



## ORDER

The undersigned Senior Resident Superior Court Judge in consultation with the undersigned Chief District Court Judge of the Twenty-First Judicial District having formulated the attached "Pretrial Release Policies" pursuant to Chapter 15A, Article 26 of the North Carolina General Statutes, particularly G.S. 15A-535(a).

Now Therefore,

IT IS ORDERED that the attached "Pretrial Release Policies, Twenty-First Judicial District, Forsyth County" be, and hereby is, adopted; that the policies therein shall be in full force and effect on and after January 31, 2019, then replacing all previous pretrial release policies for this judicial district, and that these policies shall thereafter be followed and used in determining whether, and upon what conditions, a defendant may be released before trial in the Twenty-First Judicial District.

IT IS FURTHER ORDERED that a copy of this ORDER and the attached policies and forms be maintained available for inspection by the Clerk of Superior Court of Forsyth County in a loose-leaf notebook entitled "Pretrial Release Policies, Twenty-First Judicial District, Forsyth County," that the Clerk distribute copies to be kept by courtroom clerks in all courtrooms in the district in which criminal cases are regularly heard; and that the Magistrates regularly determining conditions of pretrial release, to the District Attorney, Sheriff, State Highway Patrol Commander in Forsyth County, and to the Chief of Police of each police department in Forsyth County.

ENTERED in chambers in Winston-Salem, Forsyth, North Carolina, the 31st day of January, 2019.

Handwritten signature of L. Todd Burke in black ink.

The Honorable L. Todd Burke  
Senior Resident Superior Court Judge

Handwritten signature of Lisa Menefee in black ink.

The Honorable Lisa Menefee  
Chief District Court Judge

# PRETRIAL RELEASE POLICIES

Revised effective January 31, 2019

## I. General Policy

The Constitution of the United States (Amendment VIII) and North Carolina (Article I, Section 27) each state that "excessive bail shall not be required."

To this end, and pursuant to G.S. 15A-535(a), the following policies are adopted as a guide in determining conditions of pretrial release in the 21st Judicial District..

G.S. 15A-534(a) requires that (except in capital cases) one of the following four conditions of pretrial release must be imposed:

1. Release the defendant on a written promise to appear;
2. Release the defendant upon execution of an unsecured appearance bond;
3. Place the defendant in the custody of a designated person or organization agreeing to supervise him/her;
4. Require the execution of an appearance bond secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by a solvent surety.

**The judicial official setting conditions of pretrial release may impose condition (4) if, and only if, one of the other three conditions of pretrial release:**

1. **will not reasonably assure the appearance of the defendant as required;**
2. **will pose a danger of injury to any person; or**
3. **is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses.**

**If condition #4 is imposed, the judicial official must record the reasons for doing so in writing.**

## II. Forms of Pretrial Release

### A. *Written Promise to Appear*

1. A written promise to appear is the recommended form of pretrial release for defendants of sound mind, with strong ties to the State of North Carolina, and who are charged with a misdemeanor if the statutory criteria are predominantly favorable to the defendant, neutral or unknown.
2. A written promise to appear should not be used if there are any significant questions as to whether it will reasonably assure the defendant's appearance as required.

1. An unsecured bond is a recommended form of pretrial release for defendants of sound mind if such release will reasonably assure the appearance as required even if not all statutory criteria are favorable, neutral, or unknown.
2. Judicial officials are encouraged to emphasize to defendants released on an unsecured bond, that a judgment can be entered against them in the amount of the unsecured bond upon any failure to appear as required.

### *C. Supervised Custodial Release*

1. Placement in the custody of a sober and responsible person or organization is a recommended form of release if the defendant is a minor, in the legal custody of another person, is not mentally sound, is under the influence of an impairing substance, is ill, or is otherwise in need of care and supervision if the designated custodian agrees in writing to all terms and conditions of the custodial release.
2. If a judicial official finds a defendant is otherwise appropriate for a supervised custodial release, but does not have proper identification, the defendant may still be released when the designated custodian produces proper identification of their own identity and positively identifies the defendant.
3. A defendant subject to supervised custodial release may later elect to execute a secured appearance bond before an appropriate judicial official pursuant to G.S. 15A-534(a).

### *D. Secured Bond*

1. **A defendant charged only with an offense which cannot result in incarceration should not be placed under a secured bond unless they have failed to appear or absconded supervision.**

## **III. Determining the Form of Pretrial Release**

1. The following decisional criteria must be considered to determine conditions of pretrial release:
  - a. the nature and circumstances of the offense charged;
  - b. the weight of the evidence against the defendant;
  - c. the defendant's family ties;
  - d. the defendant's employment status and history;
  - e. the defendant's financial resources;
  - f. the defendant's character;
  - g. the defendant's mental condition;

- endanger the defendant if released without supervision;
- i. the defendant's length of residence in the community;
  - j. the defendant's record of convictions and probation status;
  - k. the defendant's history of flight to avoid prosecution;
  - l. the defendant's history of failure to appear at court proceedings;
  - m. any other evidence relevant to the issue of pretrial release (e.g. any other factor that bear on the risk of nonappearance, injury to any person, destruction of evidence, subornation of perjury, or intimidation of any potential witnesses).
2. The judicial official authorizing pretrial release 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 release; and inform that rearrest will be ordered immediately upon any violation. The order or release must be filed with the clerk of court and a copy given to defendant.

A. *Failure to Appear*

1. A defendant will most likely not appear as required if: the nature of the crime charged is categorized as serious; the status of a defendant's prior criminal record is not good; the nature and number of other pending charges existing; the more aggravated the circumstances of the offense charged and the greater the weight of the evidence is against the defendant. A person properly charged with failure to appear or absconding probation supervision should be released only on a secured bond unless the judicial official is presented with clear and convincing evidence of justification to do otherwise.
2. A defendant who has no history of flight to avoid prosecution or unjustified failure to appear at court proceedings is more likely to appear as required. A defendant with strong ties to North Carolina and the Forsyth County area is more likely to appear, as required, than a defendant with lesser ties. A person who has lived in the state, has held lengthy employment in the state, and whose family and close friends have similar ties to be in the state on a regular, frequent and predictable basis for significant lengths of time could also have strong ties to the state.
3. When placing conditions of pretrial release on a defendant who has failed to appear on charges, the judicial official shall impose the conditions recommended on the order for arrest issued for that failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall set a secured bond in the amount of at least double the amount of the most recent secured or unsecured bond on the charges. If no bond has yet been required on the charges, bond should be set at a minimum of \$1,000.

1. When selecting the form of pretrial release, North Carolina General Statutes and/or Forsyth County policy provides specific instructions for certain types of crimes. Judicial officials should be aware of these prohibitions and follow them when applicable.
  - a. Capital Crime;
  - b. Fugitive Order (Local Policy Prohibits Release);
  - c. Governor's Warrant;
  - d. Out of State Probationer Subject to Interstate Compact;
  - e. Crimes of Domestic Violence Subject to DV Hold 15A-534.1;
  - f. Probation Violation if the Defendant has a pending felony or offense and poses a danger to the public 15A- 1345(b1);
  - g. Defendant charged with a felony, currently on probation and poses a danger to the public 15A-534(d2);
  - h. Certain Drug Trafficking Offenses 15A-533(d);
  - i. Certain Firearm Offenses 15A-533(f);
  - j. Certain Gang Offenses 15A-533(e);
  - k. Certain Methamphetamine Offenses 15A-534.6;
  - l. Detention to Protect Public Health 15A-534.5;
  - m. Offenses Committed while person was involuntarily committed or on escape from Involuntary Commitment;
  - n. Violation of Pretrial Release Supervision (Order for Arrest or Failure to Comply Pretrial Release);
  - o. Defendant is Subject to any "No Release" Order or like provision issued by a Judge;
  - p. Communicating a threat of mass violence on educational property or a place of religious worship. 15A-534.7.

*C. Imposing Other Restrictive Conditions*

1. A judicial official imposing one of the four statutory forms of pretrial release, may also place restrictions on the travel, associations, conduct, or place of abode of the defendant. This does not apply to Magistrates. Only a Judge's order shall impose restrictive conditions.
2. Requiring the defendant to produce identification as a condition of release may be appropriate in circumstances where there is a real question about the identity of the person arrested. Requiring the defendant to produce identification as a condition of release should not be used if the defendant has been arrested on an outstanding process as the identity of the person arrested should have been established by the arresting officer.

*D. Drug Trafficking*

If a judicial official finds the following:

1. There is reasonable cause to believe that a person has committed a drug trafficking offense; and

release for another offense; and

3. The person has been previously convicted of a Class A through Class E felony, or any drug trafficking offense, and not more than 5 years has passed since the conviction or release from prison for the offense, whichever is later.

The person can then ONLY be released by a district or superior court judge upon a finding that there is reasonable assurance the person will appear and release does not pose an unreasonable risk of harm to the community pursuant to G.S. 15A-533(d).

#### E. *Gang Activity*

1. When determining the form of pretrial release verified gang activity is an appropriate factor to consider. However, in making this determination judicial officials may only consider specific and verified incidents of gang activity. Conclusory statements that the defendant is a known gang member or associates with known gang members are not sufficient for including this factor in determining a pretrial release.

### IV. Other Items

#### A. *Cash Bonds*

1. Any "cash" bond set by a judge continues to mean either cash money deposited and receipted by the magistrate or as a "cash" bond posted by an authorized bail agent acting on behalf of a solvent surety or an insurance company, unless the magistrate is presented with a valid Court Order that:
  - a. contains Findings of Fact by the Judge;
  - b. has one or more Conclusions of Law, one of which must indicate that accepting any other security other than actual currency will not reasonably assure the appearance of the defendant; and
  - c. orders that a cash bond be set and the amount thereof be secured by US currency in that face amount.
2. The above requirement for "cash" bonds does not apply to child support contempt proceedings. In this type of proceeding, cash always means US currency only and a bail agent may not secure a defendant's release with a bail bond.

#### B. *Magistrates*

1. Magistrates may not determine whether or upon what conditions a defendant charged with a capital offense may be released before trial pursuant to G.S. 15A-533.

Magistrates may not determine whether or upon what conditions a defendant charged with communicating a threat of mass violence on educational property or a place of religious worship. G.S. 15A-534-7.

3. Magistrates may not determine whether or upon what conditions a defendant charged with domestic violence as defined by G.S. 15A-534.1(a) may be released before trial, unless a judge has not done so within 48 hours of the defendant's arrest. In this instance, a magistrate must make a determination as to imposition of pretrial release conditions.
4. If a magistrate is imposing conditions of release as a written promise to appear or custody release or unsecured bond then no written findings need to be made pursuant to G.S. 15A-511. However, when magistrates impose a secured bond, they must record the reasons for doing so in writing on an attached "Bond Fact Finding" form. This form shall be securely attached to and accompany the court copy of the release order setting forth conditions of pretrial release forwarded to the District Court. This form should not be modified in any form or fashion.
5. Magistrates should use the existing forms for Implied Consent Offenses (AOC-CR-271) and Detention of Impaired Drivers (AOC-CR-270). However, if a secured bond is set in these cases, magistrates should also complete and attach a "Bond Fact Finding" Form.
6. When making a determination as to the appropriate form of pretrial release, magistrates should always review a defendant's history of convictions. When setting a secured bond the conviction history results should be securely attached to the "Bond Fact Finding" Form.

**Initial Appearance Secured Bond Fact Finding**  
**21st Judicial District/Forsyth County**

File Number(s) \_\_\_\_\_ Secured Bond \$ \_\_\_\_\_

This document complies with NCGS: 15A-534(b), (c), and 535(a). The judicial official conducting the initial appearance who is making the findings of fact and ordering a secured bond must complete and attach to the Release Order in every instance. Where the presiding magistrate is not making findings of fact but processing the defendant only, check one of the following criteria:

- Preset bond ordered by a judge  see OFA,  Other (specify) \_\_\_\_\_
- U.S. Currency only ordered by a judge (bondsman may not post a bond)
- Preset Bond set pursuant to a pending charge per NCGS 15A-534 (d3). Last-known bond was \$ \_\_\_\_\_
- Detention of Probationer Arrested for a Felony or Probation Violation with pending felony or prior sex offense:  
Attached AOC-CR-272
- Detention of Impaired Driver: Attach form AOC-CR-270

The following decisional criteria must be considered to determine conditions of pretrial release under NCGS 15A-534(c)

**Nature and circumstance of the offense(s) charged:** (Check all fields that apply)

- There  is  is not a question of the identity of the defendant. Identification Source \_\_\_\_\_
- Crime(s) allegedly committed while the defendant was on pretrial release for other offenses. The last-known bond amount was \$ \_\_\_\_\_. Source:  ACIS,  NCAWARE,  LEO,  other \_\_\_\_\_
- Crime against person alleged:  Weapon used  Sexual offense
- Injuries to others  Serious? (required hospitalization/ ER treatment)  Minor?  Unknown
- Victim was a:  Child,  Elderly,  Helpless,  Related to the victim
- Drug offense(s) involved,  Trafficking,  Other aggravating circumstances (specify) \_\_\_\_\_
- The defendant is currently in custody for failure to appear in court or failure to comply
- Other relevant information \_\_\_\_\_

**Weight of Evidence:** (available at initial appearance)

- I heard the initial statement of 'probable cause' and issued the charges against this defendant.
- I did not issue the charges, but the arresting LEO has provided significant evidence as to the current event.
- No weight of evidence is available for consideration at this time.

**Family ties:**

- The defendant is  Adult  A Minor: Age  16,  17.
- The defendant  Has  Does not have immediate family in the community.
- The defendant has family  In state,  Out of state,  Out of the Country,  Unknown

**Employment status:**

- The defendant is employed; Where? \_\_\_\_\_ How long? \_\_\_\_\_
- unemployed,  retired,  disabled,  unknown,  student \_\_\_\_\_

**Financial resources:**

- Defendant  owns residence,  rents,  lives with family,  lives with friends,  no permanent address,  homeless  other \_\_\_\_\_
- Value of controlled substances/ property seized (if any) \_\_\_\_\_

**Character, conduct, mental and emotional condition:**

- Defendant is:  Cooperative,  Uncooperative,  Refuses to answer question(s) relevant to release criteria
- Defendant is:  Intoxicated,  Tearful,  Belligerent,  Agitated,  Combative,  Profane,  Threatening
- Other \_\_\_\_\_

**Residency:** Defendant is a resident of  Forsyth County; length of time \_\_\_\_\_  \_\_\_\_\_ County

- Resident of North Carolina \_\_\_\_\_; length of time \_\_\_\_\_  Out of State \_\_\_\_\_
- Foreign Citizen,  legally,  undocumented,  unknown. Country of Citizenship? \_\_\_\_\_

**Criminal History:**  Failure to Appear or Failure to Comply with Court Orders

- Failure to comply with conditions of pretrial release.
- Prior Criminal Convictions,  felony,  misdemeanor,  drug offenses,  alcohol
- Assault/Crimes against Persons,  larceny/ fraud,  resist,  weapons,  DWI,  Domestic Violence
- Pertinent Criminal History \_\_\_\_\_
- Defendant is currently on probation \_\_\_\_\_ (Probation Officer) \_\_\_\_\_

**Other factors taken into consideration:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



After thorough examination of the defendant, based upon the judicial findings from the criteria as stated above, the undersigned judicial magistrate has determined that a Secured Bond is required to:

- Assure the appearance of the defendant in court.
- Ensure that the defendant's release does not result in injury to persons, destruction of evidence or intimidation of any witnesses.

Cases whereby release is not authorized: Check any that apply.

- Capital Crime
- Fugitive Order (Local Policy Prohibits Release)
- Governor's Warrant
- Out of State probationer subject to Interstate Compact
- Crimes of Domestic Violence (DV Hold)
- Probation Violation if the defendant has a pending felony or prior sex offense and a danger to the public
- Defendant Charged with a felony and is on probation. (If insufficient information or poses a danger to the public).
- Certain drug trafficking offenses (15A-533(d))
- Certain offenses involving a firearm (15A-533(f))
- Certain gang offenses (15A-533(e))
- Certain Methamphetamine offenses (15A-534.6)
- Offenses committed while person was involuntarily committed or on escape from Involuntary Commitment.
- Violation of certain health control measures if person poses health and safety threat.
- Violation of Pretrial Release Supervision (OFA/FTC Pretrial Release)
- Defendant is subject to any "No Release" order or like-provision issued by a judge

Magistrate's Signature \_\_\_\_\_ Date \_\_\_\_\_

SUGGEST BOND AMOUNTS		
Offense level	Minimum	Maximum
Class A Felony	NO BOND ALLOWED -- JUDGE ONLY	
Class B1 Felony	\$160,000	1,000,000
Class B2 Felony	100,000	500,000
Class C Felony	50,000	250,000
Class D Felony	45,000	100,000
Class E Felony	15,000	50,000
Class F Felony	5,000	30,000
Class G Felony	3,000	20,000
Class H Felony	2,000	10,000
Trafficking Felonies	3-10 TIMES MANDATORY FINE FOR OFFENSE	
Habitual Impaired Driving	15,000	50,000
Impaired Driving	1,500	10,000
Class A1 Misdemeanor	1,500	5,000
Class 1 Misdemeanor	1,200	3,000
Class 2 Misdemeanor	1,000	2,000
Class 3 Misdemeanor	500	1,000