

STATE OF NORTH CAROLINA
3B JUDICIAL DISTRICT

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

IN THE MATTER OF PROMULGATING
LOCAL RULES RELATING TO BAIL AND
PRETRIAL RELEASE FOR THE 3B
JUDICIAL DISTRICT

**ORDER
BAIL AND PRETRIAL
RELEASE POLICY**

Pursuant to the authority granted by Article 26 of Chapter 15A of the North Carolina General Statutes, and specifically the requirement in said Article that the Senior Resident Superior Court Judge issue recommended policies on bail, and the specified, implied and inherent powers of our respective offices, the undersigned, acting separately and collectively, do hereby approve and enter this order.

IT IS NOW, THEREFORE, ORDERED THAT:

1. The "Bail and Pretrial Release Policy for the 3B Judicial District" attached hereto, and incorporated herein by reference, is hereby adopted in compliance with G.S. 15A-535;
2. These policies supersede all prior such policies and shall be effective January 1, 2023.
3. The Clerk shall serve copies of this Order and this Policy upon each judge, magistrate, sheriff and each chief of police in the judicial district.

ENTERED in our respective chambers on this the 23rd day of November, 2022.



Joshua W. Willey, Jr.
Senior Resident Superior Court Judge
3B Judicial District



L. Walter Mills
Chief District Court Judge
3B Judicial District

STATE OF NORTH CAROLINA
JUDICIAL DISTRICT 3-B

OFFICIAL POLICIES ON PRETRIAL RELEASE
EFFECTIVE JANUARY 1, 2023

I. AUTHORITY

The Senior Resident Superior Court Judge, in consultation with the Chief District Court Judge, is required by G.S.15A-535 to devise and issue recommended policies to be followed in determining whether and upon what conditions a defendant may be released before trial and may include a requirement that each judicial official who imposes conditions (4) or (5) in G.S. 15A-534 record the reasons for doing so in writing.

II. PERSONS AUTHORIZED TO DETERMINE CONDITIONS FOR RELEASE

Judicial officials are authorized by G.S. 15A-532 to determine conditions of release. As defined in G.S. 15A-101(5) a “judicial official” is a magistrate, clerk, judge, or justice of the General Court of Justice.

III. DEFINITIONS

Certain terms used in bail practice have now acquired statutory definitions. G.S. 15-A-531 states that the following definitions apply unless the context clearly requires otherwise:

- 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, an appearance bond secured by a mortgage pursuant to NCGS 109-25, and an appearance bond secured by at least one solvent surety.
- B. Obligor. A principal or 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.

IV. PURPOSE OF BAIL

The traditional purpose of bail is to assure the defendant's appearance in court.

The purpose of the law on bail, Chapter 15A, Article 26, is to impose the least restrictive non-monetary form of pretrial release that will reasonably assure the defendant's appearance in court, to end or to minimize the abuses of *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 official who may know the most or can most readily learn the most about the defendant.

V. FORMS OF PRETRIAL RELEASE

- 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. House arrest with electronic monitoring.
- F. 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 G.S. 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.

VI. CHOOSING THE FORM OF PRETRIAL RELEASE – G.S. 15A-534

A. Written Promise to Appear.

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. Chapter 20 (Motor Vehicles).

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 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.

B. Unsecured Bond in a Specific Amount.

The unsecured bond in a specific amount is the recommended form of pretrial release in cases arising under G.S. Chapter 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.

This form of release may be selected in cases if the magistrate finds: (1) that by reason of 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 release.

Pretrial 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 specific Amount Secured by a Cash Deposit, Mortgage, or at Least One Solvent Surety.

This form of release must not be selected by the magistrate unless he first determines that release under paragraphs A, B, or C of this section 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 such determination, the magistrate must impose this form of release.

When imposing a secured bond, the judicial official shall specify the means of satisfying the bond only in exceptional circumstances. The judicial official shall make written findings of the exceptional circumstances requiring a "cash only" or "U.S. currency only" bond.

With respect to mortgages in lieu of bond, mortgages on real estate, the real estate must have a value, in excess of the outstanding balance owed on any deed of trust, equal to or greater than the amount of the bond. The obligor must provide the Clerk with satisfactory proof of the value of the real estate, the outstanding balance owed on any prior deeds of trust and title to the real estate. The deed of trust must contain a power of sale authorizing sale of the property upon defendant's failure to appear.

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 to the defendant. The AOC forms shall be used.

VII. SUGGESTED BAIL BONDS

The bond amounts set out below are applicable to both secured and unsecured bonds. They are **merely suggested bonds**. The actual bond may be **more** or **less** than amounts suggested below.

The circumstances of each individual case will govern each decision. A rigid bail schedule is incompatible with such an individualized decision. The magistrate will select a bond amount that is appropriate and indicated by using the same release criteria set out in N.C.G.S. 15A-534(c) and shall complete a Magistrate's Written Findings of Fact Form (Attached as schedule A) in setting each individual's bond. In setting bond, it is recommended for crimes of a violent nature, crimes involving multiple victims, crimes involving firearms or the use of other deadly weapons, or crimes involving felonious entry into homes or private residences that the bond will be set toward the high end of bond schedule or higher depending on the additional factors to be considered as found in the Magistrate's Findings of Fact Form. Those same factors used to determine the type of release **SHALL** also be considered in setting the bond amount.

Magistrates Shall complete the attached Written Findings of Fact Form when determining the type of release authorized and the amount of bond in considering those factors found in N.C.G.S. 15A-534(C). The completed Findings Form **SHALL** be retained in the court file. The suggested bond schedule is set forth below:

A. MISDEMEANORS AND NON-DRUG TRAFFICKING FELONIES

- | | | |
|--|---|-------------------------------|
| 1. For Class A Felonies* | - | NO BOND |
| 2. For Class B1 Felonies* | - | \$250,000.00 - \$1,000,000.00 |
| 3. For Class B2 Felonies* | - | \$200,000.00 - \$500,000.00 |
| 4. For Class C Felonies* | - | \$75,000.00 - \$250,000.00 |
| 5. For Class D Felonies* | - | \$50,000.00 - \$150,000.00 |
| 6. For Class E Felonies | - | \$40,000.00 - \$75,000.00 |
| 7. For Class F Felonies | - | \$35,000.00 - \$50,000.00 |
| 8. For Class G Felonies | - | \$25,000.00 - \$40,000.00 |
| 9. For Class H Felonies | - | \$10,000.00 - \$30,000.00 |
| 10. For Class I Felonies | - | \$2,500.00 - \$15,000.00 |
| 11. For Habitual DWI* | - | \$30,000.00 - \$50,000.00 |
| 12. For Class A1 Misdemeanor | - | \$500.00 - \$5,000.00 |
| 13. For Class 1 Misdemeanor | - | \$250.00 - \$2,500.00 |
| 14. For Class 2 Misdemeanor | - | \$100.00 - \$500.00 |
| 15. For Class 3 Misdemeanor | - | \$0 - \$250.00 |
| 16. For NC Probation Violation - | | |
| a. Absconding or subsequent conviction | - | \$25,000.00 - \$100,000.00 |
| b. All other violations | - | \$5,000-\$10,000 |

17. For Fugitive Warrant- Upon being served with the fugitive warrant the magistrate shall set no bond, and the defendant shall appear at the next district court term of court wherein a district court judge shall set any bond and/or conditions of release. The appropriate amount of bond, if any, set by the district court judge shall be in consideration of the underlying offense alleged in the fugitive warrant and in consideration for the nature of any violations and any new charges that arose in the fugitive's apprehension.

18. For Governor's Warrant - No Bond

19. For Interstate Compact - No Bond

20. For Parole Warrant - No Bond

*Each of these offenses carries a mandatory **ACTIVE** sentence

B. Drug Trafficking Offenses(ALL EXCEPT OPIUM, OPIATES, HEROIN, FENTANYL)**

For Class C - \$250,000.00 - \$750,000.00

For Class D - \$200,000.00 - \$500,000.00

For Class E - \$75,000.00 - \$250,000.00

For Class F - \$50,000.00 - \$150,000.00

For Class G - \$50,000.00 - \$100,000.00

For Class H - \$50,000.00 - \$75,000.00

**Please see chart attached for classes of drugs and quantities.

C. Trafficking in Opium, Opiates, Heroin, and/or Fentanyl

Whereas, in recent years there has been an epidemic of overdose deaths due to the use of opium, opiates, heroin, and/or fentanyl; and,

Whereas, it has been the experience of many involved in the criminal justice system that many of those defendants who traffic in these dangerous drugs are arrested, admitted to bail, and released into the community only to continue this same criminal enterprise; and,

Whereas, because of these defendant's likelihood to commit these same types of drug offenses which can lead to other deaths from opium, opiates, heroin and/or fentanyl overdoses, the public demands that certain protections be implemented for their protection while the criminal charges against these defendant's are pending,

bond in violation of trafficking opium, opiates, Heroin, and/or Fentanyl are as follows:

Trafficking in opium, opiates, Heroin, and/ or Fentanyl - 28 grams or more	\$1,000,000.00
Trafficking in opium, opiates, Heroin, and/ or Fentanyl - More than 14 grams but less than 28 grams	\$750,000.00
Trafficking in opium, opiates, Heroin, and/ or Fentanyl - More than 4 but less than 14 grams	\$500,000.00

Due to its extreme potential for lethality and dangerous nature, in any case where the alleged controlled substance is Fentanyl, and it is less than 4 grams the magistrate shall consider setting bond in the amount of \$50,000.00 to \$75,000.00 secured

VIII. 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 G.S. 15A-534, may set bail in capital cases.

IX. GUIDELINES

- A. When there are several charges against one defendant one bond may be set for all charges.
- B. 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.
- C. Except under exceptional circumstances, a magistrate should not 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 a citation or an order for arrest.
- D. A magistrate should not grant pretrial release by written promise to appear, unsecured bond, or custodial release when the defendant is under arrest for a

violation of G.S. 15A-534, failure to appear pursuant to pretrial release under Article 26.

- E. 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 for the offense, whichever is later.

- F. 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 G.S. 14-50.16;
 - 2. The offense described in subdivision 1 of this section 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 G.S. 14-50.16 through 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.

- G. 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 find 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 have elapsed since the date of conviction or the person's release for the offense, whichever is later.
- H. Persons who are considered for bond under the provisions of paragraphs E, F or G of this section may only be released by order of a district or superior court judge upon a finding that there is a reasonable assurance that the defendant will appear and that release does not pose an unreasonable risk of harm to the community.
- I. When conditions of pretrial release are being determined for a defendant who is charged with an offense and the defendant is currently on pretrial release for a prior offense, the judicial official may require 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).

X. REQUIRED WRITTEN FINDINGS IN ACCORDANCE WITH G.S. 15A- 534(b)

- A. In regard to all Class A1, 1, 2 or 3 misdemeanors or Class I felonies, 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 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-534(a)(1)(2) or (3) will not reasonably assure the defendant's appearance.**
- B. By way of illustrations, examples of reasons for setting a secured bond in accordance with NCGS 15A-534(b) include:
 1. The defendant's criminal record is such that he is subject to an active sentence upon conviction;
 2. The defendant poses a danger of injury to some person;
 3. The defendant's release without a secured bond is likely to result in the destruction of evidence, subornation of perjury, or intimidation of potential witnesses;
 4. Any other specific finding as to 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.

- C. In regard 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 G.S. 15A-534(b).
- D. In DWI cases in which there is an alleged willful refusal to submit to an intoximeter, 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 G.S. 15A-534(b).
- E. In DWI cases wherein the defendant registers less than 0.08 on the intoximeter, 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).
- F. By way of illustration, examples of reasons for setting a secured bond in accordance with G.S. 15A-534(b) in DWI cases include:
 - 1. The defendant has committed acts which constitute grossly aggravating factors and is subject to mandatory imprisonment and conditions (1)(2) or (3) of G.S. 15A-534(a) will not assure the defendant's appearance;
 - 2. The defendant poses a danger of injury to persons
 - 3. The defendant's release without a secured bond is likely to result in the destruction of evidence, subornation of perjury, or intimidation of potential witness;
 - 4. Any other specific finding as to 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.

XI. DETENTION OF IMPAIRED DRIVERS

- A. A defendant subject to detention under the provisions of G.S. 15A-534.2 has the right to pretrial release when the judicial official (magistrate) determines either 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 if he is released; 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 appearance bond.
- B. The defendant may be denied pretrial release under this section for a period of no longer than 24 hours, and if the defendant is detained for 24 hours, a judicial official must immediately determine the appropriate conditions of pretrial release under G.S. 15A-534.
- C. In making the determination as to whether a defendant remains impaired, the judicial official may request that the defendant submit to periodic chemical analyses or 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 0.04 is no longer impaired

XII. PRETRIAL RELEASE FOR CRIMES OF DOMESTIC VIOLENCE

- A. G.S. 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. Crimes of domestic violence are defined as:
1. Assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7B, 8, 10 or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B – 1 (b)(6).
 2. Domestic Criminal trespass.
 3. Violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes of North Carolina.

- B. In domestic cases in which no judge has set release conditions in 48 hours, the magistrate shall determine conditions of release, as set out in the following sections.
- C. In all cases of domestic violence as defined in Paragraph A of this Section, the following provisions shall apply in addition to the provisions of G.S. 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 determination that the execution of an appearance bond is 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.
 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, beating, molesting or wounding 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 that the defendant execute a secured appearance bond.

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

XIII. MODIFYING CONDITIONS OF RELEASE

A. 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 court judge. G.S. 15A-534(e). A magistrate or clerk may not modify a release order set by another magistrate or clerk. Once the case is in district court, the magistrate 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 for an initial appearance after 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 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 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. G.S. 15A-535(e).
- c. **Superior Court Judges.** After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by the superior court judge, at any time before the defendant's guilt is established in superior court. G.S. 15A-534(e). See section XI below for provisions on release after conviction in superior court.

B. On Motion of a Party.

- a. **Defendant's Motion.** 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. Any such motions filed by the defendant shall be heard no later than the next session of Superior Court.
- b. **State's Motion.** The State may at any time apply to an appropriate district or superior court judge for modification or revocation of a release order. G.S. 15A-539(a).

C. For Substitution of Surety.

The power to modify an order of release includes the power to substitute sureties upon any bond. 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 under G.S. 15A-539. G.S. 15A-538(b).

D. Revoking a Pretrial Release Order.

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

If the defendant already has been released from custody when the judge revokes an order of pretrial release and the defendant is not before the court at the time of entry of the revocation, the judge may issue an order for the defendant's arrest. G.S. 15A-305(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 G.S. 15A-534(h)(1) to release the obligors from their obligation.

XIV. TERMINATION

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 any earlier time if:

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

XV. RELEASE AFTER CONVICTION IN SUPERIOR COURT

NCGS 15A – 536

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

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

MAGISTRATE FINDINGS OF FACT

DEFENDANT NAME _____ DATE _____

DEFENDANT'S CURRENT ADDRESS _____

JUDICIAL OFFICIAL _____ COUNTY _____

PART 1

HOW LONG HAS THE DEFENDANT LIVED IN _____ COUNTY? _____ YRS/MO

IF THE DEFENDANT LIVES IN ANOTHER COUNTY, WHERE/HOW LONG? _____

IF THE DEFENANT CAME FROM OUT OF STATE, WHERE/ HOW LONG?

HOW LONG HAS DEFENDANT LIVED AT PRESENT ADDRESS? _____ YRS/MO

IS DEFENDNAT MARRIED? YES OR NO IF YES, HOW LONG _____ YRS/MO

DOES DEFENDANT HAVE CHILDREN WHO LIVE WITH THEM? YES OR NO

HOW OLD ARE THE CHILDREN? _____

ANY RELATIVES WHO LIVE IN _____ COUNTY? ___ MOTHER ___ FATHER ___ SISTER

___ BROTHER ___ CHILDREN ___ GRANDPARENTS

IF NOT THIS COUNTY, WHERE DO RELATIVES LIVE? _____

WHERE IS DEFENDANT EMPLOYED? _____ HOW LONG? _____

IS DEFENDANT A FULL TIME STUDENT, WHERE? _____ HOW LONG? _____

IS DEFENDANT ON PROBATION (offense)/ WHO IS PROBATION OFFICER (NAME AND COUNTY OF PROBATION) _____

IS THE DEFENDANT CURRENTLY OUT ON BAIL/BOND? HOW MANY PENDING CHARGES, COUNTY CHARGES ARE PENDING IN, AMOUNT OF PRIOR BONDS MADE?

NUMBER OF VICTIMS ALLEGED HARMED IN CURRENT CHARGES/THREAT TO MULTIPLE OTHER PEOPLE?

PART 2

I considered the following factors, as to the Defendant: (check all that apply)

FACTORS	FAVORABLE	UNFAVORABLE
NATURE OF OFFENSE CHARGED	_____	_____
WEIGHT OF OFFENSE CHARGED	_____	_____
WEIGHT OF EVIDENCE AGAINST DEFENDANT	_____	_____
DEFENDANT'S FAMILY TIES TO THE COMMUNITY	_____	_____
EMPLOYMENT	_____	_____
FINANCIAL RESOURCES TO POST BAIL	_____	_____
CHARACTER	_____	_____
MENTAL CONDITION	_____	_____

(WHETHER DEFENDANT IS INTOXICATED TO SUCH A DEGREE THAT HE/SHE WOULD BE ENDANGERED BY BEING RELEASED WITHOUT SUPERVISION)

___ YES WOULD BE IN ENDANGERED IF RELEASED ___ NO ENDANGERED IF RELEASED

LENGTH OF RESIDENCY IN COMMUNITY	_____	_____
RECORD CONVICTIONS	_____	_____
HISTORY OF FLIGHT TO AVOID PROSECUTION OR FTA	_____	_____

ANY OTHER EVIDENCE RELEVANT TO THE ISSUES OF PRETRIAL RELEASE (EX. The defendant is currently on probation, The defendant is currently out on one or more bonds, The defendant has been charged multiple times with new offenses in a relatively short period of time, There is credible evidence the defendant has assaulted/contacted/harassed the same victim/witness previously or multiple times, The defendant by his new criminal conduct is alleged to have violated a specific term of a pending pre-trial release condition, etc.:

