19 CR 106

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
FOURTEENTH JUDICIAL DISTRICT

2019 FEB 28 A 9:51
DURHAM CO., C.S.C.
BY

In Re: Policies Relating to Bail and Pretrial Release Policies for the Fourteenth Judicial District

WHEREAS, the attached Policies Relating to Bail and Pretrial Release constitute the official recommended policies and standards concerning release on bail bond and pretrial release of a defendant in a criminal case before trial in the courts of Durham County, in and for the Fourteenth Judicial District;

WHEREAS, these policies are established in accordance with Chapter 15A of the General Statue of North Carolina, and replace the policies that were previously established by this jurisdiction;

IT IS ORDERED that the Trial Court Administrator cause the **Pre-trial Release Policies of the Fourteenth Judicial District** to be filed in the Office of the Clerk of Superior Court in the Fourteenth Judicial District, and that copies of this order and policies be delivered to the following Fourteenth Judicial District court officials, and agencies of law enforcement in the county;

The Senior Resident Superior Court Judge
Each Resident Superior Court Judge
The Chief District Court Judge
Each District Court Judge
The District Attorney

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The Public Defender
All Magistrates
Sheriff of Durham County
Chief of Police for the City of Durham

This the 28th day of February, 2019.

Honorable Orlando F. Hudson, Jr.
Senior Resident Superior Court Judge
Fourteenth Judicial District

Honorable Pat Evans
Chief District Court Judge
Fourteenth Judicial District

THIS ORDER AND POLICIES RELATING TO BAIL AND PRETRIAL RELEASE SUPERSEDE ALL PREVIOUS POLICIES, AND SHALL BECOME EFFECTIVE ON AND AFTER FEBRUARY 28, 2019.

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POLICY OF THE FOURTEENTH JUDICIAL DISTRICT FEBRUARY 28, 2019

I. General Policy

Judicial officers setting conditions of pretrial release are expected to do so in accordance with Amendment Eight to the United States Constitution and Article I, § 27 of the North Carolina Constitution, which provide that "excessive bail shall not be required," and Article 26, Chapter 15A, North Carolina General Statutes.

Generally, whether to determine conditions of pretrial release in the case of a defendant charged with a capital offense is subject to a judge's discretion. N.C. Gen. Stat.§ 15A-533. In most noncapital cases, a defendant is entitled to have a judicial official determine conditions of pretrial release. N.C. Gen. Stat. § 15A-533(b). A defendant charged with a crime alleged to have been committed while residing in, or as an escapee or when absent without authority from, a licensed mental health facility, and whose commitment is still valid as determined by a judge or judicial official, is not entitled to pretrial release. N.C. Gen. Stat. § 15A-533(a).

The primary purposes of a condition of pretrial release are reasonably to assure (1) that the defendant will appear as required, and (2) the safety of the community. A rebutable presumption exists that no condition of pretrial release will reasonably assure either when a judicial official determines that:

1. Trafficking. Reasonable cause exists to believe that the defendant committed a controlled substance trafficking offense; while on pretrial release for another offense; and the defendant was previously convicted of a Class A through E felony or a controlled substance trafficking offense and not more than five years has elapsed since the later of the date of conviction or release from prison. N.C. Gen. Stat. § 15A-533(d).

2. Gang activity. Reasonable cause exists to believe that the defendant committed an offense for the benefit of, at the direction of or in association with any "criminal street

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gang"as defined in N.C. Gen. Stat.§ 14-50.16; while on pretrial release for another offense; and the defendant was previously convicted of an offense described in N.C. Gen. Stat.§ 14-50.16 through .20 and not more than five years has elapsed since the later of the date of conviction or release from prison. N.C. Gen. Stat.§ 15A-533(e).

3. Use of firearm. Reasonable cause exists to believe that the defendant committed a felony or Class A 1 misdemeanor involving the use, possession or discharge of a firearm; and the judicial official also finds that the offense was committed while the defendant was on pretrial release for another felony or Class A 1 misdemeanor involving the use, possession or discharge of a firearm, or that the defendant was previously convicted of a felony or Class A 1 misdemeanor involving the use, possession or discharge of a firearm, and not more than five years has elapsed since the later of the date of conviction or release from prison. N.C. Gen. Stat. § 15A-533(f).

4. Methamphetamine. The State has presented clear and convincing evidence that the defendant was arrested for a methamphetamine-related offense (N.C. Gen. Stat.§§ 90-95(b)(la) or -95(d1)(2)(b), with knowledge or reasonable cause to know that the chemical will be used to manufacture methamphetamine, and the defendant is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine, and the offense was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use m any manner.

When a judicial official makes a finding pursuant to N.C. Gen. Stat. § 15A-533(d), (e) or (f), only a district or superior court judge may order the defendant's release "upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community." N.C. Gen. Stat.§ 15A-533(g).

When a judge or judicial official determines that conditions of pretrial release should be determined, that determination must be made in accordance with N.C. Gen. Stat.§ 15A-534. N.C. Gen. Stat.§ 15A-533(a), (b).

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II. Forms of Pretrial Release.

Conditions of pretrial release must include at least one of the following:

1. Written promise. Release of the defendant on his written promise to appear.

   Unless otherwise required by statute, this form of release is recommended for defendants of sound mind, with strong ties to the State, the charge is a misdemeanor and the other considerations set out in N.C. Gen. Stat.§ 15A-534© favor the defendant.

2. Unsecured bond. Release of the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official. Unless otherwise required by statute, this form of release is recommended for defendants of sound mind, even if the considerations set out in N.C. Gen. Stat.§ 15A-1534 © are not all favorable, or neutral or unknown.

3. Release to supervised custody. Place the defendant in the custody of a designated person or organization agreeing to supervise him. If this condition is included, then the defendant may elect instead to execute an appearance bond (see subparagraph 4, immediately below).

   Unless otherwise required by statute, this form is recommended for a defendant who is (a) a minor, (b) legally in the custody of another, (c) not mentally sound or under the influence of an impairing substance, (d) ill (e) otherwise in need of care and supervision; and a suitable person agrees in writing to all conditions of pretrial release.

   Conditions of release to supervised custody may be entered, but the defendant should not be released until the judicial officer is presented evidence satisfactory to the judicial

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officer of the true identity of the defendant and the person to who the defendant is to be released.

4. Secured bond. Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

a. A cash deposit bond is a type of bail bond. It is defined as "an appearance bond secured by a cash deposit of the full amount of the bond." N.C. Gen. Stat. §ISA-531(4). Except in child support contempt cases, a cash deposit bond may be imposed only if a written promise to appear, an unsecured appearance bond or the placing of the defendant in custody of a designated person or organization pursuant to an agreement to supervise him or her (1) will not reasonably assure appearance as required, or (2) will pose a danger of injury to any person, or (3) is likely to result in destruction of evidence, subornation of perjury or intimidation of potential witnesses; *and* the judicial official setting the conditions of release records the reasons for so doing in writing. N.C.G.S §15A-534(b). A bail bond signed by (1) a bail agent, or (2) a professional bondsman, is considered the same as a cash deposit, except in child support cases, when the requirement is satisfied only by actual deposit. N.C. Gen. Stat.§ 15A-531(4).

b. Unless otherwise required by statute, when a defendant is charged with an offense that cannot result in incarceration, a secured bond should be required only after the defendant has failed to appear or has absconded supervision.

c. "Property bonds". The term "property bond" does not appear in the General Statutes pertaining to pretrial release, but is generally understood to apply to an undertaking by an individual (the defendant or a third person) a sufficient net worth of real or personal property, or a combination of those, and "pledges" it to

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secure payment of a "bail bond." "Bail bond" is "an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State in a stated amount," and may take the form of"an appearance bond secured by a mortgage under G.S. 58-74-5, and an appearance bond secured by at least one solvent surety." N.C. Ge n.-Stat.§ 15A-531(4).

e. Electronic Monitoring. Pursuant to the provisions of G.S. 15A-535(b), a Pretrial Services Program has been established in Durham County. A defendant, determined not to be eligible for release on a written promise to appear, unsecured bond or supervised release, may qualify to be released through the Pretrial Services Program. A person charged with any of the following is excluded from release under the Pretrial Services Program. However, this does not mean that Pretrial Services will not supervise such a person if otherwise found eligible, and approved for this release by a District or Superior Court Judge:

1. Class A through Class E Felonies
2. Violent charges
3. Driving while intoxicated
4. Drug trafficking charges

ALL MAGISTRATES MUST COMPLETE THE *CHECKLIST FOR MAGISTRATE FOR THE SETTING OF PRE-TRIAL RELEASE TERMS*

(A sample of which immediately follows)

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SUGGESTED BOND AMOUNTS

PLEASE NOTE: Judicial Officials are vested with discretion in the settings of conditions of pretrial release. Judicial Officials are expected to use their discretion. The suggested bond amounts are ***suggested*** ranges only and ***ARE NOT MANDATORY.*** These ***suggested*** bond amounts are NOT limitations on judicial discretion.

The following are guidelines for the settings of secured bonds when that condition of pretrial release is imposed:

TYPE OF	MAXIMUM PUNISHMENT	SUGGESTED SECURED BONDS
Local Ordinance	$50 fine or 30 days	Written Promise
Class 3 Misdemeanor	20 days	Written Promise
Class 2 Misdemeanor	60 days	$0 to $250
Class 1 Misdemeanor	120 days	$0 To $500
Class Al Misdemeanor	150 days	$0 to $1000
Driving While Impaired	24 months	$0 to $2500
Class I Felony	15 months	$0 to $1000
Class H Felony	30 months	$0 to $5,000
Class G Felony	44 months	$1,000 to $7,500
Class F Felony	59 months	$2,500 to $10,000
Class E Felony	98 months	$5,000 to $25,000
Class D Felony*	229 months	$10,000 to $150,000
Class C Felony*	261 months	$15,000 to $250,000
Class B2 Felony*	480 months	$25,000 to $500,000
Class B1 Felony*	Life without Parole	$50,000 to $1,000,000
Class A Felony*	Death, Life without Parole	No Bond (unless set by Judge)
Habitual DWI*	59 months	$5,000 to $50,000
NC Probation Violation		Set amount appropriate for underlying offense with consideration for the nature of any violations and any new charges
Fugitive Warrant		No Bond

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Governor's Warrant	No Bond
Interstate Compact	
Parole Warrant	

*Each of these offenses carries a mandatory minimum active sentence

DRUG TRAFFICKING*

TYPE OF OFFENSE	MINIMUM SENTENCE	MAXIMUM SENTENCE	SUGGESTED SECURED BONDS
Class H Drug-Trafficking Felony	25 months	30 months	$5,000-$25,000
Class G Drug-Trafficking Felony	35 months	42 months	$25,000-$100 ,000
Class F Drug-Trafficking Felony	70 months	84 months	$25,000-$200,000
Class E Drug-Trafficking Felony	90 months	117 months	$50,000-$200,000
Class D Drug-Trafficking Felony	175 months	219 months	$200'000-$500'000
Class C Drug-Trafficking Felony	225 months	279 months	$200,000-$1,000,000

* Please see the following chart for classes of drugs and quantities.

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DRUG TRAFFICKING (continued)*

STATUTE	DESCRIPTION OF OFFENSE	PUNISHMENT
90-95(h)(I): Trafficking in marijuana	More than 10 and less than 50 pounds	Class H drug-trafficking felony; fine of not less than $5,000
	50-1,999pounds	Class G drug-trafficking felony; fine of not less than $25,000
	2,000-9,999 pounds	Class F drug-trafficking felony; fine of not less than $50,000
	10.000 pounds or more	Class D drug-trafficking felony: fine of not less than $200,000
90-95(h)(2): Trafficking in methaqualone	1,000-4,999 dosage units	Class G drug-trafficking felony; fine of not less than $25,000
	5.000- 9.999 dosage units	Class F drug-trafficking felony: fine of not less than $50,000
	10.000 dosage units or more	Class D drug-trafficking felony: fine of not less than $200,000
90-95(h)(3): Trafficking in cocaine	28- 199grams	Class G drug-trafficking felony; fine of not Jess than $50,000
	200-399 grams	Class F drug-trafficking felony; fine of not Jess than $100,000
	400 grams or more	Class D drug-trafficking felony; fine of not Jess than $250,000
90-95(h)(3b): Trafficking in amphetamine or methamphetamine	28- 199grams	Class F drug-trafficking felony; fine of not Jess than $50,000
	200-399 grams	Class E drug-trafficking felony; fine of not Jess than $100,000
	400 grams or more	Class C drug-trafficking felony; fine of not less than $250,000
90-95(h)(4): Trafficking in opium or heroin	4 - 13grams	Class F drug-trafficking felony; fine of not less than $50,000
	14-27 grams	Class E drug-trafficking felony; fine of not less than $100,000
	28 grams or more	Class C drug-trafficking felony; fine of not less than $500,000
90-95(h)(4a): Trafficking in LSD	100-499 dosage units	Class G drug-trafficking felony; fine of not less than $25,000
	500 -999 dosage units	Class F drug-trafficking felony; fine of not Jess than $50,000
	1,000 dosage units or more	Class D drug-trafficking felony; fine of not less than $200,000
90-95(h)(4b): Trafficking in MDA/MDMA	100-499 dosage units or 28-grams	Class G drug-trafficking felony; fme of not less than $25,000
	500- 999 dosage units or 200-399 grams	Class F drug-trafficking felony; fine of not less than $50,000
	1,000 dosage units, or 400	Class D drug-trafficking felony;

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	or more	fine of not less than $250,000

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SPECIAL MOTIONS BY DISTRICT ATTORNEY

The Court takes notice that the District Attorney Office for this District has been furnished additional resources by the County in the form of an additional assistant district attorney. The major purpose of this assistance is to identify inmates in the Durham County Detention Facility that should be considered for bond reductions or other forms of pre-trial release. Upon the motion of the District Attorney for modification of an inmate's release order, the District Court Judge assigned to First Appearances may consider the State's motion and in appropriate cases modify the release orders.

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CHECK LIST FOR MAGISTRATE
FOR THE SETTING OF PRE-TRIAL RELEASE TERMS
FELONY OFFENSES CLASS F-I
AND MISDEMEANORS

Defendant _____
File # _____
Magistrate _____
Charge (most serious): _____
_____

(A) Check all that apply: ☐ Defendant has insufficient ties to the community to assure appearance ☐ Defendant has a recent 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 o supervised probation for any offense ☐ Charged offense involves domestic violence ☐ Charged offense is a felony & resulted ininjury to a person ☐ Charged Offense Requires Sex offender registration ☐ Charged offense is a failure to register as a sex offender offense ☐ Charged offense is a drug trafficking offense ☐ Charged offense involves distribution of drugs ☐ Defendant is impaired such that immediate release is likely to cause harm to self/others/property ☐ Charged offense involved Defendant's Defendant's use of a firearm or deadly weapon	
If any box is checked in (A)	**If no box in (A) is checked**
(B) Statute *requires* the judicial official to impose a written promise, custody release, or unsecured bond unless he/she 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	***Recommendation:*** Impose a written promise, custody release, or unsecured bond. Deviations from the Recommendation are permissible but must be documented.
If any box is checked in (B)	**If NO box is checked in (B)**
Recommendation: **Impose a secured Bond as set forth in Suggested Bond Amounts Chart and record the reason for doing so.** **Deviations from the recommendation are permissible but must be documented**	***Recommendation:*** **Impose a written promise, custody release, or unsecured bond.** **Deviations from the Recommendation are permissible but must be documented.**

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For Felonies in Class A-E

Set recommended secured bond as set forth in Suggested Bond Amounts Chart

State Reasons for Deviations below:

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