

## NC Judicial District 21 Bail Reform Project

December 2019

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This report summarizes an initiative adopted in North Carolina's 21<sup>st</sup> Judicial District and designed to promote public safety and a fair and effective pretrial justice system: A new structured decision-making tool and related procedures to better inform judicial officials' pretrial decisions and ensure compliance with constitutional and statutory requirements.

### Background

In 2015, former Chief Justice Mark Martin convened the North Carolina Commission on the Administration of Law & Justice to make recommendations to strengthen the state's court system. In 2016, that Commission released its report, including a recommendation that North Carolina embark on pilot projects supporting evidence-based pretrial justice reform.<sup>1</sup> Judicial District 30B became the state's first such pilot project, with reforms effective January 1, 2019. Early promising reports on the initiatives implemented in Judicial District 30B,<sup>2</sup> information distributed through the North Carolina Attorney General's Pretrial Release and Accountability Roundtables, and information about efforts to improve pretrial systems around the nation and in North Carolina interested judicial system leaders in District 21. In 2019, a group of judicial branch employees, law enforcement leaders, and a representative from the county came together to explore whether reforms were needed in the District and if so what reforms should be implemented. Out of this meeting came a bail reform Working Group; participants included:

- Senior Resident Superior Court Judge
- Chief District Court Judge
- Elected District Attorney's designee
- Public Defender
- Magistrates
- Clerks of Court and office staff
- Representatives from the Sheriffs' offices, including Pretrial Services
- Representatives from the local police departments
- Probation
- Judicial district administrative staff
- A county representative

Additionally, the project was supported by Jessica Smith, W.R. Kenan, Jr. Distinguished Professor, School of Government, The University of North Carolina at Chapel Hill. Smith's participation was made possible through a technical assistance award from the State Justice Institute. The SJI grant, administered by the National Center for State Courts and the Pretrial Justice Institute, funded ten days of Smith's time and state rate travel to and from the district.

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<sup>1</sup> NCCALJ CRIMINAL INVESTIGATION AND ADJUDICATION COMMITTEE, PRETRIAL JUSTICE REFORM FOR NORTH CAROLINA (2016) (Report of the North Carolina Commission on the Administration of Law & Justice), [https://nccalj.org/wp-content/uploads/2017/pdf/nccalj\\_criminal\\_investigation\\_and\\_adjudication\\_committee\\_report\\_pretrial\\_justice.pdf](https://nccalj.org/wp-content/uploads/2017/pdf/nccalj_criminal_investigation_and_adjudication_committee_report_pretrial_justice.pdf).

<sup>2</sup> See, e.g., Jamie Vaske & Jessica Smith, *Judicial District 30B Pretrial Justice Pilot Project Third Quarter 2019 Report* (2019), <https://cjil.sog.unc.edu/files/2019/11/Third-quarter-implementation-results.pdf>.

## Process

The Working Group met several times in 2019. Working Group members were focused primarily on the negative consequences of unnecessary pretrial detentions for individuals charged with lower-level crimes. Specifically, those who are detained pretrial not because of risk but because they are too poor to pay money bonds imposed in their cases. Stakeholders reviewed research on the negative public safety impact of pretrial detention of such individuals and information on the cost of pretrial detentions and fairness issues associated with poverty-based pretrial detentions. They also considered the status of state and federal litigation challenging money-based bail systems and governing federal constitutional law and state statutes. Working Group members understood the role of local jails to detain those defendants for whom no conditions of release can reasonably assure court appearance and public safety. However, they determined that unnecessary detention of low-risk individuals undermines public safety and the fairness and effectiveness of the local pretrial justice system. Ultimately the Working Group adopted a reform designed to address unnecessary pretrial detention of individuals who do not present any significant risk but who remain detained pretrial because they are unable to afford money bonds imposed in their cases: A new structured decision-making tool and related procedures to better inform judicial officials' pretrial decisions and ensure compliance with constitutional and statutory requirements.

After a consensus was reached on needed reforms, Working Group members approved a detailed implementation plan. That plan specified tasks required to be completed, and for each task, person(s) responsible, due dates, and other relevant information. Executing the implementation plan occupied most of the third quarter of 2019, and a training event for judicial branch employees and law enforcement personnel was held in December 2019. The reforms take effect January 1, 2020.

## Implemented Reforms

Data show that the statewide rate of imposition of secured bonds in highest charge misdemeanor cases is 67.6%.<sup>3</sup> In the District, that rate is 77.5%.<sup>4</sup> Working Group members were concerned that existing practices regarding setting conditions of pretrial release may not sufficiently account for individualized factors regarding the defendant and the circumstances of the offense as required by state law<sup>5</sup> and that new job tools would promote adherence to state law requiring release on a written promise, custody release, or unsecured bond unless the decision-maker finds that those conditions will not reasonably assure appearance; will pose a danger of injury to any person; or are likely to result in the destruction of evidence, subornation of perjury, or intimidation of witnesses.<sup>6</sup> Additionally, Working Group members wanted to develop an easily implemented tool to help judicial officials quickly identify those defendants who can be released on nonfinancial conditions, to reduce the occurrence of wealth-based incarceration of individuals who pose little risk to public safety or of flight. Although they considered empirical risk assessment tools (sometimes referred to as "algorithms") for that purpose, they did not opt for such a tool. Instead, they adopted a new structured decision-making tool to better inform judicial officials' pretrial decisions and conform with constitutional and statutory requirements.

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<sup>3</sup> Jessica Smith, County-Level Bail Conditions in North Carolina (Nov. 2019), <https://cjil.sog.unc.edu/files/2019/11/County-Level-Bail-Conditions-in-NC.pdf>.

<sup>4</sup> *Id.*

<sup>5</sup> G.S. 15A-534(c).

<sup>6</sup> G.S. 15A-534(b).

The new decision-making tool, included in Appendix A and modeled on the tool adopted in Judicial District 30B, applies in all circumstances except where the statutes or the local bail policy require a different process or result. Key features of the new tool include:

- Expressly incorporating the statutory requirement that a judicial official “must” impose a written promise, custody release or unsecured bond (“nonfinancial conditions”) unless the official “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.”<sup>7</sup>
- Creating a presumption of nonfinancial conditions for persons charged with Class 2 and 3 misdemeanors.
- Providing an easily implemented checklist of defendant- and offense-specific factors to quickly identify other low-risk defendants who can be released on nonfinancial conditions.
- Providing that for individuals charged with the most serious offenses, no presumption or screening applies; decision-makers proceed to the required statutory determination.
- Requiring documentation of reasons for imposing a secured bond.
- Requiring that ability to pay be considered when setting a secured appearance bond.
- Requiring detention bond hearings when a secured detention bond is imposed.
- Providing a maximum bond table.
- Preserving necessary discretion by allowing for deviations from *all* tool recommendations, provided that deviations are documented.

The Working Group also adopted a new ability to pay procedure. Specifically, Pretrial Services will obtain and present to the first appearance judge core financial information listed on the Affidavit of Indigency (AOC-CR-226)<sup>8</sup> to better inform judicial determinations of ability to pay.

The new decision-making tool will be incorporated into the Local Bail Policy issued by the Senior Resident Superior Court Judge. To facilitate adoption of the new tool, new forms were created for use by magistrates and judges when setting bail (Appendices B & C).

### **Next Steps**

Working Group members will participate in post-implementation check-ins in 2020. Additionally, Smith has applied for grant funding to do an empirical evaluation of implemented reforms. The proposed evaluation includes both process and outcome evaluations to assess the fidelity of implementation, as well as the effects of the reforms on appearance rates, public safety, and jail stays.

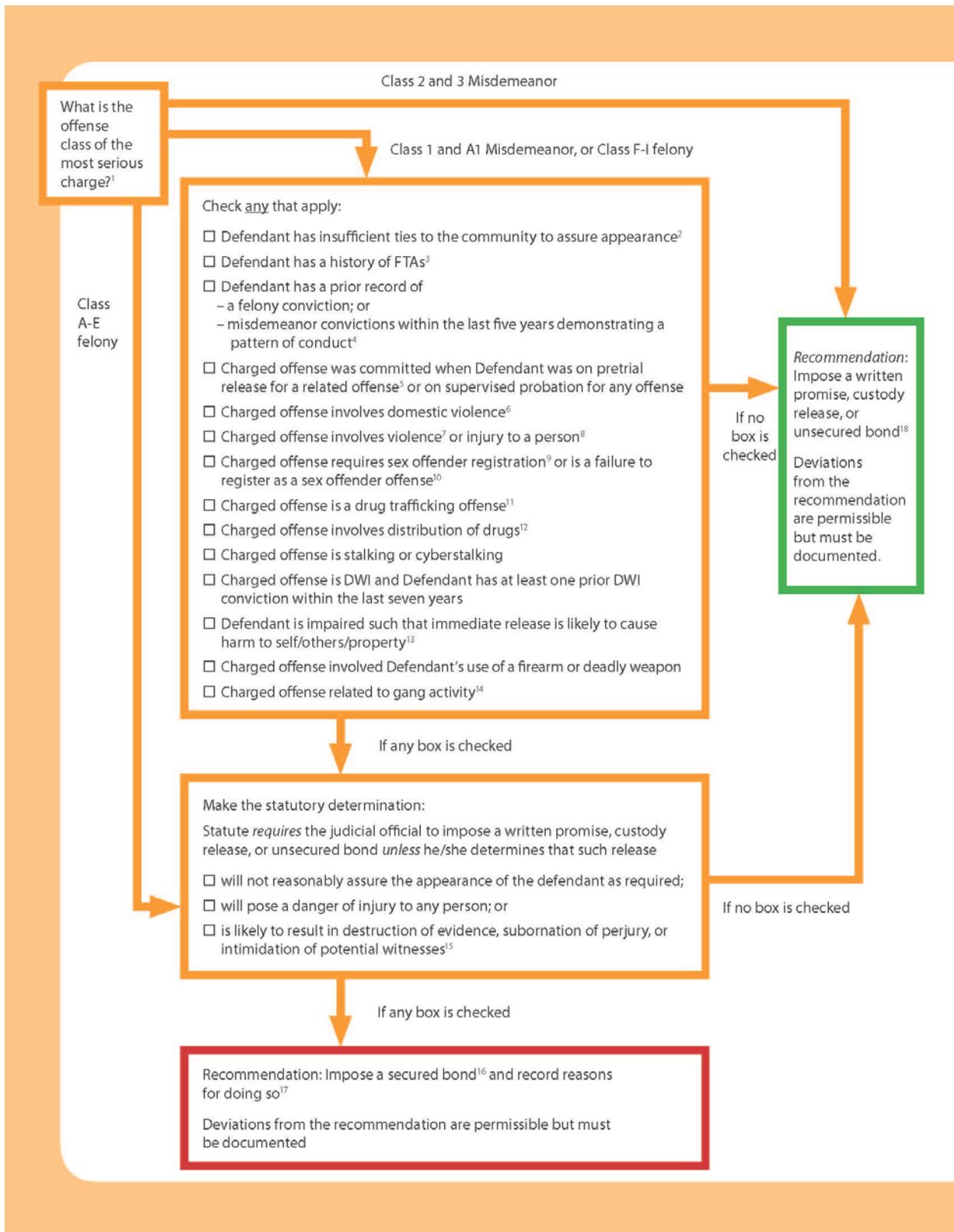
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<sup>7</sup> G.S. 15A-534(b).

<sup>8</sup> Online at: <https://www.nccourts.gov/assets/documents/forms/cr226-en.pdf?e1Vg5Goi1xRI3OAVkbvPBdXUyDuK.yrV>.

## **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 (7<sup>th</sup> 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 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 <sup>19</sup>
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.

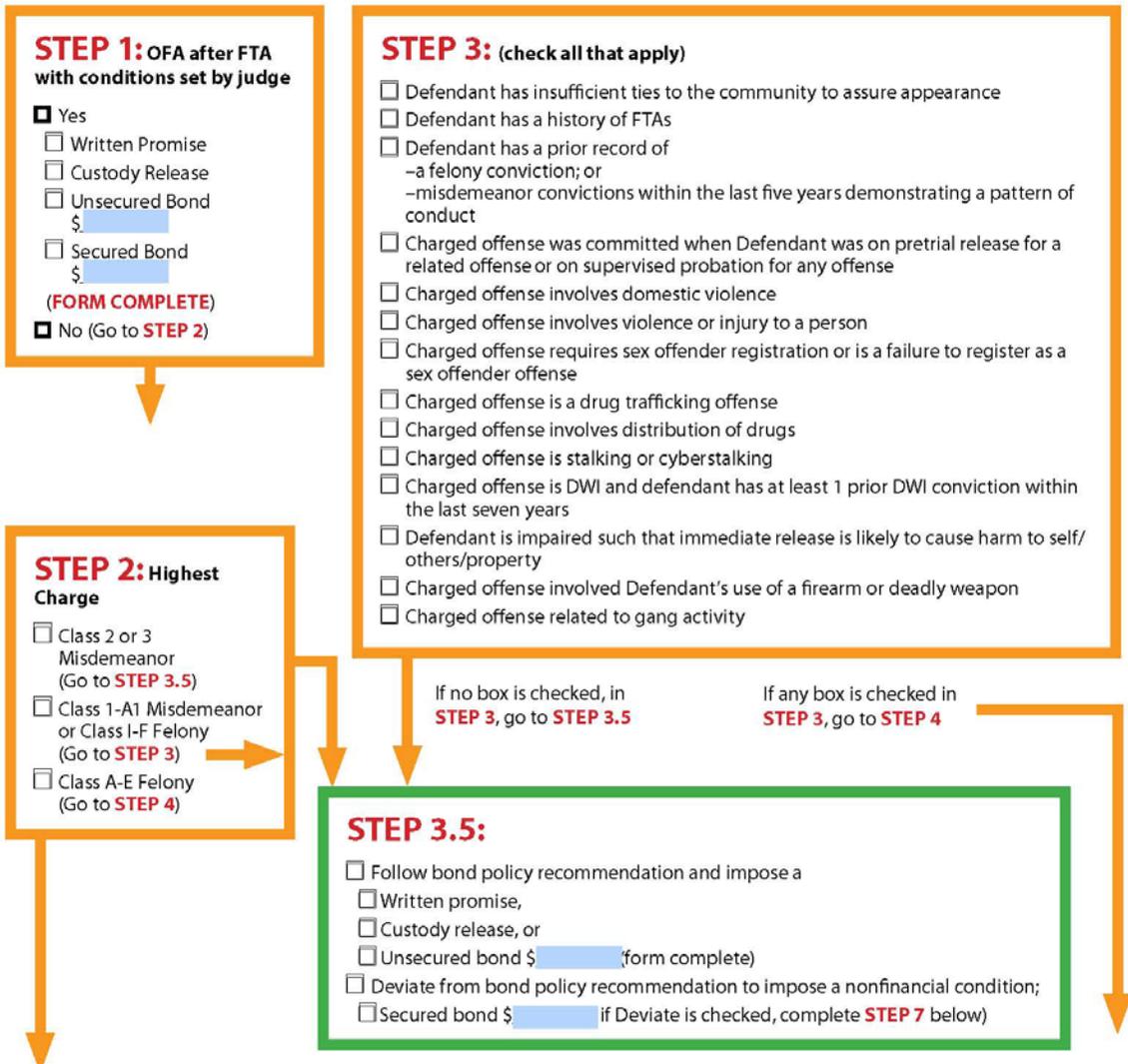
\*\*A "dosage unit" is 3 grams of synthetic cannabinoid or any mixture containing such substance

Appendix B: Magistrate Bail Explanation Form

## 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



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 area]

- will pose a danger of injury to any person

Explanation:

[Redacted explanation area]

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

Explanation:

[Redacted explanation area]

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 area for other reasons]

(Form is complete)

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Appendix C: Judge Bail Explanation Form

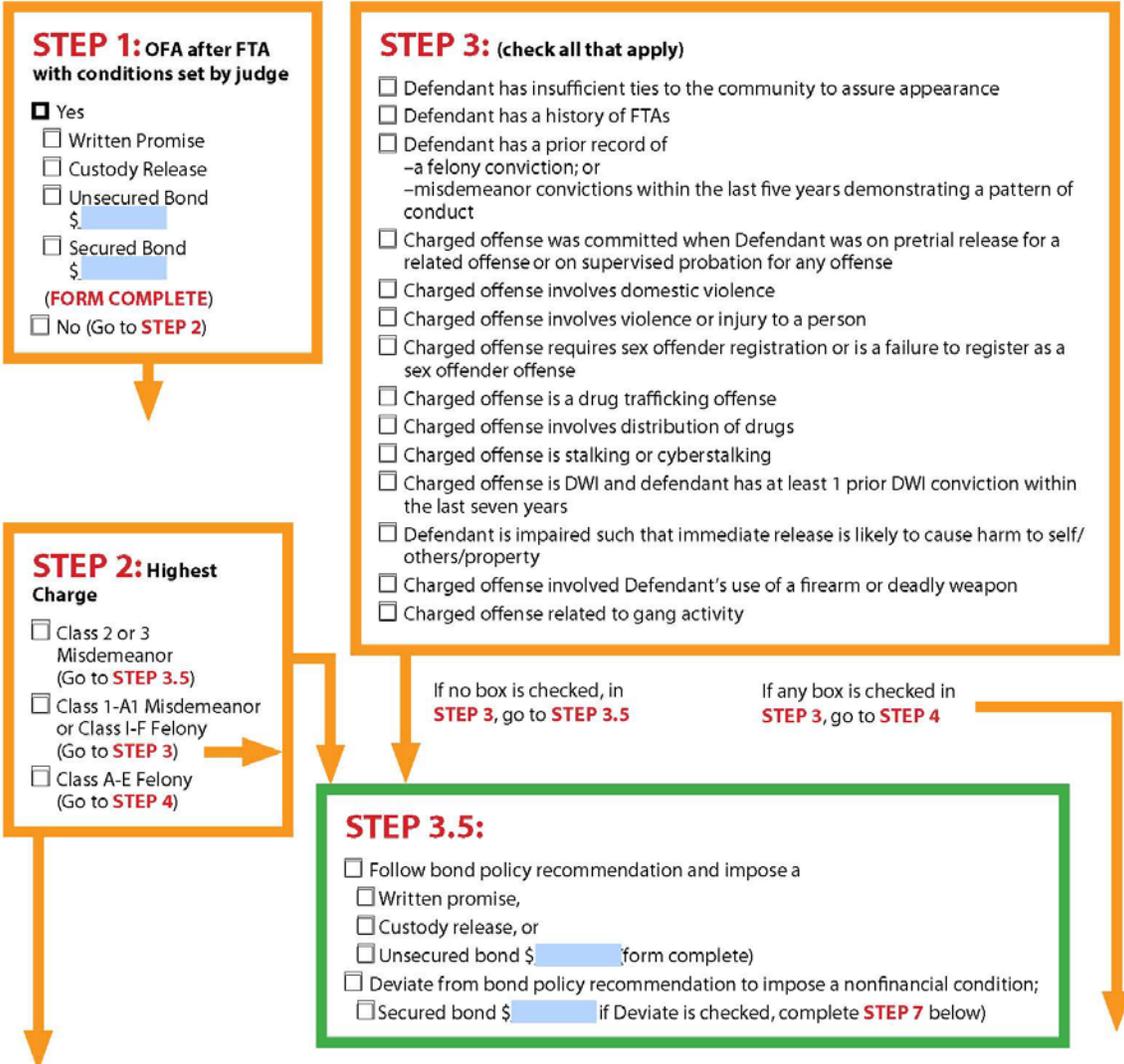
## FORSYTH COUNTY JUDGE BAIL EXPLANATION FORM

**DIRECTIONS:** This form applies when setting bail.

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
	No	No	No



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 box]

- will pose a danger of injury to any person

Explanation:

[Redacted explanation box]

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

Explanation:

[Redacted explanation box]

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 text box for other reasons]

**(Form is complete)**

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