

STATE OF NORTH CAROLINA
JUDICIAL DISTRICT EIGHT-A
LENOIR AND GREENE COUNTIES

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
DISTRICT COURT DIVISION

IN THE MATTER OF PROMULGATING)
LOCAL RULES RELATING TO BAIL)
AND PRETRIAL RELEASE FOR)
JUDICIAL DISTRICT 8-A)

AMENDED ORDER

THIS CAUSE, coming on to be heard and being heard before the undersigned Senior Resident Superior Court Judge and Chief District Court Judge of Judicial District 8-A. After careful consideration of the matter of promulgating policies relating to Bail and Pretrial Release—pursuant to the authority granted by Article 26 of Chapter 15A of the North Carolina General Statutes; the General Rules of Practice for the Superior and District Courts; the Caseflow Management Plan adopted by the Supreme Court of North Carolina on 1 May 1996; and the specified, implied and inherent powers of our respective offices — the undersigned, acting separately and collectively, do hereby approve and enter this order.

Based upon a recent review of the current criminal environment and the status of offenders who are being charged, I have found it necessary to modify recommended bond amounts. Gang activity, an explosion of violent crimes and drug offenses pose an imminent threat to the community. Those who pose the greatest threat must not be allowed to roam free while keeping in mind the presumption of innocence.

Effective March 31, 2011 the bonds in the Bail and Pretrial Release Rules are modified herein, and are recommended for magistrates setting initial bonds. Every magistrate shall complete the 8th Judicial District Bond Worksheet (copy attached, also available in Word format as a form), which will support the bond decision and shall be available for review at defendant's first appearance.

IT IS NOW, THEREFORE, ORDERED THAT:

1. The Local Rules of Bail and Pretrial Release attached hereto, and incorporated herein by reference, are hereby adopted as the official policies and standards concerning Bail and Pretrial Release in the Criminal Court of Judicial District 8-A;

2. These policies supersede all prior such policies and shall be effective March 31, 2011;

3. The Clerk shall serve copies of this Order and these Rules upon each judge, magistrate, sheriff, each chief of police in the judicial district and the local newspaper.

ENTERED in our respective chambers in Lenoir County on this the 31st of March, 2011.



THE HONORABLE PAUL L. JONES
Senior Resident Superior Court Judge
Superior Court Judicial District 8-A



THE HONORABLE DAVID B. BRANTLEY
Chief District Court Judge
District Court Judicial District 8

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LOCAL RULES OF BAIL AND PRETRIAL RELEASE FOR JUDICIAL DISTRICT 8-A

AUTHORITY: G.S. 15A-535 provides: “Subject to the provisions of this Article [26], the Senior Resident Superior Court Judge of each judicial district in consultation with the Chief District Court Judge must advise and issue recommended polices to be followed within the district in determining whether, and upon what conditions, a defendant may be released before trial.”

Rule 1: Name

These rules shall be officially known as the “Local Rules of Bail and Pretrial Release.” When clear from the context the rules may be referred to as the “Local Rules of Bail” or the “Local Rules.”

Rule 2: Authority

These rules were promulgated pursuant to the authority of Article 26 of Chapter 15A of the North Carolina General Statutes; the General Rules of Practice for the Superior and District Courts; the Caseflow Management Plan adopted by the Supreme Court of North Carolina on 1 May 1996; and the specified, implied and inherent powers of the Senior Resident Superior Court Judge and the Chief District Court Judge of District 8-A.

Rule 3: Scope

These rules shall apply in all criminal actions or proceedings in this Judicial District and shall be followed by all judicial officials and all other persons dealing with bail bonds and pretrial release of criminal defendants in this Judicial District.

Rule 4: Definitions

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.

b) Capital Offense. A criminal offense for which the death penalty is an authorized form of punishment. Such an offense is capital regardless whether the District Attorney is seeking the death penalty in the particular case.

c) Clerk. The clerk of superior court, acting clerk, or assistant or deputy clerk. G. S. 15A-101(2).

d) Defendant. A person charged with a criminal offense under the laws of the State of North Carolina.

e) Entry of Judgment. Judgment is entered when sentence is pronounced. Prayer for judgment continued upon payment of costs, without more, does not constitute entry of judgment.

f) Judicial Official. A magistrate, clerk, district court judge and superior court judge. G. S. 15A-101(5).

g) Justify. To determine that a surety owns sufficient property exclusive of indebtedness and exemptions to satisfy a bond upon forfeiture.

h) Obligor. A principal or a surety on a bail bond.

i) Post-trial Release. Release after guilt is established in superior court.

j) Pretrial Release. Release prior to guilt being established in superior court.

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

l) Surety. One who, with the principal, is liable for the amount of the bail upon forfeiture of bail.

m) Victim. A person against whom there is probable cause to believe one of the crimes has been committed as listed in 15A- 830(a)(7), (a), (b), (c), (d), (e), (f), (g).

Rule 5: General Policy

a) Purpose of Bail. The traditional purpose of bail is to assure the defendant's appearance in court. The purpose of the law on bail is to impose the least restrictive non- monetary form of pretrial release that will reasonably assure the defendant's appearance in court; to end or to minimize stereotyped *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 the form of release and amount of bond in the judicial official who can most readily learn the most about the defendant.

b) Presumption of Innocence. The right to pretrial release preserves the presumption of innocence and promotes the defendant's right to a fair trial. According to the Supreme Court of the United States:

This traditional right to freedom before the conviction permits the unhampered Preparation of a defense, and serves to prevent the infliction of punishment Prior to conviction. *** Unless this right to bail before trial is preserved, The presumption of innocence, secured only through centuries of struggle, Would lose its meaning. *State v. Boyle*, 342 U.S. 1(1951).

The spirit of the procedure is to enable them to stay out of jail until a trial has found them guilty. Without this conditional privilege even those wrongfully accused are punished by a period of imprisonment while awaiting trial, and are handicapped in consulting counsel, searching for evidence and

witnesses, and preparing a defense.
Id. Concurring Opinion of Justice Jackson.

c) Risk of Flight and New Crimes. It is recognized that any “admission to bail always involves a risk that the accused will take flight”, and a risk that the defendant released may “commit a fresh crime while out on bail”. These are calculated and accepted risks taken “as the price of our system of justice” by the North Carolina legislature and courts.

d) Defendant’s Right to Bail. With the exception of capital offenses and certain drug trafficking offenses as defined in 15A-533(d) the law unequivocally provides that a defendant charged with a non-capital offense must be accorded their right to pretrial release. A judicial official cannot deny a bond to such a defendant for preventive detention. Even if such a defendant poses a “danger of injury to any person, or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses” the defendant is still entitled to a bond.

e) Amount of Bail. The amount of the bail bond shall be such as to reasonably assure the presence in court of the defendant as needed. Bail in an amount higher than an amount reasonably calculated to fulfill its purpose of the preventing flight and assuring presence is “excessive” and unlawful under the Eighth Amendment to the Constitution of the United States and under Article I, Section 27 of the Constitution of the North Carolina. Bail may not be used as punishment.

f) Independence of Judicial Officials. A judicial official must act independently of law enforcement, the prosecution and the defendant in setting bail. The judicial official must be neutral in determining the conditions of pretrial release and take into consideration the purpose of bail, the rights of the defendant and the rights of the public.

g) Right to Speedy Trial. Innocent people should not have to bear the burden, hardship and humiliation of imprisonment awaiting trial. The public should not have to bear the risk of guilty defendants committing further crimes while on pretrial release. A partial solution to the pretrial dilemma is a speedy trial. When preparing trial calendars preference should be given to defendants awaiting trial who are unable to make bond. If such preference is not accorded then judicial officials should reconsider the conditions of pretrial release of such defendants.

Rule 6: Forms of Pretrial Release (G.S. 15A-534-(a))

a) Written Promise to Appear. The defendant is released upon his or her execution of a written promise to appear in court as necessary.

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

c) Supervised Release. The defendant is placed into the custody of a designated person or organization agreeing to supervise him or her.

d) Secured Appearance Bond. The bond is secured by a cash deposit of the full amount of the bond, a mortgage pursuant to G.S. 58-74-5, or at least one solvent surety.

e) Cash Appearance Bonds. The bond requires a cash deposit of the full amount of the bond. A professional bondsman, who is a surety bondsman, as defined by G.S. 58-71-1, acting on behalf of an insurer, may satisfy the cash deposit requirement by becoming a surety on the bond in that amount. G.S. 15A-531(1).

Rule 7: Right to Pretrial Release in Capital and Non-capital Cases (G.S. 15A-533(b) & (c))

a) A defendant charged with a non-capital offense must have conditions of pretrial release determined by a judicial official pursuant to these rules. A judicial official cannot deny bail for the purpose of preventive detention. However, if appropriate, such defendants may be detained or retained in custody pursuant to applicable rules. In certain drug trafficking offenses no bond is allowed as defined in 15A-533(d), except by a district or superior court judge upon finding there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community. (See Rule 13(b) for more details.)

b) Only a judge may determine whether a defendant charged with a capital offense may be released before trial. If the judge determines in his or her discretion release is warranted, the judge must determine the conditions of pretrial release pursuant to these rules.

Rule 8: Unauthorized Absence from Involuntary Commitment in Mental Health Facility (G.S. 15A-533(a))

a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed the crime while still residing in or subsequent to his or her escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Human Resources, and whose commitment is determined to be still valid by the judicial official authorized to determine pretrial release, has no right to pretrial release. (See b below)

b) In lieu of pretrial release, the defendant shall be returned to the treatment facility in which he or she was residing at the time of the alleged crime or from which he or she escaped or absented himself or herself for continuation of treatment pending additional proceedings on the criminal offense. No other conditions of pretrial release are to be imposed at that time.

Rule 9: Authority to Determine Conditions of Pretrial Release

a) Magistrate. Generally, the responsibility for determining the conditions of pretrial release rests with a magistrate. The magistrate should determine such conditions for misdemeanors and non-capital felonies. A magistrate cannot authorize the release of a defendant charged with a capital offense. G.S. 15A-532(a); G.S. 15A-533(c).

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

c) A magistrate or clerk may modify his or 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 the superior court pursuant to G.S. 15A-539, at or after the first appearance, a district court judge may modify a pretrial release order of a magistrate or the clerk. A district court judge may modify a pretrial release order entered by such 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).

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, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by such superior court judge, at any time prior to the guilt of the defendant being established in superior court. G.S. 15A-534(e).

Rule 10: Factors to Consider in the Pretrial Release Process

In determining which conditions of pretrial release to impose, the judicial official must, on the basis of available information, take into account the following factors: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) the defendant's family ties in the county; (4) the defendant's employment status and history; (5) the defendant's financial resources; (6) the defendant's character and reputation; (7) the defendant's mental condition; (8) whether the defendant is intoxicated to such a degree that he or she would be endangered by being released without supervision; (9) the length of his or her residence in the community; (10) the defendant's record of convictions; (11) the defendant's history to avoid prosecution or failure to appear at court proceedings; and (12) any other evidence relevant to the issue of pretrial release. G.S. 15-A-534 (c).

Rule 11: Choosing the Form of Pretrial Release (G.S. 15A-534(b))

a) The judicial official in granting pretrial release must either: (1) release the defendant on his or her written promise to appear; (2) release the defendant upon his or her execution of an unsecured appearance bond in an amount specified by the judicial official; or (3) place the defendant in the custody of a designated person or organization agreeing to supervise him or her, unless the judicial official determines that such release either: (1) will not reasonably assure the presence of the defendant as required; (2) will pose a danger of injury to any person; or (3) is likely to result in the destruction of evidence, subornation of perjury, or intimidation of witnesses. Upon making the determination, the judicial official must require the execution of a secured appearance bond in an amount specified by the judicial official and record the reasons for such determination upon an approved form which shall be filed in the defendant's official court file.

b) If the judicial official places the defendant in the custody of a designated person or organization, the defendant may elect to execute a secured appearance bond in which event the judicial official must impose such a bond. G.S. 15A-534(a).

Rule 12: General Policies in Setting Bonds (G.S. 15A-535-(a))

- a) Law enforcement officers are encouraged to use citations in those misdemeanor cases in which it appears that the defendant will appear in court as scheduled.
- b) Clerks and magistrates are encouraged to use a criminal summons instead of warrants in appropriate misdemeanor cases. G.S. 15A-303.
- c) An arresting officer has no authority to fix the amount of the bond, but the officer should furnish information to assist the judicial official in determining the conditions of pretrial release. In setting the conditions of pretrial release the judicial official acts as an independent and neutral official who has the duty to follow these rules and who has a duty to the defendant not to require an excessive bail.
- d) The written promise to appear is the recommended form of pretrial release and should be imposed, except where it would be inappropriate under these rules.
- e) If the written promise to appear is inappropriate then an unsecured appearance bond is the next recommended form of pretrial release and should be imposed, except where such a bond would be inappropriate under these rules.
- f) Ordinarily, a person who is not a resident of the State of North Carolina should only be released upon a secured or cash appearance bond.

Rule 13: Suggested Bail Amounts (G. S. 15A-535(a))

- 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.
- b) As general guidelines only, and not be blindly followed, the following criteria may be considered by judicial officials in setting amounts in unsecured and secured bonds:

MISDEMEANORS

<u>Class</u>	<u>Minimum Punishment</u>	<u>Maximum Punishment</u>	<u>Suggested Bond</u>
A1	1-60 Days C/I/A	1-150 Days C/I/A	\$100 - \$500
1	1-45 Days C	1-120 Days C/I/A	\$100 - \$400
2	1-30 Days C	1-60 Days C/I/A	Written Promise to Appear to \$200
3	1-10 Days C	1-20 Days C/I/A	Written Promise to Appear to \$100

Impaired Driving Offense, (see the specific requirements of G. S. 15A-534.2)
(See Rule 18 Detention of Impaired Drivers)

Written Promise to Appear to \$500

FELONIES

Class	Minimum Punishment	Maximum Punishment	Presumptive	Suggested Bond
A	Life w/o Parole	Death		None – can only be set by Judge
B1	144 months	Life w/o parole	192-480 mos.	\$100,000 - \$250,000
B2	94 months	480 months	125-313 mos.	\$ 50,000 - \$250,000
C	44 months	261 months	58-168 mos.	\$ 40,000 - \$100,000
D	38 months	229 months	51-146 mos.	\$ 35,000 - \$100,000
E	15 months	98 months	20-59 mos.	\$ 25,000 - \$100,000
F	10 months	59 months	13-39 mos.	\$ 12,500 – \$50,000
G	8 months	44 months	10-29 mos.	\$ 7,500 - \$50,000
G	Common Law Robbery and Second Degree Burglary			\$ 15,000 - \$50,000
H	4 months	30 months	5-20 mos.	\$ 5,000 - \$15,000
H	Breaking and Entering a Dwelling Used as Such			\$ 5,000 - \$25,000
I	3 months	15 months	4-10 mos.	\$ 2,500 - \$10,000
	Fugitive warrant	-	Set amount of underlying offense	
	Governor’s warrant	-	NO BOND	
	Parole warrant	-	NO BOND	
	Probation Violation	-	Set amount for the underlying offense with consideration for the nature of the violations.	

Drug Trafficking - (N.C.G.S. 90-95(h))

Trafficking In:	Mandatory Minimum Active Sentence	Mandatory Minimum Fine	Recommended Bond Amount
Opium or Heroin (28 grams or more)	225 – 279 mos.	\$ 500,000	\$ 500,000

Marijuana (10,000 pounds or more)	175 – 219 mos.	\$ 200,000	\$ 100,000
Cocaine (400 grams or more)	175 – 219 mos.	\$ 250,000	\$1,000,000
Opium or Heroin (14 grams to 28 grams)	90 – 117 mos.	\$ 50,000	\$ 500,000
Cocaine (200 – 399 grams)	70 - 84 mos.	\$ 100,000	\$ 500,000
Marijuana (2,000 to 10,000 pounds)	70 - 84 mos.	\$ 50,000	\$ 500,000
Methaqualone (greater than 10,000 dosage units)	175 – 219 mos.	\$ 200,000	\$1,000,000
Methaqualone (5,000 to 10,000 dosage units)	70 - 84 mos.	\$ 50,000	\$ 500,000
Methaqualone (1,000 to 5,000 dosage units)	34 – 42 mos.	\$ 25,000	\$ 250,000
Opium or Heroin (4 grams to 14 grams)	70 – 84 mos.	\$ 50,000	\$ 500,000
Cocaine (28 grams to 200 grams)	35 - 42 mos.	\$ 50,000	\$ 250,000
Marijuana (50 to 2,000 pounds)	35 – 42 mos.	\$ 25,000	\$ 250,000
Marijuana (10 to 50 pounds)	25 – 30 mos.	\$ 5,000	\$ 25,000

Pursuant to N.C.G.S. 15A-533-(d), subject to rebuttal by the defendant, it shall be presumed that no conditions of release will reasonably assure the appearance of the defendant and the safety of the community if a judicial finds the following:

(1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance, and

(2) The drug trafficking offense was committed while the person was on pretrial release for another offense, and

(3) The defendant has been previously convicted of a Class A-E Felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of the conviction or the person’s release from prison for the offense, whichever is later.

Such person 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.

c) 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.

Rule 14: General Restrictions upon Defendant on Pretrial Release

Regardless as to the form of pretrial release selected, the judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release. G.S. 15A-534(a).

Rule 15: Child Support Contempt

a) In addition to the other factors listed in Rule 6, 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).

Rule 16: Restrictions upon Defendants in Domestic Violence Cases (G.S. 15A-534.1)

a) When the defendant is charged with assault on or communicating a threat to a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B (Domestic Violence) of the General Statutes, the conditions of pretrial release must be determined by a judge.

b) 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.

c) A judge may impose the following conditions on pretrial release: (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; and (4) 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.

d) Should the defendant be mentally ill and dangerous to himself or herself or others or a substance abuser and dangerous to himself or herself or others, the provisions of Article 5 of Chapter 122C of the General Statutes shall apply.

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

Rule 17: Restrictions upon Defendants in Sex Offenses and Crimes of Violence Against Child Victims (G.S. 15A-534.4)

a) When the defendant is charged with felonious or misdemeanor child abuse, with taking indecent liberties with a minor in violation of G.S. 14-202.1, with rape or any other sex offense in violation of Article 7A, Chapter 14 of the General Statutes, against a minor victim, with incest with a minor in violation of G.S. 14-178, with kidnapping, abduction, or felonious restraint involving a minor victim, with a violation of G.S. 14-320.1, with assault or any other crime of violence against a minor victim, or with communicating a threat against a minor victim, a judicial official may 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.

b) The above conditions may be imposed in addition to any other conditions that the judicial official may impose under these rules on pretrial release.

Rule 18: Detention of Impaired Drivers (G.S. 15A-534.2)

a) A judicial official conducting an initial appearance for an offense involving impaired driving must follow the procedure in Article 24 (Initial Appearance) of Chapter 15A of the General Statutes except as modified by this rule.

b) This rule may not be interpreted to impede a defendant's right to communicate with family, friends and counsel.

c) 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 or she is released, of physical injury to himself or herself or others or damage to property, the judicial official must order that the defendant be held in custody and inform the defendant that he or she will be held in custody until one of the requirements of subsection (e) is met.

d) Regardless whether the judicial official makes the determination specified in subsection (c), the judicial official must at this time determine the appropriate conditions of pretrial release in accordance with these rules.

e) A defendant subject to detention under this rule has the right to pretrial release when the judicial official determines either that: (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 to others or of damage to property if he or she is released; or (2) A sober responsible adult is willing and able to assume responsibility for the defendant until his or her physical and mental faculties are no longer impaired.

f) The defendant may be detained under this rule for a period of no longer than 24 hours.

g) 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).

Rule 19: Detention for Communicable Diseases (15A-534.3)

a) If a judicial official conducting an initial appearance or first appearance hearing finds probable cause that an individual was exposed 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 AID virus infection or Hepatitis B infection if required by the public health officials pursuant to G.S. 130A-144 and G.S. 130A-148.

b) Regardless whether the judicial official finds such probable cause, the judicial official must at this time determine the appropriate conditions of pretrial release in accordance with these rules.

Rule 20: Pretrial Release Order (G.S. 15A-534(d))

The judicial official authorizing pretrial release must issue an appropriate order containing a statement of the conditions imposed, if any, and the reasons for requiring any secured appearance bond. The judicial official must also inform the defendant in writing of the penalties applicable to violations of the conditions of his or her release; and advise the defendant that his or her arrest will be ordered immediately upon any such violation. These duties may be satisfied by including such notification and advice in the pretrial release order. The pretrial release order must be filed with the clerk and a copy given to the defendant.

Rule 21: Justification of Secured Appearance Bonds (G.S. 15A-537(a))

a) When an appearance bond is ordered to be secured by a mortgage the bond may be justified by the clerk. G.S. 15A-535(a).

b) If a secured appearance bond is secured by a surety who is not an individual or a corporation licensed as a bail bondsman in Greene or Lenoir County, the bond may be justified by a clerk.

c) If a secured appearance bond is secured by a surety who is an individual or a corporation licensed as a bail bondsman in Greene or Lenoir County, then further justification is not required.

d) In the absence of a clerk or when the courthouse is closed, a law enforcement officer or custodial official having the person in custody may perform the justification required under subsections (b) and (c) above. See Rule 22.

e) Any judge or magistrate may perform the justification required for any bond under this rule; however, ordinarily judges and magistrates should defer to the clerk. For purposes of this Rule and Rule 22, a judge is unavailable when the courthouse is closed.

Rule 22: Persons Authorized to Effect Release (G.S. 15A-537)

a) Following any authorization of release of any person pursuant to these rules, any judicial official must effect the release of the person upon satisfying himself or herself that the conditions of release have been met.

b.) In the absence of a clerk or when the courthouse is closed, any law enforcement officer or custodial official having the person in custody must effect the release upon satisfying himself or herself that the conditions of release have been met.

Law enforcement and custodial agencies may administratively direct which officers or officials are authorized to effect release under this rule.

c) Satisfying oneself whether conditions of release are met includes determining if sureties are sufficiently solvent to meet the bond obligation. No judicial official, law enforcement officer, or custodial official may be held civilly liable for actions taken in good faith under this rule.

d) 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.

e) For the limited purposed of this rule, any law enforcement or custodial official may administer oaths to sureties and take other actions necessary in carrying out the duties imposed by this rule. Any surety bond so taken is to be regarded in every respect as any other bail bond.

Rule 23: Persons Prohibited from Becoming Surety (G.S. 15A-541)

a) No sheriff, deputy sheriff, other law enforcement officer, judicial official, attorney, parole officer, probation officer, jailer, assistant jailer, employee of the General Courts of Justice, other public employee assigned to duties relating to the administration of criminal justice, or spouse of any such person may in any case become surety on a bail bond for any person other than a member of his or her immediate family.

b) In addition no such person may act as agent for any bonding company or professional bondsman. No such person may have any interest, directly or indirectly, in the financial affairs of any firm or corporation whose principal business is acting as bondsman.

Rule 24: False Qualification by Surety (G.S. 15A-542)

No person may sign an appearance bond as surety knowing or having reason to know that he or she does not own sufficient property over and above his or her exemption allowed by law to enable him or her to pay the bond should it be ordered forfeited.

Rule 25: Motions to Modify or Revoke Pretrial Release Orders

- a) A defendant who objects to the conditions of pretrial release which were imposed or allowed to stand by order of a district court judge may apply in writing to a superior court judge to modify the order. G.S. 15A-538(a).
- b) A defendant who objects to the conditions of pretrial release may apply in writing to modify the order. The motion shall be directed to an appropriate judicial official or court having the authority under Rule 5 to modify the order of pretrial release.
- c) A prosecutor may at any time apply to an appropriate district court judge or superior court judge for modification or revocation of a pretrial release order. G.S. 15A-539.
- d) 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).

Rule 26: Jail Facilities

- a) Policy. The taxpayers of this county are responsible for the expense of caring for prisoners, including medical expense. Once such a prisoner has been tried and found not guilty he or she is no longer a burden on the taxpayers. Once such a prisoner has been tried and found guilty the defendant is transferred to the State Division of Prisons and the expense of caring for the inmate, including medical expense, is the responsibility of the State rather than the County of Greene or County of Lenoir. Every bed at the jail not being used for county prisoners is available for lease to other counties, the State and the federal government with resulting benefits to local taxpayers from the revenue derived from such leasing.
- b) Priority for Trial of Jail Cases. It is in the public interest for the number of county prisoners confined in the jail to be kept at a minimum consistent with the policy constraints of these rules. In preparing criminal trial calendars, pursuant to G.S. 7A-49.3(a), and in preparing the trial list required by G.S. 7A-49.3(a1), the District Attorney shall accord priority to those cases where the defendant is in jail. Rule 3, Rules of Practice. Resident and presiding judges should exercise their authority over the calling of cases for trial to insure the observance of this rule. G.S. 7A-49.3(c); Simeon v. Hardin, 339 N.C. 358(1994).
- c) List of Prisoners. In order to facilitate the observance and enforcement of this rule, the sheriff shall prepare each week a list of prisoners confined in the county jail who have criminal charges pending in the superior and district courts of this judicial district. The list shall contain the following information: (1) The name of the prisoner; (2) His or her race; (3) Sex; (4) The charges pending; (5) The amount and type of bond; and (6) The date since the prisoner has been continuously incarcerated on the charges. The list shall be distributed to each resident and presiding superior court judge, each resident and presiding district court judge, the district attorney, Chairpersons of the Criminal Defense Section of the Lenoir and Greene County Bar Associations, County Attorney, and County Manager.
- d) Motions by Sheriff. The sheriff or his or her representative shall have standing to apply to any appropriate judicial official for modification of the conditions of bail for any such

prisoner. In considering such an application, in addition to all other appropriate factors, such judicial official shall consider: (1) the number of such prisoners confined in the jail; (2) the medical condition of the prisoner; (3) any violations of jail rules and regulations by the prisoner; and (4) whether the prisoner is cooperating with law enforcement in any ongoing criminal investigation.

e) Motions by Prisoners. Any such prisoner may apply to any appropriate judicial official for modification of the conditions of bail. In considering such an application, in addition to all other appropriate factors, such judicial official shall consider: (1) whether the prisoner has filed a motion for a speedy trial; (2) the length of time the prisoner has been incarcerated on such charges; (3) the number of times the cases of the prisoner have appeared on a trial calendar; (4) the number of times the cases of the prisoner have appeared on a trial list; (5) the number of defendants on pretrial release whose cases have been tried since the prisoner was incarcerated on such charges; (6) any violations of jail rules and regulations while confined; and (7) any recommendation or position of the appropriate law enforcement agency. The moving party shall make a good faith effort to obtain any such recommendation or position of such law enforcement agency and to obtain a proposed consent order from the District Attorney prior to filing any such application.

Rule 27: Revocation of Pretrial Release Orders (G.S. 15A-534(f))

- a) For good cause shown any judge may at any time revoke an order of pretrial release.
- b) Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release. A defendant charged with a non-capital offense is absolutely entitled to an order authorizing pretrial release, except as otherwise provided by law.

Rule 28: Bail Bond Binding (G.S. 15A-534(h))

A bail bond posted pursuant to these rules 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.

Rule 29: Termination of Obligation on Bond (G.S. 15A-534(h))

The obligation of an obligor is terminated whenever: (1) A judge authorized to do so releases the obligor from his or her bond; (2) The principal is surrendered by a surety pursuant to G.S. 15A-540; (3) The proceedings is terminated by voluntary dismissal by the State before forfeiture is ordered pursuant to G.S. 15A-544(b); or (4) Prayer for judgment has been continued indefinitely in the district court.

Rule 30: Surrender of Principal by Surety

- a) A surety may surrender his or her principal to the sheriff of the county in which the principal is bonded to appear or to the sheriff where the defendant was bonded. A surety may arrest the principal for the purpose of surrendering him or her to the sheriff. Upon such surrender of the principal the sheriff must provide a receipt to the surety, a copy of which must be filed with the

clerk. Upon application by the surety, after surrender of the principal, before the forfeiture of bail under G.S. 15A-544(b), the clerk must exonerate the surety from his or her bond. G.S. 15A-540(a).

b) A principal so surrendered by a surety is entitled to an immediate hearing on new conditions of pretrial release. G.S. 15A-540(b).

Rule 31: Release After Conviction in Superior Court (G.S. 15A-536)

a) A defendant whose guilt has been established in superior court and is either awaiting sentence or has filed an appeal from the judgment entered may be released upon conditions determined pursuant to these rules.

b) After conviction, post-trial release is discretionary and may only be authorized by a superior court judge.

c) If the judge approves post-trial release of the defendant the judge must impose the conditions authorized for pretrial release which will (1) reasonably assure the presence of the defendant when required; and (2) provide adequate protection to persons and the community.

d) If no single condition gives such assurance and such protection, the judge may also impose any or all of the following conditions: (1) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant; and (2) Place restrictions on the travel, associations, conduct, or place of abode of the defendant.

e) In determining what conditions of post-trial release to impose, the judge must, on the basis of available information, consider the same factors considered in determining conditions of pretrial release.

f) The judge authorizing post-trial release of a defendant must issue an appropriate order containing a statement of the conditions imposed, if any. The judge must also inform the defendant in writing of the penalties applicable to violations of the conditions of his or her release; and advise the defendant that his or her arrest will be ordered immediately upon any such violation. These duties may be satisfied by including such notification and advice in the post-trial release order. The post-trial release order must be filed with the clerk and a copy given to the defendant.

g) A post-trial release order may only be modified or revoked at any time by the judge who entered the order unless that judge is absent from this judicial district. If such judge is so absent, then any other superior court judge residing or presiding in this judicial district may modify or revoke such an order.

h) If a defendant is placed in custody as a result of a revocation or modification of an order of post-trial release, the defendant is entitled to an immediate hearing on whether he or she is again entitled to release and, if so, upon what conditions.

Rule 32: Rules of Evidence

In imposing conditions of pretrial or post-trial release and in modifying and revoking such orders, the judicial official must take into account all evidence available to him or 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).

Rule 33: Penalties for Failure to Appear (G.S. 15A-543)

a) Any person released pursuant to an order of pretrial release who willfully fails to appear before any court or judicial official as required is subject to the criminal penalties set out below.

b) A violation of this rule is a Class I felony if: (1) The violation was released in connection with a felony charge against him or her; or (2) The violator was released after conviction in superior court.

c) Except as provided in subsection (b) above, if a violator was released in connection with a misdemeanor charge against him or her, a violation of this rule is a Class 2 misdemeanor.

Rule 34: Professional Bondsmen

a) Regulation by the Commissioner of Insurance. Professional bondsmen are regulated by the Commissioner of Insurance. Article 71 of Chapter 58 of the General Statutes.

b) Regulation by the Court.

1) Solicitation. No bail bondsman or runner shall solicit business in any of the Courts or on the premises of any of the Courts of this State, in the office of any magistrate and in or about any place where prisoners are confined. Loitering in or about a magistrate's office or any place where prisoners are confined shall be prima facie evidence of soliciting. No bail bondsman or runner shall advertise by blazer, logo, or briefcases, or in any other manner whatsoever, in violation of G.S. 85C-20, since such markings or special dress and use of logos constitute soliciting business.

2) Magistrates. No magistrate shall in any way or manner recommend the services of a particular bondsman to a defendant, or permit any bondsman or any agent or employee of a bondsman to loiter in and about his office. If a defendant indicates that he wishes to secure the services of a professional bondsman, the magistrate shall provide him or her with the names and telephone numbers of those persons, firms or corporations licensed to conduct a bail bonding business in Greene County or Lenoir County, and permit the defendant to call such of them as he or she may desire. See In Re Johnson, 26 N.C. App. 745(1975), cert. denied 288 N.C. 241.

Rule 35: Bail Bond Forfeiture and Remission (G.S. 15A-544)

a) Scheduling of Forfeiture and Remission Calendars. The clerk shall prepare for both the district and superior court a forfeiture and remission calendar once each month when court is in session. The forfeiture and remission calendar for superior court shall be set for a civil trial session, when such a session is scheduled during a month, and follow the motion calendar. The forfeiture and remission calendar shall not be set for any civil administrative session. When a civil trial session is not scheduled during a month, the forfeiture and remission calendar shall be set for a criminal trial session of superior court.

b) Content of Calendars. The forfeiture calendar shall list the names of all principals and sureties to whom forfeiture has been ordered more than 60 days previously in the county and as to which judgments of forfeiture have not been entered or, if entered, not yet satisfied by execution. The calendar shall show the amount of the bond ordered forfeited in each case. The clerk shall also place on the calendar for hearing all written motions to strike an order of forfeiture filed since the previous forfeiture calendar. The clerk shall also place on the calendar for hearing all petitions for remission of such judgments filed during the previous month or since the last forfeiture calendar.

c) Procedure. The procedure for dealing with bail bond forfeitures shall be as provided in G.S. 15A-544.

Rule 36: Enforcement

a) These rules constitute orders of the court duly adopted pursuant to applicable law. They are binding upon and must be observed and enforced by all judicial officials exercising their duties in this judicial district.

b) These rules may be enforced through the contempt powers of the court. G.S. 15A-546.


c) In order to insure uniformity in this judicial district, all visiting judges shall observe and enforce these local rules. Each such visiting superior court judge shall be provided with a copy of these rules by the Superior Court Judicial Assistant at or before the commencement of the judge's assignment. Each such visiting district court judge shall be provided with a copy of these rules by the District Court Judicial Assistant at or before the commencement of the judge's assignment. Rule 22, General Rules of Practice.

Rule 37: Approved Forms

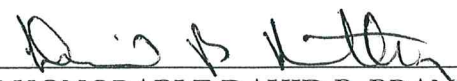
The forms attached hereto are approved for use in this judicial district. The approved forms, or an equivalent, must be used by all persons dealing with matters covered by these rules.

Rule 38: Effective Date

These rules shall be effective March 31, 2011.



THE HONORABLE PAUL L. JONES
Senior Resident Superior Court Judge
Superior Court Judicial District 8-A



THE HONORABLE DAVID B. BRANTLEY
Chief District Court Judge
District Court Judicial District 8

8th Judicial District Bond Worksheet

Defendant Name: _____ DOB: _____ Age: _____

Magistrate: _____ Date: _____

PART I

I have required the execution of a secured bond in the specified amount because I have determined that release under a written promise to appear, unsecured bond or custody release:

- _____ Will not reasonably assure defendant's appearance
_____ Will pose a danger of injury to persons or property
_____ Is likely to result in destruction of evidence, subornation of perjury or intimidation of potential witnesses.

PART II

In making the above decision, I considered the following factors: (Check those considered)

Table with 3 columns: FACTORS, FAVORABLE, UNFAVORABLE. Rows include Nature of Offense Charged, Circumstances of the Offense, Weight of the Evidence, Defendant's Family Ties, Defendant's Employment, Defendant's Record/Convictions, Defendant Intoxicated?, Defendant's Likelihood to Commit Crime While on Release, Defendant on Probation?, Name of Probation Officer, Defendant's history of FTAs, Any Other Relevant Evidence (specify).

PART III

Did the arresting officer make any suggestion or recommendations concerning the type or amount of bond? If so, specify: _____

PART IV

- 1. How long has defendant lived in county? _____ years _____ months
2. If defendant lives in another county, where? _____ years _____ months
3. If defendant came from out of state, where? _____
4. How long at present address? _____ years _____ months
5. Is defendant married? YES or NO How long married? _____ Separated? _____
6. Does defendant have children in the home? YES or NO Ages of children: _____
7. Which other relatives live in the county? _____ mother _____ father _____ children _____ sisters _____ brothers
8. If not in county, where do relatives live? _____
9. Is defendant a full time student? YES or NO Where? _____
10. Is defendant employed? YES or NO Where? _____ How long? _____
11. If the bond is outside the recommended range, state reason: _____

STATE OF NORTH CAROLINA
JUDICIAL DISTRICT EIGHT-A
GREENE & LENOIR COUNTIES

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
DISTRICT COURT DIVISION

IN THE MATTER OF PROMULGATING)
LOCAL RULES RELATING TO BAIL)
AND PRETRIAL RELEASE FOR)
JUDICIAL DISTRICT 8-A)

AMENDED ORDER FOR
COMMUNITY THREAT
GROUPS OR GANGS

THIS CAUSE, coming on to be heard and being heard before the undersigned Senior Resident Superior Court Judge Judicial District 8-A. After careful consideration of the matter of promulgating policies relating to Bail and Pretrial Release—pursuant to the authority granted by Article 26 of Chapter 15A of the North Carolina General Statutes; the General Rules of Practice for the Superior and District Courts; the Caseflow Management Plan adopted by the Supreme Court of North Carolina on 1 May 1996; and the specified, implied and inherent powers of my office — the undersigned, does hereby approve and enter this order that relates to defendants who are validated as members of a community threat group, commonly referred to as a “gang member”.

Based upon a recent review of the current criminal environment and the status of offenders who are being charged, I have found it necessary to modify recommended bond amounts. Gang activity, an explosion of violent crimes and drug offenses pose an imminent threat to the community. Those who pose the greatest threat must not be allowed to roam free while keeping in mind the presumption of innocence. Specifically risk reduction is mandated by circumstances that law enforcement and the community is forced to endure unless the threat of further violence is reduced immediately. This will protect the community from further violence and prevent harm and the intimidation of prospective witnesses and victims.

Effective July 15, 2016 the bonds in the Bail and Pretrial Release Rules are modified herein, and are recommended for magistrates setting initial bonds. Every magistrate shall complete the 8th Judicial District Bond Worksheet (copy attached, also available in Word format as a form), which will support the bond decision and shall be available for review at defendant’s first appearance.

IT IS NOW, THEREFORE, ORDERED THAT:

1. The Local Rules of Bail and Pretrial Release are incorporated herein by reference, this Amended Order for Community Threat Groups or Gangs, are hereby adopted as the official policies and standards concerning Bail and Pretrial Release in the Criminal Court of Judicial District 8-A;
2. This amended policy supersedes all prior such policies as related to community threat groups and shall be effective July 15, 2016;
3. The Clerk shall serve copies of this Order and these Rules upon each judge, magistrate, sheriff, each chief of police in the judicial district and the local newspaper.

ENTERED in chambers in on this the 14th of July, 2016.

A handwritten signature in black ink, appearing to read "Paul L. Jones", written over a horizontal line.

THE HONORABLE PAUL L. JONES
Senior Resident Superior Court Judge
Superior Court Judicial District 8-A

AMENDED BOND UPDATES

Effective July 15, 2016

1. **All gang violence activity/validated gang member** = X 5 on high end of present bond schedule.
2. **All armed robbery bonds:** minimum \$750,000 - \$1,000,000 (go to higher amount if victim is injured).
3. **Absconder bonds** – Superior Court minimum \$10,000; District Court minimum \$5,000.
4. **Habitual felon bonds:** minimum \$40,000 unless presiding judge modifies bond in court.
5. **DWI repeat offender bonds:** minimum \$2,500 - \$5,000 if prior history of conviction within the last three years.