

STATE OF NORTH CAROLINA
CUMBERLAND COUNTY

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SUPERIOR AND DISTRICT COURT DIVISIONS

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IN RE:

CUMBERLAND CO.. C.S.C.

PRETRIAL RELEASE POLICY FOR
JUDICIAL DISTRICT 12

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ADMINISTRATIVE ORDER


NOW COMES the undersigned Senior Resident Superior Court Judge and the Chief District Court Judge entering this Administrative Order regarding Pretrial Release Policy for Judicial District 12.

The attached Policies Relating to Bail and Pretrial Release constitute the official recommended policies and standards concerning release on bail bond and pretrial release of a defendant in a criminal case before trial in the courts of Cumberland County, in and for the Twelfth Judicial District.

These policies are established in accordance with Chapter 15A of the General Statutes of North Carolina, and replace the policies that were established by this jurisdiction enacted March 1, 2014.

This order and policies relating to bail and pretrial release supersede all previous policies and shall become effective on September 17, 2021.

This the 1st day of September, 2021.


James Floyd Ammons, Jr.
Senior Resident Superior Court Judge
12th Judicial District


 9/14/2021
Tom S. King
Chief District Court Judge
12th Judicial District

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PRETRIAL RELEASE POLICY FOR JUDICIAL DISTRICT 12
EFFECTIVE SEPTEMBER 17, 2021

I. Introductory Matters.

A. Name.

This policy shall be known as the "Pretrial Release Policy for Judicial District 12."

B. Authority.

This policy is adopted pursuant to G.S. 15A-535(a), providing, in relevant part, that "the senior resident superior court judge . . . in consultation with the chief district court judge or judges . . . must devise and issue recommended policies . . . [for] determining whether, and upon what conditions, a defendant may be released before trial."

C. Definitions.

In addition to the terms defined in this section, the terms and definitions in G.S. 15A-531 are adopted and incorporated by reference into this policy.

1. Capital Offense.

The term "capital offense" means an offense for which the death penalty is an authorized punishment. An offense is a capital offense regardless of whether the District Attorney is seeking the death penalty in the case; if the death penalty is authorized by law for the offense, it is a capital one. A pending charge of "murder" that does not specify first- or second-degree shall be deemed a "capital offense" for purposes of this policy.

2. Cash.

The term "cash" means United States currency or its equivalent (cashier's check, certified check, or money order).

3. Clerk.

The term "Clerk" is as defined in G.S. 15A-101(2). When this policy intends to refer only to the elected Clerk of Superior Court the following language will be used: "the Clerk of Superior Court."

4. Judicial Official.

The term "judicial official" is as defined in G.S. 15A-101(5). The use of a specific judicial official's title in this policy, e.g., "magistrate," is intended to refer to that official only.

5. Release Order.

The term "release order" means an order entered pursuant to G.S. 15A-511(e) and G.S. 15A-521(b), which may contain conditions for a defendant's release, or any separate order that addresses a defendant's conditions of release.

6. Surety.

The term "surety" means an entity other than the defendant who executes a monetary bail bond, either personally or through an authorized agent, and who is jointly and severally liable with the defendant and all other sureties on the same bond in the event of forfeiture of bail.

7. Victim.

The term "victim" is as defined in G.S. 15A-830(a)(7).

D. Purpose of this Policy.

The purpose of this policy is to provide uniform guidance for the implementation of North Carolina General Statutes Chapter 15A, Article 26, and related statutes governing pretrial release of individuals charged with criminal offenses and infractions.

E. Scope.

This policy is applicable to all pretrial release determinations in criminal and infraction cases for which trial venue originates in or is transferred to Judicial District 12.

When a judicial official determines eligibility or conditions of pretrial release for a defendant charged with a crime or infraction for which trial venue lies in another Judicial District, the judicial official shall make every reasonable effort to obtain information about and adhere to that District's local pretrial release policy. If the other District's pretrial release policy cannot be obtained within the timeframe in which a pretrial release determination must be made, see section II.F below, the judicial official shall proceed according to this policy.

II. General Principles & Guidelines

A. General Principles.

1. Applicability of State & Federal Law.

The provisions of this policy shall be applied in a manner consistent with state statutes and the State and federal Constitutions. In case of direct conflict, state statutes and constitutional law override provisions in this policy.

2. Liberty Is the Norm.

In *United States v. Salerno*, 481 U.S. 739 (1987), the United States Supreme Court instructed that “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *Id.* at 755. This principle is reflected in this policy.

3. Bail Cannot Be Used to Punish.

Bail cannot be used to punish. *See Salerno*, 481 U.S. at 746 (federal bail act passed constitutional muster in part because its purpose was held to be regulatory not punitive); *see also* *Stack v. Boyle*, 342 U.S. 1, 4 (1951) (“This traditional right to freedom before 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 after centuries of struggle, would lose its meaning.” (internal citation omitted)).

4. Purpose of Pretrial Release.

In light of these principles, the purpose of pretrial release is to impose the least restrictive conditions that will reasonably assure a defendant's appearance in court; protect against injury to any person; and prevent destruction of evidence, subornation of perjury, or intimidation of potential witnesses. *See* G.S. 15A-534(b). Further the goal of these policies is to protect against and prevent further violation of the law for the safety of the community.

5. Presumption of Innocence & Right to Fair Trial.

The right to pretrial release recognizes the presumption of innocence and promotes a defendant's right to a fair trial by facilitating access to counsel, freedom of movement to secure witnesses, and the general ability to prepare a defense.

6. Pretrial Risk.

Pretrial release may create some risk that the defendant will flee, commit another crime, or interfere with the criminal proceeding. The only way to completely eliminate these risks would be to incarcerate all persons pretrial, which is unconstitutional. These risks are codified in the legislature's statutory presumption in favor of release on conditions other than secured bond. See G.S. 15A-534(b) (judicial official "must" impose a written promise, custody release or unsecured bond unless the judicial official "determines that such release 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, subornation of perjury, or intimidation of potential witnesses.").

7. Money Bail & De Facto Detentions.

Making pretrial release contingent upon the payment of money bail that a person cannot afford results in a *de facto* detention order. Thus, without the necessary safeguards, the use of secured monetary bail can deprive people of their constitutional rights.

Secured monetary bail set in an amount higher than what a person can pay implicates that person's rights to pretrial liberty and against wealth-based detention under the U.S. Constitution. While monetary bail that is higher than what a defendant currently can meet is not *per se* excessive, bail higher than an amount reasonably calculated to minimize pretrial risks is excessive and unlawful under the Eighth Amendment to the U.S. Constitution and under Article I, Section 27 of the North Carolina Constitution.

A. Who Can Set Conditions of Release.

1. Generally.

Subject to the exceptions discussed immediately below, any judicial official is authorized to determine a defendant's eligibility for and conditions of pretrial release when presiding over a proceeding where determination or review of pretrial release is required or authorized, and at which the defendant's conditions of release are within the subject matter jurisdiction of that judicial official. These settings generally will include, but are not limited to:

- a. Initial appearances.** Presided over by any judicial official (typically magistrates).
- b. First appearances.** Presided over by district or superior court judges (and clerks pursuant to G.S. 15A-601(e)).
- c. Bond hearings.** Presided over by judges of the trial division.

2. Exceptions.

- a. Capital Cases.** As noted in section IV.A below only a judge can set conditions in a capital case.
- b. 48-Hour Rule for Domestic Violence Cases.** Whenever a defendant is charged with

- (1) an assault on, stalking, communicating a threat to, or committing a felony as provided in G.S. Chapter 14, Articles 7B (Rape & Other Sex Offenses), 8

- (Assaults), 10 (Kidnapping & Abduction), or 15 (Arson & Other Burnings), upon a current or former spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6);
- (2) domestic criminal trespass; or
 - (3) a violation of a 50B order,

only a judge can set conditions of pretrial release within 48-hours of arrest. G.S. 15A-534.1(a). When a defendant is brought before a magistrate for an offense covered by this provision, the magistrate shall hold an initial appearance and order the defendant held for the next available session of district or superior court to have conditions of release determined by a judge. If a judge does not act within 48 hours, the magistrate must set conditions. G.S. 15A-534.1(b).

A chart listing common offenses covered by the 48-hour rule is posted on the UNC School of Government's [web page for magistrates](#). From that site, click on the link entitled "Domestic Violence: 48-Hour Rule Offense Paper."

c. 48-Hour Rule for Threats of Mass Violence Cases. Whenever a defendant is charged with:

- (1) communicating a threat of mass violence on educational property, G.S. 14-277.6; or
- (2) communicating a threat of mass violence at a place of religious worship, G.S. 14-277.7

only a judge can set conditions within the first 48 hours of arrest. G.S. 15A-534.7(a). When a defendant is brought before a magistrate for a covered offense, the magistrate shall hold an initial appearance and order the defendant held for the next available session of district or superior court to have conditions of release determined by a judge. If a judge does not act within 48 hours, the magistrate must set conditions. G.S. 15A-534.7(b).

d. Rebuttable Presumption Cases. As discussed in section VI below, in certain drug trafficking, gang, and firearm cases a presumption that no conditions of release can address defined pretrial risks applies; when the presumption applies, only a judge can set conditions of release after certain findings.

C. Remote Proceedings.

Opportunity to observe defendant; Video appearances. §15A-511(a1), §15A-532.

- (1) Initial appearances should be conducted, and the determination of bail and conditions of pretrial release should be made by a judicial official with a clear opportunity to witness the defendant in person and gather information about the defendant.
- (2) Initial appearances should be conducted, and conditions of pretrial release may be made, modified, or revoked in a noncapital case by an audio and video transmission between the judicial official and the defendant in which the parties can see and hear each other. The following rules apply to such

video communications:

- 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. Prior to the use of audio and video transmission, under this section, the procedures and type of equipment for audio and video transmission shall be submitted for approval to the Administrative Office of the Courts by the senior resident superior court judge.
- d. If the defendant has not moved to require an in-person proceeding, the defendant shall be subject to the law of contempt in a video proceeding, the same as if the proceeding were in person.

D. Authorized Conditions of Release.

Under G.S. 15A-534(a) there are five permissible conditions of release:

- (1) **Written Promise to Appear.** The defendant is released upon his execution of a written promise to appear in court as necessary.
- (2) **Unsecured Appearance Bond.** The appearance bond is executed solely by the defendant. No surety or security is required to secure the appearance bond.
- (3) **Custody Release** to a person or organization agreeing to supervise the defendant. The defendant is placed into the custody of a designated person or organization agreeing to supervise, including Cumberland County Pretrial Services Agency (Pretrial Services).

Note: If a custody release is imposed, a defendant may elect to have a secured bond imposed instead. G.S. 15A-534(a).

Cumberland County Pretrial Services Agency. A defendant determined to be ineligible for release on a written promise to appear, unsecured bond or custody release to a person, may qualify to be released through Pretrial Services. Pursuant to §15A-535(b), the defendant can only be released to the custody of Pretrial Services if the program accepts supervision of the defendant and the defendant consents, in writing, to be supervised. **Appendix C** contains the exclusionary criteria for Pretrial Services. If Pretrial Services accepts the defendant and the defendant consents, a Pretrial Services agreement will be signed by both parties, attached to the release order, and made part of the official court record, and the defendant released to the custody of Pretrial Services. If Pretrial Services does not accept the defendant or the defendant does not consent, the defendant will be held until/if the secured bond is met, or the conditions of release are modified by an authorized official.

- (4) **Secured Appearance Bond.** The appearance bond is a specified amount secured by a cash deposit of the full amount of the appearance bond, a mortgage pursuant to §58-74-5, or at least one solvent surety.

(5) **Secured Appearance Bond and House Arrest with Electronic Monitoring (EHA).**

- i. Secured appearance bond with EHA shall not be imposed as a condition of release, unless the judicial official determines that EHA equipment is immediately available, and that lack of such equipment will not result in pretrial detention. Secured appearance bond with EHA may be imposed only in extraordinary circumstances.
- ii. Only a judge may impose secured bond with EHA, and written findings are required.
- iii. Under no circumstances may the cost of administering EHA be passed on to the defendant.

(6) **Secured Fayetteville Police Department Electronic Monitoring**

The Fayetteville Police Department (FPD) operates an electronic monitoring program for defendants deemed to be high risks to community safety by the DA and FPD. Electronic monitoring is only a condition of release if FPD agrees to supervise the defendant. Due to the defendant being high risk, a secured bond is required for this program.

Note:

The Judicial Official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

The Judicial Official may include as a condition of pretrial release a condition to abstain from alcohol consumption, as verified by a continuous alcohol monitoring system (CAM), which is not EHA.

As discussed in section IV.H below, G.S. 15A-534.2 requires, in certain circumstances, that the judicial official conducting the initial appearance impose an impaired driving hold on a defendant. An impaired driving hold is not a pretrial condition and a release under that hold to a sober responsible adult is not a custody release within the meaning of the pretrial release statutes.

E. Multiple Conditions of Release.

Judicial officials in this district may impose *more than one condition of release, if good cause is present and documented.*

F. Timing of Pretrial Release Decisions

Initial Appearance.

Conditions of release typically are first set at an initial appearance.

- a. **General Rule.** The initial appearance must be held without unnecessary delay. G.S. 15A-511(a)(1), subject to the exception immediately below.
- b. **Exception—Unruly or Intoxicated Defendants.** If a defendant is so unruly and disruptive as to impede the initial appearance, or is grossly intoxicated, unconscious, or otherwise unable to understand the procedural rights afforded by the initial appearance, the judicial official may delay the initial appearance temporarily and order the defendant temporarily confined. G.S. 15A-511(a)(3). Note that delay for this reason delays the entire initial appearance, not just the setting of conditions. When imposing a temporary confinement for this reason, the judicial official shall include in the order a clear directive to the custodian to return the defendant for

completion of the initial appearance either within a reasonable time or upon a specified contingency (e.g., "when the defendant wakes up").

G. Defense Counsel.

At any proceeding where conditions of release are considered for a defendant who is represented by counsel, the defendant shall be allowed to communicate fully and confidentially with counsel before and during the proceeding.

H. Rules of Evidence.

When deciding questions of pretrial release, the formal rules of evidence do not apply. G.S. 15A-534(g); G.S. 8C-1101(b). The judicial official must consider all available evidence that the judicial official considers reliable. G.S. 15A-534(g).

I. Recordkeeping.

1. Form AOC-CR-200.

All orders setting or modifying conditions of release shall be entered on form AOC-CR-200 (Conditions of Release and Release Order) promulgated by the North Carolina Administrative Office of the Courts (AOC), except in emergency and disaster situations where the judicial official cannot access the form in paper or electronic format. Other forms shall be used as required by statute.

2. AOC Electronic Systems.

Except in emergency or disaster situations when the judicial official does not have access to the AOC electronic system for completing form AOC-CR-200, that form should be completed in the AOC electronic system (currently NC AWARE) following AOC rules of recordkeeping. When conditions of release are set or modified by a judicial official without access to the AOC electronic system, the clerk shall enter those conditions into the AOC electronic system as soon as reasonably possible after the order is filed. Orders or modifications entered in this manner will be entered so as to identify both the official who entered the order and the clerk who performed the entries on that official's behalf.

3. Grouping Charges.

a. Charges Part of a Continuous Transaction. A judicial official has discretion regarding whether charges resulting from the same continuous transaction should be grouped together with one AOC-CR-200 form used to set conditions for all charges or whether separate forms will be used for each charge.

b. Charges Not Part of a Continuous Transaction. Charges that are not part of a continuous transaction shall not be grouped together for purposes of determining conditions of pretrial release, and a separate form AOC-CR-200 shall be used for each charge.

J. Modifying Conditions.

1. Sua Sponte by the Judicial Official.

a. Magistrates and Clerks. A magistrate or a clerk may modify the magistrate's or clerk's release order set by another magistrate or clerk upon proper written findings.

Once the case is in district court, the magistrate may not set or modify conditions unless (1) authorized to do so by a judge; or (2) the defendant is re-arrested and brought before the magistrate for an initial appearance after the re-arrest.

K. Revoking a Pretrial Release Order.

- 1. District/Superior Court Judge.** For good cause shown, a judge may, at any time, revoke an order of pretrial release, pursuant to G.S. 15A-534(f), with appropriate written findings.
 - a.** Upon application of any defendant whose order of pretrial release has been revoked, the judge shall set new conditions of pretrial release in accordance with this policy. *Id.*
 - b.** If the defendant has already been released from custody when the judge revokes an order of pretrial release and the defendant is not before the court at the time of entry of the revocation, the judge may issue an order for the defendant's arrest. G.S. 15A-305.
 - c.** If a secured or unsecured bond has been posted for the defendant's release and has not been ordered forfeited due to a failure to appear, the judge shall order termination of that bond pursuant to G.S. 15A-534(h)(1), to release the obligors from their obligation.
- 2. Upon Request for Good Cause**
 - a. State's Motion.** The State may at any time apply to an appropriate district court judge or superior court judge for revocation of an order of release. G.S. 15A-539(a).

- b. At Request of Pretrial Services.** Pretrial Services shall have standing to report to any appropriate judge issues regarding revocation of the conditions of release for a defendant supervised by Pretrial Services.

L. Habitual Felon, Violent Habitual Felon & Armed Habitual Felon.

Habitual felon, violent habitual felon and armed habitual felon are statuses not substantive criminal offenses. Thus, conditions of release, including a secured bond, shall not be set, or recommended in an Order for Arrest issued upon return of an indictment alleging one of these statuses. Conditions may be set only on the "habitualized" underlying offense. When an indictment is returned solely for one of these statuses, the State may seek to have the bond modified in the underlying, principal felony upon which the status is based.

M. Offense Committed While on Pretrial Release.

G.S. 15A-534(d3) provides that when a judicial official determines conditions of release for a defendant charged with an offense while on pretrial release for another offense, the judicial official may (but is not required to) impose a secured bond double the amount of any monetary bond for the previous offense, and if there was no prior monetary bond, a secured bond of at least \$1,000. This discretionary authority should be exercised only in extraordinary circumstances and in no circumstances may it be applied if doing so would result in a bond that is out of line for the new offense.

Example: A defendant on pretrial release for burglary with a \$20,000 secured bond is arrested for the new offense of misdemeanor littering. Applying this statutory provision would result in a \$40,000 secured bond for littering. Because that bond amount is out of line given the nature of the new offense, discretionary authority under the statute may not be applied.

If the new arrest or charge is for an offense alleged to have been committed before the offense for which the defendant already is on pretrial release, the provisions of G.S. 15A-534(d3) may not be applied.

N. Warrantless Arrest for Violation of Conditions of Release.

Under G.S. 15A-401(b)(2)(f), a law enforcement officer may arrest a defendant without a warrant for violation of pretrial release conditions. When a defendant appears before a judicial official after such an arrest, the judicial official shall first determine whether a valid condition of release was violated. If there is no probable cause to believe that a valid condition of release was violated, the judicial official shall order the defendant released on the existing release order. If there is probable cause to believe that a valid condition of release was violated, the judicial official shall determine the defendant's eligibility for and conditions of release as set out in this policy and, if new conditions are warranted, shall enter a new release order.

When setting new conditions of release after a warrantless arrest for a violation of conditions of pretrial release, the judicial official shall not issue new criminal process (such as a Magistrate's Order), unless the conduct also constitutes an independent, new substantive criminal offense (such as communicating threats or trespass). "Violation of court order" is not a substantive crime in North Carolina. If the judicial official decides to pursue contempt for violation of the prior release order, the judicial official should proceed accordingly.

O. Issues Regarding Identity.

Defendants Who Refuse to Identify Themselves.

Without knowing a defendant's identity, a judicial official cannot determine, among other things, whether the defendant has a record or has previously failed to appear. When a defendant refuses to self-identify, the following procedure shall apply: A judicial official may delay the initial appearance so that a law enforcement officer can investigate the defendant's identity.

Note: If a person (1) is charged with an offense involving impaired driving, as defined in G.S. 20-4.01(24a), or driving while license revoked when the revocation is for an impaired driving revocation, as defined in G.S. 20-28.2, and (2) cannot be identified by a valid form of identification, then the arresting officer must have the person fingerprinted and photographed. G.S. 15A-502(a6). This requirement may result in identification of the person without further investigation.

- If a defendant can be adequately identified by the investigation, the judicial official shall set conditions as provided in this policy, considering the defendant's failure to self-identify.
- If the investigation is unsuccessful or cannot be done within 48 hours, the judicial official shall proceed with the initial appearance. A judicial official shall not allow an indefinite delay of the initial appearance for an investigation into the defendant's identity.
- If the investigation is not feasible or is unsuccessful, the judicial official must consider the defendant's refusal to self-identify to be evidence of flight risk. Additionally, the judicial official shall include as a condition of pretrial release that either the defendant adequately self-identify or that there is an adequate

identification of the defendant. Any reasonable form of identification may meet this condition, even if it is not a written form of identification—for example, a responsible member of the community may vouch for the defendant’s identity. Because individuals may lawfully be in the country without a United States government-issued form of identification, a judicial official may not require a defendant to produce such identification as a condition of release.

Note: G.S. 15A-534(a) provides that if a defendant is required to provide fingerprints or a DNA sample and the fingerprints or DNA sample have not yet been taken or the defendant has refused to provide those items, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The fingerprint requirement may facilitate identification.

- If a defendant fails to self-identify or provided a false or fictitious name to a law enforcement officer or judicial official in connection with the current proceeding, this conduct constitutes a valid reason for setting a financial condition of release.

P. Noncitizens.

Detainer requests from the United States Immigrations and Customs Enforcement (ICE) are not a basis for delaying the initial appearance or denying conditions of release. If a judicial official is aware of an ICE detainer for a defendant, the judicial official shall determine conditions of release pursuant to this policy. The judicial official may note the existence of the detainer on the release order but shall not impose a condition that the defendant be held subject to the detainer. The fact that a person is subject to such a detainer may be considered as evidence of flight risk and may justify a financial condition.

III. General Procedure for Making Pretrial Release Decisions.

A. Introduction

Unless an exception listed in sections IV through VII applies, in making pretrial release decisions, judicial officials shall document on **Appendix A**, Cumberland County Local Form, CCLF- CR -2.

B. Notice

Prior to conducting an initial appearance, the judicial official shall give the defendant oral notice of the general nature of the initial appearance, as provided in G.S. 15A-511.

Appendix B provides an oral notice that may be used to do this. The magistrates are also to include in their notice that they are considering the defendant’s ability to pay.

C. Statutory Preference for Conditions Other Than Secured Bond.

Under state law, a judicial official must impose a written promise, unsecured bond, or custody release, unless the judicial official determines that such release 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, subornation of perjury, at risk for new crimes, danger to community, or intimidation of potential witnesses. G.S. 15A-534(b). If release on a written promise, unsecured bond or custody release will not reasonably assure appearance, will pose 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 judicial official shall impose a secured bond. Id.

D. Policy Preference for Non-Monetary Conditions.

When setting conditions of release, this policy requires a preference for non-financial conditions of release (written promise and custody release) over financial conditions (unsecured and secured bond).

E. Policy Preference for Conditions Other than Secured Bond for Certain Charges.

When conditions of release are determined for a defendant where the highest charge is a nonviolent misdemeanor Class 1, 2, or 3 misdemeanor or nonviolent Class H or I felony, the judicial official shall impose a type of release other than a secured bond unless:

- Such a condition will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person, danger to the community; or is likely to result in destruction of evidence, subornation of perjury, intimidation of potential witnesses within the meaning of G.S. 15A-534(b), or for other good cause shown;
- Such cases that trigger application of the G.S. 15A-534.1 domestic violence statute; involve violence to a person; breaking or entering a home; use of a firearm or other deadly weapon.

F. Secured Bond Prohibited/Discouraged for Certain Class 3 Misdemeanors.

If the highest charged offense is a Class 3 misdemeanor and, based on the defendant's prior record level, the defendant cannot be sentenced to active imprisonment upon conviction, a secured bond shall not be imposed, absent clear and convincing evidence that the defendant presents a danger of physical injury to any person.

G. Presumption Against Secured Bond for Placement on Probation for Deferred Prosecution/Conditional Discharge.

A court order placing a defendant on probation pursuant to a deferred prosecution, G.S. 15A-1341, or a conditional discharge, see, e.g., G.S. 15A-1341(a4); G.S. 90-96, terminates the obligation of any bond previously posted, secured or unsecured. G.S. 15A-534(h)(5). Upon entry of such an order, the court shall enter a new release order specifying the conditions of release governing any required appearances during the deferral probation. The court shall not impose a secured bond, unless the evidence conclusively shows that a defendant is unlikely to appear before the court, as required, during the deferral, is likely to cause injury to persons, or is likely to interfere with the criminal proceeding.

H. Probation Violations.

Unless a specific statute requires otherwise, see sections IV through VII below, a person arrested for a probation violation is entitled to have conditions of release set pursuant to G.S. 15A-534. G.S. 15A-1345(b). Thus, the procedure for setting pretrial release conditions in "garden-variety" probation violation matters follows the District's general pretrial release policy.

Bail conditions and bond amounts must be set for probation violations based on the nature of the violation, not the offense class of the underlying offense, using the table immediately below. If a bail condition or bond is set in excess of these recommendations, reasons for doing so must be documented.

<i>Type of Violation</i>	<i>Maximum Bond</i>
<i>Technical violation</i>	<i>Written Promise</i>
<i>Violation is a new crime – Class 2 or 3 misdemeanor</i>	<i>Written Promise</i>
<i>Violation is a new crime – Class 1 or A1 misdemeanor or Class H or I felony</i>	<i>[specify condition, e.g., \$5,000 secured bond]</i>
<i>Violation is absconding* or a new crime – Class G felony and above</i>	<i>[specify condition, e.g., “Double the bond set for the violation.”]</i>
<i>* As defined by G.S. 15A-1343(b)(3a) and interpreting cases.</i>	

I. Written Findings & Other Explanations.

1. For Secured Bond.

When a secured bond (with or without EHA) is imposed, the judicial official shall make written findings. A form for recording these findings is provided in **Appendix A**.

- a. Detailed descriptions of findings and extensive facts underlying those findings are not required, but if made, the findings shall include:
 - (i) a determination that a secured bond is required by a specific statute; or
 - (ii) individualized findings, based on clear and convincing evidence, supporting the judicial official's determination that a secured bond is warranted under G.S. 15A-534(b).
- b. A finding, based on clear and convincing evidence, that either
 - (i) the defendant is able to pay the bond imposed; or
 - (ii) the defendant appears to be unable to pay the bond imposed or there is insufficient information to determine ability to pay, but that pretrial detention is necessary because no less-restrictive type of release will reasonably assure the appearance of the defendant as required; address the danger of injury to any person; or prevent destruction of evidence, subornation of perjury, or intimidation of potential witnesses within the meaning of G.S. 15A-534(b).

2. When Release Is Not Authorized.

Whenever bail is denied, the judicial official shall document in writing why release is unauthorized. [That finding may cite to the relevant section of this policy e.g., “Military deserter per section IV.F of Local Bail Policy.”]

3. Oral Explanations in Other Cases.

When written findings are not required, the judicial official shall inform the parties orally of the judicial official’s pretrial decision and the reasons for it.

J. Consideration of Other Factors.

The factors below should be considered in deciding whether to adhere to or deviate from the conditions recommended by those tools or pretrial services.

In determining which conditions of release to impose, the judicial official must, 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, and mental condition; whether

the defendant is intoxicated to such a degree that the defendant would be endangered by being released without supervision; the length of the defendant's residence in the community; the defendant's record of convictions; the defendant's history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release. G.S. 15A-534(c). The mere fact that the defendant is homeless and not a resident of the local community, is not, by itself, a reason to impose a secured bond. Additionally, whenever a secured or unsecured bond is set, ability to pay must be considered.

Section VII below discusses situations where specific additional information must be considered.

K. Ability to Pay.

1. Generally.

When determining the type of condition to impose and the amount of any secured or unsecured bond, the judicial official shall make an individualized assessment of the defendant's ability to pay.

When assessing ability to pay, a judicial official may consider only a defendant's income or assets; income or assets of the defendant's family and friends may not be considered. The one exception to this rule is that monthly income of family members (but not friends or roommates) may be considered with respect to federal poverty guidelines, discussed below.

2. Rebuttable Presumptions.

a. That Defendant is Unable to Pay Any Amount of Secured Bond. The following circumstances create a rebuttable presumption that the defendant cannot afford any amount of secured bond:

- i. The defendant is eligible for appointment of counsel.
- ii. The defendant is or has been homeless in the last 6 months.
- iii. The defendant's household income is at or below 200% of federal poverty guidelines (see Table 1 below).
- iv. The defendant is a juvenile under the age of 18.
- v. The defendant is a full-time student.
- vi. The defendant was incarcerated on active sentence within the last six months.
- vii. The defendant resides in mental health/other treatment program or has resided there in last 6 months.
- viii. The defendant is or has dependents eligible for any federal or state public assistance based on financial hardship (e.g. Social Security disability income, food stamps, etc.).

Table 1: [2020] [replace with 2021 when available] Federal Poverty Guidelines

Federal Poverty Guidelines (2020)	
Family Size	Annual/Monthly Income
1	\$25,520 / \$2,127
2	\$34,480 / \$2,873
3	\$43,440 / \$3,620
4	\$52,400 / \$4,367
5	\$61,360 / \$5,113
For family size greater than 5, add \$8,960 annual/\$747 monthly for each additional person.	
Income amounts listed are 200% of the current federal poverty guidelines (2020). https://aspe.hhs.gov/2020-poverty-guidelines	

- b. Regarding Amount of Secured Bond.** There is a rebuttable presumption that a person cannot pay any secured bond amount that exceeds 3% of his/her monthly income.

3. Rebutting the Presumptions.

The presumptions listed above may be rebutted only with evidence that:

- a. Income.** The defendant's monthly income is greater than 200% of poverty level. If so, defendant is presumed able to pay a total secured bond in the amount of 3% of monthly income.
- b. Assets.** The defendant has liquid assets of at least \$3,000. If so, the judicial official shall determine how much the defendant can pay without unreasonable impairment of the defendant's ability to satisfy other financial obligations e.g., housing, food, medical, care of dependents, etc. Liquid assets refer to assets that are readily convertible into cash, such as money in bank accounts, marketable securities, notes, or accounts receivable; personal property such as vehicles or jewelry are not liquid assets for purposes of the ability to pay determination.
- c. Unsolicited Statement.** The defendant has made an unsolicited statement to a district or superior court judge that the defendant can satisfy a specific secured bond amount without unreasonable impairment of ability to satisfy other financial obligations.
- 4. Determining Ability to Pay When Multiple Bonds Are Imposed.**
As discussed in section II.E, in certain circumstances, more than one bond may be imposed on a single defendant at one proceeding. In these circumstances, ability to pay must be assessed as to the total financial obligations imposed at one time.

5. Setting Bond Above Ability to Pay/When Ability to Pay Cannot Be Determined.

A judicial official may set a secured bond in excess of a defendant's assessed ability and when the information is insufficient to determine ability to pay, only if:

- (a) the bond is statutorily required (see *section V below*); or
- (b) the State establishes, by clear and convincing evidence, that no less-restrictive type of release will reasonably assure the appearance of the defendant as required; address the danger of injury to any person; or prevent destruction of evidence, subornation of perjury, or intimidation of potential witnesses within the meaning of G.S. 15A-534(b).

As noted in section III.I, written findings must be made when setting a secured bond.

6. Infractions.

See section V.D for the ability to pay rule that applies to infractions.

7. Documentation.

A judicial official's ability to pay determination shall be documented in writing on **Appendix A.**

L. Additional Restrictions & Conditions.

Any restrictions imposed shall be reasonable and related to the purpose of pretrial release.

Restrictions shall not be used as punishment.

- 1. DNA & Fingerprints.** If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1), (a2), (a4), or (a6), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and the fingerprints or DNA sample have not yet been taken or the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. G.S. 15A-534(a).
- 2. Restrictions on Place of Abode, Contact with Victim, Use of CAM, Etc.**
 - a. Permissible in All Cases.** In all cases, in addition to regular conditions of release, the judicial official may place restrictions on the travel, associations, conduct, or place of abode of the defendant, as conditions of pretrial release. G.S. 15A-534(a). The judicial official also may include as a condition of pretrial release that the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system (CAM), of a type approved by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, and that any violation of this condition be reported by the monitoring provider to the district attorney. G.S. 15A-534(a). When imposing CAM in a non-domestic violence cases, the judicial official shall use form AOC-CR-242; domestic violence cases are discussed immediately below.
 - b. Domestic Violence Cases.** In domestic violence cases subject to the 48-hour rule, see section IV.J below, the following additional conditions may be imposed:

- That the defendant stay away from the home, school, business, or place of employment of the alleged victim.
- That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim.
- That the defendant refrain from removing, damaging, or injuring specifically identified property.
- That the defendant may visit the defendant's child or children at times and places provided by the terms of any existing order entered by a judge.
- That the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system (CAM), of a type approved by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, and that any violation of this condition be reported by the monitoring provider to the district attorney.

G.S. 15A-534.1(a)(2). Form AOC-CR-630 shall be used when imposing these additional conditions.

c. Cases Involving Certain Child Victims. In all cases where the defendant is charged with:

- (1) felonious or misdemeanor child abuse;
- (2) taking indecent liberties with a minor in violation of G.S. 14-202.1;
- (3) rape or any other sex offense in violation of G.S. Article 7B, Chapter 14, against a minor victim, incest with a minor in violation of G.S. 14-178, kidnapping, abduction, or felonious restraint involving a minor victim;
- (4) a violation of G.S. 14-320.1 (transporting child outside the State with intent to violate custody order);
- (5) assault or any other crime of violence against a minor victim, or with communicating a threat against a minor victim,

the judicial official shall impose the following additional conditions of pretrial release:

- That the defendant stay away from the home, temporary residence, school, business, or place of employment of the alleged victim.
- 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.
- That the defendant refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.

G.S. 15A-534.4. Upon request of the defendant, the judicial official may waive one or more of these conditions if the judicial official makes written findings of fact that it is not in the best interest of the alleged victim that the condition be imposed. G.S. 15A-534.4. Form AOC-CR-631 shall be used to impose the additional conditions and to record the findings requires for waiver, when appropriate.

d. Cases Involving Certain Threats of Mass Violence. When the defendant is charged with:

- (1) communicating a threat of mass violence on educational property in violation of G.S. 14-277.6; or
- (2) communicating a threat of mass violence at a place of religious worship in violation of G.S. 14-277.7,

the following conditions may be imposed:

- That the defendant stay away from the educational property or place of religious worship against which the threat was communicated.
- That the defendant stay away from any other educational property or place of religious worship unless permission to be present is granted by the person in control of the property.

G.S. 15A-534.7.

e. Arrest after Failure to Appear (FTA). As discussed in section V.A below, an arrest of a defendant after a FTA triggers the “bond doubling statute,” G.S. 15A-534(d1), unless the judge issuing the Order for Arrest (OFA) sets conditions in that order. That statute also provides that when setting conditions after arrest on an OFA for a FTA, the judicial official shall impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. Id. Judicial officials may offer to initiate sign up for the AOC court date reminder system for each defendant who appears before them. See section IX.A below.]

f. Fees Associated with Restrictions and Conditions. No person may be incarcerated pretrial solely because of inability to pay a fee associated with a restriction or condition of release (e.g., fees for drug testing).

IV. Exceptions—Release Not Authorized.

In the circumstances listed in this section, state law provides that the defendant may not be released pretrial or may be detained temporarily. In these circumstances, and unless another form is specified below, the judicial official shall complete form AOC-CR-200, checking the option for “Your release is not authorized” and documenting on that form a brief description of the basis for denying release, such as “Capital Case” or “Governor’s Warrant.”

A. Capital Cases.

It is within the discretion of a judge (and only a judge) to decide whether a defendant charged with a capital offense will be released before trial. G.S. 15A-533(c). North Carolina has only one offense that can qualify for capital punishment: first-degree murder. G.S. 14-17. A magistrate or clerk must deny release when determining conditions for a defendant charged with a capital offense. A judge shall determine eligibility for release and conditions for a defendant charged with a capital offense as provided in this policy.

B. Parole or Post-Release Supervision Violators.

A defendant arrested on an order of "temporary or conditional revocation" of post-release supervision or parole is not entitled to conditions of release. G.S. 15A-1368.6; G.S. 15A-1376. Upon committing the defendant to custody, if a probation/parole officer was not the

arresting officer, an official should notify the local chief probation or parole officer of the arrest as soon as feasible.

C. Certain Fugitives.

A fugitive defendant charged in another state with an offense punishable by death or life imprisonment has no right to pretrial release. G.S. 15A-736. Also, a fugitive arrested on a governor's warrant has no right to pretrial release. ROBERT L. FARB, STATE OF NORTH CAROLINA EXTRADITION MANUAL 57 (3d ed. 2013). These defendants shall be committed to jail without conditions of release being set. *Id.* at 43.

As discussed in section V.B below, a defendant arrested on a fugitive process for an offense that is not punishable by death or life in prison is entitled to conditions of release and that condition must be a secured bond. G.S. 15A-736.

D. Probationers—Interstate Compact Supervision.

A defendant supervised on probation in North Carolina on behalf of another state pursuant to the Interstate Compact on Adult Supervision (Interstate Compact) may be arrested for a "retaking" hearing to determine whether the defendant should be returned to the other state for a probation violation proceeding. A probationer arrested for such a proceeding is not entitled to conditions of release. G.S. 148-65.8(a). Upon committing the defendant to custody, if a probation/parole officer was not the arresting officer, an official should notify the local chief probation or parole officer of the arrest as soon as feasible, so that the local probation office can notify North Carolina's Interstate Compact office of the arrest.

E. Offenses Committed During Involuntary Commitment.

There is no right to pretrial release for a defendant who is alleged to have committed a crime while involuntarily committed or while an escapee from commitment. G.S. 15A-533(a). In addition to imposing the condition that "Your release is not authorized," the judicial official's release order shall direct the custodian to return the defendant to the treatment facility for continuation of treatment, pending additional proceedings on the criminal offense. G.S. 15A-533(a).

F. Military Deserters.

Military deserters arrested and presented to civilian authorities for confinement are not entitled to conditions of release. 10 U.S.C. § 808, et. seq. In addition to committing the deserter to custody, the judicial official's release order should direct the custodian to contact the relevant military authority to take custody of the deserter.

G. Hold for Violators of Health Control Measures.

If a judicial official conducting an initial appearance finds by clear and convincing evidence that a person arrested for violating an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 (incident involving nuclear, biological, or chemical agents) or G.S. 130A-145 (quarantine and isolation authority) poses a threat to the health and safety of others, the judicial official must deny pretrial release. G.S. 15A-534.5. The judicial official must order that the person be confined in a designated area or facility. This pretrial confinement ends when a judicial official determines that the confined person does not pose a threat to the health and safety of others. G.S. 15A-534.5. These determinations shall be made in conjunction with the recommendation of the state health director or local health director. *Id.* Upon recommendation of the State or local health director that the

defendant may be released, if any criminal charge related to the alleged violation is pending, a judicial official shall determine conditions of release as otherwise provided in this policy.

H. Impaired Driving Hold.

An impaired driving hold must be imposed when a magistrate finds both probable cause to charge the defendant with an offense involving impaired driving, as defined in G.S. 20-4.01(24a), and clear and convincing evidence that if the defendant is released, his or her physical or mental impairment presents a danger of physical injury to self or others or of damage to property. G.S. 15A-534.2(b). Specifically, the judicial official must order that the defendant be held in custody until one of the following requirements is met:

- the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to self or others or of damage to property if released; or
- a sober, responsible adult is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.

G.S. 15A-534.2(a)—(c). Form AOC-CR-270 shall be used to document an impaired driving hold and the judicial official also shall determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534 and this policy. G.S. 15A-534.2. Note that a release to a sober responsible adult is not a custody release for purposes of pretrial release. When a person is released from an impaired driving hold to a sober responsible adult, that person agrees to supervise the defendant only until the defendant is no longer impaired; under a custody release, the custodian agrees to supervise the defendant during the entire pretrial period.

An impaired driving hold may last no longer than 24 hours. G.S. 15A-534.2(c). If the defendant has not been released within 24 hours, a judicial official shall rescind the impaired driving hold.

For detailed information about conducting initial appearances in impaired driving cases and impaired driving holds. Note well: JESSICA SMITH, CRIMINAL PROCEEDINGS BEFORE NORTH CAROLINA MAGISTRATES 23 (UNC School of Government 2014).

I. Communicable Disease Testing Hold.

If a judicial official conducting an initial or first appearance finds probable cause that an individual had a nonsexual exposure to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by the 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 and Hepatitis B infection, if required by public health officials pursuant to G.S. 130A-144 and G.S. 130A-148. G.S. 15A-534.3. This provision does not authorize a delay in setting conditions of release; the judicial official shall set conditions of release as appropriate, but when required by the statute, also shall impose the temporary detention for testing. Form AOC-CR-270 shall be used for this purpose. Immediately after detention for testing is ordered, the judicial official or custodian shall contact the local public health department to notify

appropriate officials of the detention. Contact information for local health officials is as follows Cumberland County Health Department.

J. Hold for Conditions in Certain Domestic Violence & Threat Cases.

1. Domestic Violence Cases.

For cases that fall within the scope of the 48-hour domestic violence rule, see section II.B.2.b above, G.S. 15A-534.1(a)(1) provides that upon a determination that

- (1) the defendant's immediate release will pose a danger of injury to the alleged victim or any other person or is likely to result in intimidation of the alleged victim; and
- (2) execution of an appearance bond will not reasonably assure that such injury or intimidation will not occur,

the judicial official may order the defendant detained for a reasonable period of time while determining the conditions of release. G.S. 15A-534.1(a)(1).

2. Threat of Mass Violence Cases.

For cases that fall within the scope of the 48-hour threat of mass violence rule, see section II.B.2.c above, G.S. 15A-534.7 provides that upon a determination that

1. immediate release of the defendant will pose a danger of injury to persons; and
2. that execution of an appearance bond will not reasonably assure that such injury will not occur,

the official may order the defendant detained for a reasonable period of time while determining the conditions of release. G.S. 15A-534.7(a)(1).

K. Limited Hold–Probationer Charged with Felony.

When determining conditions of release for a defendant who is

- (1) charged with a felony; and
- (2) currently on probation for a prior offense,

the judicial official shall determine whether the defendant poses a "danger to the public" prior to setting conditions of release. G.S. 15A-534(d2).

If the defendant poses such a danger, a secured bond must be imposed. G.S. 15A-534(d2)(1). If the defendant does not pose such a danger, conditions are determined under the general rules set out in this policy. G.S. 15A-534(d2)(2). If, however, the judicial official has insufficient information to determine whether the defendant poses a danger to the public, the judicial official must order the defendant detained in custody until a determination can be made. G.S. 15A-534(d2)(3). If such a detention is ordered, the judicial official must record, in writing

- that the defendant is being held pursuant to G.S. 15A-534(d2);
- the basis for the decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information; and

- a date, within 96 hours of arrest, when the defendant will be brought to a judge for a first appearance.

G.S. 15A-534(d2)(3). Form AOC-CR-272 (Side One) shall be used for these purposes. If the necessary information is provided at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. *Id.* The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this policy.

L. No Bail & Limited Hold—Probation Violator with Pending Felony or Conviction Requiring Sex Offender Registration.

When a judicial official is determining conditions of release for a defendant arrested for a probation violation and the defendant has either

- (1) a pending felony charge; or
- (2) a prior conviction for an offense that requires registration as a sex offender under G.S. Chapter 14, Article 27A, or that would have required registration but for the effective date of the legislative acts establishing the sex offender registration program under that Article and the offenses subject to it,

the judicial official shall determine whether the defendant poses a "danger to the public" prior to setting conditions of release. G.S. 15A-1345(b1).

If the judicial official determines that the defendant presents a danger to the public, then the official shall deny conditions of release pending the probation violation hearing. G.S. 15A-1345(b1)(1). If the judicial official determines that the defendant does not present a danger to the public, then the official shall set conditions of release as normal and as otherwise provided in this policy. G.S. 15A-1345(b1)(2). If the judicial official has insufficient information to determine whether the defendant poses a danger to the public, then the judicial official shall order the defendant detained without bail so that sufficient information can be obtained to make the required determination. G.S. 15A-1345(b1)(3). Form AOC-CR-272 (Side Two) shall be used for this purpose. If the defendant has been detained without bail for seven days from the date of arrest for this reason, the defendant must be brought immediately to any judicial official, who shall record that fact in writing and set conditions as otherwise provided in this policy. G.S. 15A-1345(b1)(4).

V. Exceptions—Statute Requires or Prohibits Certain Conditions.

A. Arrest after Failure to Appear (FTA).

When conditions of pretrial release are being imposed on a defendant who has failed to appear for the charges to which the conditions apply, the judicial official must, at a minimum, impose the conditions recommended by the Order for Arrest (OFA). G.S. 15A-534(d1). If no conditions are recommended in the OFA, the judicial official shall require a secured appearance bond of at least double the most recent secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least \$1,000. *Id.* The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. *Id.* The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. *Id.* If the information available to the judicial official indicates that the defendant has failed

on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order. *Id.*

If the defendant has been arrested on an OFA after a failure to appear (FTA), the judicial official conducting the initial appearance shall check for a prior surrender by the surety for the same FTA. If the defendant already has been surrendered and a new release order was entered and a new bond was set and posted, the judicial official shall re-release the defendant on the bond already posted. If the defendant has not already been surrendered by a surety for the same FTA, set conditions of release as described immediately above.

B. Extradition—Fugitive Arrests.

As discussed in section IV.C above, a defendant arrested on a fugitive process under G.S. Chapter 15A, Article 37 is not entitled to conditions of release, if the offense is punishable by death or life in prison. However, a defendant arrested on a fugitive process for an offense that does not carry punishment of death or life in prison is entitled to conditions of release, and that condition must be a secured bond. G.S. 15A-736. When setting a secured bond in these cases, judicial officials must consider ability to pay, see section III.K above. A requesting state's preference regarding bail (e.g., a "no bail" note in an automated record of the outstanding process) is not binding on the judicial official's determination of conditions of release; conditions of release shall be imposed as provided here.

C. Probationer Charged with Felony.

When determining conditions of release for a defendant who is

- (1) charged with a felony; and
- (2) currently on probation for a prior offense,

the judicial official shall determine whether the defendant poses a "danger to the public." G.S. 15A-534(d2). If the defendant poses a danger to the public, the official shall impose a secured bond. G.S. 15A-534(d2)(1). The amount of the bond shall be determined as otherwise provided in this policy. Instructions on how to proceed when the defendant does not pose such a danger, or the information is insufficient to make the determination is provided in section VII.C below.

D. Infractions.

1. North Carolina Residents.

If a North Carolina resident is charged only with an infraction, the judicial official may not require the person to post an appearance bond. G.S. 15A-1113(c)(2). North Carolina residents charged only with an infraction should be released on written promise to appear.

2. Motor Vehicle Infractions—Non-NC Residents.

A non-North Carolina resident charged with a motor vehicle infraction may not be required to post an appearance bond if:

- (1) the person is licensed to drive by a state that subscribes to the nonresident violator compact;
- (2) the infraction charged is subject to the provisions of the compact; and
- (3) the person executes a personal recognizance as defined by the compact.

G.S. 15A-1113(c)(1). State law provides that people who do not meet these requirements may be required to post an appearance bond for a motor vehicle infraction. G.S. 15A-1113(c). However, this policy requires individuals charged with a

motor vehicle infraction to receive a written promise to appear, unless extraordinary circumstances are present and documented. If a secured bond is imposed and the person is unable to post the secured bond, the judicial official *must* allow the person to be released on an unsecured bond. G.S. 15A-1113(c).

3. Wildlife Infractions—Non-NC Residents.

A non-North Carolina resident charged only with a North Carolina wildlife infraction may not be required to post a secured bond if:

- (1) the person is a resident of a state that is a member of the Interstate Wildlife Violator Compact; and
- (2) provides adequate proof of his or her identity.

G.S. 113-300.6, Art. III. State law provides that people who do not meet these requirements may be required to post an appearance bond for a wildlife infraction. However, this policy requires that individuals charged with a wildlife infraction to receive a written promise to appear, unless extraordinary circumstances are present and documented. If a secured bond is imposed and the person is unable to post the secured bond, the judicial official *must* allow the person to be released on an unsecured bond. G.S. 15A-1113(c).

4. Other Infractions—Non-NC Residents.

For other infractions, state law provides that non-North Carolina residents may be required to post an appearance bond. G.S. 15A-1113(c). However, this policy requires an individual charged with infractions to receive a written promise to appear, unless extraordinary circumstances are present and documented. If a secured bond is imposed and the person is unable to post the secured bond, the judicial official must allow the person to be released on an unsecured bond. G.S. 15A-1113(c).

VI. Exceptions—Statutory Presumptions Against Release.

A. Recidivist Drug Trafficking.

Under 15A-533(d), there is 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:

- reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;
- the offense was committed while the person was on pretrial release for another offense; and
- 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.

If the presumption applies and is not rebutted, then the magistrate or clerk conducting the initial appearance shall deny release and set the case for the first available appearance before a judge. The clerk or magistrate shall complete form AOC-CR-200 by checking the option for “Your release is not authorized” and documenting on that form a brief description of the basis for denying release, such as “G.S. 15A-533(d).” The person only may be released by a district or superior court judge after 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. G.S. 15A-533(g).

B. Recidivist Gang Offense.

Under G.S. 15A-533(e), there is 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:

- reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal gang, as defined in G.S. 14-50.16A(1);
- the offense was committed while the person was on pretrial release for another offense; and
- the person has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20; or has been convicted of a criminal offense and received an enhanced sentence for that offense pursuant to G.S. 15A-1340.16E, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

If the presumption applies and is not rebutted, then the magistrate or clerk conducting the initial appearance shall deny release and set the case for the first available appearance before a judge. The clerk or magistrate shall complete form AOC-CR-200 by checking the option for “Your release is not authorized” and documenting on that form a brief description of the basis for denying release, such as “G.S. 15A-533(e).” The person only may be released by a district or superior court judge after 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. G.S. 15A-533(g).

C. Recidivist Firearm-Involved Offense.

Under G.S. 15A-533(f), there is 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:

- 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 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; or
- 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.

If the presumption applies and is not rebutted, then the magistrate or clerk conducting the initial appearance shall deny release and set the case for the first available appearance before a judge. The clerk or magistrate shall complete form AOC-CR-200 by checking the option for “Your release is not authorized” and documenting on that form a brief description of the basis for denying release, such as “G.S. 15A-533(f).” The person

only may be released by a district or superior court judge after 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. G.S. 15A-533(g).

D. Manufacture of Methamphetamine.

Under G.S. 15A-534.6, there is a rebuttable presumption that no conditions of release on bond will assure the safety of the community, if the State shows by clear and convincing evidence that:

- the person was arrested for a violation of G.S. 90-95(b)(1a) (manufacture of methamphetamine) or G.S. 90-95(d1)(2)b (possession of an immediate precursor chemical knowing/having reasonable cause to know that the chemical will be used to manufacture methamphetamine); and
- the person is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine, and the current charge was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner.

If the presumption applies and is not rebutted, then the judicial official shall complete form AOC-CR-200 by checking the option for “Your release is not authorized” and documenting on that form a brief description of the basis for denying release, such as “G.S. 15A-534.6.” If the judicial official denying release is a magistrate or clerk, the judicial official shall set the case for the first available appearance before a judge.

Even if the rebuttable presumption does not apply, the statute requires that in all cases where the defendant is charged with a covered offense, in determining bond and other conditions of release, the judicial official must consider any evidence that the person is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine. G.S. 15A-534.6.

VII. Exceptions—Statute Requires Consideration of Certain Information.

A. Domestic Violence Cases.

G.S. 15A-534.1(a) provides that when setting conditions in 48-eight-hour rule domestic violence cases, see section IV.J above, the judicial official must direct a law enforcement officer or district attorney to provide the defendant’s criminal history report and must consider that history when setting conditions. After setting conditions, the judge must return the report to the providing agency or department. The judge may not unreasonably delay the determination of conditions to review the criminal history report. G.S. 15A-534.1(a).

B. Threat of Mass Violence Cases.

G.S. 15A-534.7 provides that when setting conditions in 48-hour rule threat of mass violence cases, see section IV.J above, the judicial official must direct a law enforcement officer or district attorney to provide a criminal history report for the defendant for consideration when setting conditions of release. If the report is not provided promptly, the judicial official shall proceed without it and so note in the applicable section of form AOC-CR-660. If provided, the report shall be returned to the providing agency after conditions of release have been set and shall not be included with the paperwork delivered to the clerk for filing.

C. Probationer Charged with Felony.

G.S. 15A-534(d2) provides that when determining conditions of release for a defendant who is

- (1) charged with a felony; and
- (2) currently on probation for a prior offense,

the judicial official shall determine whether the defendant poses a "danger to the public." As discussed in section V.C, if the judicial official finds that the defendant poses a danger to the public, then the judicial shall impose a secured bond. G.S. 15A-534(d2)(1). If the judicial official finds that the defendant does not pose a danger to the public, then the official shall set conditions of release as normal and as otherwise provided in this policy. G.S. 15A-534(d2)(2). If the judicial official has insufficient information to make the required determination, then the judicial official shall proceed as instructed in section IV.K above.

D. Probation Violator with Pending Felony or Conviction Requiring Sex Offender Registration.

When a judicial official determines conditions of release for a defendant arrested for a probation violation, if the defendant has either

- (1) a pending felony charge; or
- (2) a prior conviction for an offense that requires registration as a sex offender under G.S. Chapter 14, Article 27A, or that would have required registration but for the effective date of the legislative acts establishing the sex offender registration program under that Article and the offenses subject to it,

the judicial official shall determine whether the defendant poses a "danger to the public." G.S. 15A-1345(b1). If the judicial official determines that the defendant presents a danger to the public, then the official shall deny conditions of release pending the probation violation hearing. G.S. 15A-1345(b1)(1). If the judicial official determines that the defendant does not present a danger to the public, then the official shall set conditions of release as normal and as otherwise provided in this policy. G.S. 15A-1345(b1)(2). If the judicial official has insufficient information to make the required determination, then the judicial official shall proceed as instructed in section IV.L above.

E. Manufacture of Methamphetamine Cases.

As discussed in section VI.D above, whenever a defendant is arrested for certain methamphetamine offenses, in determining bond and other conditions of release, the judicial official must consider any evidence that the person is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine. G.S. 15A-534.6.

VIII. Judicial Review of Bail Conditions.

A. First Appearances.

1. Required in All Cases Where the Defendant is Held Pretrial

In order to afford all individuals a timely judicial review of pretrial conditions that result in pretrial detention, **all** individuals who remain in custody pretrial after the initial appearance shall be brought before a district court judge for a first appearance within 48 hours or at the next scheduled session of district court, if court is not in session within 48 hours of the defendant's arrest. If next scheduled session of district court is

not within 48 hours, the defendant shall be taken back before a magistrate for pretrial review.

2. Scheduling.

First appearances are to be held daily, with the following exceptions: weekends, holidays, and emergency situations when the courthouse is closed.

3. First Appearance Docket.

Each weekday when court is in session, the magistrate and the staff of the Clerk's office shall identify defendants entitled to a first appearance before a judge. Clerk's office staff will create a docket listing for each defendant scheduled for a first appearance. The Clerk shall provide the first appearance docket to the District Attorney, Public Defender, and detention center liaison by 11 am.

4. Counsel.

Early involvement of counsel at pretrial proceedings will better inform pretrial decisions and protect defendants' rights in light of the significant consequences associated with pretrial detention. If funding available, counsel (either defense counsel, contract, or public defender), should be made available in person to a criminally accused person for consultation at first appearance.

5. Procedure—Generally.

First appearances shall be conducted as provided in Chapter 15A, Article 29, and as otherwise provided in this policy. Provisions of Article 29 clearly inapplicable to misdemeanors within the original jurisdiction of the District Court shall not apply.

When reviewing the defendant's conditions of release pursuant to G.S. 15A-605(3), the judge may consider factual findings made and conditions of release imposed at the initial appearance, but shall make an independent determination of the defendant's eligibility for and conditions of release in compliance with this policy.

When the first appearance is being held for charges originating in a county in NC, outside of this Judicial District, the presiding official shall limit the scope of the hearing to the defendant's conditions of release.

a. Notice.

At Initial Appearance. For any defendant committed to custody, the judicial official shall inform the defendant orally of the general nature and scheduled date of the first appearance and that, if still in custody at the time of that appearance, the defendant will be given an opportunity to meet with counsel prior to and be represented at that appearance.

b. At First Appearance. Before conducting a first appearance, the court shall advise the defendant generally about the nature of the proceeding and the issues to be considered and decided pursuant to Article 29. This advisement may be given to defendants collectively or individually.

B. Detention Bond Hearings.

1. In cases where the defendant is intentionally detained pretrial on an unattainably high

secured bond, the court may, on its own motion or on motion by a party, hold a prompt Detention Bond Hearing affording the defendant appropriate procedural protection as approved by the *United States Court in United States v. Salerno*, 481 U.S. 739 (1987). In victim's rights acts cases, the State is required to notify the victim of bond hearings/proceedings. At the hearing, the defendant has the right to counsel, to testify, to present evidence and to cross examine witnesses. In order to continue the detention bond, the State must demonstrate probable cause to believe that the defendant committed the charged crime and to prove by clear and convincing evidence that no conditions of release can reasonably assure the safety of the community or any person and the person's appearance in court, as required. If the judge determines to continue the detention bond, the case shall be, to the extent practicable, placed on an expedited trial calendar.

IX. Promoting Court Appearances and Responding to Non-Appearances.

A. Promoting Court Appearances.

All court personnel (including magistrates) shall promote court notification programs and provide information.

B. Responding to Non- Appearances.

District Court

All called and failed cases will be held until the end of the week before an Order for Arrest (OFA) is issued. The State shall notify the Judge if victims are present when the defendant fails to appear in court.

Superior Court

All called and failed cases, except those scheduled for trial, will be held until the end of the week before an Order for Arrest (OFA) is issued.

Judicial officials are encouraged to set conditions of release in OFAs and FTAs.

- Adopting various presumptions regarding issuance of an OFA, such as:
 - Applying a presumption that no OFA will issue for any non-appearance where there is good cause for the non-appearance (e.g., defendant is in the hospital or in custody elsewhere). Requiring that the matter be continued, with notice of a new court date sent to the defendant.
 - Applying a presumption that no OFA will issue for any non-appearance where the defendant did not receive proper notice of the proceeding. Requiring that the matter be continued, with notice of a new court date sent to the defendant.
- Adopting procedures allowing defense counsel to seek a waiver of the defendant's appearance before a proceeding that is not a trial on the merits, bond hearing, suppression hearing, plea proceeding, and when such a waiver is consistent with state law.

ALL TRIAL LEVEL COURTS

Each Court shall establish procedures by which all individuals have the opportunity to appear before the Court to have a court date rescheduled after a missed court date, and if they do so, to allow for a striking of the prior non-appearance. Allow for a striking of the prior non-appearance and recall of outstanding OFAs.

X. TERM of the Bond.

A defendant is covered by a bond until judgment is entered in district court, from which no appeal is taken, or until judgment is entered in superior court. G.S. 15A-534(h). However, the bond ends earlier if: (1) a judge releases the obligor from the bond; (2) the defendant is properly surrendered by a surety; (3) the proceeding is terminated by voluntary dismissal by the state before forfeiture is ordered; (4) an indefinite prayer for judgment continued has been entered in district court; or (5) the court places the defendant on probation pursuant to a deferred prosecution or conditional discharge. *Id.*

XI. Surrender.

A. Arrest for Surrender.

A surety may arrest a defendant for the purpose of surrender. G.S. 15A-540; G.S. 58-71-30.

B. Who Can Accept Surrender.

A defendant may be surrendered only to the Sheriff; surrender may not be made to a judicial official. G.S. 15A-540.

C. Surrender Before a Breach.

When a surety surrenders a defendant before a breach (failure to appear (FTA)) and the defendant is brought before a judicial official, the judicial official shall not enter a new release order. The judicial official shall notify the custodian that the existing release order in effect at the time of the surrender remains in place.

D. Surrender After a Breach.

When a surety surrenders a defendant after a breach (FTA) and the defendant is brought before a judicial official, the judicial official shall determine conditions of release as provided in this policy. Additionally, the judicial official shall determine whether an OFA for the FTA remains unserved. If so, the judicial official shall immediately recall the OFA. If the defendant already was arrested on the OFA for the FTA and new conditions were set at that time, conditions of release shall not be determined at the time of surrender; a new release order already was entered after the breach and the judicial official shall direct the custodian to release the defendant on the release order that was entered after arrest on the OFA.

XII. Release after Conviction in Superior Court.

As noted in section X above, entry of final judgment in Superior Court terminates any bond posted to secure the defendant's release. G.S. 15A-534(h). Entry of judgment occurs when sentence is pronounced. G.S. 15A-101(4a).

Release of a defendant pending appeal who otherwise would be confined (for example, for an active sentence) is within the discretion of the superior court judge and shall be determined in accordance with G.S. 15A-536. When imposing conditions of release after conviction in Superior Court, the court shall enter a new commitment order with conditions of release rather than modifying an existing pretrial release order. Conditions of release shall be determined as otherwise provided in this policy. Any bond posted to satisfy a monetary condition of post-conviction release imposed by the court shall be entered on form AOC-CR-238.

XIII. Speedy Trial for Defendants in Custody.

Defendants in custody will be given priority when calendaring cases for trial.

XIV. Review of Jail Roster.

1. Responsible parties.

A member of the District Attorney’s Office and the Cumberland County Detention Center Jail Liaison employee assigned to the District Attorney’s Office will review the jail roster daily:

- a. to ensure that all defendants who are in custody on misdemeanor charges are brought before a judge within 48 hours after arrest to address representation by counsel, if court is in session. If not, the misdemeanant will appear in court at the first available session of court.
- b. to monitor charges of defendants, number of days in custody, and conditions of pretrial release (including amount of secured bond) and representation by counsel.
- c. The District Attorney or an Assistant District Attorney will also closely monitor defendants charged with felonies, defendants that are unrepresented, and cases moving without delay expeditiously.

2. Unrepresented defendants.

In cases where the defendant has formally waived the right to counsel and no attorney has entered a notice of appearance, the District Attorney or an Assistant District Attorney will ask that defendant be brought before the court on each of their court dates to inquire as to the status of counsel or self-representation.

XV. Summons in Lieu of Arrest

When determining whether to issue a summons or warrant for arrest, the magistrate shall give effect to the statutory preference of the issuance of a summons over a warrant for arrest pursuant to N.C. Gen. Stat. §15A-304.

XVI. Citation in Lieu of Arrest

This policy also supports the increased use of citation in lieu of arrest by law enforcement officers when in their discretion a citation protects the public safety and promotes the interests of justice.

XVII. Training for Local Officials

Employees, magistrates, and judges will be required to familiarize themselves with the current bond policy in order to effectively implement and comply with the purpose of this policy.

XVIII. Information for Judges from Other Districts

Judges visiting from other districts are encouraged to review the bond policy for this district to promote consistency.

XIX. Training for Local Officials

This policy will be regularly reviewed to ensure compliance with current law.

**STATE OF NORTH CAROLINA
CUMBERLAND COUNTY**

File No(s).

IN THE GENERAL COURT OF JUSTICE

DISTRICT SUPERIOR COURT DIVISION

STATE VERSUS

Defendant

**WRITTEN FINDINGS
FOR SECURED BOND**

NOTE: Do not impose conditions of release on this form. Use form AOC-CR-200 and related forms to impose conditions of release. Use this form only to record the Court's findings supporting imposition of a secured bond and the defendant's ability to satisfy that condition. Do not use this form when imposing a written promise, custody release, or unsecured bond. Incorporate this form by reference on the related AOC-CR-200 as "SECR bond written findings".

FINDINGS

The undersigned judicial official finds for the reasons stated below that it is appropriate to impose a secured bond for the defendant's release in the above-captioned case and related cases, as imposed on the attached form AOC-CR-200.

- 1. Secured Bond Mandatory. A secured bond is required because:
 - a. The case is a fugitive proceeding under Chapter 15A, Article 37. G.S. 15A-736.
 - b. A secured bond is required by G.S. 15A-534(d1) pursuant to recommendation in an order for arrest or prior conditions imposed in this case(s).
 - c. Defendant is charged with a felony while on probation and the Court further finds that the defendant presents a danger to the public. G.S. 15A-534(d2)
 - d. The order listed below and entered previously in this proceeding directed the imposition of a secured bond:

Date of Order	Name of Entering Official	Title of Entering Official	Title/Description of Order

- e. Other: _____.
- 2. Secured Bond Imposed Pursuant to G.S. 15A-534(b). A secured bond is necessary, pursuant to the undersigned official's determination that a written promise to appear, custody release, or unsecured bond: (check all that apply)
 - a. Will not reasonably assure the appearance of the defendant as required;
 - b. Will pose a danger of injury to any person; and/or
 - c. Is likely to result in destruction of evidence, subornation of perjury or intimidation of potential witnesses.

Facts supporting by clear and convincing evidence, that determination includes: (NOTE: Give brief statements of facts supporting the Court's conclusions. Extensive findings are not required but should be sufficiently clear to evaluate in relation to the three risks listed above).

- 3. The undersigned further finds, based on all relevant and reliable evidence available concerning defendant's financial resources that:

NOTE: Check only one. See part III.K. of the Pretrial Release and Bond Policy for Judicial District 12 for guidance when determining defendant's financial status.

 - a. The defendant is presumptively indigent for one or more reasons listed on Side Two and therefore unable to satisfy any secured bond.
 - b. The defendant (check only one) is presumptively indigent for any of the reasons listed on Side Two, and has income or assets as follows: or is presumptively indigent, but that presumption is rebutted by evidence of defendant's income or assets, as follows: (Check all that apply.)
 - 1. Defendant's monthly income, which is greater than 200% of the poverty level, is \$ _____. Defendant is presumed able to pay a total secured bond in the amount of 2 percent of that monthly income, which is: (monthly income) x (0.02) = \$ _____.
 - 2. Defendant has liquid assets of at least \$3,000, in the amount of \$ _____. Defendant is able to pay a total secured bond of \$ _____ without unreasonable impairment of the defendant's ability to satisfy his/her other financial obligations.
 - 3. Defendant has ownership of real property with available equity in the amount of (A) \$ _____, of which defendant's ownership share is (B) _____%, for a value of (C) \$ _____. Eighty percent (80%) of defendant's share \$ _____ (C* 0.80), is deemed available for the purpose of securing bond.
 - 4. Defendant has represented to a district or superior court judge that the defendant is able to satisfy a secured bond in the amount of \$ _____ without unreasonable impairment of his/her ability to satisfy his/her other financial obligations. (NOTE: Select this box only if the defendant makes an unsolicited offer to pay a certain amount.)
 - c. There is no available evidence of the defendant's financial resources from which the court can determine the defendant's ability to satisfy a secured bond in any amount. (NOTE: Proceed to No. 5.b.)

ORDER

Following the ability to pay assessment in No. 3, determine the secured bond amount based on the number and weight of the factors in Part III of this Policy that merited the imposition of a monetary bond as provided in Appendix A. Document the secured bond amount on the AOC-CR-200 form only if one of the options under No. 5 apply. If neither apply, do not enter the findings on this form and do not file the form with the clerk. Instead, impose conditions of release other than a secured bond.

4. Any relevant findings pursuant to 15A-534(c).
5. After comparing the defendant's ability to pay in No. 3 to the secure bond amount, the undersigned finds that: (check one)
- a. the defendant is able to satisfy the secured bond imposed.

 - b. the defendant is unable to, or the court is unable to determine that the defendant is able to, satisfy the bond imposed, but a secured bond in that amount is nonetheless necessary, because (check one) it is mandated statutorily. the undersigned finds by clear and convincing evidence the following facts that no other condition or combination of conditions of release will satisfy compelling State interest(s) of the defendant's appearance, preventing injury to persons, or preventing destruction of evidence, subornation of perjury, or intimidation of potential witnesses:
(NOTE: Give brief statements of the facts supporting the court's conclusion.)

Date	Name of Judicial Official	Signature of Judicial Official
------	---------------------------	--------------------------------

Magistrate District Court Judge Superior Court Judge Clerk of Court Deputy CSC Assistant CSC

PRESUMPTIVE INDIGENCY/ABILITY TO PAY

Any person who meets any of the following criteria shall be presumed unable to afford any amount of secured bond, unless rebutted by evidence of ability to pay, as laid out in number 3(b) on Side One of this form. (NOTE: See Part Section III.K. of the Pretrial Release and Bond Policy for Judicial District 12.

- Is eligible for appointment of counsel;
- Is, or within the past 6 months has been, homeless;
- Has income at or below 200% of the federal poverty guidelines (see table in Appendix B of the Pretrial Release and Bond Policy);
- Is a full-time student;
- Has been incarcerated pursuant to an active sentence within the past 6 months;
- Is residing in a mental health or other treatment program, or has resided in such a program in the past 6 months; or
- Is or has dependents eligible to receive SNAP benefits (food stamps), Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, Social Security Disability Income, public housing, or any other federal or state public assistance program based on financial hardship.

Appendix B: Sample Notice—At First Appearance

Article 29 of Chapter 15A of the General Statutes mandates certain features of a first appearance for a defendant charged via criminal process or magistrate's order with an offense within the original jurisdiction of the superior court, G.S. 15A-601(a), i.e., felonies and related charges. The District's pretrial release policy however requires first appearances for all criminal defendants with criminal charges or probation violations, both felony and misdemeanor. When conducting first appearances, the court should advise all affected defendants generally about the nature of the proceeding and the issues to be considered and decided pursuant to Article 29.

When conducting proceedings for defendants charged with offenses outside of this district adapt this notice to advise defendants only about review of conditions of release. In those cases the formal first appearance will occur in the charging district. G.S. 15A-131(b) and your job at this proceeding is limited to reviewing conditions of pretrial release.

When reviewing defendants' eligibility for or conditions of release, the court should take special care to advise affected defendants of the items set out under "Advisement on Conditions of Release" below.

First Appearance Requirements

As part of every first appearance, the court must:

- Advise defendants of the right to remain silent in compliance with G.S. 15A-602.
- Assess whether defendants have counsel and, if not, advise them of their rights to counsel in compliance with G.S. 15A-603(b).
- Review the sufficiency of the charges as provided in G.S. 15A-604. For preliminary hearing on a probation violation, determine whether probable cause exists to believe the defendant violated a condition of probation. G.S. 15A-1345(c).
- Advise individual defendants of the charges pending and determine that the defendant or defendant's counsel has been provided with a copy. G.S. 15A-605(1) and (2). For preliminary hearing on a probation violation, the defendant must be provided with a statement of the violations alleged. G.S. 15A-1345(d).
- Review the defendant's eligibility for and conditions of pretrial release. G.S. 15A-605(3).

When conducting a first appearance for a probation violation, a judge should conduct the preliminary hearing of G.S. 15A-1345(e) at the same time.

Advisement on Conditions of Release

When reviewing defendants' eligibility for and conditions of release, the court must make an independent determination of both eligibility and conditions.

If the court determines that the defendant is not eligible for conditions of release, the court should inform the defendant of that determination and the basis for it.

If the court determines that the defendant is eligible for conditions of release, before reviewing the conditions, the court should advise defendants:

- of the right to remain silent.
- that the court will consider:
 - the defendants' individual circumstances, including factors like prior convictions, any history of failures to appear, and ties to the community;
 - the nature and circumstances of the present charge(s); and
 - any other evidence relevant to the State's interests in defendants' appearance for court and reducing the risk of danger to others or interference with the criminal proceeding, i.e., destruction of evidence, subornation of perjury, or intimidation of witnesses;
- that when considering monetary conditions of release, the court must consider the defendant's resources and ability to satisfy a monetary bond.
- a court may only set an unaffordable secured bond if it makes written findings that no other condition or set of conditions can reasonably assure the State's interests.
- that the defendants may provide the court with evidence in their favor for any of the factors presented, but that their right to remain silent still applies.

CUMBERLAND COUNTY
PRETRIAL SERVICES AGENCY

Purpose:

The Pretrial Service Agency serves the Criminal Justice Population by providing supervision for those released to the program from the detention center with pending criminal charges. These individuals are awaiting completion of their case and are placed on our program to reduce incarceration cost by reducing the jail population, while providing safety to the community.

There are two programs under the Pretrial Service Agency:

1. Pretrial Release Program - Designed for individuals who have a minimal criminal history and are not a danger to the community. They receive moderate supervision - no ankle monitor, daily call-ins, weekly office visits, gainfully employed, and or attend school, stable residence and may have a curfew assigned by Judge or Pretrial.

Requirements for Pretrial Release monitoring:

- 16 years of age
- Resident of Cumberland County
- Non-Resident of Cumberland County but live in North Carolina.
- In jail on Cumberland County Charges
- Provide positive identification.
- Provide proof of residence and contact information.
- In jail on a felony or Misdemeanor offense
- Must have attorney assigned to case/cases.
- Report to Case Manager weekly
- Call in daily.
- Court ordered to the program.
- No Domestic Violence cases (Subject to Judges discretion/Pretrial Services Review
- No Probation or Parole defendants
- Abide by Pretrial Release Agreement
- No violent offenders (Subject to DV exceptions)
- No electronic monitoring device
- Must enroll in North Carolina Courts Phone Notification system

2. Electronic Monitoring - (GPS) - Designed for individuals who have an extensive criminal history, require intensive supervision. These individuals are confined to their residence, monitored with a tracking device, and have no curfew. They must be at their residence 24/7 and must be approved by court to work or go to school.

Requirements for Pretrial Release House Arrest monitoring:

- 16 years of age
- Resident of Cumberland County
- Non-Resident of Cumberland County but live in North Carolina.
- In jail on Cumberland County Charges
- Provide positive identification.
- Provide proof of residence and contact information.
- In jail on a felony or Misdemeanor offense
- Must have attorney assigned to case/cases.
- Away time for court appearances, doctor appointments, and attorney appointments only.
- Court ordered to the program.
- No Domestic Violence cases (Subject to Judges discretion/Pretrial Services Review
- No Probation or Parole defendants
- Abide by Pretrial Release House Arrest/GPS Agreement
- No violent offenders (Subject to DV exceptions)

The level of supervision of a defendant is determined on a case-by-case basis depending on the following information:

Nature and circumstances of charges

The weight of evidence against the defendant

Defendants employment

Defendant's financial resources

Defendant's family ties

Defendant's character

Defendant's mental condition

Defendant's length of his/her residence in the community

Defendant's record of convictions

Defendant's history of flight to avoid prosecution or failure to appear at court proceedings.

And any other evidence relevant to the issue of Pretrial Release

The Cumberland County Pretrial Services Agency works in conjunction with the judges (who assign individuals to the program), attorneys (Public Defender and Private Attorneys and the Detention Center of Cumberland County.

The criteria/guidelines set forth are to assist the judge in determining placement on the program. If a defendant is charged with new criminal offenses, Pretrial Services of that defendant may be revoked.

1. EXCLUDED

Person charged with any of the offenses are excluded from the program. However, this does not mean that Pretrial Services will not supervise such a person if otherwise found eligible, or approved for release by a Judge. The District Attorneys office must be contacted when reviewing a defendant with excluded charges.

Excluded List

Homicide Offenses
Robbery With Dangerous Weapon
Sex Offenses
Felony Child Abuse
Habitual Felon
Kidnapping
Arson/Burning
First Degree Burglary
Trafficking/Sale of Controlled Substance
Weapons Assault on LEO/Serious Injury to LEO
Probation / Parole Violation
Willful Failure to Appear in Court
Fugitives
Defendants with bonds exceeding \$10,000

2. DISQUALIFIED

A defendant will be disqualified from participation in a Pretrial Services program if any one of the following conditions (referred to as disqualified list) applies to their situations. (Please note that a defendant may be reconsidered for release at any time if the reason for disqualification is resolved).

Contempt of Court

Pending criminal charges in other jurisdictions

Defendants with bonds exceeding \$10,000

Defendants with existing bond modifications

Defendants who are serving a sentence

Defendants with outstanding processes

Defendants with detainers filed against them

Defendants who are on probation/parole

Defendants with prior escape charges

Defendants with previous program violations

Nonresidents (May consider residents of bordering counties)

3. FURTHER INVESTIGATION

This term applies to a defendant who has not been excluded or disqualified and based on his or her interview appears to be suitable for release on a Pretrial Services program.