

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.