

STATE OF NORTH CAROLINA  
JUDICIAL DISTRICT THIRTY-A  
CHEROKEE, CLAY, GRAHAM, MACON and  
SWAIN COUNTIES

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  
JUDICIAL DISTRICT 30-A

ORDER

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 District 30A" 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 Jan. 1, 2019.
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 18<sup>th</sup> day of Jan, 2019.



THE HONORABLE WILLIAM H. COWARD  
Senior Resident Superior Court Judge  
Superior Court Judicial District 30A



THE HONORABLE RICHARD K. WALKER  
Chief District Court Judge  
District Court Judicial District 30

## TABLE OF CONTENTS

Title	Page Number
Name	3
Authority	3
Purpose	3
Scope	3
Definitions	3
Background on the Purpose of Pretrial Release	4
Opportunity to Observe Defendant; Video Appearances	4
Forms of Pretrial Release	4
Choosing the Form of Pretrial Release	4
Factors that Must be Considered in Every Case	5
Further Conditions of Release	6
Form of Release	6
Unauthorized Absence from Involuntary Commitment in Mental Health Facility	7
Authority to Determine and Modify Conditions of Pretrial Release	7
Pretrial Release in Capital Cases	8
Suggested Bail Amounts	8
Bond for Non-Violent Misdemeanors	8
Fugitive Warrants	9
Other Warrants	10
Probation Violations	10
Rebuttable Presumptions	10
Habitual Felons	11
Prison Inmates	12
Stacking or Splitting Bonds	12
Cash Bonds	12
Child Support Contempt	12
Restrictions upon Defendants in Domestic Violence Cases	12
Restrictions upon Defendants in Sex Offenses and Crimes of Violence against Child Victims	13
Detention of Impaired Drivers	14
Detention for Communicable Diseases	14
Detention as Result of Terrorist Attack or Quarantine	14
Property Bonds of \$10,000 or More	15
Persons Authorized to Effect Release	16
Motions to Modify or Revoke Pretrial Release Orders	16
Revocation of Pretrial Release Orders	17
Rules of Evidence	17
Approved Form	17
Effective Date	17
Exhibit A, Bond Information Worksheet	18

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### BAIL AND PRETRIAL RELEASE POLICY FOR DISTRICTS 30A

1. **Name.** This policy shall be officially known as the “Bail and Pretrial Release Policy for District 30A.”
2. **Authority.** G.S. 15A-535 provides: “Subject to the provisions of this Article [26], 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.*” (emphases added)
3. **Purpose.** The purpose of this policy is to provide recommendations and guidance for the implementation of Article 26, which is not amended, abrogated, or repealed by this policy. Certain sections of Article 26 are explained in this policy, and they may be set forth herein almost verbatim, with re-arrangement to facilitate better understanding. But in all cases the pertinent statute controls over any content of this policy.
4. **Scope.** This policy shall apply in all criminal actions or proceedings in Judicial District 30A, and is recommended to be followed by all judicial officials and all other persons dealing with bail bonds and pretrial release of criminal defendants in this Judicial District (referred to sometimes herein as “District”).
5. **Definitions.** The definitions set forth in G.S. 15A-531 shall apply in this policy. Additional terms are defined as follows:
  - (a) **Capital Offense.** A criminal offense for which the death penalty is an authorized form of punishment. Such an offense is “capital” regardless of whether the District Attorney is seeking the death penalty in the particular case.
  - (b) **Cash.** Cash money, cashier’s check, certified check, or money order.
  - (c) **Clerk.** The clerk of superior court, acting clerk, or assistant or deputy clerk in the county where the defendant is detained. G. S. 15A-101(2).
  - (d) **Judicial Official.** A magistrate, clerk, district court judge and superior court judge.
  - (e) **Obligor.** A principal or a surety on a bail bond.
  - (f) **Post-trial Release.** Release after guilt is established in superior court.
  - (g) **Pretrial Release.** Release prior to guilt being established in superior court. This may be referred to interchangeably as “bail” or “bond”.
  - (h) **Principal.** A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.
  - (i) **Victim.** A person against whom there is probable cause to believe one of the crimes has been committed as listed in 15A-830(a)(7), (a), (b), (c), (d), (e), (f), and (g).
  - (j) **“He”, “his”, etc.** For ease of reading, natural persons will be referred to herein in the male gender, but such references shall be construed in all instances to apply equally to females.



6. **Background on the purpose of pretrial release.** In general, the purpose of pretrial release is to impose the least restrictive conditions that will reasonably assure a defendant's appearance in court. The right to pretrial release recognizes the presumption of innocence and promotes a defendant's right to a fair trial, by allowing access to counsel, freedom of movement to secure witnesses, and the general ability to prepare a defense. It is recognized that any release on bail will create the risks that the accused will flee, commit another crime while out on bail, destroy evidence, or intimidate witnesses against him. These are calculated and accepted risks that must be taken as the price of our system of justice. Bail in an amount higher than an amount reasonably calculated to minimize these risks is "excessive" and unlawful under the Eighth Amendment to the Constitution of the United States and under Article I, Section 27 of the Constitution of the North Carolina. Bail may not be used as punishment.
7. **Opportunity to observe defendant; Video appearances. 15A-532.**
  - (a) The determination of bail and conditions of pretrial release should be made by a judicial official with a clear opportunity to witness the defendant in person and gather information about the defendant.
  - (b) Conditions of pretrial release may be made, modified, or revoked in a noncapital case by an audio and video transmission between the judicial official and the defendant in which the parties can see and hear each other. The following rules apply to such video communications:
    1. If the defendant has counsel, the defendant shall be allowed to communicate fully and confidentially with his attorney during the proceeding.
    2. Upon motion of the defendant, the court may not use an audio and video transmission.
    3. Prior to the use of audio and video transmission under this section, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior resident superior court judge.
    4. If the defendant has not moved to require an in-person proceeding, the defendant shall be subject to the law of contempt in a video proceeding the same as if the proceeding were in person.
8. **Forms of Pretrial Release. G.S. 15A-534(a).** In determining conditions of pretrial release, a judicial official must impose at least one of the following conditions:
  - (a) Written Promise to Appear. The defendant is released upon his execution of a written promise to appear in court as necessary.
  - (b) Unsecured Appearance Bond. The bond is executed solely by the defendant. No surety or security is required to secure the bond.
  - (c) Supervised Release. The defendant is placed into the custody of a designated person or organization agreeing to supervise him. Note that the defendant has the right to choose a secured bond in lieu of supervised release.
  - (d) Secured Appearance Bond. The bond is secured by a cash deposit of the full amount of the bond, a mortgage pursuant to G.S. 58-74-5, or at least one solvent surety.
  - (e) House Arrest with Electronic Monitoring. This requires a secured appearance bond.
9. **Choosing the Form of Pretrial Release. G.S. 15A-534(b).**
  - (a) Unless subsection (b) applies, the judicial official in granting pretrial release must either:
    1. release the defendant on his written promise to appear;
    2. release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official; or
    3. place the defendant in the custody of a designated person or organization agreeing to supervise him (subject to the right of the defendant to elect a secured appearance bond instead).

- (b) The judicial official *must* grant a release under section (a) (no secured bond required) *unless* the judicial official determines the existence of one of the following:
    - 1. That the conditions under section (a) will not reasonably assure the presence of the defendant as required;
    - 2. That the release of defendant under section (a) will pose a danger of injury to any person; or
    - 3. That the release of defendant under section (a) will likely result in the destruction of evidence, subornation of perjury, or intimidation of witnesses.
  - (c) If it is determined, in a proceeding under Article 5 of Chapter 122C of the General Statutes, that the defendant is mentally ill and dangerous to himself or others or a substance abuser and dangerous to himself or others, a judge should be the judicial official who issues an unsecured bond, or modifies a secured bond to be unsecured, on the belief that involuntary commitment of the defendant will reasonably assure defendant's presence and protect the public from the defendant, as it is possible that the defendant could be committed, and then be released by the mental health system, in which event the defendant would be at large under an unsecured bond. The determination of conditions of release is a completely different and independent determination from the findings that would mandate confinement under the provisions of Article 5 of Chapter 122C.
  - (d) If a judicial official determines the existence of one or more of the dangers set forth in section (b), then the judicial official must require the execution of an appearance bond, in a specified amount, which shall be secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety and may include an additional condition of electronic house arrest.
  - (e) Whenever a judicial official requires a secured appearance bond, completion of the approved form (Exhibit A to this policy) is mandatory for all Class A-D Felons, Habitual Felons, and drug trafficking cases. Completion of the form in all other cases is left to the discretion of the judicial official who *may* record the reasons for such determination upon an approved form. Once a form is completed by a judicial official it shall be filed in the defendant's official court file.
10. **Factors that must be considered in every case.** In determining which conditions of pretrial release to impose, the judicial official must, on the basis of available information, take into account the following factors:
- (a) the nature and circumstances of the offense charged;
  - (b) the weight of the evidence against the defendant;
  - (c) the defendant's family ties in the county. (Ordinarily, and especially in cases where extradition back to North Carolina is not a possibility, a person who is not a resident of the State of North Carolina should only be released upon a secured or cash appearance bond.)
  - (d) the defendant's employment status and history;
  - (e) the defendant's financial resources, including ownership of real property;
  - (f) the defendant's character and reputation;
  - (g) the defendant's mental condition;
  - (h) whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision (see paragraph 29 below for special provisions related to impaired drivers);
  - (i) the length of defendant's residence in the community;
  - (j) the defendant's record of prior convictions, and whether the defendant's prior record level would allow for (or require) a substantial active sentence;
  - (k) whether the defendant is on probation for a prior offense; if so, the judicial official must:
    - 1. Determine whether the defendant poses a danger to the public. If the judicial official does not have sufficient information to make this determination, he must follow the following procedure:



(A) Retain the defendant until this subsection can be completely followed;

(B) Set forth in writing:

- i. that the defendant is being held for this determination;
- ii. the basis for the determination that additional information is needed;
- iii. the nature of the additional information needed;
- iv. a date, within 96 hours of the time of arrest, when the defendant will be brought before a judge for a first appearance;
- v. that if the additional information is acquired before the 96-hour appearance, the first available judicial official will set conditions of release.

(C) File the written determination with the Clerk.

(l) the defendant's history to avoid prosecution or failure to appear at court proceedings, and in this connection the judicial official must consider the following:

1. The conditions of pretrial release must be at least as great as were in the order for arrest for the defendant's most recent failure to appear;
2. If the order for arrest did not set forth conditions, then there must be a secured bond in an amount at least double the amount of the most recent previous bond for the charges, or if no bond was set, then at least \$1000 secured; and
3. Restrictions on travel, associations, conduct, or place of abode.

(m) Whether the defendant is on pretrial release for another charge, in which event the bond will normally be secured and in the amount of at least double the amount of the most recent previous bond, or if none, then at least \$1000 secured. Care should be taken to determine what bond is the *appropriate* "most recent" previous bond.

(n) Violations of Conditions of Release. When a Defendant is arrested pursuant to G.S. 15A-401(b)(1) or (2) for a violation of a condition of pretrial release, the Magistrate at Initial Appearance shall set new conditions of release as follows: (1) In a case where the violated bond was a written promise, a new secured bond in an amount of at least \$1000.00; (2) In a case where the violated bond was an unsecured bond, a new secured bond of at least the same amount as the unsecured bond, and; (3) In a case where the violated bond was a secured bond, a new secured bond of at least double the amount of the original secured bond. In all cases, any other conditions of release shall be restated in the new release order.

(o) Any other evidence relevant to the issue of pretrial release.

11. **Further Conditions of Release.** In addition to a bond, a judicial official should consider imposition of the following conditions in appropriate cases, and based upon the individualized circumstances of the defendant and the crime for which he is charged:

- (a) The provision by the defendant of fingerprints or DNA sample under G.S. 15A-534(a).
- (b) Restrictions on the defendant's travel;
- (c) Restrictions on the persons or types of persons with whom the defendant may associate;
- (d) Restrictions on the defendant's conduct, such as committing other crimes or possession of non-prescribed controlled substances or weapons;
- (e) Restriction on where the defendant may live;
- (f) Requirement that the defendant refrain from the use of alcohol and submit to a continuous alcohol monitoring system (with violation to be reported by the provider directly to the district attorney).

12. **Form of Release.** The judicial official must issue an order using AOC-CR-200 or AOC-CR-242. The defendant must be given a copy of the release order and must be advised that his arrest will be ordered immediately upon any violation of the order. The release order must be filed with the Clerk.

13. **Unauthorized Absence from Involuntary Commitment in Mental Health Facility. G.S. 15A-533(a).** A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed the crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Human Resources, and whose commitment is determined to be still valid by the judicial official authorized to determine pretrial release, has no right to pretrial release. In lieu of pretrial release, the defendant shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of treatment pending additional proceedings on the criminal offense. No other conditions of pretrial release are to be imposed at that time.
14. **Authority to Determine and Modify Conditions of Pretrial Release.**
- (a) **Magistrate.** For non-capital felonies and misdemeanors, the initial responsibility for determining the conditions of pretrial release rests with a magistrate. A magistrate cannot authorize the release of a defendant charged with a capital offense. G.S. 15A-533(c).
  - (b) **Clerk of Superior Court.** A clerk can determine conditions of pretrial release for misdemeanors and non-capital felonies.
  - (c) **Modification by Magistrate or Clerk.** A magistrate or clerk may modify his pretrial release order at any time prior to the first appearance before a district court judge. G.S. 15A-534(e).
  - (d) **District Court Judge.** A district court judge may determine conditions of pretrial release for misdemeanors and felonies, including capital felonies. Except when the conditions of pretrial release have been reviewed by a superior court judge, a district court judge may modify a pretrial release order of a magistrate or the clerk, or himself. A district court judge may modify a pretrial release order entered by a judicial official other than a superior court judge at any time prior to: (1) In a misdemeanor case tried in the district court, the noting of an appeal; and (2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable cause hearing. G.S. 15A-534(e). For good cause shown, any judge may at any time revoke an order of pretrial release and the defendant may then apply for new conditions to be set.
  - (e) **Superior Court Judge.** A superior court judge may determine conditions of pretrial release for misdemeanors and felonies, including capital felonies. After a case is before the superior court, and at any time prior to the guilt of the defendant being established in superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, district court judge, himself, or another superior court judge. G.S. 15A-534(e). For good cause shown, a superior court judge may at any time revoke an order of pretrial release and the defendant may then apply for new conditions to be set.
  - (f) **Motions.** Motions to modify conditions of release must be in writing, and may be made by a defendant or the district attorney.
  - (g) **Substitution of Sureties.** The power to modify an order includes the power to substitute sureties upon any bond. 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. G.S. 15A-538(b).
  - (h) **Violations of Conditions of Release.** When a Defendant is arrested pursuant to G.S. 15A-401(b)(1) or (2) for a violation of a condition of pretrial release, the Magistrate at Initial Appearance shall set new conditions of release as follows: (1) In a case where the violated bond was a written promise, a new secured bond in an amount of at least \$1000.00; (2) In a case where the violated bond was an unsecured bond, a new secured bond of at least the same amount as the unsecured bond, and; (3) In a case where the violated bond was a secured bond, a new secured bond of at least double the amount of the original secured bond. In all cases, any other conditions of release shall be restated in the new release order.



**15. Pretrial Release in Capital Cases. G.S. 15A-533(b).**

- (a) Only a judge may determine whether a defendant charged with a capital offense may be released before trial.
- (b) If a judge determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

**16. Suggested Bail Amounts. G. S. 15A-535(a).** The circumstances of each individual case will govern the decision of a judicial official in setting conditions of bail. A rigid bail schedule is incompatible with such an individualized decision. However, the following schedule should be consulted such that bond decisions may be generally uniform across the District. For all cases involving drug trafficking, Class A-D Felons, and Habitual Felons, magistrates shall complete the attached Exhibit "A" (Bond Worksheet) and include this worksheet in the case court file.

**FELONIES**

Class	SUGGESTED BAIL AMOUNTS
A	Set by Judge
B1	\$200,000 - \$ 500,000
B2	\$200,000 - \$ 500,000
C	\$ 50,000 - \$ 150,000
D	\$ 50,000 - \$ 150,000
E	\$ 25,000 - \$ 50,000
F	\$ 15,000 - \$ 20,000
G	\$ 10,000 - \$15,000
H	\$ 5,000 - \$10,000
I	\$2,500 – 5,000

**MISDEMEANORS/DWI**

Class	Suggested Bond
A1	\$1,000 - \$2,500 (Secured Bond)
1	\$500 - \$1,000 (Secured Bond)
2	Written Promise to Appear or up to \$200
3	Written Promise to Appear or up to \$100
DWI (non-felony)	Written Promise to Appear or up to \$ 500 - \$5,000 (see the specific requirements of G. S. 15A-534.2) (See paragraph 29, Detention of Impaired Drivers)

**17. Non-violent misdemeanors.** Bonds for non-violent misdemeanors, except DWI's, should normally be unsecured.



## DRUG TRAFFICKING

Substance/amount	Mandatory Minimum Active Sentence	Recommended Secured Bond Amount (per incident, not per charged offense)
Opium or Heroin (28 grams or more)	225 – 279 mos.	\$ 500,000 - \$ 1,500,000
Marijuana (10,000 pounds or more)	175 – 219 mos.	\$ 200,000 - \$ 500,000
Cocaine/Methamphetamines (400 grams or more)	175 – 219 mos.	\$ 200,000 - \$ 500,000
Opium or Heroin (14 grams to 28 grams)	90 – 117 mos.	\$ 50,000 - \$ 200,000
Cocaine (200 – 399 grams)	70 - 84 mos.	\$ 100,000 - \$ 200,000
Marijuana (2,000 to 10,000 pounds)	70 - 84 mos.	\$ 50,000 - \$ 200,000
Methaqualone (greater than 10,000 dosage units)	175 – 219 mos.	\$ 200,000 - \$ 500,000
Methaqualone (5,000 to 10,000 dosage units)	70 - 84 mos.	\$ 50,000 - \$ 200,000
Methaqualone (1,000 to 5,000 dosage units)	34 – 42 mos.	\$ 50,000 - \$ 200,000
Opium or Heroin (4 grams to 14 grams)	70 – 84 mos.	\$ 50,000 - \$ 200,000
Cocaine/Methamphetamines (28 grams to 200 grams)	35 - 42 mos.	\$ 50,000 - \$ 200,000
Marijuana (50 to 2,000 pounds)	35 – 42 mos.	\$ 50,000 - \$ 200,000
Marijuana (10 to 50 pounds)	25 – 30 mos.	\$ 50,000 - \$ 100,000

18. **Fugitive warrants.** On a fugitive warrant, set a secured bond at the top of the range for the underlying offense.

Class	SUGGESTED BAIL AMOUNTS
A crime punishable by death or life imprisonment	NO BOND
A	Set by Judge
B1	\$ 500,000
B2	\$ 500,000
C	\$ 150,000
D	\$ 150,000
E	\$ 50,000
F	\$ 20,000
G	\$15,000
H	\$10,000
I	5,000

19. **Other warrants.** On a Governor's warrant and a parole warrant, NO BOND is authorized. When a Governor's warrant is received, the fugitive should be rearrested if they are out on bond and issued a new release order with No Bond. If the fugitive is still in the detention center, they should be brought in front of the magistrate on duty and issued a new release order with No Bond. In both cases, the magistrate should set the fugitive a new court date on the next district court session.

	<b>SUGGESTED BAIL AMOUNTS</b>
Governor's Warrant	NO BOND
Parole Warrant	NO BOND
Pre-signed Waiver of Extradition	NO BOND
Transferred under Interstate Compact	NO BOND

20. **Probation Violations.**

- (a) Set the amount based on the underlying offense, but consider the nature of the violation(s).
- (b) For misdemeanors (not including absconders), the minimum should be \$2,500, unsecured.
- (c) If an absconder, set a secured bond of at least \$5,000 for misdemeanants, and \$10,000 for felons, unless the probation officer recommends a lesser amount.

<b>Class</b>	<b>SUGGESTED BAIL AMOUNTS Non-absconder</b>
Misdemeanor	Minimum \$2,500 unsecured
Felony	Minimum \$5,000 unsecured

<b>Class</b>	<b>SUGGESTED BAIL AMOUNTS Absconder</b>
Misdemeanor	Minimum \$5,000 secured
Felony	Minimum \$10,000 secured

21. **Rebuttable presumptions.** A defendant subject to the rebuttable presumptions in the following sections may only be released by a District or Superior Court Judge upon a finding that there is reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community.

- (a) Drug Trafficking. G.S. 15A-533(d). It shall be rebuttably presumed that no conditions of release will reasonably assure the appearance of the defendant and the safety of the community if a judicial finds all three of the following:
  - 1. There is reasonable cause to believe that the defendant committed an offense involving trafficking in a controlled substance; and
  - 2. The drug trafficking offense was committed while the defendant was on pretrial release for another offense; and



3. The defendant has been previously convicted of a Class A, B, C, D, or E Felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of the defendant's conviction or release from prison for the offense, whichever is later.
- (b) Street Gangs. G.S. 15A-533(e). It shall be rebuttably presumed that no condition of release will reasonably assure the appearance of the defendant as required and the safety of the community, if a judicial official finds the following:
1. There is reasonable cause to believe that the defendant 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; and
  2. The offense described in the previous paragraph was committed while the defendant 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 G.S. 14-50.20, and not more than five years has elapsed since the date of defendant's conviction or release for the offense, whichever is later.
- (c) Firearms. G.S. 15A-533(f). It shall be rebuttably presumed that no condition of release will reasonably assure the appearance of the defendant as required and the safety of the community, if a judicial official finds there is reasonable cause to believe that the defendant committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm and the judicial official also finds either of the following:
1. The offense was committed while the defendant was on pretrial release for another felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; or
  2. The defendant 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 defendant's conviction or release for the offense, whichever is later.
- (d) Methamphetamine Manufacture. N.C. Gen. Stat. § 15A-534.6 In all cases in which the defendant is charged with any violation of G.S. 90-95(b)(1a) or G.S. 90-95(d1)(2)b., in determining bond and other conditions of release, the magistrate, judge, or court shall consider any evidence that the defendant is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine. A rebuttable presumption that no conditions of release on bond would assure the safety of the community or any person therein shall arise if the State shows by clear and convincing evidence both:
1. The defendant was arrested for a violation of G.S. 90-95(b)(1a) or G.S. 90-95(d1)(2)b., relating to the manufacture of methamphetamine or possession of an immediate precursor chemical with knowledge or reasonable cause to know that the chemical will be used to manufacture methamphetamine; and
  2. The defendant is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine, and the violation referred to in subdivision (1) of this section was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner.

## 22. Habitual Felons.

- (a) For any indictment of a defendant previously determined to be a habitual felon, on new charges that are not Class C or above, the suggested bond range should be the same as if the new felony were a Class C felony.
- (b) A defendant who is, for the first time, being indicted as a habitual felon, must have a secured bond, in addition to any other conditions determined to be appropriate.

23. **Prison Inmates:** The setting of conditions of pretrial release for a defendant while serving an active sentence upon a commitment issued by District or Superior Court Division is not authorized. A release order should be entered by the judicial official specifying that the defendant is presently in lawful custody and denying conditions of pretrial release for such reason. The release order shall require the defendant to be brought before a judicial official upon the completion of their present active sentence for the purpose of setting pretrial release conditions.
24. **Stacking or Splitting Bonds Prohibited.** “Stacking” or “splitting” of any form of a bond, is prohibited, unless pursuant to prior approval of the Senior Resident Superior Court Judge or his designee. Any surety, including an accommodation bondsman, is liable for the full amount of the bond. If multiple sureties sign, each is jointly and severally liable for the entire amount of the bond.
25. **Cash Bonds.** When a defendant fails to appear and fails to comply with a judgment (show cause), a cash bond should be set in the amount the defendant owes to satisfy the judgment. If it is not already referenced on the OFA then it can be found on ACIS by using the CR number, if the case is a criminal case. This practice will allow the court to collect the outstanding fines in a more expedient manner. Do not set a secured bond on these types of OFAs. Only cash will satisfy this condition, not a bondsman with insurance power-of-attorney, or another individual using real property. This applies to any orders for arrest where the cash bond amount is pre-set.
26. **Child Support Contempt.**
- (a) In addition to the other factors listed hereinabove, in determining conditions of pretrial release in child support contempt proceedings, the judicial official may consider the amount of the arrearage of such child support and the payment record of the person charged with contempt.
  - (b) Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash. G.S. 15A-531(1).
  - (c) Once a presiding District Court Judge sets cash bonds in child support contempt proceedings, these shall not be modified by a magistrate.
27. **Restrictions upon Defendants in Domestic Violence Cases. G.S. 15A-534.1.**
- (a) This section applies to defendants charged with any one or more of the following offenses against a spouse, former spouse, or a person with whom the defendant lives or has lived as if married:
    - 1. Assault (common law);
    - 2. Stalking. G.S. 14-277.3A;
    - 3. Communicating a threat. G.S. 14-277.1;
    - 4. A felony under Chapter 14, Article 7A (“Rape and other Sex Offenses”);
    - 5. A felony under Chapter 14, Article 8 (“Assaults”);
    - 6. A felony under Chapter 14, Article 10 (“Kidnapping and Abductions”);
    - 7. A felony under Chapter 14, Article 15 (“Arson and other Burnings”);
    - 8. Domestic criminal trespass; and
    - 9. A violation of an order entered pursuant to Chapter 50B (Domestic Violence) of the General Statutes (For more specific information, please refer to the attached 48 Hour DV Chart published by the UNC SOG in December 2015.)
  - (b) The conditions of pretrial release must be determined by a judge, who must consider the criminal history report, which must be presented to the judge by law enforcement or the district attorney.
  - (c) Upon a determination by the judge 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 further determination that the execution of an appearance bond will not reasonably assure that such injury or intimidation will not occur, a judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.



- (d) A judge may impose any of the following additional conditions on pretrial release if he feels that this is necessary to prevent injury to other persons or a danger to the public in general:
1. That the defendant stay away from the home, school, business or place of employment of the alleged victim;
  2. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim;
  3. That the defendant refrain from removing, damaging or injuring specifically identified property;
  4. That the defendant may visit his child or children at times and places provided by the terms of any existing order entered by a judge;
  5. That the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, with any violation to be reported directly from the provider to the district attorney;
  6. That the defendant not own, use, or possess controlled substances (except pursuant to prescription);
  7. That the defendant not own, use, or possess firearms, and that the defendant designate some person to remove firearms from defendant's possession or control within a specified time; or
  8. Secured appearance bond.
- (e) Should the defendant be mentally ill and dangerous to himself or others or a substance abuser and dangerous to himself or others, the provisions of Article 5 of Chapter 122C of the General Statutes shall apply.
- (f) A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination by a judge. If a judge has not acted pursuant to this rule within 48 hours of arrest, a magistrate shall act in his stead.

**28. Restrictions upon Defendants in Sex Offenses and Crimes of Violence Against Child Victims. G.S. 15A-534.4.**

- (a) The following provisions apply to the following offenses:
1. felonious child abuse;
  2. misdemeanor child abuse;
  3. taking indecent liberties with a minor in violation of G.S. 14-202.1;
  4. rape;
  5. any sex offense in violation of Article 7A, Chapter 14 of the General Statutes, against a minor victim;
  6. incest with a minor in violation of G.S. 14-178;
  7. kidnapping;
  8. abduction;
  9. felonious restraint involving a minor victim, with a violation of G.S. 14-320.1;
  10. assault against a minor victim;
  11. any crime of violence against a minor; and
  12. communicating a threat against a minor.
- (b) For any offense listed above, a judicial official may impose the following conditions on pretrial release:
1. That the defendant stay away from the home, temporary residence, school, business, or place of employment of the alleged victim;
  2. 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
  3. That the defendant refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.

- (c) The first two conditions of the previous paragraph may be waived by the judicial official if he makes written findings of fact that it is not in the best interest of the alleged victim that the condition be imposed on the defendant. The above conditions may be imposed in addition to any other conditions that the judicial official may impose under other provisions of Article 26.
- (d) For any offense listed above in which the alleged victim is a minor child and the charging documents identify the minor child by initials or pseudonym, the conditions of release shall identify the minor child in the same way as identified in the charging document.

**29. Detention of Impaired Drivers. G.S. 15A-534.2**

- (a) A judicial official conducting an initial appearance for an offense involving impaired driving must follow the procedure in G.S. 15A-511, except as modified by G.S. 15A-534.2. Neither statute should be interpreted to impede a defendant's right to communicate with family, friends and counsel.
- (b) If, at the time of the initial appearance, the judicial official finds by clear and convincing evidence that the impairment of the defendant's physical or mental faculties presents a danger, if he is released, of physical injury to himself or others or damage to property, the judicial official must order that the defendant be held in custody and inform the defendant that he will be held in custody until one of the requirements of subsection c below is met. Regardless of whether the judicial official makes the determination specified in subsection c, the judicial official must initially determine the appropriate conditions of pretrial release under G.S. 15A-511.
- (c) A defendant subject to detention for impaired driving has the right to pretrial release when the judicial official determines any of the following:
  - 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 to 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; or
  - 3. the passage of 24 hours from defendant's being detained.
- (d) In making the determination whether a defendant detained under this rule remains impaired, the judicial official may follow the provisions of G.S. 15A-534.2(d) (providing for periodic breath tests).

**30. Detention for Communicable Diseases. 15A-534.3.** If a judicial official conducting an initial appearance or first appearance hearing finds probable cause that an individual had an exposure to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or hepatitis B by such defendant, the judicial official shall order the defendant to be detained for a reasonable period of time, not to exceed 24 hours, for investigation by public health officials and for testing for AIDS virus infection or Hepatitis B infection if required by the public health officials pursuant to G.S. 130A-144 and G.S. 130A-148. Upon conclusion of such testing, or the expiration of 24 hours, a judicial official must then determine the appropriate conditions of pretrial release in accordance with these rules.

**31. Detention as Result of Terrorist Attack or Quarantine.** If a judicial official conducting an initial appearance finds by clear and convincing evidence that a person arrested for violation of an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 or G.S. 130A-145 poses a threat to the health and safety of others, the judicial official shall deny pretrial release and shall order the person to be confined in an area or facility designated by the judicial official. Such pretrial confinement shall terminate when a judicial official determines that the confined person does not pose a threat to the health and safety of others. These determinations shall be made only after the State Health Director or local health director has made recommendations to the court.



**32. Property Bonds of \$10,000 or more.**

- (a) All Accommodation bondspersons shall be advised by the Magistrate of the following:  
“If the Defendant fails to appear in court as required, you could lose your property as provided in G.S. 15A-544.1 through 15A-544.8 and as stated on AOC-CR-201 Appearance Bond for Pretrial Release”
- (b) Property Bonds of \$10,000 or more must be approved by the Clerk.
- (c) Defendants should be advised by the judicial official conducting the initial appearance to seek a non-binding preliminary approval from the Clerk before investing in a title search and attorney fees.
- (d) The Clerk has no liability for expenses incurred for a property bond, even if the Clerk has given a preliminary approval as to a certain property.
- (e) The following documents are required for a property bond of \$10,000 or greater:
  - 1. a recorded deed of trust as follows:
    - (A) prepared by a North Carolina licensed attorney using a standard bar form deed of trust;
    - (B) grantor(s) will be all record owners of an interest in the property or properties, and the spouses of the record owners (a “record owner” including life tenants, remaindermen, etc.);
    - (C) the trustee of the deed of trust will be the Clerk;
    - (D) the beneficiary will be the State of North Carolina f/b/o the county school board;
    - (E) the description will be adequate to describe the property conveyed, but a metes and bounds description will not be required; reference to a recorded survey will suffice.
- (f) The following documents are required for a property bond of \$20,000 or greater:
  - 1. a recorded deed of trust prepared as described in section (d);
  - 2. a title certificate or title opinion prepared by a licensed attorney, which will state the following:
    - (A) That the proposed sureties are the record owners of all interests in the property;
    - (B) That there are either no recorded liens encumbering the property or identifying any existing liens and stating that the value of the property net of said liens is sufficient to meet the bond-value ratio requirement.
  - 3. an affidavit as to the fair market value of the subject property, prepared by a person who is not interested in the matter, action, or proceeding (G.S. 58-74-30) who has knowledge of the property’s value, and who may be (but is not required to be) an appraiser, or a real estate broker;
  - 4. a printout from the tax office showing the tax value of the property;
  - 5. an affidavit of the owner of the property as to all liens and encumbrances against the property, showing the lienholder(s) and the amount of the payoff(s) (preferably the payoff information should come from the lienholder).
  - 6. a completed AOC-CR-201, which serves as a promissory note.
- (g) All documentation shall be provided to the Magistrate and delivered to the Clerk of Superior Court.
- (h) Bond-Value Ratio: The fair market value of the proposed property or properties owned by the proposed surety must be sufficiently in excess of the bond amount to cover costs in the action, fines, costs of sale and existing liens. The general rule is that the value of the property, net of liens, must be at least twice the amount of the bond. (Example: If the bond is \$20,000, then the net value of the property must be at least \$40,000.) However, each bond request will be looked at on a case by case basis to insure that the property value is sufficient to satisfy the amount of the bond plus any cost of collection. Exemptions under

1C-1601 should not be considered as they are not applicable to claims for appearance bonds. G.S. 1C-1601(e).

- (i) Proposed sureties (i.e. property owners) must be identified individuals. No bonds will be allowed on property titled to "heirs," corporations or other entities.
- (j) A promissory note in favor of the State of North Carolina in the amount of the bond is NOT required. However, all sureties (i.e. property owners) must execute the AOC-CR-201, Appearance Bond for Pre-Trial Release, which acts as the promissory note. The parcel number(s) of the property or properties to secure the bond must be placed on the form AOC-CR-201.
- (k) Following approval by the Clerk, the same documents must be presented to the Magistrate.
- (l) If the property bond is not approved following recording of the Deed of Trust, the Clerk will cause the unaccepted Deed of Trust to be cancelled of record.
- (m) Magistrates will confirm approval by the Clerk before authorizing release pursuant to a property bond and provide such documentation to the Clerk's office upon release.
- (n) If a judicial official has determined that a secured bond is necessary, and holidays or weekends may delay completion of requisite documents to post the bond, such delay should not normally be used as a reason to withhold the requirement of a secured bond.

**33. Persons Authorized to Effect Release. G.S. 15A-537.**

- (a) Following any authorization of release of a defendant, any judicial official must effect the release of the person upon satisfying himself that the conditions of release have been met. In the absence of a judicial official, an officer or official of a law-enforcement agency who has been previously authorized to effect release, may, upon careful determination that such authorization has in fact been given, effect the release of a defendant under the authorized conditions.
- (b) Upon release of the person, the official or officer effecting release must file any bond, deposit or mortgage and other papers pertaining to the release with the clerk.
- (c) Any surety posting bond for a defendant, whether licensed bondsman or unlicensed accommodation bondsman, must be given a copy of the release order.

**34. Motions to Modify or Revoke Pretrial Release Orders.**

- (a) Motions by Sheriff. The sheriff or his representative shall have standing to apply to any appropriate judicial official for modification of the conditions of pretrial release for a person in the custody of a county detention facility ("prisoner"). In considering such an application, in addition to all other appropriate factors, such judicial official may consider:
  - 1. the number of such prisoners confined in the jail;
  - 2. the medical condition of the prisoner;
  - 3. any violations of jail rules and regulations by the prisoner; and
  - 4. whether the prisoner is cooperating with law enforcement in any ongoing criminal investigation.
- (b) Motions by Prisoners. G.S. 15A-538. A prisoner may apply to a superior court judge for modification of the conditions of pretrial release. In considering such an application, in addition to all other appropriate factors, the judge may consider:
  - 1. whether the prisoner has filed a motion for a speedy trial;
  - 2. the length of time the prisoner has been incarcerated on such charges;
  - 3. the number of times the cases of the prisoner have appeared on a trial calendar;
  - 4. the number of times the cases of the prisoner have appeared on a trial list;
  - 5. the number of defendants on pretrial release whose cases have been tried since the prisoner was incarcerated on such charges;
  - 6. any violations of jail rules and regulations while confined; and
  - 7. any recommendation or position of the appropriate law enforcement agency.
- (c) Motions by Prosecutor. The District Attorney may at any time apply to a judge for modification or revocation of an order of pre-trial release. G.S. 15A-539.



**35. Revocation of Pretrial Release Orders. G.S. 15A-534(f).**

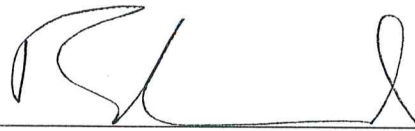
(a) For good cause shown any judge may at any time revoke an order of pretrial release.

(b) Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release.

**36. Rules of Evidence.** In imposing conditions of pretrial or post-trial release and in modifying and revoking such orders, the judicial official must take into account all evidence available to him, which the judicial official considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials. G.S. 15A-534(g) and 15A-536(f).

**37. Approved Form.** The form attached hereto is approved for use in this judicial district.

**38. Effective Date.** This Policy shall be effective January 1, 2019.



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THE HONORABLE WILLIAM H. COWARD  
Senior Resident Superior Court Judge  
Superior Court Judicial District 30A



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THE HONORABLE RICHARD K. WALKER  
Chief District Court Judge  
District Court Judicial District 30

**PROVIDE THE D.A. WITH A COPY, AFTER COMPLETION, BEFORE PRESENTING TO COURT**

Exhibit A

**Bond Worksheet (rev. 5 26 15)**

Dft: \_\_\_\_\_ Co.: \_\_\_\_\_ Date: \_\_\_\_\_ Attorney: \_\_\_\_\_ A.D.A. \_\_\_\_\_  
Existing bond amount: \$ \_\_\_\_\_; Other existing conditions:

**Secured required, because unsecured (check all that apply):**

- \_\_\_\_\_ Will not reasonably assure defendant's appearance
- \_\_\_\_\_ Will pose a danger of injury to persons or property
- \_\_\_\_\_ Is likely to result in destruction of evidence, subornation of perjury or intimidation of potential witness.

1. the nature and circumstances of the offense charged:
  2. identity of victim(s) and input into hearing:
  3. defendant's prior record level:
  4. extent of active time indicated by class of offense, prior record level, and mandatory minimums:
  5. prior FTA's:
  6. the weight of the evidence against the defendant and possible defenses:
  7. the defendant's family ties in the county. (Ordinarily, a person who is not a resident of the State of North Carolina should only be released upon a secured or cash appearance bond.) including:
    - (a) How long has defendant lived in county? \_\_\_\_\_ years \_\_\_\_\_ months
    - (b) If defendant lives in another county, where? \_\_\_\_\_ years \_\_\_\_\_ months
    - (c) If defendant came from out of state, where?
    - (d) How long at present address? \_\_\_\_\_ years \_\_\_\_\_ months
    - (e) Is defendant married? YES or NO. How long married? \_\_\_\_\_ Separated?
    - (f) Does defendant have children in the home? YES or NO. Ages of children: \_\_\_\_\_
    - (g) Which other relatives live in the county? mother \_\_\_\_\_ father \_\_\_\_\_ children \_\_\_\_\_ sisters \_\_\_\_\_ brothers \_\_\_\_\_
    - (h) If not in county, where do relatives live? \_\_\_\_\_
  8. the defendant's employment status and history:
  9. the defendant's financial resources:
  10. the defendant's character and reputation:
  11. the defendant's mental condition:
  12. whether the defendant is on probation for a prior offense. (If so, determine whether the defendant poses a danger to the public. See detailed information in the Policy as to this factor)
  13. conditions of pretrial release for other charges, if any:
  14. suggestions from arresting officer or probation officer:
  15. D.A.'s recommendations:
- Court's decision: