

**STATE OF NORTH CAROLINA
JUDICIAL DISTRICT 20-B**

OFFICIAL POLICIES ON PRETRIAL RELEASE

I. AUTHORITY.

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

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

A. **Bail Bond.** An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, and appearance bond secured by a mortgage pursuant to G. S. 109-25, and an appearance bond secured by at least one solvent surety.

B. **Obligor.** A principal or a surety on a bail bond.

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

D. **Surety.** One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.

III. PURPOSE OF BAIL.

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

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

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

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

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

- A. Written promise to appear.
 - 1. The written promise to appear is the recommended form of pretrial release except in cases in which the defendant is charged with a violation under G. S. 20 (Motor Vehicles).
 - 2. The written promise to appear may be selected by the magistrate as the form of pretrial release upon the magistrate's finding that such form will reasonably assure the defendant's court appearance after the magistrate has taken into account the release criteria set out in G. S. 15A-534(c), namely:
 - (1) the nature and circumstances of the offense charged,
 - (2) the weight of the evidence,
 - (3) the defendant's family ties,
 - (4) employment,
 - (5) financial resources,
 - (6) character,
 - (7) mental condition,

- (8) degree of intoxication, if any,
- (9) length of residence in the community,
- (10) record of convictions,
- (11) history of flight to avoid prosecution or failure to appear at court proceedings, and
- (12) any other evidence relevant to the issue of pretrial release.

B. Unsecured bond in a specific amount.

1. The unsecured bond in a specified amount is the recommended form of pretrial release in cases arising under G. S. 20 (Motor Vehicles), and upon the magistrate's finding that this form of release will reasonably assure the defendant's court appearance on the basis of the release criteria set out above.

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

1. This form of release may be selected in cases other than motor vehicle offenses if the magistrate finds: (1) that by reason of defendant's age or mental condition a custodial release is most likely to assure defendant's court appearance, and (2) such custodian and the defendant are both before the magistrate, and both agree in writing to the terms of release.
2. Pretrial release form D, below, 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 first determines that release forms A, B, or C above will not reasonably assure the appearance of the defendant as required, will pose a danger of injury to any person, or is likely to result in destruction of evidence, subordination of perjury, or intimidation of potential witnesses. Upon making such determination, the magistrate must impose this form of release.

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

VI. SUGGESTED BAIL BONDS.

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

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

1. For offenses defined as Class III misdemeanor - \$100.00;
2. For offenses defined as Class II misdemeanor - \$200.00;
3. For offenses classified as Class I misdemeanor - \$350.00;
4. For offenses classified as Class A1 misdemeanor - \$500.00;
5. For Class I felonies - \$1,000.00;
6. For Class H felonies - \$2,000.00;
7. For Class G felonies - \$3,000.00;
8. For Class F felonies - \$4,000.00;
9. For Class E felonies - \$5,000.00;
10. For Class D felonies - \$10,000.00;
11. For Class C felonies - \$20,000.00;
12. For Class B2 felonies - \$50,000.00;
13. For Class B1 felonies - \$100,000.00.

VII. CAPITAL OFFENSES.

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

B. A district court judge or a superior court judge may fix bail in all capital cases.

VIII. GUIDELINES.

A. A magistrate should not, except under extraordinary circumstances, grant pretrial release by personal recognizance, unsecured bond or custodial release to any person who is not a resident of North Carolina.

B. On misdemeanor charges a magistrate may - but is not required to - the defendant's oral and unconfirmed answers to the release criteria.

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

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

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

IX. REQUIRED WRITTEN FINDINGS IN ACCORDANCE WITH 15A-53(b).

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

B. That in regards to all Class I, II, or III misdemeanors or Class I felonies, conditions of release must be one of those set forth in G. S. 15A-534(a)(1)(2) or (3) unless the (judicial official) records in writing, or directs the clerk to record in writing, the reasons for setting of a secured bond in accordance with G. S. 15A-534(4), except when a bond is being set pursuant to a failure to appear. In such case, no written findings need be made and it may be presumed that release under G. S. 15A-534(a)(1)(2) or (3) will not reasonably assure the defendant's appearance.

C. Examples of such reasons including:

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

D. That in regards to defendants charged with DWI, the judicial official may presume that any defendant who has registered at least a 0.08% on the intoxilyzer poses a danger of injury to other persons if not placed under a secured bond and the judicial official may set a secured bond without giving any written reason therefor, pursuant to G. S. 15A534(b).

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

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

G. Examples of such reasons include:

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

X. RECOMMENDATION OR ORDERS.

A. Magistrates in this district will observe the following procedure:

1. In transmittal forms from judges the word "recommendation" will be treated as an order unless the judge clearly indicates a different purpose.
2. Recommended disposition on transmittal forms from other magistrates and from superior court clerks will be viewed as recommendations only, to be given due weight but subject to a different form of release or a different amount of bond if the receiving magistrate's information about the defendant on the release criteria clearly indicates a form of a release or amount of bond that differs from the transmittal recommendation.
3. Any magistrate in transmitting warrants out-of-county for service will avoid making any recommendation as to conditions of release unless:
 - a. the magistrate expects the defendant to be arrested in a county where he is not known, or
 - b. the magistrate's prior knowledge of the defendant's record and standing as to the release criteria is sufficient to justify a recommendation, or
 - c. experience with the release practices of a particular county has been unsatisfactory when recommendations are not given.

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

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

1. the defendant's physical and mental faculties are no longer impaired to the extent that he presents a danger of physical injury to himself or others or of damage to property; or
2. a sober, responsible adult is willing and able to assume responsibility for the defendant until his physical and mental faculties are no longer impaired. If the

defendant is released to the custody of another, the judicial official may impose any other condition of pretrial release authorized by G. S. 15A-534, including a requirement that the defendant execute a secured bond.

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

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

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

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

1. Upon arrest by warrant for crimes of domestic violence, a district court judge is the only judicial official authorized to set conditions of release for the initial 48 hours following arrest.
2. Upon a determination by the judicial official that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond as required by G. S. 15A-534 will not reasonably assure that such injury or intimidation will not occur, a judicial official may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.
3. A judicial official may impose the following condition on pretrial release:
 - a. that the defendant stay away from the home, school, business or place of employment of the alleged victim;
 - b. that the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;
 - c. that the defendant refrain from removing, damaging or injuring specifically identified property;
 - d. that the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

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

XIII. OVERCROWDING OF JAIL FACILITIES.

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

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

XIV. ERRORS AND EMERGENCIES.

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

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

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

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

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

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

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

XVI. FURTHER STATEMENT OF GENERAL POLICIES.

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

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

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

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

XVII. RELEASE AFTER CONVICTION IN SUPERIOR COURT. G. S. 15A-536.

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

1. In addition to usual conditions, superior court judges may impose supervisory custody or restrictions on travel, associations, conduct, or place of abode, or both. See IV and V, above, and State v. Cooley, 50 N.C. App. 544 (1981).
2. Judge's release order must specify conditions, inform defendant of penalty for violation, and advise him violation will result in arrest.
3. Release order may be modified or revoked by judge who has ordered release, or, if that judge is out of district, by any other superior court judge. Defendant whose release is revoked is entitled to immediate hearing.
4. Judge may consider any reliable evidence, including hearsay, under this section.

This the 27th day of April, 1998.

WILLIAM H. HELMS
SENIOR RESIDENT SUPERIOR COURT JUDGE
JUDICIAL DISTRICT 20B