted for a defendant charged with a "violent offense":

1. Secured bond or house arrest with electronic monitoring must be imposed for any defendant charged with a first "violent offense".

2. House arrest with electronic monitoring must be imposed, if available, for any defendant charged with a second or subsequent "violent offense" after either (i) having been convicted of a prior violent offense, or (ii) being released on pretrial release conditions for a prior violent offense.

The judicial official must make written findings of fact explaining why the imposed conditions are appropriate for defendant. G.S. 15A-534(d). The findings of fact must show that the judicial official considered defendant's criminal history and other factors described in G.S. 15A-534(c). See "Exhibit 2".

(g) Whenever a magistrate 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 magistrate it shall be filed in the defendant's official court file.

9. FACTORS THAT MUST BE CONSIDERED. G.S. 15A-534(c).

In determining which conditions of pretrial release to impose, the judicial official must direct the arresting law enforcement officer, a pretrial services program or a district attorney to provide a criminal history report for the defendant and shall consider the criminal history when setting conditions of pretrial release. Additionally, the judicial official must 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 housing situation;

(h) The defendant's mental condition;

(i) Whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision;

(j) The length of defendant's residence in the community;

(k) Whether the defendant's prior record level would allow for (or require) a substantial active sentence;

(l) Except for a defendant charged with a violent offense, judicial official must consider 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.

(m) Except for a defendant charged with a violent offense, 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.

(n) 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.

(o) 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, prior to December 1, 2025, a new secured bond in an amount of at least $1000;

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.

4. Magistrates are not to issue a violation of court order unless approved by a Superior or District Court Judge.

(p) Any other evidence relevant to the issue of pretrial release.

(q) In each and every order authorizing pretrial release for (i) a defendant who is charged with a "violent offense", or (ii) a defendant who has been convicted of three or more offenses in separate sessions of court, each of which is a Class 1 misdemeanor or higher offense, within the previous 10 years, the judicial official must make written finding of fact explaining the reasons why the judicial official determined the conditions of release to be appropriate by applying the factors provided in (a) through (p) above. Failure to make statutorily required written findings may subject a magistrate to suspension and/or removal under 7A-173.

See Exhibits "3 & 3A".

10. 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 charge:

(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).

11. 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.

12. 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.

13. 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 or other offenses specifically set out in G.S. 15A-533.

(b) Clerk of Superior Court. A clerk can determine conditions of pretrial release for non-capital felonies and misdemeanors.

(c) Modification by Magistrate or Clerk. A magistrate or clerk may modify his/her 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 clerk, or himself/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/herself, 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 (unless the district attorney consents to the oral motion). 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 with 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. If no Superior Court is scheduled in a county within twenty-one business days (as referenced

above), the Court may hear the motion via Web-ex or in another county within the district.

(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. Except for a defendant charged with a violent offense, 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 the Initial Appearance shall set new conditions of release as follows:

1. In a case where the violated bond was a written promise (prior to December 1, 2025), a new secured bond in an amount of at least $1000;

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.

14. PRETRIAL RELEASE IN CAPITAL CASES. G.S. 15A-533(b).

(a) Only a judge may determine whether a defendant charged with a capital case 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.

15. 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 Statues 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 because of doubling or tripling the bond. Whenever a judicial official requires a secured appearance bond more than the recommend maximum bond

tables provided by this policy, a magistrate should record the reasons for such determination upon the approved bond 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 his/her discretion.

TYPES OF OFFENSES	MAXIMUM PUNISHMENT	SUGGESTED MAXIMUM SECURED BONDS
Class A Felony	Death, Life w/out Parole	Set by a Judge
Class B1 Felony	Life without Parole	Not more than $1,000,000
Class B2 Felony	481 months	Not more than $750,000
Class C Felony	231 months	Not more than $500,000
Class D Felony	204 months	Not more than $250,000
Class E Felony	88 months	Not more than $125,000
Class F Felony	59 months	Not more than $75,000
Class G Felony	47 months	Not more than $40,000
Class H Felony	39 months	Not more than $15,000
Class I Felony	24 months	Not more than $5,000

MISDEMEANORS/DWI

Class A1 Misdemeanor	150 days	Unsecured Bond or Not more than $5,000
Class 1 Misdemeanor	120 days	Unsecured Bond or Not more than $3,000
Class 2 Misdemeanor	60 days	Unsecured Bond or Not more than $2,000
Clas 3 Misdemeanor	20 days	Unsecured Bond or Not more than $1000
DWI (non-felony)	36 months	Unsecured Bond or Not more than $5,000

DRUG TRAFFICKING

Substance/Amount	Mandatory Minimum Active Sentence	Recommend Amount (per incident) *
Opium or Heroin (28 grams or more)	225-279 months	Not more than $1,000,000
Marijuana (10,000 pounds +)	175-219 months	Not more than $500,000
Cocaine/Methamphetamines (400 grams or more)	175-219 months	Not more than $500,000
Methaqualone (greater than 10,000 dosage units)	175-219 months	Not more than $500,000
Opium or Heroin (14 grams to 28 grams)	90-117 months	Not more than $250,000
Cocaine (200-399 grams)	70-84 months	Not more than $200,000
Marijuana (2,000 to 10,000 pounds)	70-84 months	Not more than $200,000
Methaqualone (5,000 to 10,000 dosage units)	70-84 months	Not more than $200,000
Opium or Heroin (4 to 14 grams)	70-84 months	Not more than $200,000
Cocaine/Methamphetamines (28 grams to 200 grams)	35-42 months	Not more than $100,000
Marijuana (50 to 2,000 pounds)	35-42 months	Not more than $100,000
Methaqualone (1,000 to 5,000 dosage units)	34-42 months	Not more than $100,000
Marijuana (10 to 50 pounds)	25-30 months	Not more than $50,000

(*Per incident, not per charged offense)

16. **"NON-VIOLENT" MISDEMEANORS AND "CLASS I" FELONIES.** Citations, criminal summons, and unsecured bonds should ordinary be used for non-violent misdemeanors, except DWI's 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.

17. **FUGITIVE WARRANTS.** On a fugitive warrant, a secured bond should ordinarily be set near the top of the suggested maximum range for the underlying offense.

18. **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.

	SUGGESTED BAIL AMOUNTS
Governor's Warrant	NO BOND
Parole Warrant	NO BOND
Pre-signed Waiver of Extradition	NO BOND
Transfer under Interstate Compact	NO BOND

19. 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, the ordinarily secured bond should not be initially used.

(b) Seven Day Hearing. 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.

20. 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 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) 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. 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 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 dependance or pattern of illegal use in any manner.

21. HABITUAL FELONS.

(a) For any indictment of a defendant previously determined to be a habitual felon, on new charges that are not Class D 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, should 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.

22. 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.

23. STACKING OR SPLITTING BONDS. "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.

24. 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 Odyssey 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 no set a secured bond on these types of OFA's. This applies to any orders for arrest where the cash bond amount is pre-set.

25. CHILD SUPPORT CONTEMPT.

(a) In addition to the other factors listed hereabove; 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.

26. VIOLENT OFFENSES. 15A-533(b1). Effective 12/1/26.

(a) If a defendant is (i) charged with a violent offense and, after a search of the court records for the defendant, the judicial official determines that the defendant has previously been subject to an order of involuntary commitment, pursuant to Article 5 of Chapter 122C of the General Statutes, within the prior three years, or (ii) charged with any offense and the judicial official has reasonable grounds to believe the defendant is a danger to themselves or others, the judicial official shall set conditions of pretrial release in accordance with this Article and shall issue an order that includes all of the following: (See "Exhibits 4 & 4A")

1. Require the defendant to receive an initial examination by a commitment examiner, as defined in G.S. 122C-3, to determine if there are grounds to petition for involuntary commitment of the defendant pursuant to Article 5 of Chapter 122C of the General Statutes. This examination shall comply with and satisfy the requirements of the initial examination as provided in G.S. 122C-263(c).

2. Require the arresting officer to immediately transport, or cause to be transported by an officer of the arresting officer's agency, the defendant to a hospital emergency department or other crisis facility with certified commitment examiners for the initial examination. If the defendant has met all other conditions of pretrial release, the

transporting officer may release the defendant after the initial examination is conducted if one of the following criteria is met:

(A) No petition for involuntary commitment is filed pursuant to Article 5 of Chapter 122C of the General Statutes.

(B) A petition for involuntary commitment is filed pursuant to Article 5 of Chapter 122C of the General Statutes, but no custody order is issued pursuant to G.S. 122C-261.

3. Require the commitment examiner, after conducting the initial examination, to do one of the following:

(A) Petition for involuntary commitment of the defendant pursuant to Article 5 of Chapter 122C of the General Statutes, if there are grounds for that petition.

(B) Provide written notice to the judicial official that entered the order for initial examination that there are no grounds to petition for involuntary commitment of the defendant.

4. Provide that, except as provided in subdivision (5) of this subsection, whether or not the defendant has met all other conditions of pretrial release, if a petition for involuntary commitment is filed pursuant to Article 5 of Chapter 122C of the General Statutes, the custody of the defendant shall be determined pursuant to the provisions of that Article during the pendency of that petition and any hearings and orders issued pursuant to that Article.

5. Provide that if a defendant has not met all other conditions of pretrial release, if one of the following criteria is met, the defendant shall be transported to and held in the local confinement facility of the county where the conditions of pretrial release were set until all conditions of pretrial release have been met:

(A) A petition for involuntary commitment is not filed pursuant to Article 5 of Chapter 122C of the General Statutes.

(B) A custody order is not issued pursuant to G.S. 122C-261.

(C) At any other time, the provisions of Article 5 of Chapter 122C of the General Statutes would result in the release of the defendant.

See "Exhibit 5".

27. **DETENTION OF NON-CITIZENS. G.S. 162-62 & 15a-534.** Judicial officials are required to attempt to determine if a defendant is a legal resident or citizen of the United States when determining conditions of

pretrial release for certain offenses. The following categories of offense trigger the inquiry:

(a) Any Felony

(b) A Class A1 misdemeanor under Article 6A (unborn victims), Article 7B (rape and other sex offenses), or Article 8 (assaults) of Chapter 14 of the North Carolina General Statutes.

(c) Any violation of G.S. 50B-4.1 (violation of a domestic violence protective order); and

(d) Any offense involving impaired driving as defined in G.S. 20-4.01.

See "Exhibit 6" (Administration of Justice Bulletin for the University of North Carolina School of Government) for guidance on Immigration Detainers. Also, see "Exhibit 6A".

28. DOMESTIC VIOLENCE CASES. 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;
2. Stalking;
3. Communicating Threats;
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 50B (Domestic Violence) of the General Statutes.

(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 "Exhibit 7" providing recommended conditions of release based upon all information available to him/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/she 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/her stead.

29. 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 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. 14-320.11;

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, 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. CITIZEN-GENERATED WARRANTS. In cases where the warrant does not originate from a sworn law enforcement official but is instead based upon an affidavit from a private citizen who seeks to take out a warrant upon another private citizen, no secured bond or cash bond should be issued against the defendant, absent compelling or unusual circumstances, as enumerated in G.S. 15A-304(b)(1) or 15A-304(b)(3)c. Instead, the magistrate must issue a criminal summons pursuant to G.S. 15A-304(b)(3). If the magistrate finds that one of the conditions enumerated in G.S. 15(a)-304(b)(3) "a" or "b" exist, the magistrate shall impose an unsecured bond, or a cash bond in a nominal amount. If the magistrate feels that the circumstances require the posting of a secured bond or a cash bond in an amount greater than $1,000, the magistrate must fill out the appropriate form. See "Exhibit 8".

31. IMPAIRED DRIVERS.

(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 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).

32. 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.

33. 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.

34. 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 G.S. 15A-534.7.

35. PROPERTY BONDS OF $15,000 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 $15,000 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 bond.

(e) The following documents are required for a property bond of $15,000 or greater, a recorded deed trust as follows:

1. Prepared by a North Carolina licensed attorney using a standard bar form deed of trust;

2. 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.);

3. The trustee of the deed of trust will be the Clerk;

4. The beneficiary will be the State of North Carolina f/b/o the county school board;

5. 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;

6. 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;

7. 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;

8. A printout from the tax office showing the tax value of the property;

(A) 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).

(B) a completed AOC-CR-201, which serves as a promissory note.

(f) All documentation shall be provided to the Magistrate and delivered to the Clerk of Superior Court.

(g) 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 up to $100,000. (Example: If the bond is $20,000 then the net value of the property must be at least $40,000). Bonds over $100,000 should not require twice the amount of the bond (to be left in the discretion of the Clerk of Superior Court). However, each bond request will be looked at on a case-by-case basis to ensure that the property value is sufficient to satisfy the amount of the bond plus any cost of collection. Exemptions under IC-1601((e).

(h) Proposed sureties (i.e. property owners) must be identified individuals. No bonds will be allowed on property titled to "heirs", corporations or other entities.

(i) A promissory note in favor of the State of North Carolina in the amount of the bond is NOT required. However, all sureties (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.

(j) Following approval by the Clerk, the same documents must be presented to the Magistrate.

(k) 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 or record.

(l) Magistrates will confirm approval by the Clerk before authorizing release pursuant to a property bond and provide such documentation to the Clerk's office upon release. When the property bond is less than $15,000 the following documents are required:

1. A certification from the County Tax Office describing the property and verifying the tax value on said property;

(A) If the County Tax Office is not open or there is not enough time to get documentation from the Tax Office, the magistrate should attempt to access the County Tax Office online to

determine the value. Due to Constitutional protections, certification of a bond should not be denied if a County Tax Certification is unavailable.

2. The property owners must sign a document under oath/affirmation that the value of the property, net of liens, is at least twice the value of the amount of the bond (as set out in sub-section (h) above). Property owners must be advised that anyone who falsifies information potentially could be subject to criminal charges.

(m) If a judicial official has determined that a secured bond is necessary, and holidays, weekends or post business hours 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.

36. PERSONS AUTHORIZED TO EFFECT RELEASE. G.S. 15A-537.

(a) Following any authorization of release of a defendant, any judicial official must affect the release of the person upon satisfying himself that the conditions of release have been met. In the absence of a judicial official, an officer or official of a law-enforcement agency who has been previously authorized to effect release, may, upon careful determination that such authorization has in fact been given, effect the release of a defendant under the authorized conditions.

(b) Upon release of the person, the official or officer effecting release must file any bond, deposit or mortgage and other papers pertaining to the release with the clerk.

(c) Any surety posting bond for a defendant, whether licensed bondsman or unlicensed accommodation bondsman, must be given a copy of the release order.

37. MOTIONS TO MODIFY OR REVOKE PRETRIAL RELEASE ORDERS.

(a) Motions by Sheriff. The Sheriff or his authorized representative shall have standing to apply to any appropriate judicial official for modification of the conditions or 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;

4. Whether the prisoner is cooperating with law enforcement in any ongoing criminal investigation; and

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 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 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.

38. REVOCATION OF PRETRIAL RELEASE ORDERS. G.S. 15A-535(f).

(a) For good cause shown any judge may at any time revoke an order of pre-trial release.

(b) Upon application of any defendant whose order of pretrial has been revoked, the judge must set new conditions of pretrial release.

39. RULES OF EVIDENCE. In imposing conditions of pretrial or post-trial release and in modifying and revoking such orders, the judicial official must consider all evidence available to him/her, 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).

This Policy shall be effective December 1, 2025.

This the 2 day of November 2025.

12/2/2025 3:07:21 PM

Michael D. Duncan
Senior Resident Superior Court Judge

12/2/2025 2:40:48 PM

Robert J. Crumpton
Chief District Court Judge

Exhibit 1

HB-307

1. Written promises to appear or no longer options for bonds in any case.
2. Except for violent offenses you can set unsecured, secured bonds, custody of designated person/entity or house arrest with electronic monitoring unless:
    a. If convicted of 3 or more Class 1 misd or higher in the last 10 years (doesn't say if on different days) then must be secured or house arrest with EM
3. Violent Offenses
    a. A-G felonies that include assault, use of physical force or threat of physical force against a person or the threat of physical force against a person as an essential element.
    b. (1) G.S. 14-17 (First or second degree murder) or an attempt
    c. (2) G.S. 14-27.21 (First degree forcible rape).
    d. (3) G.S. 14-27.22 (Second degree forcible rape).
    e. (4) G.S. 14-27.23 (Statutory rape of a child by an adult).
    f. (5) G.S. 14-27.24 (First degree statutory rape).
    g. (6) G.S. 14-27.25 (Statutory rape of person who is 15 years of age or younger).
    h. (7) G.S. 14-27.26 (First degree forcible sexual offense).
    i. (8) G.S. 14-27.27 (Second degree forcible sexual offense).
    j. (9) G.S. 14-27.28 (Statutory sexual offense with a child by an adult).
    k. (10) G.S. 14-27.29 (First degree statutory sexual offense).
    l. (11) G.S. 14-27.30 (Statutory sexual offense with a person who is 15 years of age
    m. or younger).
    n. Indecent liberties with a minor
    o. (12) G.S. 14-32(a) (Assault with a deadly weapon with intent to kill inflicting
    p. serious injury).
    q. (13) G.S.14-34.1 (Discharging certain barreled weapons or a firearm into occupied
    r. property).
    s. (14) G.S. 14-39 (First or second degree kidnapping).
    t. (15) G.S. 14-43.11 (Human trafficking).
    u. (16) First degree burglary pursuant to G.S. 14-51.
    v. (17) First degree arson pursuant to G.S. 14-58.
    w. (18) G.S. 14-87 (Robbery with firearms or other dangerous weapons).
    x. Death by distribution of a controlled substance
    y. B&E with the intent to terrorize or injure

z. Stalking (both misd and felony)
aa. Possession of a firearm by a felony
bb. Traffic 28 grams or more that involves fentanyl
cc. An attempt to commit the above

4. There is a rebuttable presumption of no bond. Bond can be set according to NCGS 15A-534
5. If on this list then after a search of records, the judicial official determines the defendant has been IVC with last 3 years, then must include all of the following:
    a. Require an exam by a commitment examiner to see if should be IVC pursuant NCGS 122C-3. Exam must comply with NCGS 122-263(c).
    b. Require arresting officer to immediately take evaluation.
    c. Require examiner
        i. Petition for IVC if meets requirements
        ii. Written notice if no grounds
    d. If IVC then release shall be determined by Article 5 of NCGS 122C
    e. If no IVC then released once bond conditions met.
6. **Paragraph 3 applies to any other offense if reasonable grounds to believe that the defendant is a danger to themselves or others.**
7. Bond for violent offenses
    a. If 1st violent offense then secured bond or house arrest with EM
    b. If 2nd violent offense or while on pretrial for violent offense, then House arrest with EM if available.
    c. Require arresting LEO, pretrial or DA to provide a criminal record
    d. Bond must contain
        i. Written Finding of Facts that explain why appropriate by applying factors in NCGS 15A-534. (Bold added, strike thru removed)
            1. on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, housing situation, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; ~~his record of convictions~~; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

Exhibit 2

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
☐ District ☐ Superior Court Division

STATE VERSUS

Name And Address Of Defendant

CONDITIONS OF RELEASE AND RELEASE ORDER

G.S. Chapter 15A, Art. 25, 26

Process No.	*Amount Of Bond*
#	$

File Numbers And Offenses

☐ See Attachment.

FINDINGS

The undersigned judicial official finds that:

☐ 1. The defendant has been
- ☐ (i) charged with a felony while on probation *(complete AOC-CR-272, Side One unless the defendant is charged with a violent offense).*
- ☐ (ii) arrested for violation of probation with a pending felony charge or prior conviction requiring registration under G.S. 14, Article 27A *(complete AOC-CR-272, Side Two).*
- ☐ (iii) charged with an offense while on pretrial release for a prior offense.

☐ 2. This Order is entered upon defendant's arrest for violation of conditions of release entered previously for the above-captioned case in the Order dated _____.

☐ 3. The defendant is charged with an offense subject to G.S. 15A-533(h), 15A-534.1, 15A-534.7, or 15A-534.9, and no judge has acted under that statute within 48 hours of defendant's arrest.

☐ 4. The defendant is charged with an offense subject to G.S. 15A-534.6, and no judge has acted under that statute within 24 hours of defendant's arrest.

☐ 5. The defendant was arrested or surrendered after failing to appear as required under a prior release order.

☐ 6. This was the defendant's second or subsequent failure to appear in this case.

☐ 7. The defendant is charged with a "violent offense" under G.S. 15A-531(9).

☐ 8. The defendant is charged with a second or subsequent "violent offense" after ☐ being convicted of a prior violent offense ☐ being released on pretrial conditions for a prior violent offense.

☐ 9. The defendant has been convicted of three or more offenses (separate sessions of court), each of which is a Class 1 misdemeanor or higher level offense, within the previous 10 years.

☐ 10. The undersigned judicial official ☐ was able to determine the defendant is a citizen or legal resident of the United States ☐ was unable to determine that the defendant is a citizen or legal resident of the United States *(complete AOC-CR-603).*

☐ 11. There is a rebuttable presumption against the defendant's pretrial release pursuant to ☐ G.S. 15A-533(b) ☐ G.S. 15A-533(d) ☐ G.S. 15A-533(e) ☐ G.S. 15A-533(f) ☐ G.S. 15A-534(b1).

☐ 12. The undersigned judicial official makes the following additional written findings of fact: *(mandatory as required by statute and/or local bond policy)*

ORDER SETTING CONDITIONS OF RELEASE

Location Of Court	☐ District ☐ Superior	Date	Time ☐ AM ☐ PM

To The Defendant Named Above, you are ORDERED to appear before the Court as provided above and at all subsequent continued dates. If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear. You also may be arrested without a warrant if you violate any condition of release in this Order or in any document incorporated by reference.

The defendant has been advised of charge(s) against him/her and his/her right to communicate with counsel and friends.

☐ Your release is authorized upon execution of your:

- ☐ UNSECURED BOND in the amount shown above
- ☐ CUSTODY RELEASE
- ☐ SECURED BOND in the amount shown above (NOTE: *Give a copy of this order to any surety who posts bond.*)
- ☐ HOUSE ARREST with ELECTRONIC MONITORING administered by *(agency)* _____ and the SECURED BOND above. You may leave your residence for the purpose(s) of ☐ employment ☐ counseling ☐ course of study ☐ vocational training

☐ Your release is not authorized.

☐ The defendant is required to provide *(check all that apply)* ☐ fingerprints under G.S. 15A-502, ☐ a DNA sample under G.S. 15A-266.3A. Prior to release, the defendant shall provide his/her *(check all that apply)* ☐ fingerprints. ☐ DNA sample.

☐ Your release is subject to the conditions as shown on the attached ☐ AOC-CR-242. ☐ AOC-CR-270. ☐ AOC-CR-630. ☐ AOC-CR-631. ☐ AOC-CR-660. ☐ AOC-CR-661. ☐ AOC-CR-663. ☐ AOC-CR-664. ☐ Other: _____

Additional Information

Date	Name Of Judicial Official	Signature Of Judicial Official	☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court ☐ DC Judge ☐ SC Judge

ORDER OF COMMITMENT

To The Custodian Of The Detention Facility Named Below, you are ORDERED to receive in your custody the defendant named above who may be released if authorized above. If the defendant is not sooner released, you are ORDERED to: ☐ produce him/her in Court as provided above. ☐ hold him/her ☐ as provided on the attached AOC-CR-272. ☐ for the following purpose: _____.

☐ *(for charges covered by G.S. 15A-533(h), 15A-534.1, 15A-534.7, 15A-534.8, or 15A-534.9)* produce him/her at the first session of District or Superior Court held in this county after the entry of this Order or, if no session is held before *(for G.S. 15A-534.8, enter date and time 24 hours after arrest for all others, 48 hours after arrest)* _____, _____ ☐ AM ☐ PM, produce him/her before a magistrate of this county at that time to determine conditions of pretrial release.

Name Of Detention Facility	Date	Name Of Judicial Official	Signature Of Judicial Official

CUSTODY RELEASE

If I am released to the custody of another person, I agree to be placed in that person's custody, and that person agrees by his/her signature to supervise me.

Date	Signature Of Defendant	Signature Of Person Agreeing To Supervise Defendant

Name Of Person Agreeing To Supervise Defendant (type or print)	Address Of Person Agreeing To Supervise Defendant

DEFENDANT RELEASED ON BAIL

Date	Time ☐ AM ☐ PM	Signature Of Custodian

Exhibit 3

STATE OF NORTH CAROLINA

COUNTY OF WILKES

IN THE GENERAL COURT OF JUSTICE
DISTRICT/SUPERIOR COURT DIVISION
FILE NUMBER:

STATE OF NORTH CAROLINA

vs.

DEFENDANT

WRITTEN BOND FINDINGS for
PRETRIAL RELEASE CONDITIONS

Pursuant to 15A-501. 15A-533 and 15A-534, the undersigned judicial official makes the following foregoing findings as follows:

In each and every order authorizing pretrial release for (i) a defendant who is charged with a violent offense or (ii) a defendant who has been convicted of three or more offenses in separate sessions of court, each of which is a Class 1 misdemeanor or higher offense, within the previous 10 years, the judicial official must make written findings of fact explaining the reasons why the judicial official determined the conditions of release to be appropriate by applying the factors below:

A. OFFENSE: (Violent Offense – Class G OR Higher) (Crimes of Domestic Violence) (Class A1 or Class 1) (Class 2 or Class 3) (DWI/DUI)

B. Circumstances of the arrest: The defendant (WAS ARRESTED) (WAS ARRESTED AT THE SCENE) (VOLUNTARY SURRENDERED) (ATTEMPTED TO AVOID ARREST). The defendant (WAS COOPERATIVE) or (WAS NOT COOPERATIVE).

C. Family Ties: Defendant resides (ALONE) (WITH PARENTS) (WITH RELATIVES/FRIENDS) (HOMELESS)

D. Residence: LIVES IN-STATE – City? _____, how long? _____ OUT OF STATE _____

E. Employment: Defendant is employed (FULL-TIME) (PART-TIME) (UNEMPLOYED) (SEASONAL) Where: _____ How Long? _____

F. **Physical/Mental Condition:** DIAGNOSED MENTAL ILLNESS PTSD UNSTABLE BELLIGERENT INTOXICATED/UNDER THE INFLUENCE of Alcohol/Substances INJURED DISABLED

G. **Prior Convictions:** Class A-D Class E-G Class A1 or Class 1

_____

_____

_____

H. **LEO Comments or Recommendations**_____

_____

I. Judicial Findings:

_____

_____

_____

_____

_____ _____

Judicial Officer Date

Exhibit 3A

On the basis of available information, the Court makes the following findings of fact:

1. ____take into account the nature and circumstances of the offense charged;
2. ____the weight of the evidence against the defendant;
3. ____the defendant's family ties,
4. ____ is____ is not employed
5. ____financial resources,
6. ____character_____
7. ____does____ does not have housing
8. ____does____ does not have a mental condition; _____

_____

9. ____The defendant is____ is not intoxicated to such a degree that he would be endangered by being released without supervision;
10. ____the length of his residence in the community;
11. _____ his record of convictions;
12. ____does____ does not have history of flight to avoid prosecution or failure to appear at court proceedings;
13. ____and any other evidence relevant to the issue of pretrial release.

_____

_____

_____

14. ____DA recommendation or agrees to the bond

Signed this the _____ day of _____, 20____

_____

____Judge ____Magistrate _____Clerk of Court

Exhibit 4

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF	
Name Of Respondent	
Date Of Birth Of Respondent	*Full Social Security Number Of Respondent*

INVOLUNTARY COMMITMENT ORDER - MENTAL ILLNESS

G.S. 122C-267, -268, -271, -276

FINDINGS

The Court finds that:

1. The State ☐ was ☐ was not represented by counsel.
2. The respondent ☐ was ☐ was not represented by counsel.
3. The 24-hour facility ☐ was ☐ was not represented by counsel.

Based on the evidence presented, the Court

☐ 4. by clear, cogent, and convincing evidence, finds as facts all matters set out in the commitment examiner's report specified below, and the report is incorporated by reference as findings.

Date Of Last Commitment Examiner's Report	*Name Of Commitment Examiner*

☐ 5. by clear, cogent, and convincing evidence, finds these other facts:

- ☐ respondent was discharged before court date
- ☐ respondent signed voluntary commitment before court date
- ☐ special counsel stipulates there is sufficient evidence for commitment
- ☐ facts supporting involuntary commitment:

☐ 6. *(required for outpatient commitments)* finds the following, as to the availability of outpatient treatment from the treatment center/physician that has agreed to accept the respondent as a client:

☐ 7. finds that the respondent does not meet the criteria for commitment.

☐ 8. finds that this proceeding was begun after the respondent was charged with a violent crime and was found incapable of proceeding.

NOTE: *Use AOC-SP-911M for involuntary commitment of defendant found not guilty by reason of insanity.*

NOTE TO CLERK: *The clerk in the hearing county should enter this order into NICS, if appropriate, and forward a copy of the original order to the clerk in the originating county. Effective 10/9/2025, entry of a qualifying involuntary commitment order in NICS is no longer accomplished using the SPC NICS application. Instead, the clerk should add the "NICS Firearms Restriction" judgment to the case in Enterprise Justice (Odyssey).*

(Over)

DRAFT [illegible]

CONCLUSIONS

Based on the above findings, the Court concludes that the respondent:

☐ 1. has a mental illness.
☐ 2. does not have a mental illness.
☐ 3. in addition to having a mental illness, also has an intellectual disability.
☐ 4. is dangerous ☐ to self ☐ to others.
☐ 5. is not dangerous to self or others.
☐ 6. *(only for nondangerous individuals with mental illnesses)* is capable of surviving safely in the community with available supervision from family, friends, or others; and based on respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness to self or others; and, that the respondent's inability to make an informed decision to voluntarily seek and comply with recommended treatment is caused by:
  ☐ the respondent's current mental status.
  ☐ the nature of the respondent's mental illness.

ORDER

It is ORDERED that:

☐ 1. the respondent be committed/recommitted to the inpatient 24-hour facility named below for the period specified.
☐ 2. the respondent be committed/recommitted to outpatient commitment under the supervision and management of the center/physician named below for the period specified.
  ☐ the respondent may be held at the 24-hour facility where he/she is now being held, for up to 72 hours in order for the facility to notify the designated outpatient center of respondent's treatment needs.
☐ 3. the respondent be committed/recommitted to an inpatient 24-hour facility named below not to exceed the specified period. Following discharge from the 24-hour facility, the respondent shall be committed to outpatient commitment under the supervision of the center/physician named below for the specified period.
☐ 4. the respondent be discharged and this matter dismissed.
☐ 5. this matter be dismissed.
☐ 6. the respondent be discharged. Since the respondent was charged with a violent crime and previously found incapable of proceeding, and the criminal charge has not been dismissed, it is further ordered that the respondent be released to the custody of the law enforcement agency named below.

Name Of Law Enforcement Agency

☐ 7. this matter be transferred to the county named below for further proceedings.

County

INPATIENT COMMITMENT

Committed/recommitted to inpatient facility for a period not to exceed
☐ _____ days. ☐ 90 days.
☐ 180 days. ☐ 1 year.

Name And Address Of 24-Hour Facility

OUTPATIENT COMMITMENT

Committed/recommitted to outpatient facility for a period not to exceed
☐ _____ days. ☐ 90 days. ☐ 180 days.

Name And Address Of Treatment Center/Physician

Name And Address Of Local Management Entity Or Managed Care Organization (required if treatment center/physician is monitoring and supervising this outpatient commitment pursuant to a contract for services with an LME or MCO)

Date	*Signature Of District Court Judge*	*Name Of District Court Judge (type or print)*

NOTE TO CLERK: *By the most expeditious and reliable means, and within 48 hours after the hearing, send a copy of this Order to the designated inpatient or outpatient treatment center/physician, to the respondent or legally responsible person, and where listed above, the LME/MCO.*

Exhibit 4A

STATE OF NORTH CAROLINA

COUNTY OF WILKES

IN THE GENERAL COURT OF JUSTICE
DISTRICT/SUPERIOR COURT DIVISION
FILE NUMBER:

STATE OF NORTH CAROLINA

VS.

DEFENDANT

BOND FINDINGS -Relevant behavior for Commitment Examination

Pursuant to **15A-501. 15A-533 and 15A-534,** the undersigned judicial official makes the following foregoing findings as follows:

Please check and/or circle all that apply.

1. **YES** or **NO** The arresting officer informed the undersigned judicial official and/or the judicial official initially setting the bond of all relevant behavior of the defendant observed by the officer prior to, during, or after the arrest that may provide reasonable grounds for the judicial official to believe the defendant is a danger to themselves or others.

   A. If YES to above, please identify where this information was notated, the date notated and the name of the initial judicial official setting bond.

   _____

   _____

   B. If the officer is informing the undersigned judicial official, please state the relevant behavior as described:

   _____

   _____

   _____

2. **YES OR NO** Is the Defendant charged with any of the following offenses:

(1) G.S. 14-17 (First- or second-degree murder) or an attempt to commit first or second-degree murder.
(2) G.S. 14-27.21 (First degree forcible rape).
(3) G.S. 14-27.22 (Second degree forcible rape).
(4) G.S. 14-27.23 (Statutory rape of a child by an adult).
(5) G.S. 14-27.24 (First degree statutory rape).

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

3. **YES or NO** Has the defendant previously been subject to an order of involuntary commitment, pursuant to Article 5 of Chapter 122C of the General Statutes, within the prior three years.

4. **YES or NO** Is the defendant charged with any offense and the judicial official has reasonable grounds to believe the defendant is a danger to themselves or others.

The undersigned judicial official having found a reasonable factual basis to believe that the defendant fits all criteria as contained and alleged in paragraphs 1, 2, 3 and/or 4 in the foregoing findings order as follows:

(1) The defendant is to receive an initial examination by a commitment examiner, as defined in G.S. 122C-3, to determine if there are grounds to petition for involuntary commitment of the defendant pursuant to Article 5 of Chapter 122C of the General Statutes. This examination shall comply with and satisfy the requirements of the initial examination as provided in G.S. 122C-263(c) AND

(2) The arresting officer is to immediately transport, or cause to be transported by an officer of the arresting officer's agency, the defendant to a hospital emergency department or other crisis facility with certified commitment examiners for the initial examination.

This the _____.

_____
PRESIDING JUDICIAL OFFICIAL

Exhibit 5

Officer Observations of Defendant pursuant to N.C.G.S. 15A-501

1. I, _____ (Name and Agency), hereby swear under oath the following:

2. I arrested _____ (defendant) for the crime(s) of

_____

_____

3. I ___do or ___do not have relevant behavior of the defendant that I observed that may provide reasonable grounds for the judicial officer to believe that the defendant is a danger to themselves or others.

4. I observed __prior to __ during __ or after the arrest of the defendant the following:

   a. __The defendant made threats to other people in my presence.

   b. __The defendant used a weapon.

   c. __The defendant injured someone.

   d. __The defendant made threats to harm themselves.

   e. __The defendant had or attempted to harm themselves.

   f. __The defendant was acting incoherent or saying incoherent things.

   _____

   _____

   g. Any other relevant information.

   _____

   _____

   _____

   _____

   _____

_____

UNC SCHOOL OF GOVERNMENT

ADMINISTRATION OF JUSTICE BULLETIN NO. 2025/07 | NOVEMBER 2025

Exhibit 6

Detention of Noncitizens: Understanding North Carolina Law on Immigration Detainers

Brittany Bromell

CONTENTS

I. Introduction

An immigration detainer is one of the key tools that the U.S. Department of Homeland Security (DHS)—through its Immigration and Customs Enforcement (ICE) unit—uses to apprehend individuals who come in contact with local and state law enforcement agencies. Sometimes, after a defendant has been arrested for a crime, an ICE officer will file an immigration detainer

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with the agency that has custody of the defendant.[1] Through the detainer, DHS requests that the agency (1) notify DHS when the defendant would otherwise be eligible for release and (2) hold the defendant for up to forty-eight hours thereafter to enable ICE to take custody of the defendant.

In general, an ICE agent may issue a detainer only when the agent believes that there is "probable cause" to believe that the subject of the detainer is a removable alien.[2] The detainer must be accompanied by an administrative warrant for arrest or warrant for removal.[3] Although designated as warrants, these documents are issued by ICE officers, not by state or federal judicial officials.

An immigration detainer is a request that a custodial agency hold a subject after he or she would otherwise be released. A detainer does not require the custodial agency to do so.[4] Prior to December 1, 2024, North Carolina law enforcement agencies could decide whether to honor detainer requests from federal agents. In 2024, the North Carolina General Assembly passed a law that required cooperation with ICE detainers and provided some guidance on procedures regarding the custody of noncitizens.[5] The law was amended in 2025 to modify some of these procedures and create new procedures around setting pretrial release conditions for noncitizens.

This bulletin details the newly enacted statutory changes and addresses some frequently asked questions related to the implementation of the laws.

II. Pretrial Release

Effective October 1, 2025, Session Law 2025-85 (House Bill 318) enacted a new pretrial procedure which requires judicial officials, when determining conditions of pretrial release for defendants charged with certain offenses, to attempt to determine if the defendant is a legal resident or citizen of the United States.[6] The following categories of offenses trigger the inquiry:

- any felony;
- a Class A1 misdemeanor under Article 6A (unborn victims), Article 7B (rape and other sex offenses), or Article 8 (assaults) of Chapter 14 of the North Carolina General Statutes (hereinafter G.S.);
- any violation of G.S. 50B-4.1 (violation of a domestic violence protective order); and
- any offense involving impaired driving as defined in G.S. 20-4.01.

The judicial official may attempt to determine residency by making an inquiry of the defendant or by examining any relevant documents. If the defendant's status as a legal resident or citizen of the United States cannot be determined, the judicial official must (1) set conditions of

1. *See* U.S. Dep't of Homeland Sec., Immigration Detainer – Notice of Action, DHS Form I-247A (Mar. 2017).
2. *Probable cause*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("... probable cause ... amounts to more than a bare suspicion but less than evidence that would justify a conviction"). According to 8 U.S.C. § 1229a(e)(2), the term "removable" means, (1) in the case of an alien not admitted to the United States, that the alien is inadmissible under 8 U.S.C. § 1182 or (2) in the case of an alien admitted to the United States, that the alien is deportable under 8 U.S.C. § 1227.
3. *See* U.S. Dep't of Homeland Sec., Warrant for Arrest of Alien, DHS Form I-200 (rev. Sept. 2016).
4. *See* Galarza v. Szalczyk, 745 F.3d 634 (3d Cir. 2014).
5. *See* S.L. 2024-55 (H. 10).
6. G.S. 15A-534(d1), *as enacted by* S.L. 2025-85 (H. 318).

pretrial release in the AOC-CR-200 form (Conditions of Release and Release Order) and (2) using the AOC-CR-663 form (Conditions of Release for Person Whom Judicial Official Is Unable To Determine To Be Legal Resident or Citizen of The United States), commit the defendant to a facility to be fingerprinted and held for a period of two hours after a query to ICE is made.[7]

Although any judicial official is authorized to conduct proceedings under this statute, in most cases that official will be a magistrate at a defendant's initial appearance. However, a magistrate or a clerk may be limited in the ability to set conditions of release for offenses that are subject to other pretrial release rules. For example, if a defendant is charged with a violation of G.S. 50B-4.1, the defendant will be subject to the provisions of G.S. 15A-534.1, in which case the magistrate or clerk must commit the defendant to a facility and make a query to ICE, but only a judge may set the conditions of pretrial release within the first forty-eight hours of arrest.[8]

A judicial official may not detain a person indefinitely simply because he or she is not a U.S. citizen or legal resident, though citizenship status and lawful residency status may be relevant in determining conditions of pretrial release, such as when there are facts to suggest the person may be a flight risk.[9] Even when a detainer is issued, the detainer does not authorize the holding of a person without the setting of conditions of release or prevent a person from being released from confinement when the person is otherwise eligible for release.[10]

A. Receipt of Detainer and Administrative Warrant

If no detainer and administrative warrant are received from ICE within the two-hour period after the query is made to ICE (see the section immediately above), then the defendant must be released upon satisfaction of the conditions set forth in the AOC-CR-200 pretrial release order. If a detainer and administrative warrant are received within that two-hour period, then the defendant must be taken before a judicial official and processed pursuant to the provisions of G.S. 162-62(b1). The judicial official must be provided with a copy of the detainer and administrative warrant. If the judicial official determines that the person appearing before them is the person subject to the detainer and administrative warrant, the judicial official must issue a detention order using the AOC-CR-662 form (Order After Receipt of ICE Detainer and Administrative Warrant). The governing statute, G.S. 162-62, does not specify how a judicial official is to assess whether a person who is brought before them is the same person referred to in the detainer. Nevertheless, a judicial official may rely on a valid passport or a state driver's license to make this assessment. The General Statutes state that a matricula consular or a locally issued identification card are not acceptable items for a judicial official, a law enforcement officer, or another government official to use in determining a person's identity.[11] Identification of the individual by another reliable person, including a law enforcement officer, may be acceptable.

In the detention order, the judicial official must direct that the defendant (1) be held in custody and (2) be transferred to the custody of an ICE officer upon that officer's appearance at

7. *Id.*
8. *Id.* § 534.1.
9. *See id.* § 534(c).
10. G.S. 162-62(c).
11. G.S. 15A-311(a).

the holding facility and request for custody.[12] The defendant must be held in custody until the earliest of the following:

- the passage of forty-eight hours from the time the defendant would otherwise be released from the facility;
- when ICE takes custody of the defendant, or
- when ICE rescinds the detainer.[13]

A judicial official issues a detention order only when ICE has issued a detainer and warrant. Mere interest in a person by ICE does not trigger any of the requirements under G.S. 162-62(b1).

B. Notification to ICE

Within two hours of the time when the defendant would otherwise be released, the administrator or other person in charge of the detention facility holding the defendant must notify ICE of the date and time that the defendant will be released pursuant to the order (i.e., when the forty-eight hours will expire; see the section immediately above).[14] The notification must be made in the manner indicated on the "Department of Homeland Security Immigration Detainer – Notice of Action" form, which typically requires the facility to notify DHS by calling ICE or Customs and Border Patrol (CBP) at a phone number specified in the form.[15]

C. When the Detention Period Applies

The forty-eight-hour detention period discussed above applies only when the defendant is "otherwise eligible for release" from state custody—in other words, it applies when the defendant is able to satisfy conditions of release that are typically imposed in the AOC-CR-200 form. For example, if the judicial official imposes an unsecured bond, then the forty-eight-hour immigration detention begins once the defendant signs the release order. If the defendant is detained pursuant to a secured bond and posts the bond, then the forty-eight-hour immigration detention period begins at the time the bond is accepted by the judicial official. If the defendant is not able to satisfy the conditions of release that are imposed (i.e., is not able to make bond), then the forty-eight-hour detention period does not apply because the defendant is not "otherwise eligible for release." In those circumstances, there is no immediate need for the jail holding the defendant to notify ICE as required under G.S. 162-62(b1)(4), which in turn signals a lack of urgency for ICE to take custody of the defendant. If, at a later time, the defendant is able to make bond or otherwise satisfy conditions of release, then the forty-eight-hour detention period will begin at that time, having the following practical effects:

- Although the bond has been posted, the defendant remains in custody and under immigration detention for up to forty-eight hours.
- The jail administrator or other person in charge of the facility holding the defendant has two hours from the time the bond is posted to notify ICE of when the forty-eight hours is set to expire.

12. G.S. 162-62(b1)(2), *as amended by* S.L. 2025-85 (H. 318).
13. *Id.* § 62(b1)(3), *as amended by* S.L. 2025-85 (H. 318).
14. *Id.* § 62(b1)(4), *as enacted by* S.L. 2025-85 (H. 318).
15. DHS Form I-247A, *supra* note 1.

- If by the end of the forty-eight-hour period ICE has failed to either take custody of the defendant or rescind the detainer, the defendant will be released pursuant to the conditions set forth in the AOC-CR-200 form.

D. Weekend and Holiday Detention

Under federal law, the forty-eight-hour detention period excludes Saturdays, Sundays, and holidays in order to permit assumption of custody by ICE.[16] G.S. 162-62 does not describe a similar exclusion; instead, it states that the person subject to a detainer must be released after forty-eight hours from the time the person would otherwise be released. Despite the absence of language excluding weekends and holidays, which the General Assembly has included in other statutes,[17] there is an argument that the legislature intended the forty-eight-hour period under state law to be calculated in the same way it is under federal law.

III. Role of the Jail Administrator

Prior to October 1, 2025, only jail administrators bore responsibility for inquiring about a person's residency status, monitoring the receipt of detainers and administrative warrants, and ensuring that the forty-eight-hour period discussed in the sections above was properly applied. S.L. 2025-85 now requires judicial officials to make residency determinations at the defendant's initial appearance. As a result, jail administrators may often find that a defendant who has recently been placed in their custody will have already had a residency determination conducted by a judicial official. In those circumstances, jail administrators can likely satisfy their obligation by reviewing the determination made by the judicial official.

On the occasion that the administrator finds an eligible defendant in custody whose residency has not been determined, G.S. 162-62 requires the administrator or other person in charge of the facility holding the defendant to conduct the residency inquiry. As with residency determinations made by judicial officials, the following categories of offenses trigger the inquiry:

- any felony;
- a Class A1 misdemeanor under Article 6A (unborn victims), Article 7B (rape and other sex offenses), or Article 8 (assaults) of G.S. Chapter 14;
- any violation of G.S. 50B-4.1 (violation of a domestic violence protective order); and
- any offense involving impaired driving as defined in G.S. 20-4.01.[18]

If the person's status as a legal resident or citizen of the United States cannot be determined, the administrator or other person in charge of the facility must query ICE.[19] If the administrator in charge of a confinement facility receives notice that ICE has issued a detainer and administrative warrant for a person charged with a criminal offense and currently confined in that facility, the administrator is required to take the person before a state judicial official to be processed pursuant to G.S. 162-62(b1).

16. 8 C.F.R. § 287.7(d).
17. *See, e.g.*, G.S. 14-409.43 (forty-eight-hour window for reporting certain disqualifiers to National Instant Criminal Background Check System (NICS) "exclud[es] Saturdays, Sundays, and holidays"); 15A-1345(c) (hold of "seven working days" for alleged probation violators before preliminary hearing).
18. G.S. 162-62(a).
19. *Id.* § 62(b).

Although a judicial official often will have inquired into a person's residency status before confining the person to the facility, the jail administrator remains responsible for monitoring the receipt of detainers and administrative warrants for that person, including those that are issued outside of the initial two-hour detention period (see Section II.A, above). The jail administrator also is responsible for ensuring that a defendant who is eligible for release is released at the appropriate time.

IV. Frequently Asked Questions

(1) How does a judicial official determine legal residency?

The new statute does not include any guidelines on how to determine legal residency, beyond the requirement that it be "by an inquiry of the defendant, or by examination of any relevant documents, or both." A judicial official might consider preparing a list of questions to ask or a list of acceptable documents that would satisfy the official as to the defendant's citizenship or lawful residency status. Regardless of the method selected, the judicial official should consider uniformly applying the method to each defendant charged with a triggering offense so as to avoid any potential equal protection concerns.

(2) Does asking the defendant about his or her residency status raise self-incrimination concerns?

Possibly. The Fifth Amendment to the U.S. Constitution protects a person against compelled self-incrimination; a similar privilege exists in Section 23 of Article I of the North Carolina Constitution. The Fifth Amendment privilege protects against any compelled disclosures that a person reasonably believes could be used in a criminal prosecution or could lead to the discovery of other evidence that might be used in a prosecution.[20]

The U.S. Supreme Court has explained that "[a]s a general rule, it is not a crime for a removable alien to remain present in the United States," and that the federal administrative process for removing someone from the country "is a civil, not criminal, matter."[21] Although being in the United States without legal status is a civil offense, criminal penalties may be imposed for some immigration violations, such as entering the country illegally in violation of 8 U.S.C. § 1325. Consequently, a person may invoke their Fifth Amendment right and refuse to answer questions about residency status if there is "even a remote risk" that he or she will be prosecuted and if the answers "might tend to reveal" that he or she committed a crime.[22] If, during the residency inquiry, a defendant invokes the Fifth Amendment privilege and the judicial official lacks other reliable evidence regarding the defendant's residency and citizenship, the judicial official can reasonably consider themselves unable to determine the defendant's residency status and proceed in accordance with G.S. 15A-534(d4).

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20. Kastigar v. United States, 406 U.S. 441 (1972).

21. *See* Lunn v. Commonwealth, 78 N.E.3d 1143 (Mass. 2017), *citing* Arizona v. United States, 567 U.S. 387 (2012).

22. *See generally* Hernandez v. Hankook Tire Am. Corp., No. 2:12-CV-03618-WMA, 2014 WL 3052545, at *3 (N.D. Ala. July 3, 2014) (quoting *In re* Corrugated Container Anti-Trust Litig., 620 F.2d 1086, 1091 (5th Cir.1980)).

Any information an in-custody defendant provides in response to a judicial official's residency inquiry may be inadmissible in any criminal proceeding unless the defendant first received *Miranda* warnings. However, the defendant's response may be used in immigration proceedings, including deportation proceedings, because these proceedings are civil and that a violation of *Miranda* does not require exclusion of the responses in those proceedings.[23]

(3) If a magistrate conducts the residency inquiry at the initial appearance, will a judge have to again conduct the inquiry at the first appearance?

Unclear. One interpretation of G.S. 15A-534(d4) is that the residency inquiry must be conducted at every proceeding during which conditions of pretrial release are being considered for a defendant charged with an offense triggering the statute. This would include not only the initial appearance before a magistrate but also the first appearance before a judge, bond modification hearings, and appearances following orders for arrest. Absent reliable evidence regarding the defendant's residency and citizenship, this interpretation could subject a person to a two-hour detention at each stage of the process and could result in multiple, redundant queries to ICE. This would be particularly inefficient in cases where the proceedings are occurring in a short time span (e.g., when the initial appearance, first appearance, and bond modification hearing happen within the same week).

It is possible that a judge may properly rely on the inquiry conducted by a magistrate at the initial appearance. If the magistrate determined that the defendant is a legal resident or citizen of the United States, then the magistrate may wish to note that in the defendant's file, perhaps on the release order or on another local form. The judge could then rely on this notation during his or her residency determination as a "relevant document" within the meaning of the statute. If the magistrate was unable to determine the defendant's legal residency status, the judge will be made aware of such result through the existence of the AOC-CR-663 form in the defendant's case file. However, it is unlikely that a judge will be privy to the result of the ICE query since that information—to the extent that it is relayed by ICE—is not usually put in a defendant's case file. In those situations, since residency status remains unclear, a judge may wish to consider conducting an independent inquiry.

Another interpretation is that the inquiry is required only during the proceedings following an arrest. This includes both the initial arrest for the triggering offense and any appearances following orders for arrest but does not include first appearances and bond modification hearings. This interpretation is consistent with the General Assembly's phrasing of the requirement using language similar to that used in G.S. 15A-534(d2), which governs conditions of release for a defendant charged with a new felony while on probation. The context for this statute appears to contemplate only the initial determination of conditions of release.[24] Given that it is likely for significant amounts of time to have elapsed

23. *See* Busto-Torres v. Immigr. & Naturalization Serv., 898 F.2d 1053 (5th Cir. 1990) (*Miranda* warnings are not required prior to questioning of person about information used to deport him or her, because deportation proceedings are civil, not criminal, in nature; deportation proceedings still must conform to due process standards, and involuntary statements are inadmissible).

24. *See* memorandum from the N.C. Admin. Off. of the Cts., "Pretrial Release and Bond Forfeitures—2009 Legislation and New/Amended Forms" (Nov. 9, 2009) ("When a subsequent judicial official reviews the eligibility for release of a defendant initially ordered detained pursuant to G.S. 15A-534(d2)(3), whether on the basis of additional information or at first appearance, the official apparently must make a definite yes/no

between arrests in a case, and since it is possible that a person's residency status could have changed since the last inquiry, it may be the more reasonable interpretation for the inquiry to be done during each "arrest cycle."

(4) **What should a judicial official do if the defendant is not a legal resident or citizen?** In some cases, the judicial official's inquiry might lead the official to conclude that the defendant is not a legal resident or citizen of the United States. According to the statute, the mandatory detention period discussed in the sections above applies if the judicial official is "unable to determine" the person's legal residency status. Though the law does not expressly set forth any procedures that must be followed after a determination that a person does not have legal status, it is likely that the legislature intended for defendants without legal status to undergo an ICE query.

The language requiring a judicial official to conduct the residency inquiry mirrors the language in G.S. 162-62(b), which requires a jail administrator to conduct the same inquiry. G.S. 162-62(b) contains additional language stating that if the defendant has not been lawfully admitted to the United States, DHS will have been notified of the defendant's status and confinement at a facility by its receipt of the query from that facility.[25] There is an argument that the additional language in G.S. 162-62(b) evinces the legislature's intent that jail administrators query ICE both when a defendant's status is uncertain and when it is certain that the defendant does not have legal status. Though that additional language does not appear in G.S. 15A-534(d1), it is possible that the interpretation could be extended to the inquiry conducted by the judicial official.

On the other hand, there is an argument that a definitive determination that a defendant lacks legal status is not the equivalent of an inability to determine status within the meaning of the statute. The absence of the additional language found in G.S. 162-62(b) may signal a conscious decision by the legislature not to create a legal obligation to *report* a defendant's status to DHS or ICE, while maintaining the obligation to *inquire* when there is uncertainty. Under this interpretation, the judicial official would set release conditions as they normally would, without the imposition of a two-hour detention.[26] With either interpretation, the judicial official could reasonably consider a lack of legal status as a factor in setting conditions of release.[27]

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determination concerning the danger that the defendant poses to the public; the statute does not appear to allow for a second finding of 'insufficient information.' ").

25. G.S. 162-62(b).

26. In counties with what are known as 287(g) agreements, law enforcement officers may have certain reporting or enforcement duties. Judicial officials are not parties to these agreements, and the agreements do not require judicial officials to aid in the process. Given that G.S. 162-62 requires jail administrators to conduct the same residency inquiry, law enforcement officers in confinement facilities are likely to come to their own conclusions and take the appropriate action. *See* U.S. Dep't of Homeland Sec., U.S. Customs and Immigration Enf't, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, "ICE's 287(g) Program," ICE.GOV (updated Oct. 28, 2025) ("The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 added Section 287(g) to the Immigration and Nationality Act (INA) — authorizing U.S. Immigration and Customs Enforcement (ICE) to delegate to state and local law enforcement officers the authority to perform specified immigration officer functions under the agency's direction and oversight.").

27. *See* G.S. 15A-534(c).

(5) Will magistrates be required to query ICE?

The statute does not explicitly require a judicial official to query ICE. Instead, the judicial official must commit the defendant to an appropriate detention facility "for a query of [ICE]." G.S. 162-62(b) explicitly requires a jail administrator or other person in charge of the facility to query ICE. Thus, the most reasonable interpretation is that the jail administrator will query ICE once the judicial official commits the defendant to the facility.

(6) Will ICE be able to issue a detainer and administrative warrant after the two-hour detention period ends?

Yes. If ICE has not issued a detainer and warrant by the end of the statutory two-hour detention period, then the defendant must be released pursuant to the conditions of release that have been set—which are typically memorialized on the AOC-CR-200 form—if and when he or she is able to satisfy those conditions. This, however, does not preclude ICE from issuing a detainer and warrant for a defendant who remains in custody beyond the initial two-hour detention period. A defendant who is not able to satisfy conditions of release beyond this period may later be subject to a forty-eight-hour immigration detention period upon receipt of the appropriate documents from ICE.

(7) Can improper detention be cured by later issuance of documents?

Not likely. A judicial official may issue the AOC-CR-662 form detention order for a defendant only when a detainer and warrant have been issued by ICE. If ICE has not issued a detainer and warrant by the end of the statutory two-hour detention period, then the defendant must be released, pursuant to the terms of release in the AOC-CR-200 form, if and when he or she is able to satisfy his or her conditions of release. This, however, does not preclude ICE from issuing a detainer and warrant for a defendant who remains in custody after the expiration of the two-hour detention period.

In the event a defendant is detained after satisfying conditions of release (e.g., under an erroneous belief that a detainer and warrant have been issued), a later issuance of those documents likely does not cure the mistake. This was addressed in *Santos v. Frederick County Board of Commissioners*[28] when ICE's detainer request was sent forty-five minutes after officers had already arrested Santos for an immigration warrant. The court noted that the issuance of the ICE detainer did not cure the unlawful seizure because "the reasonableness of an official invasion of a citizen's privacy must be appraised on the basis of the facts as they existed at the time that invasion occurred."[29] The appropriate remedy under this circumstance would likely be to order the immediate release of the defendant, since a defendant who satisfied conditions of release would not be in custody if not for the unlawful detention.

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28. 725 F.3d 451 (4th Cir. 2013).

29. *Id.* at 466 (quoting United States v. Jacobsen, 466 U.S. 109 (1984). *See also* Beck v. Ohio, 379 U.S. 89, 91 (1964) ("Whether [an] arrest was constitutionally valid depends in turn upon whether, at the moment the arrest was made, the officers had probable cause to make it—whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense.").

(8) May a defendant challenge his or her detention pursuant to an ICE detainer?

Potentially. A defendant who is being held in custody in violation of North Carolina law may, in some circumstances, challenge the detention by filing a writ of habeas corpus.[30] A habeas corpus petition is used to argue that a person is being unlawfully held in custody and should be released. A habeas corpus proceeding is limited to reviewing the legality of the court's jurisdiction or authority to hold a person in custody; it may not be used to review general errors in the case.[31] Therefore, state habeas may provide an avenue to challenge whether an immigration detainer exists but likely may not be used to challenge the validity of any such detainer.

North Carolina appellate courts have analyzed whether a defendant can challenge continued custody on an immigration detainer on habeas corpus grounds.[32] The North Carolina Supreme Court held in *Chavez v. McFadden* that a trial court has jurisdiction to determine as an initial matter whether it has the authority to issue a writ of habeas corpus, but once that initial examination of the writ application shows that the defendant is being held pursuant to an immigration-related warrant or detainer in a county in which the sheriff has entered into a 287(g) agreement (see note 26, above), the trial court should summarily deny the application.[33] The court may not make any determination concerning the validity of the detainer or warrant, whether the petitioner is the person named in the immigration-related process, whether the law enforcement officers involved are properly certified, or whether the process has sufficient factual support.[34] Attempting to make such determinations would place the trial judge in the position of making decisions that have been reserved for federal, rather than state, judicial officials and potentially interfering with the manner in which federal immigration laws are administered.[35] The *Chavez* court noted, however, that a trial judge would have the authority to inquire into whether the custodian of the defendant has, in fact, entered into a 287(g) agreement that is presently in effect, though the validity of that agreement or the manner in which it is being implemented is an issue for the federal courts.[36]

It remains unclear whether the existence of a 287(g) agreement in a given county is material in determining the availability of habeas relief for a defendant detained in that county. While the *Chavez* court noted several times that a trial judge must summarily deny a writ for habeas corpus if either the writ application or the return alleges that the custodian is a party to an active 287(g) agreement, the court made clear that it was expressing no opinion concerning the extent, if any, to which a defendant in the custody of a North Carolina agency that is not a party to a 287(g) agreement is entitled to discharge in a habeas proceeding conducted pursuant to state law.[37]

30. For further discussion of the law related to state habeas corpus writs, see Jessica Smith, NC Superior Court Judges' Benchbook, *Habeas Corpus* (Mar. 2014; updated by Christopher Tyner Sept. 2024) (UNC Sch. of Gov't 2024).
31. *See, e.g.*, State v. Edwards, 192 N.C. 321 (1926); State v. Burnette, 173 N.C. 784 (1917).
32. *See* Chavez v. McFadden, 374 N.C. 458 (2020).
33. *Id.* at 477.
34. *Id.* at 476.
35. *Id.*
36. *Id.*
37. *Id.* at 474.

Regardless of whether there is an active 287(g) agreement in place, a defendant cannot—in a habeas petition—challenge the *validity* of an ICE detainer or warrant or any other underlying issues. However, this probably does not preclude a defendant from challenging the *existence* of a detainer and warrant at the time of his or her detention. If a defendant who is otherwise eligible for release is detained at a time when no detainer and warrant have been issued, a court may be able to properly issue a writ of habeas corpus for, and order the release of, the defendant. Similarly, if a defendant who is otherwise eligible for release remains in detention beyond the forty-eight-hour window discussed in this bulletin, a court may be able to properly issue a writ of habeas corpus for, and order the release of, the defendant.

Exhibit 6A

Changes in setting bonds pursuant to NCGS 162-62 and 15A-534

1. QUALIFYING OFFENSES UNDER G.S. 162-62 – LEGAL STATUS OF PRISONERS
    a. All Felonies
    b. DVPO Violation
    c. DWI including DWI in commercial vehicle and habitual
        i. Not Consuming < 21
    d. Assaults/Qualifying A1 Misdemeanors
    e. Assault by Pointing a Gun
    f. Assault Emergency Personnel
    g. Assault Government Official
    h. Assault in Individual with Disability
    i. Assault Inflicting Serious Injury
    j. Assault Inflicting Serious Injury Minor Present
    k. Assault on a Female
    l. Assault on Child Under 12
    m. Assault on Handicapped Person
    n. Assault on Pregnant Woman
    o. Assault on School Employee
    p. Assault Public Transit
    q. Assault with a Deadly Weapon
    r. AWDW Minor Present
    s. Battery of an Unborn Child
    t. Misdemeanor Child Abuse
    u. Misdemeanor Crime of Domestic Violence
    v. Sexual Battery
2. This act applies to any judicial official setting a bond. (Judges, Magistrates, and Clerks)
3. This act applies to bonds set after 10/1/25 regardless of offense date.
4. Magistrates are to initiate the inquiry even if it is a bond that requires a District Court Judge to set.
5. If you cannot determine the person's status use AOC-CR-663 and the jail will start the process. It does not have a place to in put the time. Use the time attached to your signature to put in there.
    a. The Statute says that you shall attempt to determine if the defendant is a legal resident or citizen of the US by an inquiry of the defendant, examination of any relevant documents of both.

i. Recommended questions:
    1. "You are charged with an offense that requires a determination that you are a legal resident or citizen of the US. You have the right to remain silent and any statement maybe used against you. If I cannot determine if you are legally in the US, then pursuant to NCGS 162-62, I will sign an order to have you fingerprinted and your information sent to Homeland Security.
    2. Do you want to answer questions concerning your citizenship and or provide documentation?
b. Any information or documents you would normally use in determining who a person is should still be used.
c. Please be careful to ask all defendants so that no one says you are profiling defendants.

6. It appears the time starts when the jail begins the inquiry.
7. If a detainer is filed, then you use AOC-CR-662.
    a. It has a box to check whether the person named in the detainer is or is not the person in custody.
8. You still set a bond. Please put in the notes section of the bond the time you signed CR-663. If you determine that the person is in the US legally, please put in this section as well.

    a. Please take caution to ask all persons charged appropriate questions pursuant to NCGS 162-62.

Exhibit 7

DOMESTIC VIOLENCE REPORT

TO: 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:

Exhibit 8

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

_____ DATE: _____

MAGISTRATE