

STATE OF NORTH CAROLINA
SURRY AND STOKES COUNTIES
JUDICIAL DISTRICT 17B

IN THE GENERAL COURT OF JUSTICE
SUPERIOR AND DISTRICT COURT DIVISIONS

IT IS ORDERED that pursuant to the provisions of Article 26 of Chapter 15A of the North Carolina General Statutes the following policies and recommended guidelines set forth below shall be utilized in the 17B Judicial District. These policies shall be in full force and effect on or after January 15, 2019, and do replace existing policies.

I. GENERAL REQUIREMENTS

North Carolina General Statutes require that one of five conditions of pretrial release be imposed in any NON-CAPITAL charge. These five conditions are:

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

If condition (C) is imposed, however, the defendant may elect to execute a secured appearance bond under condition (D). If the defendant is required to provide fingerprints pursuant to NCGS 15A-502(a1) or (a2), or a DNA sample pursuant to NCGS 15A-266.3A or NCGS 15A-266.4 and (i) the fingerprints or DNA samples have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place

restrictions on the travel, associations, conduct or place of abode on the defendant as conditions of pretrial release under NCGS 15A-543(a).

NOTE: The magistrate will observe that a citation is a criminal process. See NCGS 15A-302. It is not a form of release.

II. CHOOSING THE FORM OF PRETRIAL RELEASE—NCGS 15A-534

A. Written Promise to Appear

The written promise to appear may be selected by the magistrate as the form of pretrial release upon the magistrate's finding that such form will reasonably assure the defendant's court appearance after the magistrate has taken into account the release criteria set out in NCGS 15A-524(c), namely;

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

The written promise to appear is the recommended form of pretrial release **IF** the magistrate finds that this form of release will reasonably assure the defendant's court appearance on the basis of the criteria set out above **EXCEPT** in cases in which the defendant is charged with violation of a misdemeanor offense under NCGS Chapter 20 (Motor Vehicles) or for other situations discussed in Section IV.

B. Unsecured Bond in a Specific Amount

The unsecured bond in a specific amount is the recommended form of pretrial release in misdemeanor cases arising out of NCGS Chapter 20 (motor vehicles) **IF** the magistrate's finds that this form of release will reasonably assure the defendant's court appearance on the basis of the release criteria set out above.

- C. Release to the Custody of a Designated Person or Organization Agreeing to Supervise the Defendant.

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

Pre-trial release under paragraph D of this Section must be selected if the defendant objects to the custodial form of release.

- D. Release on a Secured Appearance Bond in a Specified Amount Secured by a Cash Deposit, Mortgage, or at Least One Solvent Surety.

1. This form of release must not be selected by the magistrate unless he or she first determines that release under conditions A, B, or C listed above will **NOT** reasonably assure the appearance of the defendant as required, will pose a danger of injury to any person, or is likely to result in the destruction of evidence, subornation of perjury, or intimidation of potential witnesses.

Upon making such a determination, the magistrate **MUST** impose this form of release.

NOTE: The magistrate (judicial official) authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of his/her release; and advise him/her that his/her arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given to the defendant. The AOC forms shall be used.

NOTE: See the attachment at the end of this order for a schedule of recommended bond amounts.

2. 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.

III. CAPITAL OFFENSES (CLASS A FELONIES)

- A. A magistrate does not have authority to grant pretrial release to any defendant charged with a capital offense.
- B. A District Court Judge or a Superior Court Judge, in the exercise of the judge's discretion after consideration of those factors set forth in NCGS 15A-534, may set bail in capital cases.

IV. GUIDELINES

- A. Except under extraordinary circumstances, a magistrate should not grant pretrial release by personal recognizance, unsecured bond or custodial release to any person who is not a resident of North Carolina.
- B. A magistrate may—but is not required--- to accept the defendant' oral and unconfirmed answers to the release criteria (as set out in Section II above) on misdemeanor charges.
- C. A magistrate should not grant pretrial release by personal recognizance, unsecured bond, or custodial release to any person charged with a felony except upon the defendant's sworn and written questionnaire on the release criteria, answered favorably, and upon the magistrate's independent confirmation of a sufficient portion of those answers to prove their accuracy.
- D. Except under exceptional circumstances, a magistrate should not grant pretrial release by written promise to appear, unsecured bond, or custodial release to a defendant who has already failed to appear in court and is then in custody by warrant for failure to appear on a citation or order for arrest.
- E. A magistrate should not grant pretrial release by a written promise to appear, unsecured bond, or custodial release when the defendant is under arrest for a violation of NCGS 15A-534, failure to appear pursuant to pretrial release under Article 26.
- F. A magistrate should not grant pretrial release contrary to the order of any judge.
- G. A magistrate should not grant pretrial release by written promise to appear or unsecured bond to any defendant who is intoxicated or in a highly emotional or agitated condition.
- H. There shall be a rebuttable presumption that **NO** condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:
 - 1. There is a reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;
 - 2. The drug trafficking offense was committed while the person was on pretrial release for another offense; and
 - 3. The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison of the offense, whichever is later.

- I. There shall be a rebuttable presumption that **NO** condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:
 - 1. There is a reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in NCGS 14-50.16;
 - 2. The offense described in subdivision 1 above was committed while the person was on pretrial release for another offense; and
 - 3. The person has been previously convicted of an offense described in NCGS 14-50.16 through NCGS 14-50.20, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

- J. There shall be a rebuttable presumption that **NO** condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds there is reasonable cause to believe that the person committed a felony or Class A1 misdemeanor offense involving the illegal use, possession or discharge of a firearm; and the judicial official also finds any of the following:
 - 1. The offense was committed while the person was on pretrial release for another felony or Class A1 misdemeanor offense involving the illegal use, possession or discharge of a firearm.
 - 2. The person has previously been convicted of a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

- K. Persons who are considered for bond under the provisions in paragraph H, I and J of this Section may **ONLY** be released by a District or Superior Court Judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm in the community.

V. REQUIRED WRITTEN FINDINGS IN ACCORDANCE WITH NCGS 15A-534(b)

- A. In all charges involving felonies and Class A1 misdemeanors wherein a defendant is subject to an active sentence in grids under Structured Sentencing or subject to active time pursuant to a probation violation, there is a presumption that release under NCGS 15A-534 (a)(1)(2) or (3) will not reasonably assure the appearance of the defendant and the judicial official may set a secured bond without giving any specific reason in writing under NCGS 15A-534(b).

- B. In all charges involving probation violations, there is a presumption that release under NCGS 15A-534(a)(1)(2) or (3) will not reasonably assure the appearance of the defendant and the judicial official may set a secured bond without giving any specific reason in writing under 15A-534(b).

If the violation alleged involves absconding or any new charges involving felonies, DWI or Class A1 misdemeanors, the suggested secured bond amount is \$15,000 to \$50,000.

If the violation alleged involves any new misdemeanor charges (other than the ones listed above) the suggested secured bond amount is \$1500-15,000.

For probation violations that do not involve absconding or new charges, the judicial official should refer to Appendix A regarding suggested bond amounts.

- C. In regards to all other cases, conditions of release must be one of those set forth in NCGS 15A-534(a)(1)(2) or (3) **unless the judicial official records in writing the reasons for setting a secured bond in accordance with NCGS 15A-534(a)(4), EXCEPT when a bond is being set pursuant to a failure to appear. In such case, no written findings need be made and it may be presumed that release under NCGS 15A-524(a)(1)(2) or (3) will not reasonably assure the defendant's appearance.**
- D. In regards to defendants charged with DWI, the judicial official may presume that any defendant who has registered at least a 0.08 on the intoximeter poses a danger of injury to other persons if not placed under a secured bond and the judicial official may set a secured bond without giving any written reason therefore, pursuant to NCGS 15A-534(b).
- E. In DWI cases in which there is an alleged willful refusal to submit to an intoximeter or the defendant registers less than 0.08 on the intoximeter but there is evidence some other impairing substance is also involved, a judicial official who has observed the defendant and finds probable cause that the defendant is impaired at that time may presume that the defendant poses a risk of injury to persons and may place the defendant under a secured bond without giving any written reason therefore, pursuant to NCGS 15A-534(b).
- F. In DWI cases wherein the defendant registers less than 0.08 on the intoximeter with no other evidence there were other impairing substances involved, the judicial official shall impose conditions set forth in NCGS 15A-534(a)(1)(2) or (3) unless he or she makes written findings as required by NCGS 15A-534(b).

VI. RECOMMENDATIONS OR ORDERS

Magistrates in this district will observe the following procedure:

- A. Transmittal forms from all judges containing the word "recommendation" will be treated as orders unless the judge clearly indicates a different purpose.
- B. Transmittal forms from other magistrates and from superior court clerks will be viewed as recommendations only, to be given due weight, but subject to a different form of release or a different amount of bond if the receiving magistrate's information about the defendant with regard to the release criteria set out in Section II A above clearly indicates a form of release or amount of bond that differs from the transmittal form.

VII. PRETRIAL RELEASE FOR CRIMES OF DOMESTIC VIOLENCE

- A. NCGS 15A-534.1 provides that only a judge may set the defendant's release conditions of pretrial release for the first 48 hours in cases of crimes of domestic violence.
- B. In domestic cases in which no judge has set release conditions within 48 hours, the magistrate shall determine the conditions of release as set out below in Section C.
- C. In all cases of domestic violence the following provisions shall apply in addition to the provisions of NCGS 15A-534:
 - 1. Upon a determination by the judicial official that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond required by NCGS 15A-534 will not reasonably assure that such injury or intimidation will not occur, a judicial official may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.
 - 2. A judicial official may impose the following conditions on pretrial release:
 - (a) That the defendant stay away from the home, school, business or place of employment of the alleged victim;
 - (b) That the defendant refrain from assaulting, threatening or harassing the alleged victim;
 - (c) That the defendant not communicate with the alleged victim by any means, directly or indirectly;
 - (d) That the defendant refrain from removing, damaging or injuring specifically identified property;

- (e) That the defendant may not visit his or her child or children except at times and places provided by the terms of any existing order entered by a judge;
- (f) That the defendant may not purchase or possess a firearm or other dangerous weapon pending the final disposition of the case.

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

- D. Should the defendant be inebriated, mentally ill or imminently dangerous to himself or others, the provisions of Article 5A of Chapter 122, "Involuntary Commitment," shall apply.

VIII. FAILURE TO APPEAR

When placing conditions of pretrial release on a defendant who has failed to appear on charges, the judicial official shall impose the conditions recommended by the judge on the order for the arrest issued for that failure to appear. If a judge has not recommended conditions in that order for arrest, the judicial official shall set a secured bond in the amount of at least double the amount of the most recent secured or unsecured bond on the charges. If no bond has yet been required on the charges, bond should be a minimum of \$500.

IX. OTHER STATUTES THAT MUST BE CONSIDERED

When selecting the form of pretrial release, North Carolina General Statutes provide specific instructions and restrictions for certain types of crimes. Judicial officials should be aware of these statutes and follow them when applicable.

- A. 15A-524.1 Crimes of Domestic Violence
- B. 15A-534.2 Detention of Impaired Drivers
- C. 15A-534.3 Detention of Communicable Diseases
- D. 15A-534.4 Sex Offenses and Crimes of Violence Against Child Victims
- E. 15A-534.5 Detention to Protect Public Health
- F. 15A-534.6 Bail in Cases of Manufacture of Methamphetamine
- G. 15A-533(d) Drug Trafficking
- H. 15A-533(e) Street Gang Activity
- I. Chapter 15A, Article 37 Uniform Criminal Extradition Act

X. ERRORS AND EMERGENCIES

- A. Magistrates are not authorized to modify pretrial release orders or recommendations of Judges of Superior or District Court. If there is cause to believe that an error may have occurred then the magistrate is to contact the District Court Judge's office or the Superior Court Judge's office. Emergency numbers for contact with the judges will be provided to all magistrates.

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

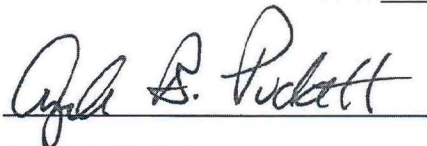
XI. TITLE SEARCH REQUIREMENT

A title search is required for any property offered to secure a bond amount \$100,000.00 or above.

XII. BOND REDUCTION HEARINGS

The District Attorney is responsible for calendaring any motion that has been filed to reduce the bond of a defendant. Any motion to reduce the bond of a defendant must be served on the District Attorney. The District Attorney then must schedule the bond hearing within 5 business days for any District Court matter. Any motion to reduce bond for a Superior Court matter must be filed and served on the District Attorney the Tuesday before the scheduled session of Superior Court. The District Attorney will then calendar the motion for a specific day of court during the Superior Court session. If the motion is not timely filed, the motion will not be addressed during that Superior Court session and the District Attorney will calendar it for the following Superior Court session to ensure proper notice is given to all interested parties. Once a bond motion has been calendared before a District Court Judge (whether it is heard or withdrawn) that District Court Judge shall hear any further filed bond hearings while the matter is pending in District Court.

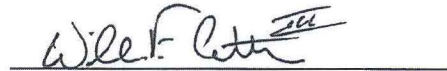
This the 1 day of January, 2019.



Angela B. Puckett

Senior Resident Superior Court Judge

17B Judicial District



William F. Southern, III

Chief District Court Judge

17B Judicial District

APPENDIX A
SUGGESTED BOND AMOUNTS
JUDICIAL DISTRICT 17-B

SUGGESTED BOND AMOUNTS -JUDICIAL DISTRICT 17-B
(To Be Read In Conjunction With Pretrial Release Policies of Judicial District 17B)

PLEASE NOTE: Judicial Officials are vested with discretion in the settings of conditions of pretrial release and are expected to use their discretion. Suggested bond amounts suggests ranges only and are neither mandatory nor limitations on judicial discretion. The following are guidelines for the setting of secured bonds when that condition of pretrial release is imposed:

TYPE OF OFFENSE	MAXIMUM PUNISHMENT	SUGGESTED SECURED BONDS
Local Ordinance	\$50 fine or 30 days	\$0 to \$300
Class 3 Misdemeanor	20 days	\$0 to \$300
Class 2 Misdemeanor	60 days	\$0 to \$500
Class 1 Misdemeanor	120 days	\$0 To \$3,500
Class A1 Misdemeanor	150 days	\$500 to \$10,000
Driving While Impaired	36 months	\$500 to \$10,000
Class I Felony	24 months	\$500 to \$10,000
Class H Felony	39 months	\$1,000 to \$15,000
Class G Felony	47 months	\$2,000 to \$20,000
Class F Felony	59 months	\$2,500 to \$40,000
Class E Felony	88 months	\$25,000 to \$60,000
Class D Felony*	204 months	\$30,000 to \$150,000
Class C Felony*	231 months	\$50,000 to \$200,000
Class B2 Felony*	484 months	\$80,000 to \$500,000
Class B1 Felony*	Life without Parole	\$150,000 to \$1,000,000
Class A Felony*	Death, Life without Parole	No Bond (unless set by Judge)
Habitual DWI*	59 months	\$10,000 to \$60,000
NC Probation Violation		Set amount appropriate for underlying offense with consideration for the nature of any violations [subject to N.C.G.S. 15A-1345(b1)]. See bond policy for specific provisions regarding certain types of violations.
Fugitive Warrant		
Governor's Warrant		
Interstate Compact		
Parole Warrant		No Bond

*Each of these offenses carries a mandatory minimum active sentence

DRUG TRAFFICKING **

TYPE OF OFFENSE	MINIMUM SENTENCE	MAXIMUM SENTENCE	SUGGESTED SECURED BONDS
Class H Drug-Trafficking Felony	25 months	39 months	\$15,000-\$50,000
Class G Drug-Trafficking Felony	35 months	51 months	\$50,000-\$150,000
Class F Drug-Trafficking Felony	70 months	93 months	\$75,000-\$200,000
Class E Drug-Trafficking Felony	90 months	120 months	\$100,000-\$250,000
Class D Drug-Trafficking Felony	175 months	222 months	\$200,000-\$500,000
Class C Drug-Trafficking Felony	225 months	282 months	\$500,000-\$1,500,000

SUGGESTED BOND AMOUNTS - JUDICIAL DISTRICT 17-B

DRUG TRAFFICKING (continued) ***(under Punishment, the Class designated refers to a “drug-trafficking felony”, and references the special mandatory sentences for completed trafficking offenses)

STATUTE	DESCRIPTION OF OFFENSE	PUNISHMENT
90-95(h)(1): Trafficking in marijuana	More than 10 and less than 50 lbs.	Class H; fine of not less than \$5,000
	50 – 1,999 pounds	Class G; fine of not less than \$25,000
	2,000 – 9,999 pounds	Class F; fine of not less than \$50,000
	10,000 pounds or more	Class D; fine of not less than \$200,000
90-95(h)(1a): Trafficking in synthetic cannabinoids	51-249 dosage units	Class H; fine of not less than \$5,000
	250-1249 dosage units	Class G; fine of not less than \$25,000
	1250-3749 dosage units	Class F; fine of not less than \$50,000
	3750 or more dosage units	Class D; fine of not less than \$200,000
90-95(h)(2): Trafficking in methaqualone	1,000 – 4,999 dosage units	Class G; fine of not less than \$25,000
	5,000 – 9,999 dosage units	Class F; fine of not less than \$50,000
	10,000 dosage units or more	Class D; fine of not less than \$200,000
90-95(h)(3): Trafficking in cocaine	28 – 199 grams	Class G; fine of not less than \$50,000
	200 – 399 grams	Class F; fine of not less than \$100,000
	400 grams or more	Class D; fine of not less than \$250,000
90-95(h)(3b): Trafficking in methamphetamine 90-95(h)(3d): Trafficking in MDPV 90-95(h)(3e): Trafficking in mephedrone	28 – 199 grams	Class F; fine of not less than \$50,000
	200 – 399 grams	Class E; fine of not less than \$100,000
	400 grams or more	Class C; fine of not less than \$250,000
90-95(h)(3c): Trafficking in amphetamine	28-199 grams	Class II; fine of not less than \$5,000
	200-399 grams	Class G; fine of not less than \$25,000
	400 grams or more	Class E; fine of not less than \$100,000
90-95(h)(4): Trafficking in opium or heroin	4 – 13 grams	Class F; fine of not less than \$50,000
	14 – 27 grams	Class E; fine of not less than \$100,000
	28 grams or more	Class C; fine of not less than \$500,000
90-95(h)(4a): Trafficking in LSD	100 – 499 dosage units	Class G; fine of not less than \$25,000
	500 – 999 dosage units	Class F; fine of not less than \$50,000
	1,000 dosage units or more	Class D; fine of not less than \$200,000
90-95(h)(4b): Trafficking in MDA/MDMA	100 – 499 dosage units or 28 – 199 grams	Class G; fine of not less than \$25,000
	500 – 999 dosage units or 200 – 399 grams	Class F; fine of not less than \$50,000
	1,000 dosage units, or 400 grams, or more	Class D; fine of not less than \$250,000

***Sources: *Punishment Chart for North Carolina Crimes and Motor Vehicle Offenses, with 2016 Supplement*, Robert L. Farb and *North Carolina Sentencing Handbook, with Felony, Misdemeanor, and DWI Sentencing Grids, 2016-17*, James M. Markham and Shea Riggsbee Denning