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STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE 2022 MAR 15 AM 11: 57 10<sup>TH</sup> JUDICIAL DISTRICT

WAKE CO., C.S.C.

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BY \_\_\_\_\_ )  
ADMINISTRATIVE ORDER )  
SETTING 10<sup>TH</sup> JUDICIAL DISTRICT )  
PRETRIAL RELEASE POLICY )  
 )

*Preamble*

In 2020, Wake County leaders undertook a collaborative process to closely examine the pretrial criminal justice system in Wake County with a view towards promoting fairness and equity by balancing community safety, concern for victims, and the rights and needs of individuals facing criminal charges. A Steering Committee was established of stakeholders of our county’s justice system, including the District Attorney, the Public Defender, the Sheriff, the Raleigh Police Chief, the Clerk of Court, the Chair of the County Commissioners, the Chief Magistrate Judge, Judges of the Superior and District Courts, representatives of the County Manager’s Office, and leaders of non-profit organizations including Criminal Justice Alternatives, InterAct, the NC Justice Center, and the Wake County Bar Association.

For fifteen months the Steering Committee met with a vision of utilizing resources to build an evidence-based pretrial system that allows for the consistent application of objective criteria by providing judicial officials with tools to effectively balance the rights, interests and safety concerns of the community, victims and individuals charged with crimes. The process was guided by the following values adopted at the outset: fair, equitable, consistent, respect, trust, transparency, evidence-based, stability, timeliness, least-restrictive, community safety, and collaborative.

In December 2021, the Steering Committee issued its Report and Recommendations. Six significant recommendations were suggested, all of which have been approved for implementation. These recommendations are:

1. Implement a “magistrate card” at initial appearances to standardize magistrate review of bail conditions consistent with the statutory framework of using least restrictive conditions that meet pretrial objectives and require a written finding when imposing a secured bond.
2. Implement a Public Safety Assessment (PSA) to provide empirically validated risk information to a judicial official during first appearance that can be considered in determining conditions of release.
3. Increase pretrial support services so that additional resources are provided to support an individual’s success while on pretrial release.

4. Establish a pretrial jail status “real-time” dashboard to provide additional frequent review of jail population with daily dashboard updates.
5. Revise the Secured Bond Schedule in the 10<sup>th</sup> Judicial District to adjust the suggested secured bond amounts in certain offense classes in the context of the Committee’s pretrial reform goals.
6. Provide for the Public Defender’s Office to be present at first appearance hearings as resources permit so that defendants have greater access to legal counsel at the time conditions of pretrial release are considered.

Pursuant to N.C. Gen. Stat. § 15A-535(a), through this Administrative Order, the undersigned adopt the recommendations of the Steering Committee Report and order the implementation of these recommendations as expeditiously as possible. Moreover, through this Order, several of the recommendations of the Steering Committee are implemented immediately, effective April 1, 2022.

IT IS ORDERED that the policies set forth herein shall constitute the official recommended policies and standards concerning pretrial release of a defendant in a criminal case before trial in all courts of the County of Wake, in and for the Tenth Judicial District.

## **I. Introduction**

Article 26 of Chapter 15A of the North Carolina General Statutes shall be followed by all judicial officials.

To this end and pursuant to N.C. Gen. Stat. §15A-535(a), the following recommended policies are adopted as a guide in determining conditions of pretrial release in the Tenth Judicial District.

## **II. Local Guidelines**

### **A. General Requirements**

North Carolina G.S. § 15A-533(b) states “[a] defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. § 15A-534.”

North Carolina G.S. § 15A-533(b) requires that one of five conditions of pretrial release be imposed in any non-capital charge. These five conditions are:

- (1) Release the defendant on his or her written promise to appear.
- (2) Release the defendant upon his or her execution of an unsecured appearance bond in an amount specified by the judicial official.
- (3) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant.



- (4) 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.
- (5) House arrest with electronic monitoring.

North Carolina G.S. § 15A-534(b) requires that the judicial official impose conditions (1), (2), or (3) unless “he [or 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 intimidation of potential witnesses.” If the judicial official determines that one or more of these situations exist, he or she must then impose condition (4) or (5). In making the determination, the court shall, in accordance with the policy set out in Part III below, consider the factors set out in N.C.G.S. §15A-534(c).

In imposing any of these five conditions, the judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant. Requiring the defendant to prove identity as a condition of release may be appropriate in circumstances where there is a serious question about the identity of the person arrested.

When a magistrate sets a secured bond, the magistrate shall note in writing the reasons supporting the imposition of a secured bond. These written findings may be brief handwritten notations on the Release Order (AOC-CR-200). The failure of the magistrate to make such written findings shall not render a bond invalid, but such failure may constitute some evidence to support a claim that a bond is excessive.

## **B. Impaired Driving Cases**

In setting conditions of pre-trial release in Driving While Impaired cases, judicial officials must follow the same analysis as set for the above. In determining whether release of the defendant “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,” judicial officials should consider whether the defendant has previously been convicted of a Driving While Impaired offense, whether the defendant has any pending Driving While Impaired charges, and whether the defendant has previously failed to appear for court, among other considerations. The judicial official should also consider the sentencing guidelines of Driving While Impaired cases and be aware of the existence of evidence that any grossly aggravating, aggravating or mitigating factors, as outlined in Chapter 20 of the North Carolina General Statutes, apply. The judicial official should pay particular attention to whether factors exist that, if proven in court, would result in a mandatory active sentence.

In addition to following N.C. Gen. Stat. §15A-534, judicial officials must consider whether the “impairment of the defendant’s physical or mental faculties

presents a danger, if he [or she] is released, of physical injury to [one]self or others or damage to property” as set forth in N.C. Gen. Stat. §15A-534.2 and, if so, follow the procedures outlined therein. In determining whether a defendant poses a danger to oneself or the public, a magistrate should consider, among other things, the defendant’s blood alcohol level, information provided by the officer as to the defendant’s level of impairment, evidence of reckless or dangerous driving and the condition of the defendant at the time of the initial appearance.

Judicial officials should also be familiar with the constitutional requirements of setting the conditions of pre-trial release in Driving While Impaired cases so as to not irreparably prejudice a defendant.

### **C. Domestic Violence Cases**

Defendants charged with crimes of domestic violence as defined by N.C. Gen. Stat. §15A-534.1(a) (assault, stalking, communicating threats, domestic criminal trespass, violation of a 50B order or a qualifying felony) upon a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. § 50B-1(b)(6), are subject to special restrictions pursuant to N.C. Gen. Stat. §15A-534.1 which may be imposed in addition to any condition of release. These include conditions requiring the defendant: to stay away from the home, school, business or place of employment of the alleged victim; to refrain from assaulting, beating, molesting, or wounding the alleged victim; to refrain from removing, damaging or injuring specifically identified property; to visit his or her child or children at times and places provided by the terms of any existing order entered by a judge; or to abstain from alcohol consumption as verified by the use of a continuous alcohol monitoring system.

### **D. Sex Offenses and Crimes of Violence Against Children Cases**

In setting conditions of pretrial release where a defendant is charged with child abuse, a sex offense, or a crime of violence against a child as defined by N.C. Gen. Stat. § 15A-534.4, the judicial official must impose those conditions set forth in § 15A-534.4 in addition to any other conditions of pretrial release that the judicial official determines to be appropriate unless, in accordance with § 15A-534.4(b), the judicial official, upon request of the defendant, makes written findings of fact that it is not in the best interest of the alleged victim that the condition be imposed.

### **E. Other Offenses Subject to Special Statutory Conditions of Pre-Trial Release**

While not enumerated fully here, in those cases in which a defendant is charged under circumstances described by, or for offenses listed in, various General Statutes bearing upon conditions of pretrial release, the judicial official setting conditions of pretrial release shall consider and adhere to the requirements of any



applicable statute. These statutes include, but are not limited, to circumstances and offenses such as: offenses committed during an unauthorized absence from an involuntary commitment in a mental health facility (G.S. § 15A-533(a)); offenses involving the trafficking of controlled substances (G.S. § 15A-533(d)); offenses committed for the benefit of, at the direction of, or in association with, any criminal gang (G.S. § 15A-533(e)(1)); offenses committed involving the illegal use, possession or discharge of a firearm (G.S. § 15A-533(f)); offenses in cases of manufacture of methamphetamine (G.S. § 15A-534.6); and offenses involving communicating a threat of mass violence (G.S. § 15A-534.7).

### III. Policy

#### A. Considerations

In determining the existence or non-existence of the factors justifying the imposition and amount of secured bond or in determining which of the first three conditions (See II(A) above) should be imposed, the judicial official should, based upon any available information judged by him or her to be reliable, consider the following criteria:

- (1) the nature and the circumstances of the offense or offenses charged. This includes evidence of violence or flight, and whether the defendant could receive an active sentence for the offense or offenses charged;
- (2) the weight of the evidence against the defendant, including the probability of conviction and the likely sentence insofar as these factors are relevant to the likelihood that the defendant will flee or otherwise evade or avoid prosecution;
- (3) the defendant's family ties;
- (4) the defendant's employment status and history
- (5) the defendant's financial resources;
- (6) the defendant's character;
- (7) the defendant's mental and emotional condition;
- (8) whether the defendant resides in the community and if so, the length of residency;
- (9) the defendant's record of conviction;
- (10) the defendant's history of appearing or failing to appear at court proceedings or failure to comply with court orders;
- (11) any statement made by the defendant to anyone concerning his or her intention to flee, to appear in court, to injure any person, to intimidate any witness, or to destroy any evidence;
- (12) whether the defendant is on probation or post-release supervision;
- (13) whether the defendant was already under conditions of pretrial release when the current offense was allegedly committed;
- (14) the defendant's juvenile record as allowed by law;

- (15) any history of mental illness, involuntary commitments or substance abuse that may be relevant to the potential failure to appear at future proceedings; and
- (16) any other matters or factors bearing on the risk of nonappearance, injury to any person, destruction of evidence, subornation of perjury, or intimidation of any witness.

## **B. Public Safety Assessment Tool**

The 10<sup>th</sup> Judicial District's Public Safety Assessment (PSA) tool is an objective, validated tool for understanding an individual's likelihood of success when released on pretrial. Based upon actuarial data, and a continual review of data, individuals are scored on both the likelihood to be arrested with a new charge or to fail to appear during the pretrial period. The PSA is intended to be completed for all individuals charged with misdemeanors and felonies who remain in pretrial custody before First Appearance, as resources permit. During implementation of the PSA tool, the assessments may be limited to persons charged with some misdemeanors and low level felonies. The purpose of the PSA is to provide empirically validated risk information to a judicial official during First Appearance that can be considered in determining conditions of release. The PSA assessment takes into account many of the factors set out above in section III(A) and the PSA Risk Matrix is a valuable and objective tool when considering appropriate pretrial conditions. In all cases, the judicial official retains discretion in determining release conditions.

## **C. Written Promise to Appear**

It is recommended that a written promise to appear be set as the condition of release when reliable information indicates that all the criteria set out above are favorable to the defendant or neutral. When a PSA has been performed on the defendant, the judicial official should consider the assessment tool results for objective evaluation of the defendant's risk of failure to appear and risk of new criminal arrest.

## **D. Unsecured Bond**

An unsecured bond may be set with any appropriate restrictions on travel, associations, conduct, or place of abode when reliable information indicates that a significant portion of the above criteria are favorable to the defendant or neutral. A condition of the unsecured bond may include referral to Criminal Justice Alternatives, the pretrial release program of Wake County, for additional pretrial support services. When a PSA has been performed on the defendant, the judicial official should consider the assessment tool results for objective evaluation of the defendant's risk of failure to appear and risk of new criminal arrest and for objective guidance on appropriate non-monetary conditions or restrictions, if any.



### **E. Placement with a Designated Person or Organization**

Placement into the custody of a designated person or organization agreeing to supervise the defendant, with any appropriate restrictions on travel, associations, conduct, or place of abode, is recommended when reliable information indicates that the defendant is an unemancipated minor, is mentally ill or otherwise deficient, is physically ill, is impaired, or is otherwise in need of care, and that the designated person or organization resides or operates within the state and proposes to keep the defendant within the state.

### **F. Secured Bond**

Secured bonds shall be imposed in cases in which the judicial official makes a determination that less restrictive conditions of release are inappropriate because 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. A secured bond may be in addition to other conditions of release such as restrictions on travel, associations, conduct, or place of abode. When a PSA has been performed on the defendant, the judicial official should consider the assessment tool results for objective evaluation of the defendant's risk of failure to appear and risk of new criminal arrest and for objective guidance on appropriate non-monetary conditions or restrictions, if any

### **G. Electronic House Arrest and Electronic Monitoring**

Upon approval of the judicial official, the defendant may also be placed with Criminal Justice Alternatives, the pretrial release program of Wake County, for electronic monitoring ("EM") or electronic house arrest ("EHA"). Monitoring by these programs may be in addition to other conditions of release such as restrictions on travel, associations, conduct, or place of abode. When a PSA has been performed on the defendant, the judicial official should consider the assessment tool results for objective evaluation of the defendant's risk of failure to appear and risk of new criminal arrest and for objective guidance on appropriate non-monetary conditions or restrictions, if any. A defendant who is placed on EHA must execute a secured bond pursuant to N.C. Gen Stat. § 15A-534(a).

Judicial officials ordering that a defendant be placed on EM or EHA should determine whether the defendant is indigent. A defendant who meets the criteria for court appointed counsel also qualifies as indigent for EM and EHA purposes. A judicial official may also determine that a defendant, though represented by retained counsel, is nonetheless indigent for EHA and EM purposes.

When ordering a defendant be placed on either EM or EHA, the judicial official should set a “high” and “low” bond. The “low” bond is the amount of secured bond, if any, that the judicial official determines is appropriate, upon consideration of the factors set out above, for the defendant while being electronically monitored or under electronic house arrest. The “high” bond is the amount of secured bond that the judicial official determines is appropriate, upon consideration of the factors set out above, for the defendant if no electronic monitoring devices are available or the defendant is otherwise not able to be electronically monitored. By setting a “high” bond, the defendant is able to secure his or her release from detention, albeit with a higher secured bond, even when the supply of monitoring devices in Wake County has been exhausted.

#### IV. Secured Bond Guidelines

##### A. Suggested Secured Bond Amounts

The following are guidelines for the setting of secured bonds when that condition of pretrial release is imposed. The guidelines are recommendations only. All judicial officials shall exercise their own judgment in making bond decisions.

| <b>Class of Offense</b> | <b>Suggested Secured Bonds</b>   |
|-------------------------|--|
| Misdemeanor Class 3     | Up to \$750  |
| Misdemeanor Class 2     | Up to \$1,000  |
| Misdemeanor Class 1     | Up to \$2,000  |
| Misdemeanor Class A1    | Up to \$5,000  |
| Driving while Impaired  | Up to \$10,000   |
| Felony Class I          | Up to \$10,000   |
| Felony Class H          | Up to \$15,000   |
| Felony Class G          | \$15,000 - \$50,000  |
| Felony Class F          | \$15,000 - \$50,000  |
| Felony Class E          | \$20,000 - \$75,000  |
| Felony Class D          | \$50,000 - \$200,000   |
| Felony Class C          | \$50,000 - \$250,000   |
| Felony Class B2         | \$200,000 - \$500,000  |
| Felony Class B1         | \$500,000 - \$1,500,000  |
| Felony Class A          | No Bond (unless set by a Superior Court Judge)                           |
| Fugitive Warrant        | Set amount appropriate for the underlying offense, but at least \$25,000 |
| Governor's Warrant      | No Bond  |
| Parole Warrant          | No Bond  |



|                          |                               |
|--------------------------|-------------------------------|
| Habitual Felon           | at least \$25,000 secured     |
| <b>Drug Trafficking</b>  | <b>Suggested Secured Bond</b> |
| Drug Trafficking Class H | \$25,000 - \$100,000          |
| Drug Trafficking Class G | \$50,000 - \$200,000          |
| Drug Trafficking Class F | \$50,000 - \$200,000          |
| Drug Trafficking Class E | \$50,000 - \$200,000          |
| Drug Trafficking Class D | \$200,000 - \$500,000         |
| Drug Trafficking Class C | \$500,000 - \$1,500,000       |

### B. Suggested Secured Bond Amounts – Probation Violations

The following are guidelines for the setting of secured bonds when that condition of release is imposed for alleged probation violation(s). The guidelines are recommendations only. All judicial officials shall exercise their own judgment in making bond decisions.

| <b>Probation Violations (Underlying Offense)</b> | <b>Suggested Secured Bond</b>                       |
|--|---|
| Misdemeanor Class 3                              | Up to \$10,000<br>Up to \$10,000 (Absconder)        |
| Misdemeanor Class 2                              | Up to \$10,000<br>\$10,000 minimum (Absconder)      |
| Misdemeanor Class 1                              | Up to \$10,000<br>\$10,000 minimum (Absconder)      |
| Misdemeanor Class A1                             | Up to \$10,000<br>\$10,000 minimum (Absconder)      |
| Felony Class I                                   | Up to \$10,000<br>\$10,000 minimum (Absconder)      |
| Felony Class H                                   | \$10,000 - \$25,000<br>\$25,000 minimum (Absconder) |
| Felony Class G                                   | \$25,000 - \$50,000<br>\$50,000 minimum (Absconder) |
| Felony Class F                                   | \$25,000 - \$50,000<br>\$50,000 minimum (Absconder) |
| Felony Class E                                   | \$50,000 - \$75,000<br>\$75,000 minimum (Absconder) |

### **C. Secured Bonds Posted by Non-Professional (“Solvent”) Surety or by Mortgage**

North Carolina Gen. Stat. § 15A-534(a) authorizes release upon execution of an appearance bond secured by a cash deposit of full amount of the bond, by a mortgage pursuant to G.S. § 58-74.5, or by a solvent surety.

All professional bondsmen licensed by the North Carolina Insurance Commissioner are deemed “solvent” sureties up to the amount of bond authorized by such license.

Any non-professional bondsman may sign a surety so long as such person satisfies the judicial official that he or she is solvent, with assets exceeding debts in excess of the amount to the bond. However, a non-professional bondsman may not sign as a surety for a bond in excess of \$10,000.00 unless such bond is secured by mortgage of real property.

An appearance bond secured by mortgage must include a completed financial statement for determination of solvency of the surety showing the value of said property as indicated on the tax record. The value of the property must be assessed by the tax department showing equal or higher values than the amount of bond required using the financial statement form. An attorney must prepare a promissory note and deed of trust and obtain a certified title opinion letter. The deed of trust shall be executed in favor of the State of North Carolina as beneficiary and the Clerk of Superior Court as trustee, which guarantees all appearances of the defendant at all court proceedings as required by law. The note and deed of trust must be recorded in the Register of Deeds office for Wake County or the county where the property is located, and the surety or attorney is responsible for any fees associated with preparing, recording and canceling the deed.

### **D. Multiple Sureties on Same Secured Bond**

There shall be no “stacking” or “splitting” of secured bonds without the approval of the Senior Resident Superior Court Judge or Chief District Court Judge. Any surety, including an accommodation bondsman, is liable for the full amount of



the bond. If multiple sureties sign, each is jointly and severally liable for the entire amount of the bond.

If the defendant is charged with more than one offense, nothing in these rules prohibits a judicial official from setting separate bonds and allowing different sureties to post the bond in each of the cases, so long as there is only one surety on each bond.

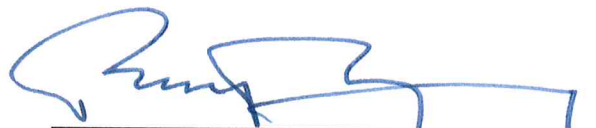
IT IS ORDERED that a copy of this Order shall be permanently maintained in the Office of the Clerk of Superior Court in the 10<sup>th</sup> Judicial District for public inspection.

The Clerk of Superior Court is authorized to promulgate any additional rules, procedures and forms necessary to implement these bond policies, so long as such rules do not conflict with the policies set forth in this document. Any rules promulgated by the Clerk and forms required by the Clerk's office for the posting of appearance bonds in criminal cases will be attached to and maintained with the bond policies set forth herein.

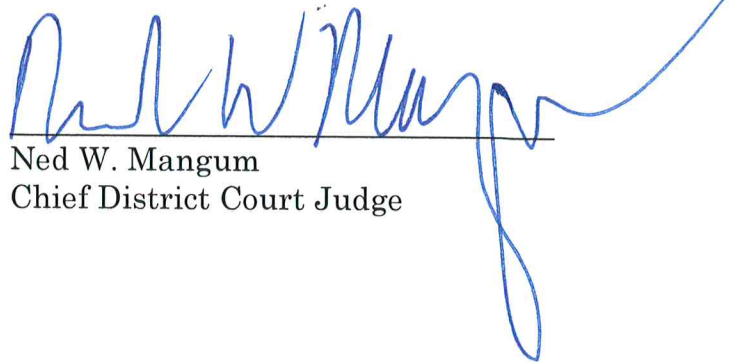
The Clerk shall cause a copy of this Administrative Order to be disseminated to the following persons: each Superior Court Judge, each District Court Judge, each Magistrate in the County, the Wake County District Attorney, the Wake County Public Defender, the Sheriff of Wake County, the Chief of each Police Department within Wake County, and the Commanding Officer of Troop C, North Carolina Highway Patrol.

These policies shall be in full force and effect on and after April 1, 2022, and do replace existing policies.

So ORDERED, this the 15<sup>th</sup> day of March, 2022,



Paul C. Ridgeway  
Senior Resident Superior Court Judge



Ned W. Mangum  
Chief District Court Judge