

MODEL BAIL POLICY APPENDIX
 November 2022

This document contains appendices to the Criminal Justice Innovation Lab’s Model Bail Policy.

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Appendix A: Sample Tools, Processes & Forms for Pretrial Decision Making

1. Orange County, North Carolina

ORANGE COUNTY MAGISTRATE BAIL EXPLANATION FORM

INSTRUCTIONS:

1. This process supplements and provides structure for the magistrate’s application of G.S. 15A-534. Specifically, it requires compliance with G.S. 15A-534(b), requiring a written promise, custody release or unsecured bond unless certain factors are found, creates presumptions for certain release conditions and emphasizes certain factors in the decision-making process. G.S. 15A-534(c) specifies factors that must be considered when setting pretrial conditions. A number of those factors are incorporated into this decision-making process. In deciding whether to follow recommended release conditions or to deviate, magistrates should consider other factors specified in G.S. 15A-534(c) including the weight of the evidence against the defendant; the person’s family ties, employment, character, mental condition, and length of residence in the community; and any other relevant evidence.
2. This form must be used in all cases except where a statute or local policy prescribes a different process/result.
3. When a defendant is charged with multiple offenses arising out of a continuous transaction, only one form should be completed for all offenses.
4. For defendants arrested for probation violations, do not use this process; instead proceed directly to table below entitled, Maximum Secured Appearance Bond Amounts Probation Violations.

Date	
Magistrate’s Name (first initial, last—no commas)	
Defendant’s Name (first, middle, last—no commas)	
Case #s (no commas)	
Highest Charged Offense	

Step 1: Is the defendant before you on an OFA after a FTA or after arrest in a 48-hour case with judge setting conditions by phone?

- No **[GO TO STEP 2]**
- Yes **[IF CHECKED ALSO CHECK ONE OF THE OPTIONS IMMEDIATELY BELOW]**
 - Set conditions as ordered by judge in OFA or by phone:
 - written promise
 - custody release
 - pretrial services
 - unsecured bond \$ _____
 - secured bond \$ _____ **[FORM COMPLETE]**
 - Bond doubling rule in G.S. 15A-534(d1) applies; secured bond \$ _____ **[FORM COMPLETE]**

STEP 2: Is the highest charged offense a non-DWI Class 1-3 misdemeanor?

- No **[GO TO STEP 3]**
- Yes **[IF CHECKED ALSO CHECK ONE OF THE OPTIONS IMMEDIATELY BELOW]**
 - Follow policy recommendation: Impose a
 - written promise
 - custody release or
 - unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond) **[FORM COMPLETE]**
 - Follow alternative recommendation: Where defendant’s impairment presents a risk of injury to a person, impose a “disappearing” secured bond for up to 8 hours or until sober, to convert to a written promise after that time. **[FORM COMPLETE]**
 - Deviate from recommendations and consider release to pretrial services or secured bond. **[GO TO STEP 3]**

STEP 3: Do any sidebar factors apply?

- Yes **[GO TO STEP 4]**
- No
 - Follow policy recommendation: Impose a
 - written promise
 - custody release or
 - unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond)**[FORM COMPLETE]**
 - Deviate from recommendations and consider release to pretrial services or secured bond. **[GO TO STEP 4]**

Sidebar Factors (check any that apply)

- Charged offense is Class A-E felony **[IF CHECKED, CHECK YES IN STEP 3 & PROCEED IMMEDIATELY TO STEP 4]**
- Defendant has recent history of FTAs¹
- Defendant has prior record of at least one violent felony conviction
- Defendant has prior record of felony or misdemeanor convictions within the last five years demonstrating a pattern of conduct²
- Charged offense committed when defendant was on pretrial release, supervised probation, parole or post-release supervision
- Charged offense involves domestic violence³
- Charged offense involves violence⁴ or injury to a person⁵
- Charged offense requires sex offender registration⁶ or is a failure to register as a sex offender offense⁷
- Charged offense is a drug trafficking offense⁸ or involves distribution of drugs⁹
- Charged offense is DWI and defendant has at least 1 DWI conviction within the last seven years
- Defendant is impaired such that immediate release is likely to cause harm to self/others/property¹⁰
- Charged offense involved defendant's use of a firearm or deadly weapon¹¹

STEP 4: Assess the statutory risk factors.¹² Release on written promise, custody release, or unsecured bond (check any that apply)

- will not reasonably assure defendant's appearance as required
Explain:
- poses a danger of injury to any person
Explain:
- is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses
Explain:
- No boxes checked
 - Follow policy recommendation: Impose a
 - written promise
 - custody release or
 - unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond)**[FORM COMPLETE]**
 - Deviate from recommendation and consider release to pretrial services or secured bond. **[GO TO STEP 5]**
- Any boxes checked
 - If release on a written promise, custody release or unsecured bond poses a danger of injury to any person and that risk is created only by the defendant's impairment, impose a "disappearing" secured bond for up to 8 hours or until sober, to convert to a written promise after that time **[FORM COMPLETE]**; otherwise
 - [GO TO STEP 5].**

STEP 5: Can Step 4 risk factor/reason for deviation be addressed by custody release/release to pretrial supervision services?

- Yes. Impose a
 - custody release or
 - release to pretrial services. **[FORM COMPLETE]**
- No
 - Follow policy: Impose secured bond¹³ in the amount of: \$ _____

Explanation for imposing a secured bond:

[If amount within maximum bond table, **FORM COMPLETE**; if in excess of that table **COMPLETE NEXT LINE**]

Explanation for secured bond in excess of maximum bond table:

[FORM COMPLETE]

- Deviate from policy & impose a written promise, custody release or unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond)

Explanation:

[FORM COMPLETE]

Maximum Secured Appearance Bond Amounts – Felonies and Misdemeanors (Other than DWI)

If a bond is set in excess of these recommendations, reasons for doing so must be documented.

These suggested maximum bond amounts are not mandatory and do not replace the use of the Magistrate's Tool and judicial discretion.

	Offense Class	Maximum Bond
Felony	A	By Judge
	B	\$200,000
	C	\$100,000
	D	\$75,000
	E	\$25,000
	F	\$15,000
	G	\$10,000
	H	\$5,000
	I	Written Promise
Misdemeanor	A1	\$2,500
	1	\$500
	2	Written Promise
	3	Written Promise

Maximum Secured Appearance Bond Amounts –DWI

If a bond is set in excess of these recommendations, reasons for doing so must be documented.

These suggested bond amounts are not mandatory and do not replace the use of the Magistrate's Tool and judicial discretion.

No prior DWI convictions	Written Promise
1 prior DWI conviction within 7 years	\$500
2 prior DWI convictions within 7 years	\$2,500
3 or more prior DWI convictions within 7 years	\$15,000

Maximum Secured Appearance Bond Amounts Probation Violations

Bail conditions and bond amounts must be set for probation violations based on the nature of the violation, not the offense class of the underlying offense, using the table immediately below. If a bail condition or bond is set in excess of these recommendations, reasons for doing so must be documented.

Type of Violation	Maximum Bond
Technical violation	Written Promise
Violation is a new crime – Class 2 or 3 misdemeanor	Written Promise
Violation is a new crime – Class 1 or A1 misdemeanor or Class H or I felony	\$5,000
Violation is absconding* or a new crime – Class G felony and above	Double the maximum bond allowed for the new offense in the tables on this page

* As defined by G.S. 15A-1343(b)(3a) and interpreting cases.

Other Bond Amount Guidelines

Fugitive Warrant	Set amount appropriate for underlying offense
Governor's Warrant	No bond
Parole Warrant	No bond
Drug Trafficking	Suggested maximum bond: An amount that is double that listed in table above for other offenses of the same class

Endnotes

1. There must be more than one prior FTA for this factor to apply. FTAs within the last two years are most relevant, as are OFAs for FTAs in cases other than minor traffic. Impaired driving is not a minor traffic case. Notwithstanding the word “recent” in this sidebar factor, magistrates may deviate from recommendations based on an older FTA history, for example, when a person has an older FTA history but was only recently released from incarceration for that offense.
2. The pattern of conduct must relate to the present offense. For example: the current charge involves drug possession and the Defendant has three priors within the last five years for misdemeanor drug or drug paraphernalia possession.
3. An offense involves domestic violence when the relationship between the parties is one of the following:
 - Current or former spouses
 - Currently or formerly lived together as if married
 - Currently or formerly in a dating relationship
 - Have a child in common
 - Parent (or one in parental role)/child
 - Grandparent/grandchild
 - Current or former members of the same householdNote: this list is drawn from G.S. 15A-534.1, the 48-hour domestic violence hold statute.
4. For example, robbery, assault, assault by pointing a gun, and assault by strangulation.
5. This factor applies when the offense involved harm to a person (e.g., assaultive conduct). It does not apply to offenses in which property is taken or harmed (e.g., larceny, embezzlement, obtaining property by false pretenses, etc.).
6. For a list of offenses requiring sex offender registration, see JAMIE MARKHAM AND SHEA DENNING, NORTH CAROLINA SENTENCING HANDBOOK 2018 (UNC School of Government, 2018).
7. See G.S. 14-208.11(a); JESSICA SMITH, NORTH CAROLINA CRIMES: A GUIDEBOOK ON THE ELEMENTS OF CRIME 268 (7th Ed. 2012) (discussing this offense).
8. G.S. 90-95(h); SMITH, NORTH CAROLINA CRIMES, *supra* note 7, at 721–739 (discussing trafficking offenses).
9. For example, sale and delivery of a controlled substance and possession with intent to manufacture, sell, or deliver.
10. For defendants in impaired driving cases, follow impaired driving procedures. In all other cases if a secured bond is imposed only because of this factor and the defendant remains detained, conditions must be revised without consideration of this factor when the defendant’s impairment no longer presents a danger of physical injury to himself or herself or others or of damage to property, but in any event, no later than 24 hours after secured bond was set.
11. As a general rule, for this factor to apply the defendant must have actively used the firearm or deadly weapon during the charged offense, for example, pointing a gun during a robbery. Carrying concealed is an exception to this general rule. Although a single carrying concealed violation does not satisfy this factor, multiple such violations may satisfy it.
12. G.S. 15A-534(b). When making this inquiry, judicial officials should consider whether pretrial restrictions (e.g., restrictions on travel, associations, conduct or place of abode, as well as abstention from alcohol consumption, as verified by the use of an approved continuous alcohol monitoring system), which can be imposed with a written promise, custody release or unsecured bond, can sufficiently mitigate pretrial risk. See G.S. 15A-534(a).
13. If a secured appearance bond is imposed: (1) the judicial official must consider—among other relevant factors—the defendant’s ability to pay; and (2) the amount of the secured appearance bond should not exceed the amounts listed the tables shown below; if a secured bond is set in excess of these recommended maximums, reasons for doing so must be documented. Ability to pay should be assessed as to the total bond amount, not 10% that would be paid for a commercial bail bond.

If a secured bond is used to detain (“detention bond”), a detention bond hearing that affords the defendant appropriate procedural protections must be held before a judge on motion by the defense.

ORANGE COUNTY MAGISTRATE BAIL EXPLANATION FORM

Date	
Magistrate's Name (first initial, last—no commas)	
Defendant's Name (first, middle, last—no commas)	
Case #s (no commas)	
Highest Charged Offense	

Step 1: Is the defendant before you on an OFA after a FTA or after arrest in a 48-hour case with judge setting conditions by phone?

- No **[GO TO STEP 2]**
- Yes **[IF CHECKED ALSO CHECK ONE OF THE OPTIONS IMMEDIATELY BELOW]**
 - Set conditions as ordered by judge in OFA or by phone:
 - written promise
 - custody release
 - pretrial services
 - unsecured bond \$_____ Note: Per local policy, written promise & custody release are preferred over unsecured bond)
 - secured bond \$_____ **[FORM COMPLETE]**
 - Bond doubling rule in G.S. 15A-534(d1) applies; secured bond \$_____ **[FORM COMPLETE]**

STEP 2: Is the highest charged offense a non-DWI Class 1-3 misdemeanor?

- No **[GO TO STEP 3]**
- Yes **[IF CHECKED ALSO CHECK ONE OF THE OPTIONS IMMEDIATELY BELOW]**
 - Follow policy recommendation: Impose a
 - written promise
 - custody release or
 - unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond) **[FORM COMPLETE]**
 - Follow alternative recommendation: Where defendant's impairment presents a risk of injury to a person, impose a "disappearing" secured bond for up to 8 hours or until sober, to convert to a written promise after that time. **[FORM COMPLETE]**
 - Deviate from recommendations and consider release to pretrial services or secured bond. **[GO TO STEP 3]**

STEP 3: Do any sidebar factors apply?

- Yes **[GO TO STEP 4]**
- No
 - Follow policy recommendation: Impose a
 - written promise
 - custody release or
 - unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond) **[FORM COMPLETE]**
 - Deviate from recommendations and consider release to pretrial services or secured bond. **[GO TO STEP 4]**

Sidebar Factors (check any that apply)

- Charged offense is Class A-E felony **[IF CHECKED, CHECK YES IN STEP 3 & PROCEED IMMEDIATELY TO STEP 4]**
- Defendant has recent history of FTAs
- Defendant has prior record of at least one violent felony conviction
- Defendant has prior record of felony or misdemeanor convictions within the last five years demonstrating a pattern of conduct
- Charged offense committed when defendant was on pretrial release, supervised probation, parole or post-release supervision
- Charged offense involves domestic violence
- Charged offense involves violence or injury to a person
- Charged offense requires sex offender registration or is a failure to register as a sex offender offense
- Charged offense is a drug trafficking offense or involves distribution of drugs
- Charged offense is DWI and defendant has at least 1 DWI conviction within the last seven years
- Defendant is impaired such that immediate release is likely to cause harm to self/others/property
- Charged offense involved defendant's use of a firearm or deadly weapon

STEP 4: Assess the statutory risk factors. Release on written promise, custody release, or unsecured bond
(check any that apply)

- will not reasonably assure defendant's appearance as required

Explain:

[Redacted]

- poses a danger of injury to any person

Explain:

[Redacted]

- is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses

Explain:

[Redacted]

- No boxes checked

- Follow policy recommendation: Impose a

- written promise

- custody release or

- unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond)

[FORM COMPLETE]

- Deviate from recommendation and consider release to pretrial services or secured bond. [GO TO STEP 5]

- Any boxes checked

- If release on a written promise, custody release or unsecured bond poses a danger of injury to any person and that risk is created only by the defendant's impairment, impose a "disappearing" secured bond for up to 8 hours or until sober, to convert to a written promise after that time [FORM COMPLETE]; otherwise

- [GO TO STEP 5].

STEP 5: Can Step 4 risk factor/reason for deviation be addressed by custody release/release to pretrial supervision services?

- Yes. Impose a

- custody release or

- release to pretrial services. [FORM COMPLETE]

- No

- Follow policy: Impose secured bond in the amount of: \$ [Redacted]

Explanation for imposing a secured bond:

[Redacted]

[If amount within maximum bond table, FORM COMPLETE; if in excess of that table COMPLETE NEXT LINE]

Explanation for secured bond in excess of maximum bond table:

[Redacted]

[FORM COMPLETE]

- Deviate from policy & impose a written promise, custody release or unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond)

Explanation:

[Redacted]

[FORM COMPLETE]

2. Columbus County, North Carolina

COLUMBUS COUNTY MAGISTRATE BAIL EXPLANATION FORM



DO NOT COMPLETE THIS FORM IF:

- > Defendant arrested on OFA after FTA
- > Specific bail statute applies e.g., recidivist firearm offense
- > Case involves only a probation violation
- > Case involves fugitive order/warrant

Defendant Name		Magistrate Name	
Case #(s)		Date	

STEP 1: What is the offense class of the most serious charge?¹
 Class 2 or 3 Misdemeanor **[GO TO STEP 4]**
 DWI, Class 1 or A1 Misdemeanor or Class F-1 Felony **[GO TO STEP 2]**
 Class A-E Felony **[GO TO STEP 3]**

STEP 2: Check any that apply:

- Charged offense was committed when Defendant was on pretrial release for a related offense², or on supervised probation for any offense
- Defendant has insufficient ties to the community to assure appearance or resides out of state³
- Defendant has a history of FTAs⁴
- Defendant has a prior record of a felony conviction or misdemeanor convictions within the last five years demonstrating a pattern of conduct⁵
- Charged offense involves domestic violence⁶
- Charged offense involves violence⁷ or injury to a person⁸
- Charged offense requires sex offender registration⁹ or is a failure to register as a sex offender offense¹⁰
- Charged offense is a drug trafficking offense¹¹
- Charged offense involves distribution of drugs¹²
- Charged offense is stalking or cyberstalking
- Charged offense is DWI and Defendant has at least one prior DWI conviction within the last 7 years
- Defendant is impaired such that immediate release is likely to cause harm to self/others/property¹³
- Charged offense involves Defendant's use of a firearm or deadly weapon or possession of a firearm in connection with a drug offense.
- Charged offense related to gang activity¹⁴

[IF ANY BOX IS CHECKED, GO TO STEP 3. IF NO BOX IS CHECKED, GO TO STEP 4]

STEP 3: Make the statutory determination:
 Statute *requires* the judicial official to impose a written promise, custody release, or unsecured bond *unless* he/she determines that such release **[check any that apply]**

- 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 witnesses¹⁵

[IF ANY BOX IS CHECKED, GO TO STEP 5. IF NO BOX IS CHECKED, GO TO STEP 4]

STEP 4: Follow policy recommendation & impose a written promise, custody release, or unsecured bond. **[FINISHED]**
 Deviate from the policy recommendation & impose a secured bond. Record reasons below. **[GO TO STEP 6]**

STEP 5: Follow policy recommendation and impose a secured bond. Record reasons below. **[GO TO STEP 6]**
 Deviate from the policy recommendation & impose a condition other than secured bond. **[FINISHED]**

STEP 6: FOR ALL SECURED BONDS, give reasons for imposing secured bond:

I considered all information presented regarding ability to pay.¹⁷ **[FINISHED]**

1. If the matter is before the judicial official on a habitual felon charge, the judicial official should treat the offense at its "habitualized" offense Class level.
 2. This factor covers situations where the Defendant continues to engage in the same type of conduct (e.g., repeat larceny) or an escalating course of conduct (e.g., the defendant is charged with an injury to real property while on pretrial release for communicating threats to the property owner).
 3. The mere fact that the Defendant is homeless and does not have a home address does not warrant checking this box; inquiry should be focused on the Defendant's connections to the community.
 4. There must be more than one prior FTA for this factor to apply. FTAs within the last two years are most relevant, as are OFAs for FTAs in cases other than minor traffic. Impaired driving is not a minor traffic case.
 5. The pattern of conduct must relate to the present offense. For example: the current charge involves drug possession and the Defendant has three priors within the last five years for misdemeanor drug or drug paraphernalia possession.
 6. An offense involves domestic violence when the relationship between the parties is one of the following:
 - o Current or former spouses
 - o Currently or formerly lived together as if married
 - o Currently or formerly in a dating relationship
 - o Have a child in common
 - o Parent (or one in parental role)/child
 - o Grandparent/grandchild
 - o Current or former members of the same household
- Note: this list is drawn from G.S. 15A-534.1, the 48-hour domestic violence hold statute.*
7. For example, robbery, assault, assault by pointing a gun, and assault by strangulation.
 8. This factor applies when the offense involved harm to a person (e.g., assaultive conduct). It does not apply to offenses in which property is taken or harmed (e.g., larceny, embezzlement, obtaining property by false pretenses, etc.)
 9. For a list of offenses requiring sex offender registration, see Jamie Markham and Shea Denning, *North Carolina Sentencing Handbook 2017-18* (UNC School of Government, forthcoming 2018)
 10. See G.S. 14-208.11(a); Jessica Smith, *North Carolina Crimes: A Guidebook on the Elements of Crime* 268 (7th Ed. 2012) (discussing this offense).
 11. See G.S. 90-95(h); *NORTH CAROLINA CRIMES supra* note 10, at 721-739 (discussing trafficking offenses).
 12. For example, sale and delivery of a controlled substance and possession with intent to manufacture, sell, or deliver.
 13. For defendants in impaired driving cases, follow impaired driving procedures. In all other cases if a secured bond is imposed only because of this factor and the defendant remains detained, conditions must be revised without consideration of this factor when the defendant's impairment no longer presents a danger of physical injury to himself or herself or others or of damage to property, but in any event, no later than 24 hours after secured bond was set.
 14. Specific evidence of relation to gang activity must be presented (e.g., admission of defendant or social media material). The mere statement that the defendant is a "validated" gang member is insufficient by itself to establish this factor.
 15. G.S. 15A-534(b). When making this inquiry, judicial officials should consider whether pretrial restrictions (e.g., restrictions of travel, associations, conduct or place of abode, as well as abstention from alcohol consumption, as verified by the use of an approved continuous alcohol monitoring system), which can be imposed with a written promise, custody release or unsecured bond, can sufficiently mitigate pretrial risk. See G.S. 15A-534(a).
 16. Pretrial restrictions can accompany any pretrial condition. See G.S. 15A-534(a) and note 15 above.
 17. If a secured appearance bond is imposed the judicial official must consider – among other relevant factors – the defendant's ability to pay.

Columbus County Magistrate Bail Explanation Form: Offense Class Reference Sheet

Most Common Offenses: Class 2 & Class 3 Misdemeanors			
Offense	Class	Offense	Class
ALLOW UNLICENSED TO DRIVE	3	OPEN CONT AFTER CONS ALC 1ST	3
CANCL/REVOK/SUSP CERTIF/TAG	3	OPERATE VEH NO INS	3
CARRYING CONCEALED GUN(M)	2	POSS/DISP ALT/FICT/REVD DR LIC	2
DR/ALLOW REG PLATE NOT DISPLAY	3	POSSESS MARIU PARAPHERNALIA	3
DRIVE/ALLOW MV NO REGISTRATION	3	POSSESS MARIJUANA UP TO 1/2 OZ	3
DWLR NOT IMPAIRED REV	3	RECKLESS DRIVING TO ENDANGER	2
EXPIRED REGISTRATION CARD/TAG	3	RECKLESS DRVG-WANTON DISREGARD	2
FAIL TO RETURN RENTAL PROPERTY	3	RESISTING PUBLIC OFFICER	2
FICT/ALT TITLE/REG CARD/TAG	3	SECOND DEGREE TRESPASS	3
FICTITIOUS INFO TO OFFICER	2	SIMPLE ASSAULT	2
GIVE/LEND/BORROW LIC PLATE	3	SIMPLE POSSESS SCH VI CS (M)	3
NO LIABILITY INSURANCE	2	SPEEDING	3
NO OPERATORS LICENSE	3	WINDOW TINTING VIOL	3

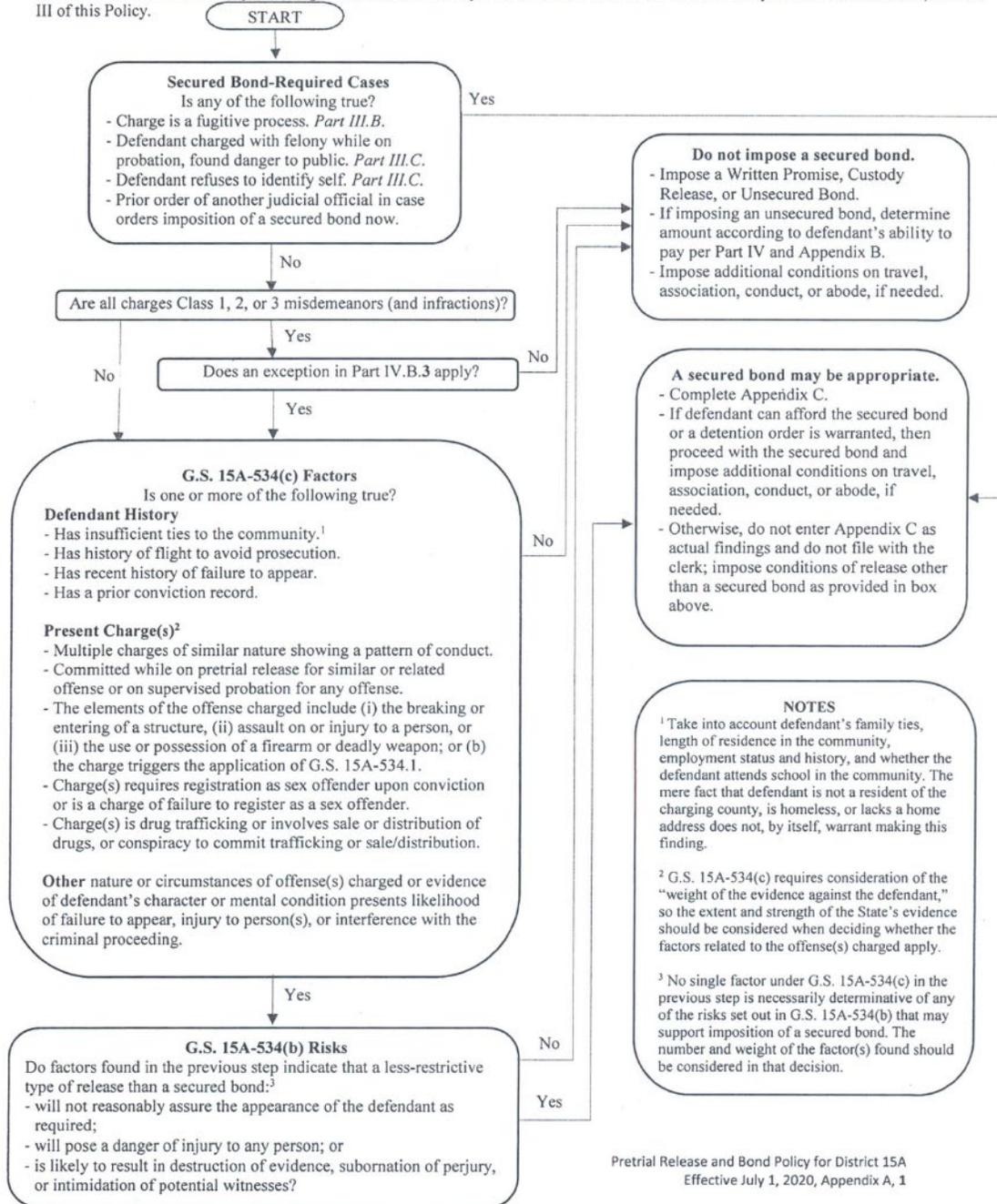
Most Common Offenses: DWI, Class 1 & A1 Misdemeanors, Class F-I Felonies			
Offense	Class	Offense	Class
ASSAULT AND BATTERY	1	FLEE/ELUDE ARREST W/MV (F)	H
ASSAULT BY POINTING A GUN	A1	INJURY TO REAL PROPERTY	1
ASSAULT GOVT OFFICIAL/EMPLY	A1	LARCENY AFTER BREAK/ENTER	H
ASSAULT ON A FEMALE	A1	LARCENY BY EMPLOYEE	H
ASSAULT WITH A DEADLY WEAPON	A1	LARCENY OF A FIREARM	H
BREAK OR ENTER A MOTOR VEHICLE	I	MAINTN VEH/DWELL/PLACE CS (F)	I
BREAKING AND OR ENTERING (F)	H	MISDEMEANOR LARCENY	1
COMMUNICATING THREATS	1	OBTAIN PROPERTY FALSE PRETENSE	H
DRIVING WHILE IMPAIRED		POSS CS PRISON/JAIL PREMISES	H
DWLR IMPAIRED REV	1	POSSESS DRUG PARAPHERNALIA	1
FELONY LARCENY	H	POSSESS STOLEN FIREARM	H
FELONY POSSESSION OF COCAINE	I	POSSESSION OF FIREARM BY FELON	G
FELONY POSSESSION SCH II CS	I	PWIMSD SCH II CS	H

Most Common Offenses: Class A-E Felonies			
Offense	Class	Offense	Class
ATT ROBBERY-DANGEROUS WEAPON	D	FIRST DEGREE KIDNAPPING	C
ATTEMPT FIRST DEGREE BURGLARY	E	FIRST DEGREE MURDER	A
AWDW INTENT TO KILL	E	FIRST DEGREE SEX OFFENSE CHILD	B1
AWDW SERIOUS INJURY	E	INT CHILD ABUSE-SER PHYS INJ	E
AWDWIKISI	C	M/S/D/P CS W/N 1000FT SCHOOL	E
CONSP ROBBERY DANGRS WEAPON	E	NEG CHILD ABUSE-SER BOD INJ	E
DIS WEAP OCC DWELL/MOVING VEH	D	ROBBERY WITH DANGEROUS WEAPON	D
DIS WEAP OCC PROP SER BOD INJ	C	SECOND DEG MURDER W/O REGARD	B2
DISCHARGE WEAPON OCCUPIED PROP	E	SECOND DEGREE KIDNAPPING	E
FELONY DEATH BY VEHICLE	D	STAT SEX OFF W/CHILD BY ADULT	B1
FIRST DEGREE ARSON	D	STAT SEX OFF WITH CHILD <= 15	B1
FIRST DEGREE BURGLARY	D	STATUTORY RAPE OF CHILD <= 15	B1
FIRST DEGREE FORCIBLE RAPE	B1	STATUTORY RAPE OF CHILD <= 15	B1

3. Alamance County, North Carolina

Appendix A: Determining Conditions of Pretrial Release

This chart summarizes the process set out in Part IV of this Policy for determining the appropriate type of pretrial release to impose, when a defendant is eligible to have conditions of release set. This chart implements the directive in G.S. 15A-534(b) that a secured bond should be imposed only when a less-restrictive form of release will not assure the defendant's presence for trial, avoid injury to any person, or avoid interference with the criminal proceeding. For scenarios that require denial of conditions of release or delay in their determination, see Part III of this Policy.



Note: References within this document to Appendices refer to Appendices in the Alamance Policy, not in this Model Bail Policy.

New Alamance County Pretrial Release Flowchart: A Step-By-Step Guide

Jessica Smith, UNC SOG, June 2020

Step 1: Secured Bond-Required Cases

Any of the following true?

- Charge is a fugitive process
Note: Under Part III.B.5 of the Policy (page 7), a defendant arrested on a fugitive process for an offense punishable by death or life in prison is not entitled to conditions of release. However, a defendant arrested on fugitive process for an offense not subject to death or life in prison is entitled to conditions, the condition must be a secured bond & this box is checked.
- Defendant charged with felony while on probation, found danger to public
Note: Under Part III.C.5 of the Policy (pages 13-14), when determining conditions for a defendant charged with a felony and currently on probation, the judicial official must determine if the defendant poses a danger to the public before setting conditions. If the defendant poses a danger to the public, the official must impose a secured bond & this box is checked. If the official finds that the defendant does not pose a danger to the public, conditions are set as usual.
- Defendant refuses to identify self
Note: Under Part III.C.7 of the Policy (pages 15-16), if at the initial appearance the defendant cannot be identified and continues to refuse to identify himself, that refusal must be deemed clear and convincing evidence that the defendant is unlikely to appear in court, a secured bond must be imposed & this box is checked.
- Another judicial official's prior order requires imposition of a secured bond now
Note: Under Part IV.B.7.b of the Policy (page 19), if a secured bond has been ordered by a senior judicial official, that condition must be imposed & this box is checked.

If none of the above apply, go to Step 2

If any of the above apply, go to Step 7

Step 2: Are All Charges Class 1-3 Misdemeanors or Infractions?

If Yes, go to Step 3

If No, go to Step 4

Step 3: Do any of the following exceptions apply?

Note. Part IV.B.3. of the Policy (pages 17-18) provides that when the most serious charged offense is a Class 1-3 misdemeanor, the judicial official must impose a condition other than a secured bond unless one of the following exceptions applies.

- Elements of the charged offense include: breaking or entering a structure; assault on/injury to a person, or the use/possession of a firearm or deadly weapon
- G.S. 15A-534.1 (domestic violence) is triggered because of the offenses charged and the relationship between the defendant and the victim
- Clear and convincing evidence of one or more factors in G.S. 15A-534(c) (see Step 4) presents a substantial likelihood of one or more of the risks in G.S. 15A-534(b) (failure to appear, injury to persons, interference with the criminal proceeding)

If none of the exceptions apply, go to Step 6

If any of the exceptions apply, go to Step 4

Step 4: Consider the "G.S. 15A-534(c) Factors"

Is one or more of the following true:

- Defendant History
 - Has insufficient ties to the community

Note: Consider defendant's family ties, length of residence in the community, employment status and history, and whether the defendant attends school in the community. The mere fact that defendant is not a resident of the charging county, is homeless, or lacks a home address does not, by itself, warrant making this finding.

- Has history of flight to avoid prosecution
- Has recent history of failure to appear
- Has a prior conviction record
- Present charge(s)
 - Note: G.S. 15A-534(c) requires consideration of the "weight of the evidence against the defendant," so the extent and strength of the State's evidence should be considered when deciding whether the factors related to the offense(s) charged apply.*
 - Multiple charges of similar nature showing a pattern of conduct
 - Committed while on pretrial release for similar or related offense or on supervised probation for any offense
 - Elements of the charged offense include: breaking or entering a structure; assault on/injury to a person; or the use/possession of a firearm or deadly weapon
 - G.S. 15A-534.1 (domestic violence 48-hour rule) applies
 - Charge(s) requires registration as sex offender upon conviction or is a charge of failure to register as a sex offender
 - Charge(s) is drug trafficking or involves sale or distribution of drugs, or conspiracy to commit trafficking or sale/distribution
- Nature or circumstances of offense(s) charged or evidence of defendant's character or mental condition presents likelihood of failure to appear, injury to person(s), or interference with the criminal proceeding

If none of the above apply, go to Step 6

If any of the above apply, go to Step 5

Step 5: Assess G.S. 15A-534(b) Risks

Do any factors found in Step 4 indicate that a written promise, custody release or unsecured bond:

- 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

Notes

- *No single factor under G.S. 15A-534(c) in Step 4 is necessarily determinative of any of the G.S. 15A-534(b) risks that may support imposition of a secured bond. The number and weight of the factor(s) found should be considered in that decision.*
- *For Class 3 misdemeanors charged against defendants with less than 4 prior convictions, a secured bond may not be imposed absent clear and convincing evidence that release poses danger of injury to any person. See Part IV.B.7.c (page 19). In these Class 3 misdemeanor cases, you may proceed to Step 7 only if the second box above is checked; otherwise proceed to Step 6.*

If none of the above apply, go to Step 6

If any of the above apply, go to Step 7

Step 6: Do Not Impose a Secured Bond

- Impose a written promise, custody release, or unsecured bond.
 - Note: The Policy recommends a presumption in favor of non-monetary types of release (written promise and custody release) over an unsecured bond. See Part IV.B.2 (page 17).*
- If imposing an unsecured bond, determine the amount according to the defendant's ability to pay per Part IV and Appendix B.
- Impose additional conditions on travel, association, conduct, or abode, if needed.

Step 7: A Secured Bond May Be Appropriate

- Determine amount according to defendant's ability to pay per Part IV and Appendix B.
- Make written findings of reasons for imposing secured bond and about defendant's ability to pay on the form in Appendix C.
- Impose additional conditions on travel, association, conduct, or abode, if needed.

STATE OF NORTH CAROLINA ALAMANCE COUNTY	File No. (list only local file number on associated AOC-CR-200)
STATE VERSUS	IN THE GENERAL COURT OF JUSTICE <input type="checkbox"/> DISTRICT <input type="checkbox"/> SUPERIOR COURT DIVISION
Name of Defendant	WRITTEN FINDINGS FOR SECURED BOND

Pretrial Release and Bond Policy for District 15A
 NOTE: Do not impose conditions of release on this form. Use form AOC-CR-200 and related forms to impose conditions of release. Use this form only to record the court's findings supporting imposition of a secured bond and the defendant's ability to satisfy that condition. Do not use this form when imposing a written promise, custody release, or unsecured bond. Incorporate this form by reference on the related AOC-CR-200 as "SECR bond written findings."

FINDINGS

The undersigned judicial official finds for the reasons stated below that it is appropriate to impose a secured bond for the defendant's release in the above-captioned case and related cases, as imposed on the attached form AOC-CR-200.

1. **Secured Bond Mandatory.** A secured bond is required, because:
- a. the case is a fugitive proceeding under Chapter 15A, Article 37. G.S. 15A-736.
 - b. a secured bond is required by G.S. 15A-534(d1) pursuant to recommendation in an order for arrest or prior conditions imposed in this case(s).
 - c. defendant is charged with a felony while on probation, and the court further finds that defendant presents a danger to the public. G.S. 15A-534(d2).
 - d. the order listed below and entered previously in this proceeding directed the imposition of a secured bond:

Date of Order	Name of Entering Official	Title of Entering Official	Title/Description of Order

- e. Other: _____

NOTE: If No. 1 is found, no findings are required in No. 2. Proceed to No. 3.

2. **Secured Bond Imposed Pursuant to G.S. 15A-534(b).** A secured bond is necessary, pursuant to the undersigned official's determination that a written promise to appear, custody release, or unsecured bond: *(check all that apply)*
- a. will not reasonably assure the appearance of the defendant as required;
 - b. will pose a danger of injury to any person; and/or
 - c. is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses.

Facts supporting, by clear and convincing evidence, that determination include: (NOTE: Give brief statements of fact supporting the court's conclusions. Extensive findings are not required but should be sufficiently clear to evaluate in relation to the three risks listed above.)

3. The undersigned further finds, based on all relevant and reliable evidence available concerning defendant's financial resources, that

NOTE: Check only one. See Part IV.B.8 of the Pretrial Release and Bond Policy for District 15A for guidance when determining defendant's financial status.

- a. the defendant is presumptively indigent for one or more of the reasons listed on Side Two and therefore unable to satisfy any secured bond.
- b. the defendant *(check only one)* is not presumptively indigent for any of the reasons listed on Side Two, and has income or assets as follows:
 - is presumptively indigent, but that presumption is rebutted by evidence of defendant's income or assets, as follows: *(Check all that apply)*
 - 1) Defendant's monthly income, which is greater than 200% of the poverty level, is \$ _____. Defendant is presumed able to pay a total secured bond in the amount of 2 percent of that monthly income, which is: $(\text{monthly income}) \times (0.02) = \$ \text{_____}$.
 - 2) Defendant has liquid assets of at least \$3,000, in the amount of \$ _____. Defendant is able to pay a total secured bond of \$ _____ without unreasonable impairment of the defendant's ability to satisfy his/her other financial obligations.
 - 3) Defendant has ownership of real property with available equity in the amount of (A) \$ _____, of which defendant's ownership share is (B) _____ %, for a value of (C) \$ _____ (A*B). Eighty percent (80%) of defendant's share \$ _____ (C* 0.80), is deemed available for the purpose of securing bond.
 - 4) Defendant has represented to a district or superior court judge that the defendant is able to satisfy a secured bond in the amount of \$ _____ without unreasonable impairment of his/her ability to satisfy his/her other financial obligations. (NOTE: Select this box only if the defendant makes an unsolicited offer to pay a certain amount.)
- c. there is no available evidence of the defendant's financial resources from which the court can determine the defendant's ability to satisfy a secured bond in any amount. (NOTE: Proceed to No. 4 b)

Following the ability to pay assessment in No. 3, determine the secured bond amount based on the number and weight of the factors in Part IV of this Policy that merited the imposition of a monetary bond as provided in Appendix B. Document the secured bond amount on the AOC-CR-200 form only if one of the options under No. 4 apply. If neither apply, do not enter the findings on this form and do not file the form with the clerk. Instead, impose conditions of release other than a secured bond.

4. After comparing the defendant's ability to pay in No. 3 to the secure bond amount, the undersigned finds that: *(check one)*

- a. the defendant is able to satisfy the secured bond imposed.
- b. the defendant is unable to, or the court is unable to determine that the defendant is able to, satisfy the bond imposed, but a secured bond in that amount is nonetheless necessary, because *(check one)* it is mandated statutorily. the undersigned finds by clear and convincing evidence the following facts that no other condition or combination of conditions of release will satisfy compelling State interest(s) of the defendant's appearance, preventing injury to persons, or preventing destruction of evidence, subornation of perjury, or intimidation of potential witnesses:
(NOTE: Give brief statements of the facts supporting the court's conclusion.)

<i>Date</i>	<i>Name of Judicial Official</i>	<i>Signature of Judicial Official</i>
<input type="checkbox"/> <i>Magistrate</i>	<input type="checkbox"/> <i>District Court Judge</i>	<input type="checkbox"/> <i>Superior Court Judge</i>
<input type="checkbox"/> <i>Clerk of Superior Court</i>	<input type="checkbox"/> <i>Deputy CSC</i>	<input type="checkbox"/> <i>Assistant CSC</i>

PRESUMPTIVE INDIGENCY/ABILITY TO PAY

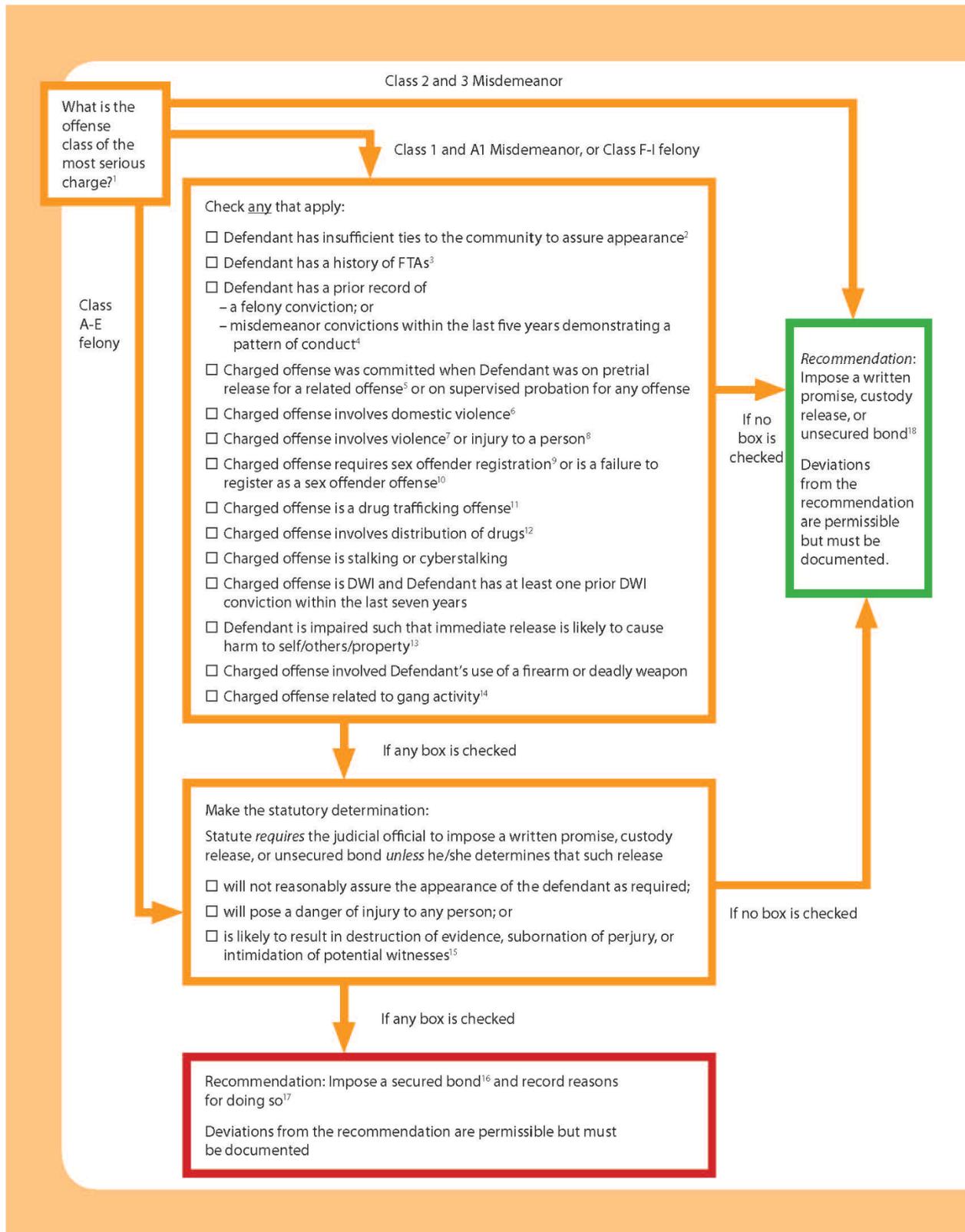
Any person who meets any of the following criteria shall be presumed unable to afford any amount of secured bond, unless rebutted by evidence of ability to pay, as laid out in number 3(b) on Side One of this form. **(NOTE: See Part IV.B.8.d.2 of the Pretrial Release and Bond Policy for District 15A.)**

- Is eligible for appointment of counsel;
- Is, or within the past 6 months has been, homeless;
- Has income at or below 200% of the federal poverty guidelines *(see table in Appendix B of the Pretrial Release and Bond Policy)*;
- Is a full-time student;
- Has been incarcerated pursuant to an active sentence within the past 6 months;
- Is residing in a mental health or other treatment program, or has resided in such a program in the past 6 months; or
- Is or has dependents eligible to receive SNAP benefits (food stamps), Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, Social Security Disability Income, public housing, or any other federal or state public assistance program based on financial hardship.

4. Forsyth County, North Carolina

JUDICIAL DISTRICT 21: DETERMINING CONDITIONS OF PRETRIAL RELEASE

Pursuant to Judicial District 21's Local Pretrial Release Policy, judicial officials must use the flowchart contained here, with accompanying footnotes and tables, when determining conditions of release in all cases except where the North Carolina General Statutes or local policy prescribe a different process or result.



1. If the matter is before a judge on the State's motion to increase conditions after the return of a habitual felon indictment, the judge should treat the offense at its "habitualized" offense Class level.
2. The mere fact that the Defendant is homeless and does not have a home address does not warrant checking this box; inquiry should be focused on the Defendant's connections to the community.
3. There must be more than one prior FTA for this factor to apply. FTAs within the last two years are most relevant, as are OFAs for FTAs in cases other than minor traffic. Impaired driving is not a minor traffic case.
4. The pattern of conduct must relate to the present offense. For example: the current charge involves drug possession and the Defendant has three priors within the last five years for misdemeanor drug or drug paraphernalia possession.
5. This factor covers situations where the Defendant continues to engage in the same type of conduct (e.g., repeat larceny) or an escalating course of conduct (e.g., the defendant is charged with injury to real property while on pretrial release for communicating threats to the property owner).
6. An offense involves domestic violence when the relationship between the parties is one of the following:
 - o Current or former spouses
 - o Currently or formerly lived together as if married
 - o Currently or formerly in a dating relationship
 - o Have a child in common
 - o Parent (or one in parental role)/child
 - o Grandparent/grandchild
 - o Current or former members of the same household

Note: this list is drawn from G.S. 15A-534.1, the 48-hour domestic violence hold statute.
7. For example, robbery, assault, assault by pointing a gun, and assault by strangulation.
8. This factor applies when the offense involved harm to a person (e.g., assaultive conduct). It does not apply to offenses in which property is taken or harmed (e.g., larceny, embezzlement, obtaining property by false pretenses, etc.).
9. For a list of offenses requiring sex offender registration, see Jamie Markham and Shea Denning, *North Carolina Sentencing Handbook 2017–18* (UNC School of Government, forthcoming 2018).
10. See G.S. 14-208.11(a); Jessica Smith, *North Carolina Crimes: A Guidebook On The Elements Of Crime* 268 (7th Ed. 2012) (discussing this offense).
11. See G.S. 90-95(h); *NORTH CAROLINA CRIMES* *supra* note 10, at 721–739 (discussing trafficking offenses).
12. For example, sale and delivery of a controlled substance and possession with intent to manufacture, sell, or deliver.
13. For defendants in impaired driving cases, follow impaired driving procedures. In all other cases if a secured bond is imposed only because of this factor and the defendant remains detained, conditions must be revised without consideration of this factor when the defendant's impairment no longer presents a danger of physical injury to himself or herself or others or of damage to property, but in any event, no later than 24 hours after secured bond was set.
14. Specific evidence of relation to gang activity must be presented (e.g., admission of defendant or social media material). The mere statement that a defendant is a "validated" gang member is insufficient by itself to establish this factor.
15. G.S. 15A-534(b). When making this inquiry, judicial officials should consider whether pretrial restrictions (e.g., restrictions on travel, associations, conduct or place of abode, as well as abstention from alcohol consumption, as verified by the use of an approved continuous alcohol monitoring system), which can be imposed with a written promise, custody release or unsecured bond, can sufficiently mitigate pretrial risk. See G.S. 15A-534(a).
16. If a secured appearance bond is imposed: (1) the judicial official must consider—among other relevant factors—the defendant's ability to pay; and (2) the amount of the secured appearance bond should not exceed the amounts listed in the tables shown below; if a secured bond is set in excess of these recommended maximums, reasons for doing so must be documented.

If a secured bond is used to detain ("detention bond"), a detention bond hearing that affords the defendant appropriate procedural protections must be held before a judge on motion by the defense.
17. See G.S. 15A-534(b) (when judicial official imposes secured bond instead of written promise, custody release or unsecured bond, the judicial official "must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge").
18. Pretrial restrictions can accompany any pretrial condition. See G.S. 15A-534(a) and note 14 above.

Maximum secured appearance bond amounts—offenses other than drug trafficking

If a bond is set in excess of these recommendations, reasons for doing so must be documented.

Type of Offense	Maximum Secured Bond
Misdemeanor, Class 2-3	\$250 ¹⁹
Misdemeanor, Class 1	\$500
Misdemeanor, Class A1	\$1,000
Driving While Impaired non felony	\$500
Felony Class I	\$2,500
Felony Class H	\$5,000
Felony Class G	\$10,000
Felony Class F	\$15,000
Felony Class E	\$25,000
Felony Class D	\$50,000
Felony Class C	\$50,000
Felony Class B2	\$200,000
Felony Class B1	\$200,000
Felony Class A	Set by a Judge

19. Or 15% if \$250 will result in a detention bond.

Maximum Secured Appearance Bond Amounts—Drug Trafficking*

If a bond is set in excess of these recommendations, reasons for doing so must be documented.

Drug	Amount	Class	Maximum Secured Bond
Marijuana	>10 lbs – 49 lbs.	H	\$5,000
	50-1,999	G	\$25,000
	2,000-9,999	F	\$50,000
Methaqualone	10,000 or more	D	\$200,000
	1,000 – 4,999 dosage units	G	\$25,000
	5,000 – 9,999	F	\$50,000
Cocaine	10,000 or more	D	\$200,000
	28-199 grams	G	\$50,000
	200-399	F	\$100,000
Methamphetamine	400 or more	D	\$250,000
	28-199 grams	F	\$50,000
	200-399 grams	E	\$100,000
Amphetamine	400 or more	C	\$250,000
	28-199 grams	H	\$5,000
	200-399	G	\$25,000
Opium/Opiate/Opioid/Heroin	400 or more	E	\$100,000
	4-13 grams	F	\$50,000
	14-27	E	\$100,000
LSD	28 or more	C	\$500,000
	100-499 dosage units	G	\$25,000
	500-999	F	\$50,000
MDA/MDMA	1,000 or more	D	\$200,000
	100-499 units/28-199 grams	G	\$25,000
	500-999 units/200-399 grams	F	\$50,000
Substituted Cathinones	1,000 units/400 grams or more	D	\$250,000
	28-199 grams	F	\$50,000
	200-399	E	\$100,000
Synthetic Cannabinoids	400 or more	C	\$250,000
	In excess of 50-249 dosage units**	H	\$5,000
	250-1,249	G	\$25,000
	1,250-3,749	F	\$50,000
	3,750 or more	D	\$200,000

* The maximum secured bonds included in this table are taken from the minimum fines required for the respective offenses.

**A "dosage unit" is 3 grams of synthetic cannabinoid or any mixture containing such substance

FORSYTH COUNTY JUDGE BAIL EXPLANATION FORM

DIRECTIONS: Use this form when setting or modifying bail in all cases except probation violations.

Judge's Name		Date	
Defendant's Name			
Case #s			

Highest charge	Class A-E Felony	Class 1-A1 Misdemeanor or F-I Felony	Class 2 or 3 Misdemeanor

STEP 1: OFA after FTA with conditions set by judge

Yes

Written Promise

Custody Release

Unsecured Bond \$ _____

Secured Bond \$ _____

(FORM COMPLETE)

No **(GO TO STEP 2)**

STEP 3: (check all that apply)

Defendant has insufficient ties to the community to assure appearance

Defendant has a history of FTAs

Defendant has a prior record of
-a felony conviction; or
-misdemeanor convictions within the last five years demonstrating a pattern of conduct

Charged offense was committed when Defendant was on pretrial release for a related offense or on supervised probation for any offense

Charged offense involves domestic violence

Charged offense involves violence or injury to a person

Charged offense requires sex offender registration or is a failure to register as a sex offender offense

Charged offense is a drug trafficking offense

Charged offense involves distribution of drugs

Charged offense is stalking or cyberstalking

Charged offense is DWI and defendant has at least 1 prior DWI conviction within the last seven years

Defendant is impaired such that immediate release is likely to cause harm to self/others/property

Charged offense involved Defendant's use of a firearm or deadly weapon

Charged offense related to gang activity

STEP 2: Highest Charge

Class 2 or 3 Misdemeanor **(GO TO STEP 3.5)**

Class 1-A1 Misdemeanor or Class I-F Felony **(GO TO STEP 3)** →

Class A-E Felony **(GO TO STEP 4)**

IF NO BOX IS CHECKED IN STEP 3, GO TO STEP 3.5 **IF ANY BOX IS CHECKED IN STEP 3, GO TO STEP 4**

STEP 3.5:

Follow bond policy recommendation and impose a

Written promise,

Custody release, or

Unsecured bond \$ _____ **(FORM COMPLETE)**

Deviate from bond policy recommendation to impose a nonfinancial condition;

Secured bond \$ _____ **IF DEVIATE IS CHECKED, COMPLETE STEP 7**

From **STEP 2** or **Step 3**

STEP 4: Make the statutory determination

Statute *requires* the judicial official to impose a written promise, custody release, or unsecured bond *unless* he/she determines that such release (Check any that apply and provide explanation for any checked box)

will not reasonably assure the appearance of the defendant as required

Explanation:

[Redacted explanation text]

will pose a danger of injury to any person

Explanation:

[Redacted explanation text]

is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses

Explanation:

[Redacted explanation text]

IF NO BOX IS CHECKED IN STEP 4, GO TO STEP 3.5 ABOVE. IF ANY BOX IS CHECKED IN STEP 4, GO TO STEP 5.

STEP 5:

Follow bond policy recommendation and impose a secured bond consistent with maximum bond tables (*if this box is checked, make sure that reason is stated in STEP 4 and once that is done, form is complete \$* [Redacted])

Deviate from bond policy recommendation to impose a secured bond within maximum bond table amount and impose:

Written promise

Custody release

Unsecured bond \$ [Redacted]

Secured bond \$ [Redacted]

(IF DEVIATE IS CHECKED, PROCEED TO STEP 6)

STEP 6: Type of Deviation (check one)

From recommendation to impose secured bond

From maximum bond table

IF ANY BOX IS CHECKED, GO TO STEP 7

STEP 7: Reasons for deviating from local bond policy recommendation (check any that apply):

NC General Statute 15A-534(d3) - Bond is doubled because an offender already is released on bond for a related crime.

NC General Statute 15a-534(d2) - Probationer is charged with a new felony and is deemed to pose a danger to the public.

NC General Statute 15A-534.6 - Offender is charged with manufacturing methamphetamine or has a pattern or regular use of methamphetamine

Other:

[Redacted other reasons text]

(FORM COMPLETE)

20190634

FORSYTH COUNTY MAGISTRATE BAIL EXPLANATION FORM

DIRECTIONS: This form applies when setting bail.

Magistrate's Name		Date	
Defendant's Name			
Case #s			
Highest charge	Class A-E Felony	Class 1-A1 Misdemeanor or F-I Felony	Class 2 or 3 Misdemeanor

STEP 1: OFA after FTA with conditions set by judge

Yes

- Written Promise
- Custody Release
- Unsecured Bond \$ _____
- Secured Bond \$ _____

(FORM COMPLETE)

No (Go to **STEP 2**)

STEP 3: (check all that apply)

- Defendant has insufficient ties to the community to assure appearance
- Defendant has a history of FTAs
- Defendant has a prior record of
 - a felony conviction; or
 - misdemeanor convictions within the last five years demonstrating a pattern of conduct
- Charged offense was committed when Defendant was on pretrial release for a related offense or on supervised probation for any offense
- Charged offense involves domestic violence
- Charged offense involves violence or injury to a person
- Charged offense requires sex offender registration or is a failure to register as a sex offender offense
- Charged offense is a drug trafficking offense
- Charged offense involves distribution of drugs
- Charged offense is stalking or cyberstalking
- Charged offense is DWI and defendant has at least 1 prior DWI conviction within the last seven years
- Defendant is impaired such that immediate release is likely to cause harm to self/others/property
- Charged offense involved Defendant's use of a firearm or deadly weapon
- Charged offense related to gang activity

STEP 2: Highest Charge

- Class 2 or 3 Misdemeanor (Go to **STEP 3.5**)
- Class 1-A1 Misdemeanor or Class I-F Felony (Go to **STEP 3**)
- Class A-E Felony (Go to **STEP 4**)

If no box is checked, in **STEP 3**, go to **STEP 3.5**

If any box is checked in **STEP 3**, go to **STEP 4**

STEP 3.5:

- Follow bond policy recommendation and impose a
 - Written promise,
 - Custody release, or
 - Unsecured bond \$ _____ (form complete)
- Deviate from bond policy recommendation to impose a nonfinancial condition;
 - Secured bond \$ _____ if Deviate is checked, complete **STEP 7** below)

From **STEP 2** or **Step 3**

STEP 4: Make the statutory determination

Statute *requires* the judicial official to impose a written promise, custody release, or unsecured bond *unless* he/she determines that such release (Check any that apply and provide explanation for any checked box)

will not reasonably assure the appearance of the defendant as required

Explanation:

[Redacted explanation text]

will pose a danger of injury to any person

Explanation:

[Redacted explanation text]

is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses

Explanation:

[Redacted explanation text]

If no box is checked in Step 4, go to step **3.5** above. If any box is checked in Step 4, go to **Step 5**.

STEP 5:

Follow bond policy recommendation and impose a secured bond consistent with maximum bond tables (*if this box is checked, make sure that reason is stated in STEP 4 and once that is done, form is complete \$* [Redacted])

Deviate from bond policy recommendation to impose a secured bond within maximum bond table amount and impose:

Written promise

Custody release

Unsecured bond \$ [Redacted]

Secured bond \$ [Redacted]

(if Deviate is checked, proceed to **STEP 6**)

STEP 6: Type of Deviation (check one)

From recommendation to impose secured bond

From maximum bond table

STEP 7: Reasons for deviating from local bond policy recommendation (check any that apply):

NC General Statute 15A-534(d3) - Bond is doubled because an offender already is released on bond for a related crime.

NC General Statute 15a-534(d2) - Probationer is charged with a new felony and is deemed to pose a danger to the public.

NC General Statute 15A-534.6 - Offender is charged with manufacturing methamphetamine or has a pattern or regular use of methamphetamine

Other:

[Redacted other reasons text]

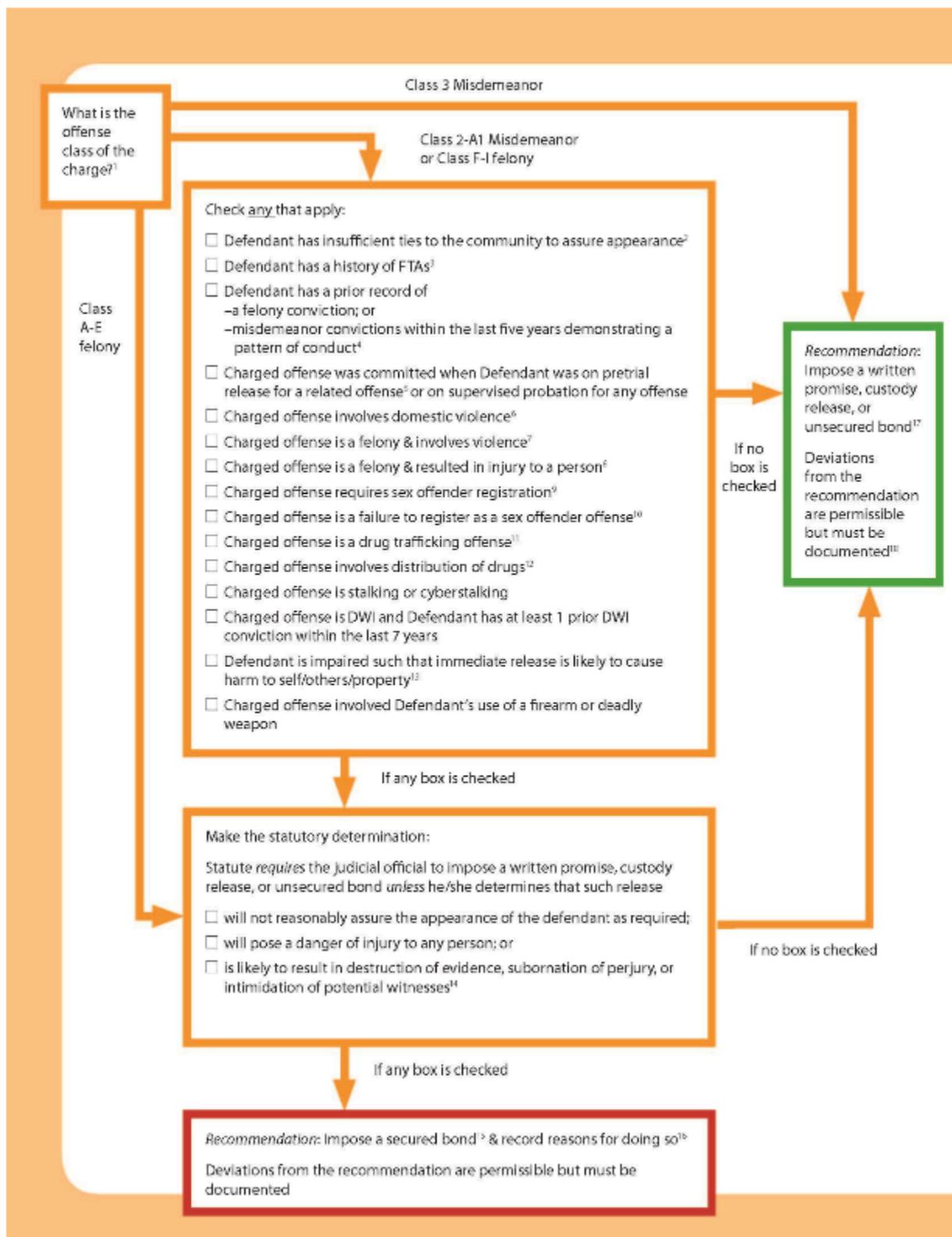
(Form is complete)

20190634

5. North Carolina Judicial District 2

JUDICIAL DISTRICT 2: DETERMINING CONDITIONS OF PRETRIAL RELEASE

Pursuant to Judicial District 2's Local Pretrial Release Policy, judicial officials must use the flowchart contained here, with accompanying footnotes and tables, when determining conditions of release in all cases except where the North Carolina General Statutes or Local Policy prescribe a different process or result.



1. If the matter is before a judge on the State's motion to increase conditions after the return of a habitual felon indictment, the judge should treat the offense at its "habitualized" offense Class level.
2. The mere fact that the Defendant is homeless and does not have a home address does not warrant checking this box; inquiry should be focused on the Defendant's connections to the community.
3. FTAs within the last 2 years are most relevant.
4. The pattern of conduct must relate to the present offense. For example: the current charge involves drug possession and the Defendant has 3 priors within the last 5 years for misdemeanor drug or drug paraphernalia possession.
5. This factor covers situations where the Defendant continues to engage in the same type of conduct (e.g., repeat larceny) or an escalating course of conduct (e.g., the defendant is charged with injury to real property while on pretrial release for communicating threats to the property owner).
6. An offense involves domestic violence when the relationship between the parties is one of the following:
 - o Current or former spouses
 - o Currently or formerly lived together as if married
 - o Currently or formerly in a dating relationship
 - o Have a child in common
 - o Parent (or one in parental role)/child
 - o Grandparent/grandchild
 - o Current or former members of the same household

Note: this list is drawn from G.S. 15A-534.1, the 48-hour domestic violence hold statute.
7. For example, robbery.
8. This factor applies when the offense involved harm to a person (e.g., assaultive conduct). It does not apply to offenses in which property is taken or harmed (e.g., larceny, embezzlement, obtaining property by false pretenses, etc.).
9. For a list of offenses requiring sex offender registration, see JAMIE MARKHAM & SHEA DENNING, NORTH CAROLINA SENTENCING HANDBOOK 2017-18 (UNC School of Government, forthcoming 2018).
10. See G.S. 14-208.11(a); JESSICA SMITH, NORTH CAROLINA CRIMES: A GUIDEBOOK ON THE ELEMENTS OF CRIME 268 (7th Ed. 2012) (discussing this offense).
11. See G.S. 90-95(h); NORTH CAROLINA CRIMES *supra* note 10, at 721-739 (discussing trafficking offenses).
12. For example, sale and delivery of a controlled substance and possession with intent to manufacture, sell, or deliver.
13. For defendants in impaired driving cases, follow impaired driving procedures. In all other cases if a secured bond is imposed only because of this factor and the defendant remains detained, conditions must be revised without consideration of this factor when the defendant's impairment no longer presents a danger of physical injury to himself or herself or others or of damage to property, but in any event, no later than 24 hours after secured bond was set.
14. G.S. 15A-534(b). When making this inquiry, judicial officials should consider whether pretrial restrictions (e.g., restrictions on travel, associations, conduct or place of abode, as well as abstention from alcohol consumption, as verified by the use of an approved continuous alcohol monitoring system), which can be imposed with a written promise, custody release or unsecured bond, can sufficiently mitigate pretrial risk. See G.S. 15A-534(a).
15. If a secured appearance bond is imposed: (1) the judicial official must consider—among other relevant factors—the defendant's ability to pay; and (2) the amount of the secured appearance bond should not exceed the amounts listed in the tables shown below; if a secured bond is set in excess of these recommended maximums, reasons for doing so must be documented.

If a secured bond is used to detain ("detention bond"), a detention bond hearing that affords the defendant appropriate procedural protections must be held before a judge on motion by the defense.
16. See G.S. 15A-534(b) (when judicial official imposes secured bond instead of written promise, custody release or unsecured bond, the judicial official "must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge").
17. Pretrial restrictions can accompany any pretrial condition. See G.S. 15A-534(a) & note 14 above.
18. A deviation is permissible if there is a risk of continuing felony-level criminal activity.

**Maximum Secured Appearance Bond Amounts—
Offenses Other Than Drug Trafficking**

If a bond is set in excess of these recommendations, reasons for doing so must be documented.

Type of Offense	Maximum Secured Bond
Misdemeanor, Class 2	\$500
Misdemeanor, Class 1	\$1,000
Misdemeanor, Class A1	\$3,000
Driving While Impaired	\$5,000
Felony Class I	\$10,000
Felony Class H	
Felony Class G	\$25,000
Felony Class F	
Felony Class E	\$50,000
Felony Class D	\$70,000
Felony Class C	\$100,000
Felony Class B2	\$250,000
Felony Class B1	\$300,000
Felony Class A	No Bond Unless Set by a Judge
Fugitive Warrant	For Maximum bond amount, see maximum for the underlying offense
Governor's Warrant	No Bond
Parole Warrant	No Bond

Maximum Secured Appearance Bond Amounts—Drug Trafficking

If a bond is set in excess of these recommendations, reasons for doing so must be documented.

Punishment Class	Maximum Secured Bond
H	\$75,000
G	
F	
E	
D	\$150,000
C	\$250,000

6. Mecklenburg County, North Carolina
Reason Codes – For Use on AOC-CR-200

Attachment D – Mecklenburg County Codes for Imposing Condition (4) or (5) under §15A-534(a)

Pursuant to G.S. §15A-534(b), “The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless he determines that such release 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 the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition (1), (2), or (3), and must record the reasons for doing so in writing to the extent provided in the policies or requirement issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).”

In the event that a magistrate determines that imposing a secured condition of bond is necessary per the statute, the magistrate must record the reasons for so doing in writing using the following codes:

A = Nature and circumstances of the offense charged

B = Weight of the evidence against the defendant

C = Personal/Community Stability

- 1) Family Ties
- 2) Employment
- 3) Financial Resources
- 4) Character
- 5) Mental Condition

D = Whether the defendant is intoxicated to such a degree that he or she would be endangered by being released without supervision

E = Length of residence in the community

F = Record of convictions

G = The defendant's history of flight to avoid prosecution or failure to appear at court hearings

H = Any other evidence relevant to the issue of pretrial release

I = Protect public health/known communicable disease

J = Pending charges in court at the time of the alleged offense including compliance with current pretrial release conditions

K = History of substance abuse

L = Outstanding warrants, holds, or detainers

M = Domestic violence lethality indicators

7. Wake County, North Carolina

Wake County Magistrate Initial Appearance Card Please refer to the 10 th Judicial District Bond Policy & NC General Statutes <i>Pretrial release should be the norm, and detention is the carefully limited exception. (United States v. Salerno, 481 U.S. 739 (1987))</i>	
Pretrial Release Not Authorized by Magistrate <input type="checkbox"/> Class A Felony <input type="checkbox"/> Parole Warrant <input type="checkbox"/> Governor’s Warrant <input type="checkbox"/> Rebuttable Presumption Hold for certain drug trafficking, gang, or firearms offenses– G.S. 15A-533 (d)(e)(f) <input type="checkbox"/> Crimes of Domestic Violence – 48 hour rule – G.S. 15A-534.1 <input type="checkbox"/> Probation Violation with pending felony or prior sex offense – G.S. 15A-1345(b1) <input type="checkbox"/> Judicial Order to Hold without Bond <input type="checkbox"/> Federal Indictment or Federal Detainer (if seen by Magistrate on State charge as well) <input type="checkbox"/> Detention to Protect Public Health (G.S. 15A-534.5) <input type="checkbox"/> Manufacturing Methamphetamine (G.S. 15A-534.6) <input type="checkbox"/> Communicating a threat of Mass Violence – 48 hour rule (G.S. 15A-534.7)	
Secured Bond Required <input type="checkbox"/> Failure to Appear in Court – G.S. 15A-534 (d1) <input type="checkbox"/> Probationer Charged with Felony – G.S. 15A-534 (d2) <input type="checkbox"/> Judicial Order Requiring Secured Bond	Possible additional conditions for all individuals: <input type="checkbox"/> Electronic Monitoring <input type="checkbox"/> Electronic House Arrest <input type="checkbox"/> Continuous Alcohol Monitoring (CAM) <input type="checkbox"/> Pretrial Release Program <input type="checkbox"/> No Contact Order <input type="checkbox"/> Any other conditions that the Court deems appropriate.
Review for Least Restrictive Conditions (G.S. 15A-534) Statute requires that the judicial official impose a: <input type="checkbox"/> Written Promise to Appear and/or <input type="checkbox"/> Custody Release/Pretrial Release Program and/or <input type="checkbox"/> Unsecured Bond	
Secured Bond if it is determined that such release: <input type="checkbox"/> Will not reasonably assure the appearance of the defendant in court <input type="checkbox"/> Will pose a danger of injury to any person; or <input type="checkbox"/> Is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses When imposing Secured Bond Judicial Official shall: <input type="checkbox"/> <u>Record written findings on AOC Form CR200 (Blue Sheet) for all Secured Bonds</u>	Factors for Consideration G.S. 15A-534(c) <input type="checkbox"/> Nature & Circumstances of the offenses charged including evidence of violence <input type="checkbox"/> Weight of the evidence against the defendant <input type="checkbox"/> Defendant's family ties, employment, financial resources, character, and mental condition <input type="checkbox"/> Whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision <input type="checkbox"/> Length of his residence in the community <input type="checkbox"/> Record of convictions <input type="checkbox"/> History of flight to avoid prosecution or failure to appear at court proceedings <input type="checkbox"/> Any other evidence relevant to the issue of pretrial release.
Fugitive Warrant <input type="checkbox"/> If charged with crime carrying life in prison or death penalty: Pretrial Release Not Authorized by Magistrate <input type="checkbox"/> All other charges: Follow 10th Judicial District Bond Policy	
DWI <input type="checkbox"/> Refer to G.S. 20-138.1 and the 10th Judicial District Bond Policy	

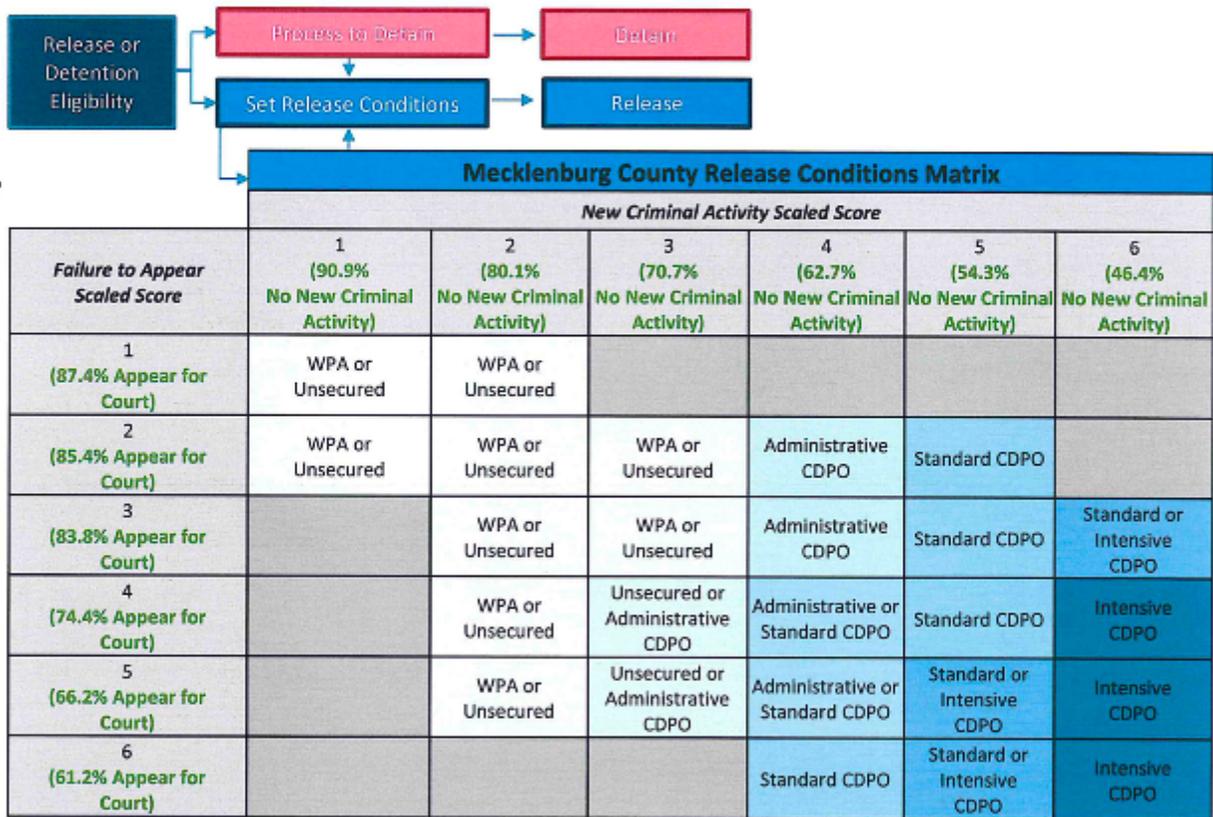
**This card provides a non-exhaustive list of applicable NC General Statutes.*

Appendix B: Sample Matrices—For Use with Empirical Risk Assessment Tools

1. Mecklenburg County, North Carolina

Attachment A - Mecklenburg County Release Conditions Matrix

Mecklenburg County uses a locally validated actuarial tool, the Public Safety Assessment (PSA), which “examines nine factors based on a person’s age, current charge, and criminal history to produce two risk scores: one that predicts risk of failure to appear for future court appearances, and a second that predicts risk of committing a new crime if released before trial. The PSA calculates its scores on a scale of one to six, with higher scores indicating a higher level of risk. The risk assessment also indicates an elevated risk of committing a new violent crime.”¹ Mecklenburg County criminal justice stakeholders used the results of the local PSA validation study to help them make the recommendations listed in the Release Conditions Matrix (Matrix). When a judicial official grants release, the Matrix serves as a guide to setting release conditions consistent with the statutory presumption of release with non-secured conditions G.S. § 15A-534 (b). In considering the presumptive release conditions in this Matrix, the court is encouraged to assess the totality of circumstances to decide appropriate release conditions in each individual case including additional assessments that may be available in some instances, for example in domestic violence cases.



WPA-Written Promise to Appear; CDPO- Place in the Custody of Designated Person or Organization

Additional Notes:

1. If the person has a NVCA flag = **85.6% No New Violent Criminal Activity**
2. Defendant success rates noted in the Matrix are from the 2017 local validation of the PSA.
3. When the judicial official refers a defendant to CDPO, the Pretrial Services Agency will monitor the defendant in accordance with the supervision level listed in this Release Conditions Matrix. Where the Matrix lists two levels of supervision, the Pretrial Services Agency will monitor the defendant at the lower level listed unless otherwise ordered.
4. See Mecklenburg County’s Pretrial Services’ Directives for a full description of supervision levels and response to compliance and non-compliance protocols.

¹ psapretrial.org

2. Buncombe County, North Carolina

Buncombe County Release Conditions Matrix						
New Criminal Activity (NCA) Scaled Score						
Failure to Appear (FTA) Scaled Score	1 (90% No New Criminal Activity)	2 (85% No New Criminal Activity)	3 (77% No New Criminal Activity)	4 (70% No New Criminal Activity)	5 (52% No New Criminal Activity)	6 (45% No New Criminal Activity)
1 (90% Appear to Court)	WPA or Unsecured (no pretrial supervision)	WPA or Unsecured (no pretrial supervision)				
2 (85% Appear to Court)	WPA or Unsecured (no pretrial supervision)	WPA or Unsecured (no pretrial supervision)	WPA or Unsecured (no pretrial supervision)	Unsecured or Administrative	Standard	
3 (80% Appear to Court)		WPA or Unsecured (no pretrial supervision)	WPA or Unsecured (no pretrial supervision)	Unsecured or Administrative	Standard	Standard or Intensive
4 (69% Appear to Court)		WPA or Unsecured (no pretrial supervision)	Unsecured or Administrative	Administrative or Standard	Standard	Intensive
5 (65% Appear to Court)		WPA or Unsecured (no pretrial supervision)	Unsecured or Administrative	Administrative or Standard	Standard or Intensive	Intensive
6 (60% Appear to Court)				Standard	Standard or Intensive	Intensive

Appendix C: Sample Oral Notice—At Initial Appearance

Note: Adapt this language, as appropriate, based on other decisions made in your bail policy.

Initial Appearance for New Charge(s)

This is an initial appearance, but it is not your trial. I cannot try or dismiss the charges against you. You will be able to address the charges against you with the court soon, and if you want a lawyer to assist you in court and cannot afford one, the court will appoint one for you. Right now, I must determine whether you must be held in jail while your case is pending and any conditions for your release from jail during that time. If I have to set conditions for your release, I will be considering information about several factors, including your history with the courts, if any, and the nature of your current charges. If the conditions I impose include a monetary bond for your release, I must consider your financial situation and your ability to pay a bond. You have the right to provide me with information or evidence about those decisions, but you also have the right to remain silent. Anything you say might be used later in evidence against you, so you should not discuss the events that led to your arrest. When we are done, you will get a copy of the order I enter that includes any conditions for your release that I impose. You or your attorney can challenge my decision at a future hearing.

[Continue initial appearance as otherwise provided in G.S. 15A-511, including additional information to defendant set out in subsection (b) of that statute.]

Initial Appearance for Warrantless Arrest for Violation of Conditions of Release

This is an initial appearance, but it is not your trial. I cannot try or dismiss the charges against you. Right now, I must determine only whether there is cause to believe you have violated a condition of release in your case. If I find that, I will set new conditions for your release, and I will be considering information about several factors, including your history with the courts, if any, and the nature of your current charges. If the conditions I impose include a monetary bond for your release, I must consider your financial situation and your ability to pay a bond. You have the right to provide me with information or evidence about those decisions, but you also have the right to remain silent. Anything you say might be used later in evidence against you, so you should not discuss the events that led to your arrest. When we are done, you will get a copy of the order I enter that includes any conditions for your release that I impose. You or your attorney can challenge my decision at a future hearing.

Appendix D: Sample Notice—After Initial Appearance

1. For Defendants with Cases Pending in the District/County

Note: The content below is reproduced from the Alamance County Administrative Order regarding first appearances. Adapt this language, as appropriate, based on other decisions made in your bail policy.

APPENDIX B

STATE OF NORTH CAROLINA
JUDICIAL DISTRICT 15A
ALAMANCE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR AND DISTRICT COURT DIVISIONS

NOTICE to Defendants Committed to Custody for Cases Pending in Alamance County

If you are in jail for a new criminal case charged in Alamance County, this sheet describes the next step in your case. Review this sheet in detail so you are ready to discuss these issues with your attorney or with the court.

Law enforcement officers and court officials (like a magistrate) cannot give you legal advice about your case. This sheet only describes the next steps in your case so that you will know what to expect. If you have questions about your case, you should discuss them only with an attorney who represents you. Anything you say to a law enforcement officer or court official is not confidential and may be used against you.

A. How Do You Post a Secured Bond?

If a secured bond has been imposed in your case, you are allowed to post that bond as soon as you are able to do so. You do not have to wait for your first appearance to satisfy your bond, usually called “posting” bond. Posting your bond usually means you will be released immediately, but it might not, if you are in jail for other reasons. You can post bond in several ways:

- You can give the court cash in the full amount of the bond. If you appear at all of your court dates, the cash will be returned at the end of the case. If you fail to appear, the State might keep the cash.
- You can give the court a deed of trust to real property (land) you own that is worth more than the amount of the bond. If you appear at all of your court dates, the deed will be cancelled. If you fail to appear, the State might foreclose on the property and sell it. If you post bond this way, you probably will need an attorney to help you prepare and file the deed of trust.
- A “surety” can post bond for you. A surety can be a private person like a family member or friend who might deposit cash or a deed to cover the amount of the bond (but not always). If you appear for all your court dates, the surety’s cash will be returned, or the deed will be cancelled. A surety also might be a bail bondsman licensed by the State. If a bondsman posts bond, he or she will charge a “premium” for doing so. You will not get that premium back at the end of the case; it is the bondsman’s fee for posting the bond.

Posting your bond does not end your case. If you are released on bond, you still must appear in court on the date listed on your “release order” (discussed below) and on all of your court dates until your case is over.

Some defendants will not have a first appearance like the one described in this sheet. Different cases have different procedures, so you might be taken to court at a different time, in a different county, or before a different agency. If your case is listed below and you have questions about how your case will proceed, you should discuss them with an attorney who represents you:

- a violation of parole or post-release supervision;
- another state’s case for which you were arrested in North Carolina, called a “fugitive” or “extradition” case;
- a federal case (including military desertion); or
- a charge pending in another county in North Carolina other than Alamance County.

B. When Will Your First Appearance Happen?

If you have a new criminal charge pending in Alamance County, the next step in your case is a “first appearance” before a judge. The location and date of your first appearance usually will be listed on your *Conditions of Release and Release Order* (form AOC-CR-200). You should have been provided with a copy.

- If your charge is pending in Alamance County, and you remain in jail, you will be taken to court to have a first appearance at the next available court session, which may be earlier than the court date listed on your release order. Before the first appearance, you will have a chance to talk with a first appearance attorney appointed specifically to assist you at that appearance.
 - The first appearance attorney is appointed to protect your rights at the first appearance, so you can talk with him or her confidentially. If the court later appoints an attorney to represent you for the rest of your case, it probably will not be the same person as the first appearance attorney.
 - If you want to hire your own attorney or if you want to represent yourself, you do not have to accept the help of the first appearance attorney, but the court will not appoint a different attorney for this appearance.
 - You have the right to hire an attorney, if you can afford it and want to be represented by someone other than an appointed attorney.

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- If you are released from custody before you are taken to court (for example, because you were able to post your bond), you must still appear at the court date listed on your release order. If you fail to appear, the court may issue an order for your arrest and your bond may be forfeited.

C. What Will Happen at Your First Appearance?

The first appearance is only a “pretrial” step in your case. It is not your trial, and most cases are not resolved at the first appearance. At the first appearance:

1. The court will advise you of the right to remain silent and that anything you say might be used against you.
2. The court will ask if you want to be represented by an attorney for the rest of your case. If you cannot afford an attorney, the court may appoint one to represent you, if you ask for it. Remember, if the court appoints an attorney to represent you for the rest of your case, it probably will not be the same person as your appointed first appearance attorney.
3. The court will inform you of the charges against you and review the charges. If there is a legal error in the charges, the court might dismiss the case, correct the errors, or continue the case for time to correct the error.
4. The court will review your conditions of release, including any bond imposed. Your attorney (or you, if you represent yourself) will have a chance to address the court about your conditions of release and ask for changes. In making its decision, the court will consider the **Factors Related to Conditions of Release** below.
5. At the end of your first appearance, the court will determine the next court date in your case.

D. What Factors Will the Judge Consider in Setting Your Conditions of Release?

Most criminal cases in North Carolina allow the court to set conditions for the defendant’s release while the case is pending. If your case is eligible for conditions of release, the court will impose one or more of five types of release: (1) a written promise to appear in court; (2) “custody release” to a person who agrees to make sure you appear for court; (3) an unsecured bond; (4) a secured bond; or (5) electronic house arrest (EHA). The court is supposed to impose a written promise, custody release, or unsecured bond, unless the court finds that those three types of release:

- will not reasonably assure that you will appear for court when required;
- will pose a danger of injury to any person; or
- likely will result in the destruction of evidence, subornation of perjury (which means asking someone to testify falsely before the court), or intimidation of witnesses.

To decide whether any of those three risks applies in your case, the court will consider the factors below. You may wish to tell the court information in your favor about these factors. If you are represented by an attorney, you should tell that information to your attorney, so the attorney can present it to the court for you.

- | | |
|---|---|
| • Nature and circumstances of the offense charged | • The length of your residence in the community |
| • Weight of the evidence against you | • Your record of convictions, if any |
| • Your family ties | • Your history of fleeing or hiding out to avoid prosecution, if any |
| • Your current employment status and history | • Your history of failures to appear (FTA) at court proceedings, if any |
| • Your financial resources and ability to pay a bond, including ownership of real property. | • Any other evidence that the court thinks is relevant to the issue of pretrial release |
| • Your character and reputation | |
| • Your mental condition | |

If the court imposes a secured bond, the court must either (i) set the bond at an amount you can afford, or (ii) make findings in its order about why a bond higher than you can afford is necessary, because a bond that you currently can afford will not reasonably ensure that you will appear for court, will pose a danger of injury to another person, or is likely to result in the destruction of evidence, subornation of perjury, or intimidation of witnesses.

In addition to the type of release imposed, the court also might impose other conditions on your release, like staying away from certain places, not having contact with certain people, or not engaging in some conduct (like drinking alcohol) while your case is pending. You must comply with all of those conditions. If you do not, you might be arrested again.

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2. For Defendants with Cases Pending in Other Districts/Counties

Note: The content below is reproduced from the Alamance County Administrative Order regarding first appearances. Adapt this language, as appropriate, based on other decisions made in your bail policy.

APPENDIX C

STATE OF NORTH CAROLINA
JUDICIAL DISTRICT 15A
ALAMANCE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR AND DISTRICT COURT DIVISIONS

NOTICE to Defendants in Custody in Alamance County for North Carolina Cases in Other Counties
If you are in jail for a case pending in a North Carolina county other than Alamance, this sheet describes the next step in your case. Review this sheet in detail so you are ready to discuss these issues with your attorney or the court.

Law enforcement officers and court officials (like a magistrate) cannot give you legal advice about your case. This sheet only describes the next steps in your case so that you will know what to expect. If you have questions about your case, you should discuss them only with an attorney who represents you. Anything you say to a law enforcement officer or court official is not confidential and may be used against you.

A. How Do You Post a Secured Bond?

If a secured bond has been imposed in your case, you are allowed to post that bond as soon as you are able to do so. You do not have to wait for your next court appearance to satisfy your bond, usually called "posting" bond. Posting your bond usually means you will be released immediately, but it might not, if you are in jail for other reasons. You can post bond in several ways:

- You can give the court cash in the full amount of the bond. If you appear at all of your court dates, the cash will be returned at the end of the case. If you fail to appear, the State might keep the cash.
- You can give the court a deed of trust to real property (land) you own that is worth more than the amount of the bond. If you appear at all of your court dates, the deed will be cancelled. If you fail to appear, the State might foreclose on the property and sell it. If you post bond this way, you probably will need an attorney to help you prepare and file the deed of trust.
- A "surety" can post bond for you. A surety can be a private person like a family member or friend who might deposit cash or a deed to cover the amount of the bond (but not always). If you appear for all your court dates, the surety's cash will be returned, or the deed will be cancelled. A surety also might be a bail bondsman licensed by the State. If a bondsman posts bond, he or she will charge a "premium" for doing so. You will not get that premium back at the end of the case; it is the bondsman's fee for posting the bond.

Posting your bond does not end your case. If you are released on bond, you still must appear in court on the date listed on your "release order" (discussed below) and on all of your court dates until your case is over.

B. When Your Next Court Appearance Will Happen

If your case is pending in another county, you will be transported to that other county for a court appearance there, if you do not post bond before then. The location and date of your next appearance usually will be listed on your *Conditions of Release and Release Order* (form AOC-CR-200, called a "release order"). You should have been provided with a copy. If you remain in custody and have not been transported to the other county before the next session of court in Alamance County, you will be taken before a judge in Alamance County for a "bail review hearing," to review your bond and any other conditions of release.

If you are released before the next court date listed on your release order, you still must appear in court on the date listed on your release order and on all of your court dates until your case is over. If you fail to appear, the court may issue an order for your arrest and your bond may be forfeited.

C. Where Your Next Court Appearance Will Happen

If your case is pending in another county, most of your court appearances will occur there. The location and date of your next appearance usually will be listed on your release order. But as noted above, if you remain in custody and have not been transported to the other county before the next available court date in Alamance County, you will be taken before a judge in Alamance County to review your bond and any other conditions of release.

D. What Will Happen at Your Next Court Appearance

If your case is pending in a North Carolina county other than Alamance County, the details of your next appearance will depend on the nature of your case and the local procedures there. But you might be taken first to court in Alamance County for a bail review hearing, so read the rest of this section and section E., below.

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Effective July 1, 2020, Appendix C, 1

You Have a Right to an Attorney

If you are taken to court in Alamance County for a bail review hearing, then before your court appearance, you will have a chance to talk with an attorney appointed specifically to assist you at that appearance.

- The attorney is appointed to protect your rights at the bail review hearing, so you can talk with him or her confidentially. If the court later appoints an attorney to represent you for the rest of your case, it probably will not be the same person as this attorney.
- If you want to hire your own attorney or if you want to represent yourself, you do not have to accept the help of the appointed attorney, but the court will not appoint a different attorney for this appearance.
- You have the right to hire an attorney, if you can afford it and want to be represented by someone other than an appointed attorney.

Things the Court Will Do at Your Court Appearance

If you have a bail review hearing in Alamance County for a case pending in another county:

1. The court will review the conditions of release in your release order, including any bond imposed. Your attorney (or you, if you represent yourself) will have a chance to address the court about your conditions of release and ask for changes. In making its decision, the court will consider the **Factors Related to Conditions of Release** below.
2. At the end of your bail review hearing, the court will determine the next court date in your case.

E. What Factors Will the Judge Consider in Setting Your Conditions of Release?

Most criminal cases in North Carolina allow the court to set conditions for the defendant's release while the case is pending. If your case is eligible for conditions of release, the court will impose one or more of five types of release: (1) a written promise to appear in court; (2) "custody release" to a person who agrees to make sure you appear for court; (3) an unsecured bond; (4) a secured bond; or (5) electronic house arrest (EHA). The court is supposed to impose a written promise, custody release, or unsecured bond, unless the court finds that those three types of release:

- will not reasonably assure that you will appear for court when required;
- will pose a danger of injury to any person; or
- likely will result in the destruction of evidence, subornation of perjury (which means asking someone to testify falsely before the court), or intimidation of witnesses.

To decide whether any of those three risks applies in your case, the court will consider the factors below. You may wish to tell the court information in your favor about these factors. If you are represented by an attorney, you should tell that information to your attorney, so the attorney can present it to the court for you.

- Nature and circumstances of the offense charged
- Weight of the evidence against you
- Your family ties
- Your current employment status and history
- Your financial resources and ability to pay a bond, including ownership of real property.
- Your character and reputation
- Your mental condition
- The length of your residence in the community
- Your record of convictions, if any
- Your history of fleeing or hiding out to avoid prosecution, if any
- Your history of failures to appear (FTA) at court proceedings, if any
- Any other evidence that the court thinks is relevant to the issue of pretrial release

If the court imposes a secured bond, the court must either (i) set the bond at an amount you can afford, or (ii) make findings in its order about why a bond higher than you can afford is necessary, because a bond that you currently can afford will not reasonably ensure that you will appear for court, will pose a danger of injury to another person, or is likely to result in the destruction of evidence, subornation of perjury, or intimidation of witnesses.

In addition to the type of release imposed, the court also might impose other conditions on your release, like staying away from certain places, not having contact with certain people, or not engaging in some conduct (like drinking alcohol) while your case is pending. You must comply with all of those conditions. If you do not, you might be arrested again

In re In-Custody First Appearances – District 15A
Effective July 1, 2020, Appendix C, 2

Appendix E: Sample First Appearance and Bail Review Advisement Summary

Note: The content below is taken from an Appendix to the new Alamance County Administrative Order regarding first appearances. Adapt this language, as appropriate, based on other decisions made in your bail policy.

APPENDIX D

First Appearance and Bail Review Advisement Summary

Article 29 of Chapter 15A of the General Statutes mandates certain features of a first appearance for a defendant charged via criminal process or magistrate's order with an offense within the original jurisdiction of the superior court, G.S. 15A-601(a), *i.e.*, felonies and related charges.

This Policy mandates first appearances for all criminal defendants with criminal charges or probation violations pending in Alamance County, both felony and misdemeanor. When conducting first appearances, the court should advise all affected defendants generally about the nature of the proceeding and the issues to be considered and decided pursuant to Article 29, as provided in Paragraph 7 of this Policy. When conducting bail review hearings the court should advise affected defendants only about the review of conditions of release, as provided in Paragraph 8 of this Policy; the first appearance and its other incidents will occur in the charging district. G.S. 15A-131(b). When reviewing defendants' eligibility for or conditions of release, the court should take special care to advise affected defendants of the items set out under "Advisement on Conditions of Release" below.

First Appearance Requirements

- As part of every first appearance, the court must:
 - Advise defendants of the right to remain silent in compliance with G.S. 15A-602.
 - Assess whether defendants have counsel and, if not, advise them of their rights to counsel in compliance with G.S. 15A-603(b).
 - Review the sufficiency of the charges as provided in G.S. 15A-604. For preliminary hearing on a probation violation, determine whether probable cause exists to believe the defendant violated a condition of probation. G.S. 15A-1345(c).
 - Advise individual defendants of the charges pending and determine that the defendant or defendant's counsel has been provided with a copy. G.S. 15A-605(1) and (2). For preliminary hearing on a probation violation, the defendant must be provided with a statement of the violations alleged. G.S. 15A-1345(d).
 - Review the defendant's eligibility for and conditions of pretrial release. G.S. 15A-605(3).
- When conducting a first appearance for a probation violation, a judge should conduct the preliminary hearing of G.S. 15A-1345(e) at the same time.

Advisement on Conditions of Release

When reviewing defendants' eligibility for and conditions of release, the court must make an independent determination of both eligibility and conditions, as provided in Paragraphs 7.d. and 8.d of this Policy.

- If the court determines that the defendant is ineligible for conditions of release, the court should inform the defendant of that determination and the basis for it.
- If the court determines that the defendant is eligible for conditions of release, prior to reviewing the conditions, the court should advise defendants:
 - of the right to remain silent.
 - that the court will consider:
 - the defendants' individual circumstances, including factors like prior convictions, any history of failures to appear, and ties to the community;
 - the nature and circumstances of the present charge(s); and
 - any other evidence relevant to the State's interests in defendants' appearance for court and reducing the risk of danger to others or interference with the criminal proceeding, *i.e.*, destruction of evidence, subornation of perjury, or intimidation of witnesses;
 - that when considering monetary conditions of release, the court must consider the defendant's resources and ability to satisfy a monetary bond.
 - a court may only set an unaffordable secured bond if it makes written findings that no other condition or set of conditions can reasonably assure the State's interests.
 - that the defendants may provide the court with evidence in their favor for any of the factors presented, but that their right to remain silent still applies.

In re In-Custody First Appearances – District 15A
Effective July 1, 2020, Appendix D, 1

Appendix F: Sample Decision Making Tool—Responding to Non-Appearances

ORANGE COUNTY BENCH CARD

Responses to Non-Appearances In Criminal District Court

Date	
Judge's Name	
Defendant's Name	
Case Number(s)	

Step 1: Should the non-appearance be excused?

- Yes. **EXCUSED.** Re-set court date with notice to defendant and counsel, if represented
[FORM COMPLETE]
- No. **UNEXCUSED** [GO TO STEP 2]

Step 2: Is the matter before you for a charge or probation violation that is a non-DWI Class 1–3 misdemeanor OR technical probation violation?

- Yes [GO TO STEP 3]
- No.
 - Issue an OFA setting conditions, which can include money bond, in your discretion
 - Written promise
 - Custody release/pretrial services
 - Unsecured bond \$ _____
 - Secured bond \$ _____
 - Exercise discretion, decline to issue OFA & reschedule court date for other reasons:

[FORM COMPLETE]

Step 3: Is there a prior unexcused non-appearance in this case or do you know of a prior unexcused non-appearance in another pending case?

- Yes.
 - Issue an OFA setting conditions, which can include money bond, in your discretion
 - Written promise
 - Custody release/pretrial services
 - Unsecured bond \$ _____
 - Secured bond \$ _____
 - Exercise discretion, decline to issue OFA & reschedule court date for other reasons:

[FORM COMPLETE]

- No: re-set court date with notice to defendant and counsel, if represented

[FORM COMPLETE]

- Judge did not use process. Check this box when judge exercises discretion and declines to follow the recommended decision-making process.

Note: All Chapter 20 cases except Impaired Driving and Driving While License Revoked (DWLR) will go to the "20-day failure box." DWLR cases are subject to additional DWLR procedures adopted by the Senior Resident by Administrative Order Oct. 2020.

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