

**TWENTY FIRST JUDICIAL DISTRICT
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.

B. Unsecured Bond

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;

- h. the defendant's degree of intoxication and whether or not this would 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.

B. *Other Statutes That Must Be Considered* ____

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

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 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.

2. 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.