

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
PRETRIAL RELEASE POLICY 35th JUDICIAL DISTRICT
AVERY, MADISON, MITCHELL
WATAUGA AND YANCEY COUNTIES

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ORDER N.C.G.S. § 15A-535

I. INTRODUCTORY MATTERS.

A. Name. This policy shall be known as the "Pretrial Release Policy for the 35th Judicial District [Avery, Madison, Mitchell, Watauga and Yancey Counties].

B. Authority. This policy is adopted pursuant to N.C.G.S. § 15A-535 (a), providing, in relevant part, that "the senior resident superior court judge ... in consultation with the chief district court judge ... must devise and issue recommended policies ... [for] determining whether, and upon what conditions, a defendant may be released before trial." This policy shall become effective on December 1, 2025, following execution, by the Senior Resident Superior Court Judge, and filing, with/by the Office of the Clerk of Superior Court for Avery, Madison, Mitchell, Watauga and Yancey County, North Carolina. This policy shall replace any prior pretrial release policy for this judicial district.

C. Definitions. In addition to the terms defined in this section, the terms and definitions in N.C.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" which 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 N.C. 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. Conditions of Release. The term "conditions of release" refers to the conditions of release specified in N.C.G.S. § 15A-534(a) (written promise to appear; unsecured bond; custody release to a person or organization agreeing to supervise the defendant; secured bond; and secured bond with house arrest and electronic monitoring [EHA]) and any other conditions or obligations (e.g .. stay away from designated individuals and/or places) imposed on the defendant as part of pretrial release.

5. Judicial Official. The term "judicial official" is as defined in N.C.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.

6. Release Order. The term "release order" means an order entered, pursuant to N.C.G.S. § 15A-511(e) and N.C.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.

7. 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.

8. Type of Release. Effective December 1, 2025 as codified in session law 2025-93 the term "type of release" refers to the four conditions of release specified in N.C.G.S. § 15A-534(a): (2) unsecured bond; (3) custody release to a person or organization agreeing to supervise the defendant; (4) secured bond; and (5) secured bond with house arrest with electronic monitoring (EHA).

9. Victim. The term "victim" is as defined in N.C.G.S. § 15A-830(a)(7).

10. Violent Offense. Effective December 1, 2025 as codified in session law 2025-93 amends 15A-531 to add paragraph (9) to define "Violent offense" to mean any of the following"

a. Any Class A through G felony that includes assault, the use of physical force against a person, or the threat of physical force against a person, as an essential element of the offense.

b. Any felony offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.

c. An offense under G.S. 14-17, and any other offense listed in G.S. 15A-533(b).

d. An offense under G.S. 14-18.4, 14-34.1, 14-51, 14-54(a1), 14-202.1, 14-277.3A, or 14-415.1, or an offense under G.S. 90-95(h)(4c) that involves fentanyl.

e. Any offense that is an attempt to commit an offense described in this subdivision.

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 35,

including probation violations and extradition proceedings heard in Judicial District 35, Avery, Madison, Mitchell, Watauga and Yancey Counties, North Carolina.

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 North Carolina statutes and the North Carolina and United States Constitutions. In case of direct conflict, state statutes and constitutional law override provisions in this policy.

2. Bail Cannot Be Used to Punish. See: *United States v. Salerno*, 481 U.S. 739, 746 (1987) (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]).

3. Purpose of Pretrial Release. The purpose of pretrial release is to impose the least restrictive conditions of release 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: N.C.G.S. § 15A-534(b).

4. 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. See: *Stack v. Boyle*, 342 U.S. 1, 4 (1951) (pretrial release permits unhampered preparation of a defense and makes the presumption of innocence meaningful).

B. Who Can Set Conditions of Release.

1. Generally. Subject to the exceptions, addressed immediately below, any judicial official is authorized to determine a defendant's eligibility for and conditions of 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 or magistrates, pursuant to N.C.G.S. § 15A-601(e) as modified by S.L. 2022-6.

c. Bail hearings. Presided over by judges of the trial division.

2. Exceptions.

a. Capital Offenses. Only a judge can set conditions for capital charges. N.C.G.S. § 15A-533(c). When a defendant is brought before a magistrate or clerk, for an offense covered by this provision, the magistrate or clerk shall hold an initial appearance and order the defendant produced at the first available session of court to have conditions of release determined by a judge.

b. Certain Serious Felony Charges. Effective October 1, 2023, only a judge can set conditions of release for the following felonies:

- First or second-degree murder, N.C.G.S. § 14-17, and attempts to commit those offenses;
- First or second-degree kidnapping, N.C.G.S. § 14-39;
- First-degree forcible rape. N.C.G.S. § 14-27.21;
- First-degree forcible sexual offense, N.C.G.S. § 14-27.26;
- Second-degree forcible rape, N.C.G.S. § 14-27.22;
- Second-degree forcible sexual offense, N.C.G.S. § 14-27.27;
- Statutory rape of a child by an adult. N.C.G.S. § 14-27.23;
- Statutory sexual offense with a child by an adult, N.C.G.S. § 14-27.23; and 1-1-27.28;
- First-degree statutory rape, N.C.G.S. § 14-27.24;
- First-degree statutory sexual offense, N.C.G.S. § 14-27.29;
- Statutory rape of a person 15 years of age or younger, N.C.G.S. § 14-27.25;
- Statutory sexual offense with a person 15 years old or younger, N.C.G.S. § 1-1-27.30;
- Human trafficking. N.C.G.S. § 14--13.11;
- Assault with a deadly weapon with intent to kill inflicting serious injury. N.C.G.S. § 14-32(a);
- Discharging barreled weapons or firearm into occupied property, N.C.G.S. § 14-34.1;
- First-degree burglary, N.C.G.S. § 14-51;
- First-degree arson pursuant to N.C.G.S. § 14-58; and
- Armed robbery, N.C.G.S. § 14-87.

S.L. 2023-75, § 2(a) codified as N.C.G.S. § 15A-533(b). When a defendant is brought before a magistrate or clerk for an offense covered by this provision, the magistrate or clerk shall hold an initial appearance and order the defendant produced at the first available session of court to have conditions of release determined by a judge. Effective December 1, 2025 as codified in session law 2025-93 there shall be a rebuttable presumption that no condition of release will

reasonably assure the appearance of the person as required and the safety of the community for a defendant charged with a crime listed under any of the subdivisions of this subsection. However, if the judge determines that release is warranted for a defendant charged with a crime listed under any of the subdivisions of this subsection, the judge shall set conditions of pretrial release in accordance with G.S. 15A-534

3. Requirement for Examination. *Effective December 1, 2026* as codified in session law 2025-93, NCGS 15A-533(b1) *with the effective date being modified in SB 449, session law 2025-97* requires that if a defendant is (i) charged with a violent offense and, after a search of the court records for the defendant, the judicial official determines that the defendant has previously been subject to an order of involuntary commitment, pursuant to Article 5 of Chapter 122C of the General Statutes, within the prior three years, or (ii) charged with any offense and the judicial official has reasonable grounds to believe the defendant is a danger to themselves or others, the judicial official shall set conditions of pretrial release in accordance with this Article and shall issue an order that includes all of the following:

- Require the defendant to receive an initial examination by a commitment examiner, as defined in G.S. 122C-3, to determine if there are grounds to petition for involuntary commitment of the defendant pursuant to Article 5 of Chapter 122C of the General Statutes. This examination shall comply with and satisfy the requirements of the initial examination as provided in G.S. 122C-263(c).
- Require the arresting officer to immediately transport, or cause to be transported by an officer of the arresting officer's agency, the defendant to a hospital emergency department or other crisis facility with certified commitment examiners for the initial examination. If the defendant has met all other conditions of pretrial release, the transporting officer may release the defendant after the initial examination is conducted if one of the following criteria is met:
 - No petition for involuntary commitment is filed pursuant to Article 5 of Chapter 122C of the General Statutes.
 - A petition for involuntary commitment is filed pursuant to Article 5 of Chapter 122C of the General Statutes, but no custody order is issued pursuant to G.S. 122C-261.
- Require the commitment examiner, after conducting the initial examination, to do one of the following:
 - Petition for involuntary commitment of the defendant pursuant to Article 5 of Chapter 122C of the General Statutes, if there are grounds for that petition.
 - Provide written notice to the judicial official that entered the order for initial examination that there are no grounds to petition for involuntary commitment of the defendant.

- Provide that, except as provided in subdivision (5) of this subsection, whether or not the defendant has met all other conditions of pretrial release, if a petition for involuntary commitment is filed pursuant to Article 5 of Chapter 122C of the General Statutes, the custody of the defendant shall be determined pursuant to the provisions of that Article during the pendency of that petition and any hearings and orders issued pursuant to that Article.
- Provide that if a defendant has not met all other conditions of pretrial release, if one of the following criteria is met, the defendant shall be transported to and held in the local confinement facility of the county where the conditions of pretrial release were set until all conditions of pretrial release have been met:
 - A petition for involuntary commitment is not filed pursuant to Article 5 of Chapter 122C of the General Statutes.
 - A custody order is not issued pursuant to G.S. 122C-261.
 - At any other time, the provisions of Article 5 of Chapter 122C of the General Statutes would result in the release of the defendant.

NCGS 122C-54(d) now provides that “Judicial officials determining whether a criminal defendant may be released before trial pursuant to G.S. 15A-533 may have access to the defendant's records of proceedings made pursuant to Article 5 of this Chapter for the purposes of determining whether a criminal defendant has been involuntarily committed within the previous three years.” Session law 2025-93.

4. 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 N.C.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 N.C.G.S. § 50B-1(b)(6); or (2) domestic criminal trespass; or (3) a violation of a 5OB order, only a judge can set conditions of release within 48 hours of arrest. N.C.G.S. § 15A-534.1(a). When a defendant is brought before a magistrate or clerk for an offense covered by this provision, the magistrate or clerk shall hold an initial appearance and order the defendant produced at the first 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, then the defendant must immediately be brought before a magistrate to set conditions of release. N.C.G.S. § 15A-534.1(b).

5. 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, N.C.G.S. § 14-277.6;

or (2) communicating a threat of mass violence at a place of religious worship, N.C.G.S. §14-277.7 only a judge can set conditions of release within the first 48 hours of arrest. N.C.G.S. § 15A- 534.7(a). When a defendant is brought before a magistrate or clerk for a covered offense, the magistrate or clerk shall hold an initial appearance and order the defendant produced at the first 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, then the defendant must immediately be brought before a magistrate to set conditions of release. N.C.G.S. § 15A-534.7(b).

6. 24-Hour Looting & Trespass during Emergency Cases. Effective December 1, 2023 and applying to offenses committed on or after that date, whenever a defendant is charged with: (1) rioting or inciting to riot, N.C.G.S. § 1-1-288.2: or (2) looting or trespass during an emergency, N.C.G.S. §14-288.6, only a judge can set conditions of release within the first 24 hours of arrest. S.L. 2023-6, § 4 codified as N.C.G.S. § 15A-534.8(a). When a defendant is brought before a magistrate or clerk for a covered offense, the magistrate or clerk shall hold an initial appearance and order the defendant produced at the first available session of district or superior court to have conditions of release determined by a judge. If a judge does not act within 24 hours, then the defendant must immediately be brought before a magistrate to set conditions of release. *Id.*

7. 48-Hour Rule for Defendants Arrested for Certain New Offenses while on Pretrial Release. Effective October 1, 2023, and applying to offenses committed on or after that date, whenever a defendant is arrested for (a) new charge(s) while on pretrial release, only a judge can set conditions of release within the first 48 hours after arrest. S.L.2023-75, §2(a), codified as N.C.G.S. § 15A-533(h). This law does not apply to new Chapter 20 offenses unless they are one of the following:

- impaired driving. N.C.G.S. § 20-138.1;
- habitual impaired driving, N.C.G.S. § 20-138.5;
- impaired driving in a commercial vehicle, N.C.G.S. § 20-138.2:
- operating a commercial vehicle after consuming alcohol. N.C.G.S. § 20-138.2A;
- operating a school bus, school activity bus, childcare vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle after consuming alcohol. N.C.G.S. § 20-138.2B; and
- death or injury by vehicle, N.C.G.S. § 20-141.4.

Id. Put another way, the hold only applies to non-Chapter 20 offenses and the Chapter 20 offenses included in the bulleted list above.

When a defendant is brought before a magistrate or clerk for a covered offense, the magistrate or clerk shall hold an initial appearance and order the defendant produced at the first 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, then the defendant must immediately be brought before a magistrate to set conditions of release. S.L. 2023-75, § 2(a), codified as N.C.G.S. § 15A-533(h).

8. Rebuttable Presumption Cases. As discussed below, in certain drug trafficking, gang, firearm, and enumerated felonies set forth in NCGS 15A-533(b), a presumption that no conditions of release can address defined pretrial risks applies. When this presumption applies, only a judge can set conditions of release, after certain findings.

C. Remote Proceedings.

The statutes allow for the initial appearance and other proceedings to determine, modify, or revoke conditions of release to be conducted by an audio and video transmission in which the parties, the presiding official, and any other participants can see and hear each other. The judicial official must safeguard the constitutional rights of those persons involved in the proceedings and preserve the integrity of the judicial process. The video conferencing application used to conduct remote proceedings must be approved by the Administrative Office of the Courts. N.C.G.S. § 7A-49.6.

D. Types of Release.

1. Effective December 1, 2025, N.C.G.S. § 15A-534(a) specifies four types of release and that, when conditions of release are set, at least one of these types of release must be imposed:

- (2) unsecured bond:
- (3) custody release to a person or organization agreeing to supervise the defendant:
- (4) secured bond; and/or
- (5) secured bond and house arrest with electronic monitoring (EHA).

2. (b) Except for a defendant charged with a violent offense, a judicial official in granting pretrial release must impose condition (2) or (3) set forth above unless he 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. Upon making the determination, the judicial official must then impose condition (4) or (5) instead of condition (2) or (3), and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a). However, if a defendant has been

convicted of three or more offenses *in separate sessions of court*, each of which is a Class 1 misdemeanor or higher offense, within the previous 10 years, the judicial official must then impose condition (4) or (5) as set forth above.

3. (b1) For a defendant charged with any violent offense, there shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community. However, if the judicial official determines that pretrial release is appropriate for a defendant, the judicial official must do one of the following:

(a) For a defendant charged with a first violent offense, impose condition (4) or (5) as set forth above.

(b) For a defendant charged with a second or subsequent violent offense, after (i) being convicted of a prior violent offense, or (ii) being released on pretrial release conditions for a prior violent offense, impose condition (5) as set forth above, if available.

(c) In determining which conditions of release to impose, the judicial official shall direct the arresting law enforcement officer, a pretrial services program, or a district attorney to provide a criminal history report for the defendant and shall consider the criminal history when setting conditions of pretrial release. Additionally, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, housing situation, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of his release; and advise him that his arrest will be ordered immediately upon any violation. In each and every order authorizing pretrial release for (i) a defendant who is charged with a violent offense or (ii) a defendant who has been convicted of three or more offenses in separate sessions of court, each of which is a Class 1 misdemeanor or higher offense, within the previous 10 years, the judicial official must make written findings of fact explaining the reasons why the judicial official determined the conditions of release to be appropriate by applying the factors provided in subsection (c) of this section. The order of release must be filed with the clerk and a copy given the defendant and any surety, or the agent thereof who is executing the bond for the defendant's release pursuant to that order.

(d1) Except for a defendant charged with a violent offense, when conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official

shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least one thousand dollars (\$1,000). 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. 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. 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.

(d2) Except for a defendant charged with a violent offense, when conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter. After making a determination pursuant to this subsection, the judicial official shall impose the following conditions:

(1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) as set forth above instead of condition (2) or (3).

(2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.

(3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in custody shall set forth, in writing, the following at the time that the order is entered:

a. The defendant is being held pursuant to this subdivision.

b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.

c. A date, within 72 hours or 96 hours if the courthouse is closed for transactions for a period longer than 72 hours, of the time of arrest, when the defendant shall be brought before a

judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. 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 Article.

In imposing any of these four conditions, the judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant.

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

N.C.G.S. § 15A-534(a)(4) provides that in determining conditions of release, a judicial official may " ... [r]equire the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage (pursuant to N.C.G.S. § 58-74-5), or by at least one solvent surety." Additionally, N.C.G.S. § 15A-531(4) provides that "[a] bail bond signed by any surety . . . is considered the same as a cash deposit for all purposes in this Article."

When imposing a secured bond, the judicial official may not also specify the means of satisfying the bond. Thus, "cash only" or "U.S. currency only" bonds are not permissible in this judicial district, except (1) as required by N.C.G.S. § 15A-531(4), cash bonds set in child support contempt proceedings may be satisfied only with the deposit of cash: and (2) should a contempt citation issue for non-payment of court costs, a cash appearance bond may be set in the amount of outstanding court costs in the respective case. Magistrates shall, however, honor any cash bond set by a judge.

A condition to abstain from alcohol consumption, as verified by a continuous alcohol monitoring system (CAM), is not EHA. For imposition of CAM as a condition of release, see below.

As discussed in section below, N.C.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 of release and a release under that hold to a sober responsible adult is not a custody release within the meaning of the pretrial release statutes.

NCGS 122C-54(d) now provides that "Judicial officials determining whether a criminal defendant may be released before trial pursuant to G.S. 15A-533 may have access to the defendant's records of proceedings made pursuant to Article 5 of this Chapter for the purposes of determining whether a criminal defendant has been involuntarily committed within the previous three years."

E. 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 procedures shall apply:

- A judicial official may delay the initial appearance, so that a law enforcement officer can investigate the defendant's identity.
- If a person (1) is charged with an offense involving impaired driving, as defined in N.C.G.S. § 20-4.01(24a), or driving while license revoked when the revocation is for an impaired driving revocation, as defined in N.C.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. N.C.G.S. § 15A-502(a6). N.C.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. 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 of release, as provided in this policy, taking into account the defendant's failure to self-identify.
- If the investigation is unsuccessful or cannot be done within twelve (12) 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).
- If a defendant fails to self-identify or provides a false or fictitious name to a law enforcement officer or judicial official, in connection with the current proceeding, the condition imposed shall include a secured bond, and this conduct constitutes a valid reason for setting a financial condition of release in excess of the amounts listed in the "Schedule of Suggested Bond Amounts," as set forth in "Attachment 'A'" hereto.

F. Non-Citizens.

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: otherwise, should such ICE detainer be lifted, then the defendant would have no conditions of release set for a pending charge(s) in this judicial district. If a judicial official is aware of an ICE detainer for a defendant, the judicial official shall provide an initial appearance and determine conditions of release, pursuant to this policy. The judicial official should note the existence of the detainer on the defendant's release order(s).

G.S. 162-62(b1)(2) now directs that “[i]f the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant,” then the judicial official shall order the prisoner be (1) held in custody and (2) transferred to the custody of an ICE officer “upon that officer’s appearance at the facility and request for custody.” Note, however, that G.S. 162-62(b1)(3) still instructs that transfer of custody to ICE does not occur if “continued custody of the prisoner is required by other legal process.”

S.L. 2025-85, Sec. 2: New Pretrial Release Provision (G.S. 15A-534(d4)) for Certain Defendants, Tied to Immigration Enforcement by ICE requires additional steps for a judicial official when determining conditions of pretrial release for certain defendants, applicable to “persons appearing before a judicial official for a determination of pretrial release conditions” on or after October 1, 2025.

The new provision applies to defendants charged with any felony; any Class A1 misdemeanor under Article 6A (Unborn Victims), Article 7B (Rape and Other Sex Offenses), or Article 8 (Assaults) of Chapter 14 of the General Statutes; any violation of G.S. 50B-4.1; or, any offense involving impaired driving as defined in G.S. 20-4.01 (mirroring the offenses now included under G.S. 162-62(a)).

For all such defendants, G.S. 15A-534(d4) now requires the judicial official to “attempt to determine if the defendant is a legal resident or citizen of the United States by an inquiry of the defendant, or by examination of any relevant documents, or both.” If the judicial official cannot affirmatively determine the defendant is a legal resident or citizen of the United States, the judicial official must proceed to set conditions of pretrial release and commit the defendant to the appropriate detention facility pursuant to G.S. 15A-521 (i.e., jail, juvenile detention facility or holdover facility) for fingerprinting and a further two-hour hold pending a query to ICE. If no detainer and administrative warrant has been issued by ICE by the end of the two-hour query period, then the defendant must be released pursuant to the terms and conditions of the pretrial release order. However, if ICE does issue a detainer and administrative warrant within the two-hour query period, the defendant must instead be processed pursuant to G.S. 162-62(b1) (see above). Form AOC-CR-663 (Conditions of Release for Person Whom Judicial Official is Unable

to Determine to be Legal Resident or Citizen of the United States) shall be used to facilitate the two-hour ICE query hold when required pursuant to G.S. 15A-534(d4).

G. Compliance with Odyssey/Enterprise Justice.

When establishing initial conditions of release, or when setting conditions of release following (a) failure(s) to appear, pursuant to the Pre-Trial Integrity Act or other law requiring setting of conditions of release by a judicial official, when a single defendant has multiple criminal cases (meaning case numbers, not multiple charges within a single case number) before the court, the judicial official must establish/set separate conditions of release in each said criminal case, in order to comply with the restrictions and processes of the Odyssey/Enterprise Justice system.

H. Considerations in Setting Pretrial Conditions of Release.

The requirements of Article 26 of Chapter 15A of the North Carolina General Statutes shall be followed by all judicial officials in this judicial district.

1. The judicial official shall make findings relating to the setting of bond. In each and every order authorizing pretrial release for (i) a defendant who is charged with a violent offense or (ii) a defendant who has been convicted of three or more offenses in separate sessions of court, each of which is a Class 1 misdemeanor or higher offense, within the previous 10 years, the judicial official must make written findings of fact explaining the reasons why the judicial official determined the conditions of release to be appropriate by applying the factors listed below. The order of release must be filed with the clerk and a copy given the defendant and any surety, or the agent thereof who is executing the bond for the defendant's release pursuant to that order.
 - a. The judicial official shall consider pursuant to NCGS 15A-534(c) the following factors in the setting of pretrial release conditions for each Defendant:
 - Criminal history
 - Nature and circumstances of the offense charged;
 - Weight of the evidence against the defendant;
 - Defendant's family ties,
 - Employment,
 - Financial resources,
 - Character,
 - Housing situation,
 - Mental condition;

- Whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision;
- Length of residence in the community;
- History of flight to avoid prosecution or failure to appear at court proceedings;
- Any other evidence relevant to the issue of pretrial release.

Additional factors that may be considered by the judicial official in setting conditions of release may include, but are not limited to:

- Defendant's current physical condition
- Defendant's history of compliance with condition of pre-trial release;
- Whether the defendant is a legal resident of the United States;
- Whether the defendant is a citizen of another country, although a legal resident of the United States [Does the judicial official find the defendant's ability to cross international borders could allow the defendant to elude and avoid the jurisdiction of our courts?];
- Whether the defendant is charged with committing the offense under consideration while on pretrial release for a separate offense [In accordance with N.C.G.S. §15A-534(d3), the judicial official should consider requiring a secured appearance bond in an **amount at least double the amount of the most recent previous secured or unsecured bond, in a minimum amount of \$1,000.00.**];
- Whether there is evidence that the defendant intends to flee or fail to appear in court;
- Whether there is reliable information as to the identity of the defendant;
- Whether the defendant's release may result in: injury to any person, intimidation of any witness, destruction of evidence, subornation of perjury, or intimidation of any witness;
- Whether the defendant is charged with an offense as defined by N.C.G.S. §15A-830 ("Crime Victim's Rights Act");
- Whether the defendant attempted to unreasonably flee from or resisted arrest or struggled with the arresting officer(s), respecting the charge(s) on which the judicial official is considering setting conditions of pretrial release;
- The conduct of the defendant before the judicial official setting pretrial conditions of release.

Effective December 1, 2025 as codified in session law 2025-93 NCGS 15A-501(2a) requires a law enforcement officer “Must inform any judicial official determining conditions of pretrial release pursuant to Article 26 of this Chapter of any relevant behavior of the defendant observed by the officer prior to, during, or after the arrest that may provide reasonable grounds for the judicial official to believe the defendant is a danger to themselves or others”.

A. Probation Violations.

Unless a specific statute exists, requiring other conditions of release or procedures, as may be set forth below, the following policies apply for setting of conditions of release, respecting allegations of violation(s) of probation.

a. Technical Violations.

A "*Technical violation*" refers to a violation other than absconding or conduct that constitutes a new criminal offense. When setting conditions of release for alleged technical violation(s), the judicial official should consider:

- (1) The nature and severity of the underlying conviction(s);
- (2) The defendant's criminal history, including any other pending allegations of probation violations;
- (3) The number of alleged technical violations, including whether multiple instances are included in a single allegation on a "Probation Violation Report;"
- (4) The circumstances and seriousness of the alleged violation(s);
- (5) The potential risk to public safety; and
- (6) The likelihood of defendant appearing at future court dates.

b. Subsequent Criminal Conduct.

For alleged violations that constitute new criminal offenses, in addition to the considerations listed for technical violations above, the judicial official should consider:

- The nature and severity of the conduct alleged to constitute the violation(s), including the level(s) of the related offense(s).

a. Absconding.

When the allegation(s) involve absconding, as defined by N.C.G.S. § 15A-13-13(b)(3a) and interpreting case law, conditions shall be set in accordance with this policy, except:

- The allegation of absconding shall be prima facie evidence that types of release other than secured bond will not reasonably assure the defendant's appearance.
- Such allegation may be deemed exceptional circumstances that justify upward deviation from the amounts listed in the "Schedule of Suggested Bond Guidelines" in "Attachment A" hereto.

I. Timing of Pretrial Release Decisions.

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

- a. General Rule. The initial appearance must be held without unnecessary delay. N.C.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; grossly intoxicated; unconscious; or otherwise, unable to understand the procedural rights afforded by the initial appearance, the judicial official may temporarily delay the proceeding and order the defendant temporarily confined. N.C.G.S. § 15A-511(a)(3).

NOTE: Delay under this subsection applies to the entire initial appearance- not just the setting of release conditions. When imposing 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 within a reasonable time or upon a specified contingency (e.g. : "when the defendant wakes up").

2. Probation Violations. When setting a first appearance in court for a defendant in custody on a secured bond for an alleged probation violation magistrates shall observe the following provision.

Under N.C.G.S. § 15A-1345(c), The court must hold a preliminary hearing on a probation violation within seven (7) working days (excluding weekends, legal holidays, or other days with no court sessions), unless the probationer waives the preliminary hearing or a final violation hearing is first held. The purpose of the preliminary hearing is to determine whether probable cause exists to believe the probationer violated a condition of probation. If the preliminary hearing is not held, then said defendant must be released seven (7) working days after his/her arrest to continue on probation, pending a hearing unless the probationer is covered under N.C.G.S. § 15A-1345(b1) and has been determined to be a danger to the public, in which case he/she must be held until final violation hearing.

J. Defense Counsel.

At any proceeding where conditions of release are considered for a defendant who is represented by counsel (including initial appearance, first appearance, or any subsequent bail hearing), the defendant shall be allowed to communicate fully and confidentially with counsel before and during the proceeding and defense counsel (or the defendant, if unrepresented) shall be afforded the opportunity to be heard.

K. Rules of Evidence.

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

L. 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 and this policy.

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. 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 of release into the AOC electronic system as soon as reasonably possible after the order is filed. Orders or modifications entered in this manner shall 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.

M. Modifying Conditions of Release.

1. Sua Sponte by the Judicial Official.

a. Magistrates and Clerks. A magistrate or a clerk may modify their own pretrial release order at any time before the first appearance before the district or superior court judge. N.C.G.S. § 15A-534(e). A magistrate or clerk may modify release order set by another magistrate or clerk should the magistrate or clerk who established said release order be not reasonably available in person or by telephonic or electronic means. Once the case is in district court, the magistrate or clerk may not set or modify conditions of release unless (1) authorized to do so by a judge; or (2) the defendant is re-arrested and brought before the magistrate or clerk for an initial appearance after the re-arrest.

b. District Court Judges. At or after a first appearance, except when the conditions of release have been reviewed by the superior court, pursuant to N.C.G.S. § 15A-539, a district court judge may modify a pretrial release order of a magistrate or clerk or any pretrial release order entered by the judge at any time before:

- in a misdemeanor case, tried in district court, the noting of an appeal, after the time for entering or withdrawing of appeal has expired; and
- in a case in the original trial jurisdiction of the superior court, the binding over of the defendant to superior court, after the holding or waiver of a probable cause hearing.

N.C.G.S. § 15A-535(e).

c. Superior Court Judges. A superior court judge may modify any prior release order (magistrate, clerk, or district court judge) or one issued by themselves, at any time before the defendant's guilt is established in superior court. N.C.G.S. § 15A-536.

2. Modifications on Motion of a Party.

a. Defendant's Motion. N.C.G.S. § 15A-538(a) provides that a defendant, who is detained or objects to conditions of release imposed or allowed to stand by order of a district court judge, may apply in writing to a superior court judge to modify the order.

b. State's Motion. N.C.G.S. § 15A-539(a). The State may at any time apply to an appropriate district or superior court judge for modification or revocation of a release order.

3. For Substitution of Surety.

The power to modify an order of release includes the power to substitute sureties upon any bond. N.C.G.S. § 15A-538(b). Substitution or addition of acceptable sureties may be made at the request of any obligor on a bond or, in the interests of justice, at the request of a prosecutor, pursuant to N.C.G.S. § 15A-539.

4. Source of Money or Property to Be Posted.

On the State's motion, or sua sponte, a judge may, for good cause shown, conduct a hearing into the source of money or property to be posted for any defendant who is about to be released on a secured bond. N.C.G.S. § 15A-539(b). The court may refuse to accept offered money or property as security for the bond if because of its source, it will not reasonably assure the appearance of the defendant, as required. *Id.* The State shall have the burden of proving, by a preponderance of the evidence, the facts supporting the court's decision to refuse to accept the offered money or property as security. *Id.*

N. Revoking a Pretrial Release Order.

For good cause shown, a judge may, at any time revoke an order of pretrial release. N.C.G.S. § 15A-534(f). Upon application of any defendant, whose pretrial release has been revoked, the judge shall set new conditions of release, in accordance with this policy. *Id.*

If the defendant has already been released from custody at the time the judge revokes release order, and the defendant is not present in court, the judge may issue an order for the defendant's arrest. N.C.G.S. § 15A-305(b)(5).

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 N.C.G.S. § 15A-534(h)(1), thereby releasing the obligors from their obligation.

O. Habitual Felon, Violent Habitual Felon & Armed Habitual Felon.

Habitual felon, violent habitual felon, and armed habitual felon are legal statuses, not substantive criminal offenses. Accordingly, conditions of release, including a secured bond, shall **not** be set or recommended in an order for arrest issued solely upon return of an indictment alleging one of these statuses as the only count. Conditions of release may be set only in connection with the "habitualized" underlying substantive offense. When an indictment is returned solely for one of these statuses, the State may seek modification of the bond in the underlying substantive felony upon which the status is based.

P. Offense Committed While on Pretrial Release.

N.C.G.S. § 15A-534(d3) provides that when setting conditions of release for a defendant charged with an offense committed while on pretrial release for another offense, a judicial official may impose a secured bond in double the amount of any monetary bond previously set. If there was no prior monetary bond, the judicial official may impose a secured bond of at least \$1,000.

Q. Warrantless Arrest for Violation of Conditions of Release.

Under N.C.G.S. § 15A-401(b)(2)f, a law enforcement officer may arrest a defendant without a warrant for violation of conditions of release. When the defendant appears before a judicial official following 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 release and set appropriate new conditions, in accordance with this policy. If new conditions are warranted, a new release order shall be entered.

When setting new conditions following a warrantless arrest for a release violation, judicial officials shall not issue new criminal process, unless the conduct also constitutes a separate, new substantive criminal offense.

Judicial officials should not charge "violation of a court order" under N.C.G.S. § 14-226.1 for violations of release orders. By its terms that statute is limited to violations of orders issued

"for the purpose of maintaining or restoring public safety and public order, or to afford protection for lives or property during times of a public crisis, disaster, riot,

catastrophe, or when such condition is imminent, or for the purpose of preventing and abating disorderly conduct as defined in N.C.G.S. § 14-288.4."

The North Carolina Administrative Office of the Courts advises that this provision applies only to orders issued in the context of civil disturbances. If the judicial official decides to pursue contempt for violation of the prior release order, the judicial official should initiate separate proceedings for contempt, via show cause order, AOC-CR-219), and should not issue criminal process charging "violation of court order."

R. When Release Is Not Authorized.

Whenever bail is denied, the judicial official shall document in writing the specific reason why the release is unauthorized. The finding must cite to the specific statute authorizing or requiring the denial of bail.

S. Juveniles Prosecuted as Adults in Superior Criminal Court.

If a juvenile is being prosecuted as an adult in criminal superior court, that juvenile's conditions of pretrial release shall be established in accordance with the policies set forth in these guidelines (including by the district court upon entry of a transfer order). Any such release order shall specify the person or persons to whom the juvenile may be released. N.C.G.S. § 7B- 2204.

When a person charged with a crime is committed to a detention facility and is under the age of 18, that person must be committed to a juvenile detention facility approved by the North Carolina Division of Juvenile Justice (DJJ). N.C.G.S. § 15A-521(a). Once an order of commitment is issued, it must be delivered to a law enforcement officer who must then deliver both the order and the juvenile to the appropriate juvenile detention facility. N.C.G.S. § 15A-521(c)(1)

III. DOCUMENTATION.

Documentation reflecting findings made during hearings before magistrates is necessary to ensure compliance with statutory mandates [N.C.G.S. § 15A-534(b)(b)] and applicable case law. Such documentation also aids judges in reviewing cases, setting conditions of release, or considering motions to modify pretrial release conditions.

IV. ADDITIONAL AND EXCEPTIONAL CONSIDERATIONS.

A. Additional Restrictions & Conditions of Release.

1. DNA & Fingerprints.

If the defendant is required to provide fingerprints pursuant to N.C.G.S. § 15A-502(a1), (a2), (a4), or (a6), or a DNA sample pursuant to N.C.G.S. § 15A-266.3A or N.C.G.S. § 15A-266.4 and those fingerprints or DNA samples have not yet been taken on the defendant has refused to provide them, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. N.C.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 types of release specified in N.C.G.S. § 15.534(a) (written promise to appear; unsecured bond; custody release to a person or organization agreeing to supervise the defendant; secured bond; and secured bond with electronic house arrest), the judicial official may impose restrictions on the defendant's travel, associations, conduct, or place of abode of the defendant as conditions of release. N.C.G.S. § 15A-534(a).

The judicial official may also require, as a condition of pretrial release, that the defendant abstain from alcohol consumption, verified by the use of a continuous alcohol monitoring system (CAM). This condition must be reasonably related for the purpose of pretrial release and must use a monitoring device approved by the Department of Adult Correction or Juvenile Justice Division of the Department of Public Safety. Any violation of this condition must be reported by the monitoring provider to the district attorney. N.C.G.S. § 15A-534(a).

When imposing CAM in non-domestic violence cases, the judicial official shall use form AOC-CR-242. Domestic violence cases are addressed in the following section:

- b. Domestic Violence Cases. In domestic violence cases subject to the 48-hour rule, the following additional conditions of release 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 his/her child(ren) only at times and places provided by the terms of any existing order entered by a judge: and/or
 - That the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring (CAM) system, approved by the Department of Adult Correction or Juvenile Justice Division of the Department of Public Safety, and that any violation of this condition be reported by the monitoring provider to the district attorney.

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

c. Cases Involving Certain Child Victims.

In all cases, in which the defendant is charged with:

- (1) Felonious or misdemeanor child abuse;
- (2) Taking indecent liberties with a minor in violation of N.C.G.S. § 14-202.1;
- (3) Rape or any other sex offense in violation of N.C.G.S. § Article 7B, Chapter 14 of the General Statutes, against a minor victim; incest with a minor in violation of N.C.G.S. § 14-178; or kidnapping, abduction, or felonious restraint involving a minor victim;
- (4) A violation of N.C.G.S. § 14-320.1 (transporting a child outside the State with intent to violate custody order); or
- (5) Assault or any other crime of violence against a minor victim, or communicating a threat against a minor victim, the judicial official **shall** impose the following additional conditions of 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; and
- That the defendant refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.

N.C.G.S. § 15A-534.4(a). Upon request of the defendant, the judicial official may waive one or more of these conditions of release, 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.

N.C.G.S. § 15-534(b). Form AOC-CR-631 shall be used to impose the additional conditions of release and to record the findings required for waiver, when applicable.

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 N.C.G.S. § 14-277.6; or
- (2) Communicating a threat of mass violence at a place of religious worship in violation of N.C.G.S. § 14-277.7,

the following conditions of release may be imposed:

- That the defendant stay away from the educational property or place of religious worship against which the threat was communicated; and/or
- 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. N.C.G.S. § 15A-534.7.

e. Cases Involving Rioting, Looting, or Trespass During Emergency.

Effective December 1, 2023, and applying to offenses committed on or after that date, when the defendant is charged with:

- (1) rioting or inciting to riot, in violation of N.C.G.S. § 14-288.2; or
- (2) looting or trespass during an emergency, in violation of N.C.G.S. § 14-288.6, the judicial official may order that the defendant stay away from specific locations or property where the offense occurred. S.L. 2023-6, § 4, to be codified as N.C.G.S. § 15A-534.8(a)(2).

f. Arrest after Failure to Appear (FTA).

N.C.G.S. § 15A-534(d1) provides that, when setting conditions of release 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.*

B. Special Cases.

The following sections below detail the exceptions to the general rules set out in this section and are organized by type of exception: when release is not authorized; when statutory presumptions against release apply; when the statute requires consideration of certain information; and when the statute requires or prohibits certain conditions. To streamline application of this policy, this section provides an at-a -glance summary of the rules that apply in three recurring situations that involve several types of exceptions.

a. 48-Hour Domestic Violence Cases

- Only a judge may set conditions within first 48 hours of arrest.
- Additional conditions may be imposed.
- Special hold for conditions when immediate release poses a danger of injury or is likely to result in intimidation of victim.
- Must consider criminal history when setting conditions.

b. Probation Violator with Pending Felony/Conviction Requiring Sex Offender Registration

- Judicial official must determine if defendant poses a "danger to the public" before setting conditions of release.
- If yes, deny conditions of release, pending the probation violation hearing.
- If no, follow general rules. If insufficient information, detain until determination can be made.

- If detention lasts seven (7) days, probationer must immediately be brought to any judicial official who must set conditions of release per this policy.

c. Probationer Charged with Felony

- Judicial official must determine if poses a "danger to the public" before setting conditions of release.
- If yes, must impose secured bond.
- If no, follow general rules.
- If insufficient information, detain until determination can be made, making required written findings & setting case for first appearance.
- At first appearance, judge determines conditions per this policy.

d. 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."

i. Capital & Certain Non-Capital Felony Offenses.

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. N.C.G.S. § 15A-533(c). A magistrate or clerk must deny release when determining conditions of release for a defendant charged with a capital offense. Effective October 1, 2023, this rule also applies to the following felonies:

- First or second-degree murder, N.C.G.S. § 14-17, and attempts to commit those offenses;
- First or second-degree kidnapping, N.C.G.S. § 1-1-39;
- First degree forcible rape, N.C.G.S. § 14-27.21, or sexual offense. N.C.G.S. § 14-27.26;
- Second-degree forcible rape, G.S-14-27.22, or sexual offense, N.C.G.S. § 14-27.27;
- Statutory rape of or sexual offense with a child by an adult, N.C.G.S. § 14-27.23: N.C.G.S. § 14-27.28;
- First-degree statutory rape, N.C.G.S. § 14-27.24, or sexual offense, N.C.G.S. § 14-27.29;
- Statutory rape of or sexual offense with a person 15 years old or younger, N.C.G.S. § 14-27.25; N.C.G.S. § 14-27.30;
- Human trafficking, N.C.G.S. § 14-43.11;

- Assault with a deadly weapon with intent to kill inflicting serious injury. N.C.G.S. § 14-32(a);
- Discharging barreled weapons or firearm into occupied property, N.C.G.S. § 14-34.1;
- First-degree burglary, pursuant to N.C.G.S. § 14-51;
- First-degree arson, pursuant to N.C.G.S. § 14-58; and
- Armed robbery, N.C.G.S. § 14-87.

N.C.G.S. § 15A-533(b). Effective December 1, 2025 as codified in session law 2025-93 there shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community for a defendant charged with a crime listed under any of the subdivisions of this subsection. However, if the judge determines that release is warranted for a defendant charged with a crime listed under any of the subdivisions of this subsection, the judge shall set conditions of pretrial release in accordance with G.S. 15A-534

ii. 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. N.C.G.S. § 15A-1368.6; N.C.G.S. § 15A-1376. Upon committing the defendant to custody, if a probation/parole officer was not the arresting officer, the presiding judicial official should notify the local chief probation or parole officer of the arrest as soon as feasible or ensure that such notification is made.

iii. Certain Fugitives.

A fugitive defendant, charged in another state with an offense punishable by death or life imprisonment, has no right to pretrial release. N.C.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 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. N.C.G.S. § 15A-736.

iv. 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 or not 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. N.C.G.S. § 148-65.8(a). Upon committing the defendant to custody, if a probation/parole officer was not the arresting officer, the presiding judicial official should notify the local chief probation or parole officer of the arrest, as soon as feasible, or ensure that such notification is made, so that the local probation office can notify North Carolina's Interstate Compact office of the arrest.

v. 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. N.C.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. N.C.G.S. § 15A-533(a).

vi. 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.

vii. Impaired Driving Hold.

An impaired driving hold must be imposed when a magistrate finds both probable causes to charge the defendant with an offense involving impaired driving, as defined in N.C.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. N.C.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.

N.C.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 N.C.G.S. § 15A-534 and this policy. N.C.G.S. § 15.534.2. 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. N.C.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.

viii. Hold for Violators of Health Control Measures.

This statute applies when a person is arrested for violating orders that limit freedom of movement or access issued under:

- N.C.G.S. § 130A-475 Pertains to incidents involving nuclear, biological, or chemical agents.
- N.C.G.S. § 130A-145 Relates to quarantine and isolation authority.

If a judicial official, during an initial appearance, finds by clear and convincing evidence that the individual poses a threat to the health and safety of others, the official must:

- Deny pretrial release.
- Order confinement in a designated area or facility.

This pretrial confinement continues until a judicial official determines that the person no longer poses a threat, based on recommendations from the State or local health director.

ix. Communicable Disease Testing Hold.

This provision is invoked when a judicial official finds probable cause that an individual had nonsexual exposure to the defendant in a manner posing a significant risk of transmitting:

- AIDS virus
- Hepatitis B

In such cases, the official must:

- Order detention of the defendant for a reasonable period, not exceeding 24 hours.
- Facilitate investigation and testing by public health officials, if required, pursuant to N.C.G.S. § 130A-144 and N.C.G.S. § 130A-148.

This detention is solely for the purpose of investigation and testing and does not delay the setting of pretrial release conditions.

N.C.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.

x. Hold for Conditions of Release.

a. Certain New Offenses while on Pretrial Release.

As discussed above, effective October 1, 2023 only a judge can set conditions of release when a defendant is arrested for a new offense while on pretrial release. S.L. 2023-75, § 2(a) to be codified as N.C.G.S. § 15A-533(h). This new law does not apply to new Chapter 20 offenses unless they are one of the following:

- impaired driving, N.C.G.S. § 20-138.1;
- habitual impaired driving, N.C.G.S. § 20-138.5;
- impaired driving in a commercial vehicle, N.C.G.S. § 138.2;
- operating a commercial vehicle after consuming alcohol, N.C.G.S. 20- 138.2A;
- operating a school bus, school activity bus, childcare vehicle, ambulance, other EMS vehicle, firefighting vehicle or law enforcement vehicle after consuming alcohol, N.C.G.S. § :20- 138.2B; and
- death or injury by vehicle. N.C.G.S. § 20-141.4.

b. Domestic Violence Cases.

As discussed above, only a judge can set conditions of release for cases that fall within the scope of the 48-hour domestic violence rule. N.C.G.S. § 15A-534.1(a)(1) allows for a separate hold that may be ordered when conditions are being considered in these cases. Specifically, it provides that, upon a determination that:

- (1) immediate release of the defendant 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) the 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, while determining the conditions of release. N.C.G.S. § 15A-534.1(a)(1).

c. Threat of Mass Violence Cases.

As discussed above, only a judge can set conditions of release for cases that fall within the scope of the 48-hour threat of mass violence rule. N.C.G.S. § 15A-534.7 allows for a separate hold that may be ordered when conditions actually are being considered in these cases. Specifically, it provides that, upon a determination that:

- (1) immediate release of the defendant will pose a danger of injury to persons: and
 - (2) the 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.
- N.C.G.S. § 15A-534.7(a)(1).

d. Rioting, Looting & Trespass during Emergency Cases.

As discussed above, effective December 1, 2023, for offenses committed on or after that date, only a judge can set conditions of release for cases that fall within the scope of the 24-hour rioting, looting & trespass during emergency rule. S.L. 2023-6. § 4, to be codified as N.C.G.S. § 15A-534.8. The statute allows for a separate hold that may be ordered when conditions actually are being considered in these cases. Specifically, it provides that, upon a determination that, upon a determination by the judge that;

- (1) immediate release of the defendant will pose a danger of injury to persons: and
- (2) the execution of an appearance bond will not reasonably assure that such injury will not occur, the judge may order the defendant detained in custody for a reasonable period of time, while determining the conditions of release. *Id.*

e. 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 . N.C.G.S. § 15A-534(d2).

If the defendant poses such a danger a secured bond must be imposed. N.C.G.S. § 15A-534(d2)(1). If the defendant does not pose such a danger, conditions of release are determined under the general rules set out in this policy. N.C.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. N.C.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 N.C.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 72 hours of arrest or 96 hours, if the courthouse is closed for transactions for a period longer than 72 hours, when the defendant will be brought to a judge for a first appearance.

N.C.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 before the first appearance, the first available judicial official shall set the conditions of release. *Id.* The judge who reviews the defendant's eligibility for release, at the first appearance, shall determine the conditions of release as provided in this policy.

f. 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 N.C.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. N.C.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. N.C.G.S. § 15A1345(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.

N.C.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. N.C.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 (7) 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 of release as otherwise provided in this policy. N.C.G.S. § 15A-1345(b1)(4).

xi. Exceptions-Statutory Presumptions Against Release.

a. Capital & Certain Non-Capital Felony Offenses.

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. N.C.G.S. § 15A-533(c). A magistrate or clerk must deny release when determining conditions of release for a defendant charged with a capital offense. Effective October 1, 2023, this rule also applies to the following felonies:

- First or second-degree murder, N.C.G.S. § 14-17, and attempts to commit those offenses;
- First or second-degree kidnapping, N.C.G.S. § 1-1-39;
- First degree forcible rape, N.C.G.S. § 14-27.21, or sexual offense. N.C.G.S. § 14-27.26;
- Second-degree forcible rape, G.S-14-27.22, or sexual offense, N.C.G.S. § 14-27.27;
- Statutory rape of or sexual offense with a child by an adult, N.C.G.S. § 14-27.23; N.C.G.S. § 14-27.28;
- First-degree statutory rape, N.C.G.S. § 14-27.24, or sexual offense, N.C.G.S. § 14-27.29;
- Statutory rape of or sexual offense with a person 15 years old or younger, N.C.G.S. § 14-27.25; N.C.G.S. § 14-27.30;
- Human trafficking, N.C.G.S. § 14-43.11;
- Assault with a deadly weapon with intent to kill inflicting serious injury. N.C.G.S. § 14-32(a);
- Discharging barreled weapons or firearm into occupied property, N.C.G.S. § 14-34.1;
- First-degree burglary, pursuant to N.C.G.S. § 14-51;
- First-degree arson, pursuant to N.C.G.S. § 14-58; and
- Armed robbery, N.C.G.S. § 14-87.

N.C.G.S. § 15A-533(b). Effective December 1, 2025 as codified in session law 2025-93 there shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community for a defendant charged with a crime listed under any of the subdivisions of this subsection. However, if the judge determines that release is warranted for a defendant charged with a crime listed under any of the subdivisions of this subsection, the judge shall set conditions of pretrial release in accordance with G.S. 15A-534

b. Recidivist Drug Trafficking.

Under N.C.G.S. § 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 (5) 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, 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 "N.C.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. N.C.G.S. § 15A-533(g).

c. Recidivist Gang Offense. Under N.C.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 N.C.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 N.C.G.S. § 14-50.16 through N.C.G.S. § 14- 50.20; or has been convicted of a criminal offense and received an enhanced sentence for that offense, pursuant to N.C.G.S. § 15A-1340.16E, and not more than five (5) years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

If the presumption applies 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 "N.C.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. N.C.G.S. § 15A-533(g).

d. Recidivist Firearm-Involved Offense.

Under N.C.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 either;
- 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 (5) years have elapsed since the date of conviction or the person's release for the offense, whichever is later. If the presumption applies, 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 "N.C.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. N.C.G.S. § 15A-533(g).

e. Manufacture of Methamphetamine.

Under N.C.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 N.C.G.S. § 90- 95(b)(1a) (manufacture of methamphetamine) or N.C.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 "N.C.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. N.C.G.S. § 15A-534.6.

xii. Exceptions-Statute Requires Consideration of Certain Information.

a. Domestic Violence Cases. N.C.G.S. § 15A-534.1(a) provides that, when setting conditions of release in 48-hour rule domestic violence cases, 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 of release. After setting conditions of release, the judge must return the report to the providing agency or department and it shall not be included with the paperwork delivered to the clerk for filing. The judge may not unreasonably delay the determination of conditions of release to review the criminal history report. N.C.G.S. § 15A-534.1(a).

b. Threat of Mass Violence Cases. N.C.G.S. § 15A-534.7 provides that, when setting conditions of release in 48-hour rule threat of mass violence cases, 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. Rioting, Looting, & Trespass during Emergency Cases. Effective December 1, 2023 and for offenses committed on or after that date, when setting conditions of release in 24-hour rule rioting, looting, and trespass during emergency cases, 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 of release. After setting conditions of release, the judge must return the report to the providing agency or department and it shall not be included with the paperwork delivered to the clerk for filing. The judge may not delay the determination of conditions of release to review the criminal history report. S.L. 2023-6, § 4, to be codified as N.C.G.S. § 15A-534.8(a).

d. Certain Offenses Committed while on Pretrial Release. Effective October 1, 2023 and for offenses committed on or after that date, when setting conditions of release for certain offenses committed when the defendant was on pretrial release, the judicial official must direct a law enforcement officer, pretrial services program, or district attorney to provide the defendant's criminal history report and risk assessment, if available, for the defendant, and must consider that history when setting conditions of release. After setting conditions of release, the judge must return the report to the providing agency or department. The judge may not unreasonably delay the determination of conditions of release to review the criminal history report. S.L. 2023-75, § 2(a), to be codified as N.C.G.S. § 15A-533(h).

e. Probationer Charged with Felony. N.C.G.S. § 15A-534(d2) provides that, when determining conditions of release for 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."

If the judicial official finds that the defendant poses a danger to the public, then the judicial shall impose a secured bond. N.C.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. N.C.G.S. § 15A534(d2)(2). If the judicial official has insufficient information to make the required determination, then the judicial official shall proceed as instructed above.

f. 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 N.C.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." N.C.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. N.C.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. N.C.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 subsection 10.f. above.

g. **Manufacturing of Methamphetamine Cases.**

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. N.C.G.S. § 15A-534.6. Whenever there is evidence of such a dependence or pattern of use, the presumption discussed in subsection 11d. above may apply.

xiii. **Exceptions-Statute Requires or Prohibits Certain Conditions of Release.**

a. Arrest after Failure to Appear (FTA).

When conditions of release are being imposed on a defendant who has failed to appear for the charge(s) to which the conditions of release apply the judicial official must at a minimum, impose the conditions of release recommended by the Order for Arrest (OFA). N.C.G.S. § 15-534(d1). If no conditions of release 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 charge(s) or, if no bond has yet been required for the charge(s), 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 (2) or more prior occasions to appear to answer the charge(s), 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 above, a defendant arrested on a fugitive process, under N.C.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. N.C.G.S. § 15A-736. When setting a secured bond in these cases, judicial officials must follow this bond policy, also considering the underlying charge(s) or conviction(s), as well as giving attenuated consideration to the possibility of flight. 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." N.C.G.S. § 15A-534(d2). If the judicial official finds that the defendant poses a danger to the public, then the judicial shall impose a secured bond. N.C.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. N.C.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 subsection 10e. above.

d. Infractions.

1. North Carolina Residents. A North Carolina resident, charged only with an infraction, may not be required to post an appearance bond, N.C.G.S. § 15A-1113 (c)(2), and may not be committed to custody with conditions of release.

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 non-resident violator compact, as defined in N.C.G.S. § Chapter 20, Article 1B;
 - (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.
- N.C.G.S. § 15A-1113(c)(1). The compact carves out from its scope infractions that would result in the suspension or revocation of a license. N.C.G.S. § 20-4.19(b). As a result, an appearance bond may be set for an infraction that would result in revocation. *Id.*; N.C.G.S. § 15A-1113(c). However, only one motor vehicle infraction requires revocation: Failure to yield resulting in serious bodily injury, in violation of N.C.G.S. § 20-160.1. If a secured bond is imposed on a non-North Carolina resident for a motor vehicle infraction and the person is unable to post the bond, the judicial official *must* allow release on an unsecured bond. N.C.G.S. § 15A-1113(c).

e. 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.

N.C.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, bond may be imposed for wildlife infractions only if 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. N.C.G.S. § 15A-1113(c). Almost all states are members of the compact.

f. Other Infractions-Non-NC Residents.

For other infractions, state law provides that non-North Carolina residents may be required to post an appearance bond, N.C.G.S. § 15A-1113(c); however, bond may be

imposed for other infractions only if 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. *Id.*

V. FIRST APPEARANCES.

North Carolina law requires a first appearance for defendants charged with felony offenses and for defendants charged with misdemeanor offenses and held in custody. N.C.G.S. § 15A-601(a). Unless the courthouse is closed for transactions for a period longer than 72 hours, a defendant held in custody on a felony or misdemeanor charge must have a first appearance within 72 hours after being taken into custody, or at the first session of district court, whichever occurs first. N.C.G.S. § 15A-601(c). If the courthouse is closed for transactions for a period longer than 72 hours, the time window for the first appearance is extended to 96 hours. *Id.* If the defendant is not taken into custody or is released before the first appearance the proceeding must be held at the next session of district court. *Id.*

These requirements do not apply to defendants whose first appearance is set in a criminal summons. *Id.* If a district court judge "is not available in the county" within the required time period for conducting the first appearance, the clerk of the superior court in the county where the defendant is taken into custody may conduct the proceeding. N.C.G.S. § 15A-601(e). If the clerk is not available, a magistrate may conduct the first appearance. *Id.*

VI. SURRENDER.

a. Arrest for Surrender.

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

b. Who Can Accept Surrender.

Judicial officials may not accept surrenders directly. Surrender only may be made to the Sheriff. N.C.G.S. § 15A-540. Any surety offering a defendant to a judicial official for surrender shall be directed to the Sheriff.

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 or not 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 of release 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 hold or release the defendant pursuant to the release order that was entered after arrest on the OFA.

VII. RELEASE FOLLOWING CONVICTION IN SUPERIOR COURT.

Entry of final judgment in superior court terminates any bond posted to secure the defendant's release. N.C.G.S. § 15A-534(h). Entry of judgment occurs when sentence is pronounced. N.C.G.S. § 15-101(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 N.C.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.

VIII. STACKING AND SPLITTING BONDS.

Bonds may not be split or stacked. When there is more than one surety, whether it is a professional surety, a representative of an insurance company, or a private individual, each shall post and be jointly and severally liable for the entire amount of the authorized bond.

IX. PROPERTY BOND REQUIREMENTS.

When the amount of a secured bond is \$50,000.00 or greater, the person or persons seeking to post such surety bond for a defendant's appearance in court shall employ an attorney to prepare a First Deed of Trust with a Power of Sale provision describing the realty that is to serve as security by a sufficient legal description, together with a Promissory Note in the full amount of the bond. The Deed of Trust shall be the first lien on the real estate and there may be no other liens or judgments against the property recorded or docketed prior to the date of recording the Deed of Trust. The Deed of Trust and Note shall name the Clerk of Superior Court for the county where the case(s) is pending, as the Trustee for the State of North Carolina and the beneficiary shall be the State of North Carolina. The Deed of Trust shall be recorded in the

county where the property is located, and the surety or person posting the bond shall be responsible for paying all recording fees and cancellation costs when the Final Order discharging the surety is entered, if any are due. The attorney preparing the Note and Deed of Trust shall submit an Opinion of the Title showing all liens and encumbrances and that the taxes are current and verifying the Deed of Trust is a First Deed of Trust. A certificate from the Tax Supervisors Office in the county where the real property is located shall also be submitted showing the most recent value as indicated on the Tax Records. Form AOC-CR-201 shall be completed and said Note and Deed of Trust shall be attached to the form. Nothing herein shall exclude or prevent any individual from posting a secured bond by means of cash in the full amount of the bond or utilizing a professional bail bondsman or an insurance company authorized to execute appearance surety bonds in North Carolina. The purpose of this policy is to ensure that the State of North Carolina has a superior lien or encumbrance on the real property used as collateral or security in the event the defendant fails to appear as required and the bond is ordered forfeited.

X. THIS POLICY SHALL BE MADE AVAILABLE TO JUDGES FROM OTHER JUDICIAL DISTRICTS 'WHO ARE ASSIGNED TO HOLD COURT IN THE 35TH JUDICIAL DISTRICT.

XI. THIS POLICY MAY BE REVIEWED, FROM TIME-TO-TIME, AS APPROPRIATE, BY THE SENIOR RESIDENT SUPERIOR COURT JUDGE OF THIS JUDICIAL DISTRICT, PURSUANT TO N.C.G.S. § 15A-535(a).

ATTACHMENT "A"

SCHEDULE OF SUGGESTED BOND AMOUNTS

NOTE WELL: Judicial Officials are vested with discretion in the setting of conditions of pretrial release. Judicial Officials are expected to use their discretion. The suggested bond amounts on Attachment "A" are SUGGESTED RANGES ONLY. They are NOT MANDATORY. They are NOT to be considered as LIMITATIONS ON JUDICIAL DISCRETION.

THE FOLLOWING ARE GUIDELINES FOR THE SETTING OF BONDS:

TYPE OF OFFENSE	SUGGESTED BONDS
Local Ordinance	Unsecured
Misdemeanor Class 3	1,000
Misdemeanor Class 2	1,000 to 3,000
Misdemeanor Class 1	3,000 to 7,500
Misdemeanor Class A1	5,000 to 25,000
Driving While Impaired	1,000 to 50,000
Felony Class I	5,000 to 20,000
Felony Class H	10,000 to 50,000
Felony Class G	15,000 to 75,000
Felony Class F	25,000 to 100,000
Felony Class E	50,000 to 200,000
Felony Class D	75,000 to 500,000
Felony Class C	100,000 to 1,000,000
Felony Class B2	250,000 to 5,000,000
Felony Class B1	250,000 to 10,000,000
Felony Class A	Set by Judge
Fugitive Warrant	Set amount appropriate to underlying offense with special consideration to flight as a factor
Fugitive Warrant inc. extradition waiver	No Bond

Interstate Compact	No Bond
Governor's warrant	No Bond
Parole Warrant	No Bond
Probation Violation Misdemeanor	1,000-50,000
Probation Violation Felony	5,000-200,000

Drug Trafficking

Class C Trafficking	750,000-3,000,000
Class D Trafficking	500,000-2,000,000
Class E Trafficking	400,000-1,600,000
Class F Trafficking	300,000-1,200,000
Class G Trafficking	250,000-1,000,000
Class H Trafficking	100,000-400,000

ORDER N.C.G.S. § 15A-535

TO: THE CLERKS OF SUPERIOR COURT FOR AVERY, MADISON, MITCHELL,
WATAUGA AND YANCEY COUNTIES, NORTH CAROLINA Effective: DECEMBER 1, 2025

IT IS ORDERED, pursuant to the mandate contained in N.C.G.S. § 15A-535(a), that the policies contained in the papers attached hereto, made a part hereof, constitute the official recommended policies and standards concerning pretrial release and release on bail bond of a defendant, in a criminal case, before trial, in all Courts, of the 35th Judicial District. These policies shall be in full force and effect on and after December 1, 2025, replacing all such respective previous policies. IT IS ORDERED that a copy of these policies, along with a copy of this Order, shall be permanently maintained in the Office of the Clerk of Superior Court for each county in the 35th Judicial District, for public inspection, in a loose-leaf notebook, entitled, "Policies Relating to Bail and Pretrial Release in the 35th Judicial District." An electronic copy shall also be furnished to each Resident Superior Court Judge; each Resident District Court Judge; each Resident Magistrate; the District Attorney (of the 35th Prosecutorial District); the Sheriff of each county of the 35th judicial District; the First Sergeant of the North Carolina State Highway Patrol, respecting the District; each Chief of each Police Department within the District; the Judicial District Manager of Probation/Parole for the District; and the Agent in Charge of the Office of the State Bureau of Investigation respecting the District. Upon request from any of these individuals, the Clerk shall cause to be reproduced sufficient copies of these policies, so as to deliver a true copy to the individuals requesting same, in the 35th Judicial District: Executed, in Chambers, on this, the 21st day of November 2025, pursuant to the authority of N.C.G.S. § 15A-535.



Rebecca Eggers-Gryder
Chief District Court Judge



Theodore W. McEntire
Senior Resident Superior Court Judge