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## STATE OF NORTH CAROLINA

2020 MAY 12 PM 2:10 JUDICIAL DISTRICT 16A

RICHMOND COUNTY

EFFECTIVE MAY 12, 2020

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BY

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**OFFICIAL POLICIES ON PRETRIAL RELEASE****I. AUTHORITY.**

G. S. 15A-535 provides: "Subject to the provisions of this Article [Article 26, Bail], the senior resident superior court judge of each judicial district in consultation with the chief district court judge, must advise and issue recommended policies to be followed within the district in determining whether, and upon what conditions, a defendant may be released before trial."

**II. DEFINITIONS. G. S. 15A-531.**

- A. Bail Bond.** An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an appearance bond secured by a cash deposit of the full amount of the bond, and appearance bond secured by a mortgage pursuant to G. S. 109-25, and an appearance bond secured by at least one solvent surety.
- B. Obligor.** A principal or a surety on a bail bond.
- C. Principal.** A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.
- D. Surety.** One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.

**III. PURPOSE OF BAIL.**

The traditional purpose of bail is to assure the defendant's appearance in court. The purpose of the law on bail (G. S. Ch. 15A, Article 26) is to impose the least restrictive form of pretrial release that will reasonably assure the defendant's appearance in court, to end or to minimize ex parte bail-fixing policies calling for secured bonds in predetermined amounts in all cases charging certain offenses, and to vest the decision making process as to form of release and amount of bond in the judicial officer who may know the most, or can most readily learn the most, about the defendant.

#### IV. FORMS OF PRETRIAL RELEASE. G. S. 15A-534.

- A. Release on a written promise to appear.
- B. Release on unsecured bond.
- C. Release to the custody of a designated person or organization agreeing to supervise the defendant.
- D. Release on a secured appearance bond secured by a cash deposit, mortgage, or at least one solvent surety.
- E. Use of Conditions: Restrictions may be imposed on travel, associations, conduct, or place of abode, no matter what type of pretrial release set.
  - 1. Any restrictions imposed should be *reasonable* and *related to the purposes* of the pretrial release provisions. Conditions should not be used as punishment. [*Note*: G. S. 15A-534.4 sets out specific conditions that may be imposed on a defendant who is charged with certain sex offenses and crimes of violence against child victims.]
  - 2. The conditions should relate to reasons listed under 15A-534(b):
    - a. assure defendant's appearance (travel);
    - b. danger of injury (conduct/association);
    - c. destroy evidence (conduct/travel/association);
    - d. intimidate witnesses (conduct/association).

Note. The magistrate will observe that a citation is now a criminal process, G. S. 15A-302. It is not a form of release.

#### V. SELECTION OF FORM OF PRETRIAL RELEASE. G. S. 15A-534.

- A. **Written promise to appear.**
  - 1. The written promise to appear is the recommended form of pretrial release except as is provided below.
  - 2. The written promise to appear may be selected by the magistrate as the form of pretrial release upon the magistrate's finding that such form will reasonably assure the defendant's court appearance after the magistrate has taken into account the release criteria set out in G. S. 15A-534(c), namely:

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

**B. Unsecured Bond in a Specific Amount.**

The unsecured bond in a specified amount is the recommended form of pretrial release in cases arising under G. S. Chapter 20 (Motor Vehicles), and upon the magistrate's finding that this form of release will reasonably assure the defendant's court appearance on the basis of the release criteria set out above. This subsection does not apply to Class 3 misdemeanors, as a written promise is the required form of release unless the defendant has four or more prior convictions as defined by the Structured Sentencing Act.

**C. Release to the custody of a designated person or organization agreeing to supervise the defendant.**

This form of release may be selected in cases if the magistrate finds: (1) that by reason of defendant's age or mental condition a custodial release is most likely to assure the defendant's court appearance, and (2) such custodian and the defendant are both before the magistrate, and both agree in writing to the terms of release.

**D. Release on a secured appearance bond in a specified amount secured by cash deposit, mortgage, or at least one solvent surety.**

This form of release must not be selected by the magistrate unless he or she first determines that release forms A, B, or C above will not reasonably assure the appearance of the defendant as required, will pose a danger of injury to any person, or is likely to result in destruction of evidence, subordination of perjury, or intimidation of potential witnesses. Upon making such determination, the magistrate must impose this form of release.



Note. The magistrate (judicial official) authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of his release; and advise him that his arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant. *See Forms AOC-CR-200,201.*

## **VI. SUGGESTED BAIL BONDS.**

**A.** If after considering the above criteria the judicial official believes a written promise is not appropriate, then a bond should be set if a custody release is not chosen.

**B(1).** With the exception of subsection 1 below, the bond amounts set out below are applicable to both secured and unsecured bonds. The bond amounts set out below are applicable to both secured and unsecured bonds. They are merely suggested bonds. The actual bond may be more or less than those suggested herein. The circumstances of each individual case will govern each decision; and the judicial official will select a bond amount that is appropriate and indicated by using the release criteria set out in V. above, using those criteria for determination of amount of bond in the same manner as they are used to determine the form of release. Except as set out in paragraph B(2) below, suggested minimum bonds are as follows:

1. For offenses defined as Class 1, 2, or 3 misdemeanors where a defendant has three or fewer prior convictions as defined by the Structured Sentencing Act – written promise, except for charges involving domestic violence or DWI;
2. For DWI offenses, see Section XI, below;
3. For charges including domestic violence, see Section XII, below;
4. For offenses classified as Class A1 misdemeanors - \$500.00 to \$1,500.00;
5. For Class I felonies - \$1,500.00 to \$2,500.00;
6. For Class H felonies - \$2,500.00 to \$4,000.00;
7. For Class G felonies - \$4,000.00 to \$5,000.00;
8. For Class F felonies - \$5,000.00 to \$10,000.00;
9. For Class E felonies - \$10,000.00 to \$25,000.00;
10. For Class D felonies - \$25,000.00 to \$40,000.00;
11. For Class C felonies - \$40,000.00 to \$50,000.00;
12. For Class B2 felonies - \$50,000.00 to \$100,000.00;
13. For Class B1 felonies - \$100,000.00 to \$200,000.00;

**B(2).** Bond is set as below in the following cases:

1. Trafficking in less than 100 pounds of marijuana - \$50,000.00;
  2. Trafficking in cocaine if less than 400 grams - \$100,000.00;
  3. Trafficking in opium if less than 14 grams - \$100,000.00;
  4. Trafficking in heroin - \$100,000.00;
  5. All other trafficking - \$250,000.00;
- C. Armed Robbery - \$50,000.00;
- D. Discharging a weapon into occupied property - \$30,000.00;
- E. AWDWITK - \$30,000.00;
- F. AWDWISI - \$30,000.00;
- G. AISBI - \$25,000.00;
- H. Absconding-Felony probation Class E, F, & G - \$25,000.00 to \$50,000.00; and Felony probation Class H and I - \$5,000.00 to \$25,000.00.
- I. Fugitive Warrant – set amount appropriate for underlying offense with consideration for the nature of any violations and new charges.
- J. Failure to Appear-Minimum \$1,000.00 Secured Bond;
- K. Governor’s Warrant – No bond.
- L. Interstate Compact – No bond.
- M. Parole Warrant – No bond.

## **VII. CAPITAL OFFENSES (CLASS A FELONIES).**

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

B. A district court judge or a superior court judge, in the exercise of his or her discretion, may fix bail in all capital cases upon consideration of those factors set forth in G.S. 15A-534.

## **VIII. GUIDELINES.**

A. A magistrate should not, except under extraordinary circumstances, release by personal recognizance, unsecured bond or custodial release any person who is not a resident of North Carolina; however this provision does not apply if the defendant is charged with a Class 3 misdemeanor and has three or fewer prior convictions as defined by the Structured Sentencing Act.

B. On misdemeanor charges a magistrate may -- but is not required to -- accept the defendant’s oral and unconfirmed answers to the release criteria set out in Section V. A. 2, above.

C. A magistrate should not grant pretrial release by personal recognizance, unsecured bond, or custodial release to any person charged with a felony except upon the defendant's sworn and written questionnaire on the release criteria, answered favorably, and upon the magistrate's independent confirmation of a sufficient portion of those answers to prove their accuracy.

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

E. A magistrate should not grant pretrial release by written promise to appear or custodial release where the defendant is under arrest for violation of G. S. 15A-534, failure to appear pursuant to pretrial release under Article 26.

F. A magistrate should not grant pretrial release contrary to the order of any judge except as authorized under XIV, below.

G. A magistrate should not grant pretrial release by written promise to appear or unsecured bond to any defendant who is intoxicated or in a highly emotional or agitated condition.

H. 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 if a judicial official finds the following:

1. There is a reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;
2. The drug trafficking offense was committed while the person was on pretrial release for another offense; and
3. The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

I. 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, if a judicial official finds the following:



1. There is a reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in NCGS 14-50.16;
2. The offense described in subdivision 1 of this section was committed while the person was on pretrial release for another offense; and
3. The person has been previously convicted of an offense described in NCGS 14-50.16 through NCGS 14-50.20, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

**J.** 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, if a judicial official finds there is reasonable cause to believe that the person committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; and the judicial official also finds any of the following:

1. The offense was committed while the person was on pretrial release for another felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm.
2. The person 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 conviction or the person's release for the offense, whichever is later.

**K.** Persons who are considered for bond under the provisions of paragraphs H, I, and J of this Section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community.

**IX. REQUIRED WRITTEN FINDINGS IN ACCORDANCE WITH 15A-534(b).**

**A.** In all charges involving felonies designated A, B1, B2, C, D, E, F, G, H, or in Class A1 misdemeanors wherein a defendant is subject to an active sentence in all grids under Structured Sentencing, it may be presumed that release under G. S. 15A-534a(1)(2) or (3) will not reasonably assure the appearance of the defendant and the judicial official may set a secured bond without giving any specific reason in writing, under G. S. 15A-534(b).

**B.** In regards to all Class A1, 1, 2, or 3 misdemeanors or Class I felonies, conditions of release must be one of those set forth in G. S. 15A-534(a)(1)(2) or (3) unless the

judicial official records in writing, or directs the clerk to record in writing, the reasons for setting of a secured bond in accordance with G. S. 15A-534(4), **except when a bond is being set pursuant to a failure to appear. In such case, no written findings need be made and it may be presumed that release under G. S. 15A-534(a)(1)(2) or (3) will not reasonably assure the defendant's appearance.**

C. Examples of such reasons including:

1. The defendant's criminal record is such that he or she is subject to an active sentence upon conviction;
2. The defendant poses a danger of injury to any person;
3. The defendant's release without a secured bond is likely to result in destruction of evidence, subordination of perjury, or intimidation of potential witnesses;
4. Any other specific finding of why the judicial official believes that conditions (1)(2) or (3) of G. S. 15A-534(a) would not reasonably assure a defendant's appearance.

D. In regards to Class 3 misdemeanors, conditions of release must be a written promise, except when a bond is being set pursuant to a failure to appear. In such case, no written findings need be made and it may be presumed that release under G. S. 15A-534(a)(1), (2), or (3) will not reasonably assure the defendant's appearance.

E. In regards to defendants charged with DWI, the judicial official may presume that any defendant who has registered at least a 0.08% on the intoxilyzer poses a danger of injury to other persons if not placed under a secured bond and the judicial official may set a secured bond without giving any written reason therefore, pursuant to G. S. 15A-534(b).

F. In DWI cases in which there is an alleged willful refusal to submit to an intoxilyzer, a judicial official who has observed the defendant and finds probable cause that the defendant is impaired at that time may presume that the defendant poses a risk of injury to persons and may place the defendant under secured bond without giving any written reason therefore, pursuant to G. S. 15A-53(b).

G. In DWI cases wherein the defendant registers less than 0.08% on the intoxilyzer, the judicial official shall impose conditions set forth in G. S. 15A-534(a)(1)(2) or (3) unless he or she makes written findings as required by G. S. 15A-534(b).



H. Examples of such reasons for setting a secured bond in accordance with N.C.G.S. 15A-534(b) in DWI cases include:

1. The defendant has committed acts which constitute grossly aggravating factors and is subject to mandatory imprisonment and conditions (1)(2) and (3) of G. S. 15A-534(a) will not assure the defendant's appearance;
2. The defendant poses a danger of injury to persons;
3. The defendant's release without a secured bond is likely to result in destruction of evidence, subordination of perjury, or intimidation of potential witnesses;
4. Any other specific finding of why the judicial official believes that release under G. S. 15A-534(a)(1)(2) or (3) would not reasonably assure the appearance of the defendant.

**X. RECOMMENDATION OR ORDERS.**

Magistrates in this district will observe the following procedure:

A. In transmittal forms from judges the word "*recommendation*" will be treated as an order unless the judge clearly indicates a different purpose.

B. Recommended disposition on transmittal forms from other magistrates and from superior court clerks will be viewed as recommendations only, to be given due weight, but subject to a different form of release or a different amount of bond if the receiving magistrate's information about the defendant on the release criteria clearly indicates a form of a release or amount of bond that differs from the transmittal recommendation.

C. Any magistrate in transmitting warrants for out-of-county for service will avoid making any recommendation as to conditions of release unless:

1. The magistrate expects the defendant to be arrested in a county where he or she is not known, or
2. The magistrate's prior knowledge of the defendant's record and standing as to the release criteria is sufficient to justify a recommendation, or
3. Experience with the release practices of a particular county has been unsatisfactory when recommendations are not given.

**XI. DETENTION OF IMPAIRED DRIVERS. G. S. 15A-534.2.**

A. A defendant charged with impaired driving has the right to pretrial release when the judicial official (magistrate) determines that either:

1. The defendant's physical and mental faculties are no longer impaired to the extent that he or she presents a danger of physical injury to himself or herself or others or of damage to property; or
2. A sober, responsible adult is willing and able to assume responsibility for the defendant until his physical and mental faculties are no longer impaired. If the defendant is released to the custody of another, the judicial official may impose any other condition of pretrial release authorized by G. S. 15A-534, including a requirement that the defendant execute a secured bond.

B. The defendant may be denied pretrial release under this section for a period no longer than 24 hours, but the conditions under which he or she is to be released must be set at the time of initial appearance.

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

**XII. PRETRIAL RELEASE FOR CRIMES OF DOMESTIC VIOLENCE.  
G. S. 15A-534 and 15A-534.1.**

In all cases in which the defendant is charged with assault on or communicating a threat to a spouse or former spouse or a person with whom the defendant lives or has lived as if married, or with whom the defendant currently or formerly was in a dating relationship (opposite or same sex), with domestic criminal trespass, or with violation of an order entered pursuant to G. S. Ch. 50B (Domestic Violence), the following provisions shall apply in addition to the provisions of G. S. 15A-534 and G.S. 15A-534.1:

- A. Upon arrest by warrant for crimes of domestic violence, a district court judge is the only judicial official authorized to set conditions of release for the initial 48 hours following arrest.



- B. Upon a determination by the judicial official that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond as required by G. S. 15A-534 will not reasonably assure that such injury or intimidation will not occur, a judicial official may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.
- C. A judicial official may impose the following conditions on pretrial release:
- a. that the defendant stay away from the home, school, business or place of employment of the alleged victim;
  - b. that the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;
  - c. that the defendant refrain from removing, damaging or injuring specifically identified property;
  - d. that the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

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

### **XIII. OVERCROWDING OF JAIL FACILITIES.**

Magistrates will be mindful of the jail capacity and the number of persons being detained therein, and shall make such reductions in bond requirements as he or she shall deem necessary, including use of unsecured bonds, to avoid overcrowding.

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

### **XIV. ERRORS AND EMERGENCIES.**

A. Magistrates are not authorized to modify pretrial release orders or recommendations of judges of the superior court.

B. Magistrates are not authorized to modify pretrial release orders or recommendations of district court judges outside their county.

C. Magistrates are authorized to modify pretrial release orders of district court judges in their respective counties in misdemeanor cases involving process for service only after and pursuant to the direction of the district court judge. Magistrates exercising such authority to modify a district court judge's pretrial release order will staple an attachment to the process setting out the reasons for his actions along with the date and his or her signature.

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

**XV. TERMINATION. G. S. 15A-534(h).**

A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

- A. A judge authorized to do so releases the obligor from his bond; or
- B. The principal is surrendered by a surety in accordance with G. S. 15A-540; or
- C. The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G. S. 15A-544(b); or
- D. Prayer for judgment has been continued indefinitely in the district court.

**XVI. FURTHER STATEMENT OF GENERAL POLICIES.**

A. Law enforcement officers are encouraged to use citations in those misdemeanor cases in which they feel confident that the defendant will appear in court on the day he or she is due to appear.

B. Clerks and magistrates are encouraged to use the criminal summons instead of warrants in non-support and other appropriate misdemeanor cases. G. S. 15A-303.



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

D. When there are several charges against one defendant, one bond may be set for all charges.

E. When a Defendant is arrested on a new charge while out on pretrial release and the date of the new offense is after Defendant's release from custody on the previous charge, the magistrate may consider setting a bond in excess of the recommended bond for that offense.

F. When it is apparent that a Defendant is being recharged as soon as he or she is released, or warrants could have been served simultaneously with the first, magistrates may set bond in his or her discretion, as if the latter charges had been brought timely.

## **XVII. RELEASE AFTER CONVICTION IN SUPERIOR COURT.**

### **G. S. 15A-536.**


There is no constitutional right to release at this stage. Defendants whose guilt has been established and who are awaiting sentence or have filed an appeal may be released, in the judge's discretion. State v. Sparks, 297 N.C. 314 (1979).


A. In addition to usual conditions, superior court judges may impose supervisory custody, or restrictions on travel, associations, conduct, or place of abode, or both. See IV and V, above, and State v. Cooley, 50 N.C. App. 544 (1981).

B. Judge's release order must specify conditions, inform defendant of penalty for violation, and advise him violation will result in arrest.

C. Release order may be modified or revoked by the judge who has ordered release, or, if that judge is out of district, by any other superior court judge. Defendant whose release is revoked is entitled to immediate hearing.

This the 12<sup>th</sup> day of May, 2020.

  
\_\_\_\_\_  
**STEPHAN R. FUTRELL**  
**SENIOR RESIDENT SUPERIOR COURT JUDGE**  
**JUDICIAL DISTRICT 16A**

  
\_\_\_\_\_  
**AMANDA L. WILSON**  
**CHIEF DISTRICT COURT JUDGE**  
**JUDICIAL DISTRICT 16A**



**WRITTEN DETERMINATION OF JUDICIAL OFFICIAL ON IMPOSITION OF SECURED BOND IN CLASS I FELONIES, CLASS I, II OR III MISDEMEANORS, OR IN DWI CASES WHERE THE DEFENDANT'S BLOOD ALCOHOL LEVEL IS LESS THAN .08%**

State v. \_\_\_\_\_

A SECURED BOND IS SET IN THE AMOUNT OF \$ \_\_\_\_\_

**THE REASONS FOR REQUIRING A SECURED BOND ARE:**

(Numbers (1), (2) and/or (3) Must Be Checked in Some Cases – See Reverse)

- (1) \_\_\_ Necessary to reasonably assure the appearance of the Defendant.
- (2) \_\_\_ The Defendant poses a danger to another person or persons.
- (3) \_\_\_ The Defendant is a threat to destroy evidence, suborn perjury or intimidate a witness or witnesses.

**EXPLANATION OF FACTORS CONSIDERED**

(This Section Must Be Completed in Some Cases – See Reverse)

( ) Nature and circumstances of the offense(s) charged and weight of the evidence against the Defendant:

\_\_\_\_\_  
\_\_\_\_\_

( ) The Defendant's family ties, employment, character, degree of intoxication and mental condition:

\_\_\_\_\_  
\_\_\_\_\_

( ) The Defendant's length of residence in and other ties to the community:

\_\_\_\_\_  
\_\_\_\_\_

( ) The Defendant's record of convictions:

\_\_\_\_\_  
\_\_\_\_\_

( ) History of flight or failure to appear:

\_\_\_\_\_  
\_\_\_\_\_

( ) Other evidence relevant to pretrial release (specific reason must be stated):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Judicial Official