

**STATE OF NORTH CAROLINA
CHATHAM/ORANGE COUNTIES**

**IN RE BAIL POLICY
ORANGE COUNTY**

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR AND DISTRICT COURT
DIVISIONS**

ADMINISTRATIVE ORDER

Pursuant to the mandate of G.S. 15A-535(a) and the specified, implied, and inherent powers of our respective offices, the undersigned do hereby approve and enter this administrative order for the governance of pretrial release in Orange County.

IT IS THEREFORE ORDERED THAT:

1. The “Bail Policy for Orange County” (“the Bail Policy”), attached hereto and incorporated herein by reference, is adopted.
2. The attached Bail Policy supersedes all prior local administrative orders and directives for the subject matters therein, including, but not limited to, the “Pretrial Release Policy Order” entered originally on January 1, 1999, and as amended on February 2, 2006, and March 12, 2019, by Senior Resident Superior Court Judge Carl R. Fox and the “Administrative Order” issued on October 1, 2020, by Senior Resident Superior Court Judge Allen Baddour.
3. The attached Bail Policy shall be in full force and effect for all determinations of defendants’ eligibility for and conditions of pretrial release made by judicial officials in Orange County on or after January 24, 2022.
4. Upon filing of this order with the office of the Clerk of Superior Court, the Clerk shall cause to be delivered without charge copies of this order and the attached Policy to: all resident judges and magistrates of Orange County; the office of the District Attorney for Prosecutorial District 18; the office of the Orange County Public Defender; the Sheriff of Orange County; the Chiefs of Police for Chapel Hill, Carrboro, Mebane, Hillsborough and UNC Public Safety; the president of the Judicial District 18 Bar; the Criminal Justice Resource Department; and the Orange County Probation and Parole Supervisors for the Division of Adult Correction and Juvenile Justice, Community Corrections.
5. The Trial Court Coordinator shall have a copy of this Policy available to all visiting judges assigned to preside in Orange County and the Clerk of Superior Court shall have a copy for any interested member of the public.

Entered in our respective chambers, this the 19 day of January, 2022.



THE HONORABLE ALLEN BADDOUR
Senior Resident Superior Court Judge



THE HONORABLE SAMANTHA H. CABE
Chief District Court Judge

BAIL POLICY FOR ORANGE COUNTY

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I. Introductory Matters.

A. Name.

This policy shall be known as the "Bail Policy for Orange County."

B. Authority.

This policy is adopted pursuant to the General Statutes, including G.S. 15A-535(a), and the inherent authority of the Senior Resident Superior Court Judge and Chief District Court Judge in the administration of criminal procedure for Orange County.

C. Definitions.

In addition to the terms defined in this section, the terms and definitions in G.S. 15A-531 are adopted and incorporated by reference into this policy.

1. Capital Offense.

The term "capital offense" means an offense for which the death penalty is an authorized punishment. An offense is a capital offense regardless of whether the District Attorney is seeking the death penalty in the case; if the death penalty is authorized by law for the offense, it is a capital one. A pending charge of "murder" that does not specify first- or second-degree shall be deemed a "capital offense" for purposes of this policy.

2. Cash.

The term "cash" means United States currency or its equivalent (cashier's check, certified check, or money order). A bail bond signed by any surety, as defined in G.S. 15A-531(8)a and b, is considered the same as a cash deposit for all purposes in this policy except that cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash. G.S. 15A-531(4).

3. Clerk.

The term "Clerk" is as defined in G.S. 15A-101(2). When this policy intends to refer only to the elected Clerk of Superior Court the following language will be used: "the Clerk of Superior Court."

4. Conditions of Release.

The term "conditions of release" refers to the conditions of release specified in G.S. 15A-534(a) (written promise to appear; unsecured bond; custody release to a person or organization agreeing to supervise the defendant; secured bond; and secured bond with house arrest and electronic monitoring (EHA)) and any other conditions (e.g., drug testing as requirement of release to pretrial services) or obligations (e.g., stay away from the victim) imposed on the defendant as part of pretrial release.

5. Judicial Official.

The term "judicial official" is as defined in G.S. 15A-101(5). The use of a specific judicial official's title in this policy, e.g., "magistrate," is intended to refer to that official only.

6. Release Order.

The term "release order" means an order entered pursuant to G.S. 15A-511(e) and G.S. 15A-521(b), which may contain conditions for a defendant's release, or any separate order that addresses a defendant's conditions of release.

7. Surety.

The term “surety” means an entity other than the defendant who executes a monetary bail bond, either personally or through an authorized agent, and who is jointly and severally liable with the defendant and all other sureties on the same bond in the event of forfeiture.

8. Type of Release.

The term “type of release” refers to the five conditions of release specified in G.S. 15A-534(a): written promise to appear; unsecured bond; custody release to a person or organization agreeing to supervise the defendant; secured bond; and secured bond with house arrest and electronic monitoring (EHA).

9. Victim.

The term “victim” is as defined in G.S. 15A-830(a)(7).

D. Purpose.

The purpose of this policy is to provide uniform guidance for the implementation of North Carolina General Statutes Chapter 15A, Article 26, and related statutes governing pretrial release of individuals charged with criminal offenses and infractions.

E. Scope.

This policy is applicable to all pretrial release determinations in criminal and infraction cases for which trial venue originates in or is transferred to Orange County and to probation violation and extradition proceedings heard in Orange County.

When a judicial official determines eligibility or conditions of pretrial release for a defendant charged with a crime or infraction for which trial venue lies in another county, the judicial official shall make every reasonable effort to obtain information about and adhere to that county’s local bail policy. If the other county’s bail policy cannot be obtained within the time frame in which a pretrial release determination must be made, see section II.F below, the judicial official shall proceed according to this policy.

Under G.S. 7B-2204, when jurisdiction over a juvenile is transferred from juvenile court to superior court for trial, the juvenile has the right to pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. This policy applies to pretrial release determinations in such cases.

II. General Principles & Guidelines.

A. General Principles.

1. Applicability of North Carolina & Federal Law.

The provisions of this policy shall be applied in a manner consistent with state statutes and the North Carolina and federal Constitutions. In case of direct conflict, North Carolina statutes and constitutional law override provisions in this policy.

2. Liberty Is The Norm.

In *United States v. Salerno*, 481 U.S. 739 (1987), the United States Supreme Court instructed that “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *Id.* at 755. This principle is reflected in this policy.

3. Bail Cannot Be Used to Punish.

Bail may not be used to punish. *See Salerno*, 481 U.S. at 746 (federal bail act passed constitutional muster in part because its purpose was held to be regulatory not punitive); *see also* *Stack v. Boyle*, 342 U.S. 1, 4 (1951) (“This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.” (internal citation omitted)).

4. Purpose of Pretrial Release.

In light of these principles, the purpose of pretrial release is to impose the least restrictive conditions of release that will reasonably assure a defendant’s appearance in court; protect against injury to any person; and prevent destruction of evidence, subornation of perjury, or intimidation of potential witnesses. *See* G.S. 15A-534(b).

5. Presumption of Innocence & Right to Fair Trial.

The right to pretrial release recognizes the presumption of innocence and promotes a defendant’s right to a fair trial by facilitating access to counsel, freedom of movement to secure witnesses, and the general ability to prepare a defense. *See Stack v. Boyle*, 342 U.S. at 4 (pretrial release permits unhampered preparation of a defense and makes the presumption of innocence meaningful).

6. Pretrial Risk.

Pretrial release may create some risk that the defendant will flee, commit another crime, or interfere with the criminal proceeding. The only way to completely eliminate these risks would be to incarcerate all persons pretrial, which is unconstitutional. These risks are codified in the legislature’s statutory presumption in favor of release on conditions of release other than secured bond. *See* G.S. 15A-534(b) (judicial official “must” impose a written promise, custody release or unsecured bond unless the judicial 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”).

7. Unaffordable Money Bail.

While monetary bail that is higher than what a defendant currently can meet is not *per se* excessive, bail higher than an amount reasonably calculated to address pretrial risks is excessive and unconstitutional. *Salerno*, 481 U.S. at 752-54 (addressing the defendants’ Eighth Amendment Excessive Bail Clause claim).

B. Who Can Set Conditions of Release.

1. Generally.

Subject to the exceptions discussed immediately below, any judicial official is authorized to determine a defendant's eligibility for and conditions of release when presiding over a proceeding where determination or review of pretrial release is required or authorized, and at which the defendant's conditions of release are within the subject matter jurisdiction of that judicial official. These settings generally will include, but are not limited to:

- a. Initial appearances.** In Orange County, presided over by magistrates.
- b. First appearances.** In Orange County, presided over by district court judges.
- c. Bail hearings.** Presided over by judges of the trial division.

2. Exceptions.

- a. Capital Cases.** As noted in section IV.A below only a judge can set conditions of release in a capital case.
- b. 48-Hour Rule for Domestic Violence Cases.** Whenever a defendant is charged with

- (1) an assault on, stalking, communicating a threat to, or committing a felony as provided in G.S. Chapter 14, Articles 7B (Rape & Other Sex Offenses), 8 (Assaults), 10 (Kidnapping & Abduction), or 15 (Arson & Other Burnings), upon a current 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);
- (2) domestic criminal trespass; or
- (3) a violation of a 50B order,

only a judge can set conditions of release within 48-hours of arrest. G.S. 15A-534.1(a). When a defendant is brought before a magistrate or clerk for an offense covered by this provision, the magistrate or clerk shall hold an initial appearance and order the defendant produced at the first available session of district or superior court to have conditions of release determined by a judge. Alternatively, if a session of court is then in progress, the magistrate or clerk shall order that the defendant immediately be brought to that session. If a judge does not act within 48 hours, the magistrate must set conditions of release. G.S. 15A-534.1(b).

However, if the defendant is brought before a magistrate or clerk outside of normal business hours for a case that may warrant pretrial release, the magistrate or clerk shall attempt to contact a judge to have the judge set conditions by telephone. If the judge sets conditions by telephone, the magistrate or clerk shall set those conditions as directed and shall note on the NC AOC Conditions of Release form that conditions of release were set by a judge by telephone.

A chart listing common offenses covered by the 48-hour rule is posted on the UNC School of Government's [web page for magistrates](#). From that site, click on the link entitled "Domestic Violence: 48-Hour Rule Offense Paper."

c. **48-Hour Rule for Threats of Mass Violence Cases.** Whenever a defendant is charged with

- (1) communicating a threat of mass violence on educational property, G.S. 14-277.6; or
- (2) communicating a threat of mass violence at a place of religious worship, G.S. 14-277.7

only a judge can set conditions of release within the first 48 hours of arrest. G.S. 15A-534.7(a). When a defendant is brought before a magistrate or clerk for a covered offense, the magistrate or clerk shall hold an initial appearance and order the defendant produced at the first available session of district or superior court to have conditions of release determined by a judge. Alternatively, if a session of court is then in progress, the magistrate or clerk shall order that the defendant immediately be brought to that session. If a judge does not act within 48 hours, the magistrate must set conditions of release. G.S. 15A-534.7(b).

d. **Rebuttable Presumption Cases.** As discussed in section V below, in certain drug trafficking, gang, and firearm cases a presumption that no conditions of release can address defined pretrial risks applies; when the presumption applies, only a judge can set conditions of release after certain findings.

C. Remote Proceedings.

This policy authorizes the use of audio and video transmission of proceedings to determine, modify, or revoke bail, provided that the procedures and equipment used for remote proceedings must comply with the requirements of G.S. 7A-49.6.

D. Types of Release.

G.S. 15A-534(a) specifies five types of release:

- (1) written promise to appear;
- (2) unsecured bond;
- (3) custody release to a person or organization agreeing to supervise the defendant, including Orange County Pretrial Release Services;
- (4) secured bond; and
- (5) secured bond and house arrest with electronic monitoring (EHA).

If a custody release is imposed, a defendant may elect to have a secured bond imposed instead. G.S. 15A-534(a).

When a custody release to Orange County Pretrial Release Services is imposed, a Pretrial Release Agreement, included here as Appendix A, must be completed within 72-hours of the judicial official's release decision in coordination with a Pretrial Services case manager. The Agreement shall be placed in the defendant's file.

GPS monitoring, with or without EHA, may be imposed with a secured bond and/or Pretrial Services supervision only in extraordinary circumstances. When GPS monitoring is imposed it must be imposed as a condition of Pretrial Services. This policy discourages requiring GPS monitoring as a condition of release when the defendant is unable to pay for the monitoring

and the necessary equipment is not immediately available for the defendant's use at no cost.

As used here, the term Global Positioning System (GPS) monitoring refers to electronic monitoring through use of a GPS unit. Electronic House Arrest (EHA) refers to a specific type of GPS monitoring: programming parameters into a GPS unit to institute a zone of confinement at a person's residence.

When imposing a secured bond, the judicial official may not also specify the means of satisfying the bond. Thus, "cash only" or "U.S. currency only" bonds are not permissible in this county except that as required by G.S. 15A-531(4), cash bonds set in child support contempt proceedings may be satisfied only with the deposit of cash.

A condition to abstain from alcohol consumption, as verified by a continuous alcohol monitoring system (CAM), is not EHA. For imposition of CAM as a condition of release, see section III.J below.

As discussed in section IV.G below, G.S. 15A-534.2 requires, in certain circumstances, that the judicial official conducting the initial appearance impose an impaired driving hold on a defendant. An impaired driving hold is not a pretrial condition of release and a release under that hold to a sober responsible adult is not a custody release within the meaning of the pretrial release statutes.

E. Multiple Types of Release.

G.S. 15A-534(a) may be read to allow for imposition of more than one type of release (e.g., a custody release and unsecured bond). Judicial officials may impose more than one type of release only in extraordinary circumstances, except imposition of a written promise and a custody release to Orange County Pretrial Services may be imposed in the absence of extraordinary circumstances.

F. Timing of Pretrial Release Decisions.

1. Initial Appearance.

Conditions of release typically first are set at an initial appearance.

a. General Rule. The initial appearance must be held without unnecessary delay. G.S. 15A-511(a)(1), subject to the exception immediately below.

b. Exception—Unruly or Intoxicated Defendants. If a defendant is so unruly and disruptive as to impede the initial appearance, or is grossly intoxicated, unconscious, or otherwise unable to understand the procedural rights afforded by the initial appearance, the judicial official may delay the initial appearance temporarily and order the defendant temporarily confined. G.S. 15A-511(a)(3). Delay for this reason delays the entire initial appearance, not just the setting of conditions of release. When imposing a temporary confinement for this reason, the judicial official shall include in the order a clear directive to the custodian to return the defendant for completion of the initial appearance either within a reasonable time or upon a specified contingency (e.g., "when the defendant wakes up").

G. Defense Counsel.

At any proceeding where conditions of release are considered for a defendant who is represented by counsel (including initial appearance, first appearance, or any subsequent bail hearing), the defendant shall be allowed to communicate fully and confidentially with counsel before and during the proceeding and defense counsel (or the defendant if unrepresented) shall be afforded the opportunity to be heard.

H. Rules of Evidence.

When deciding questions of pretrial release, the formal rules of evidence do not apply. G.S. 15A-534(g); G.S. 8C-1101(b). The judicial official must take into account all available evidence that the judicial official considers reliable. G.S. 15A-534(g).

I. Recordkeeping.

1. Form AOC-CR-200 & Other Forms.

All orders setting or modifying conditions of release shall be entered on form AOC-CR-200 (Conditions of Release and Release Order) promulgated by the North Carolina Administrative Office of the Courts (AOC), except in emergency and disaster situations where the judicial official cannot access the form in paper or electronic format. Form AOC-CR-922 (Release Order for Juvenile Transferred to Superior Court for Trial), rather than AOC-CR-200, shall be used in cases where jurisdiction over a juvenile has been transferred from juvenile court to superior court for trial as in the case of adults. Other forms shall be used as required by statute and this policy.

2. AOC Electronic Systems.

Except in emergency or disaster situations when the judicial official does not have access to the AOC electronic system for completing form AOC-CR-200, that form should be completed in the AOC electronic system (currently NC AWARE). When conditions of release are set or modified by a judicial official without access to the AOC electronic system, the clerk shall enter those conditions of release into the AOC electronic system as soon as reasonably possible after the order is filed. Orders or modifications entered in this manner shall be entered so as to identify both the official who entered the order and the clerk who performed the entries on that official's behalf.

3. Grouping Charges.

a. Charges Part of a Continuous Transaction.

Charges resulting from the same continuous transaction including multiple probation violations generally should be grouped together with one AOC-CR-200 form used to set conditions of release for all charges and probation violations that are part of the same continuous transaction, even if the charges and probation violations are under separate file numbers. When a secured or unsecured bond is imposed for charges that are part of a continuous transaction, the judicial official shall set a single bond for the charges.

b. Charges Not Part of a Continuous Transaction. Charges that are not part of the same continuous transaction shall not be grouped together for purposes of determining conditions of release and a separate form AOC-CR-200 shall be used for each charge.

J. Modifying Conditions of Release.

1. Sua Sponte by the Judicial Official.

- a. Magistrates and Clerks.** A magistrate or a clerk may modify their own pretrial release order at any time before the first appearance before the district court judge. G.S. 15A-534(e). A magistrate or clerk may modify a release order set by another magistrate or clerk in this time period when circumstances have changed requiring a modification and the original judicial official is not available to address the matter. Nothing in this section restricts a magistrate or clerk from setting conditions after a re-arrest.
- b. District Court Judges.** At or after a first appearance, except when the conditions of release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of a magistrate or clerk or any pretrial release order entered by the judge at any time before:
- in a misdemeanor case tried in district court, the noting of an appeal; and
 - in a case in the original trial jurisdiction of the superior court, the binding over of the defendant to superior court after the holding or waiver of a probable cause hearing. G.S. 15A-535(e).
- c. Superior Court Judges.** After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by the superior court judge, at any time before the defendant's guilt is established in superior court. G.S. 15A-534(e). See section XI below for provisions on release after conviction in superior court.

2. On Motion of a Party.

- a. Defendant's Motion.** G.S. 15A-538(a) provides that a defendant who is detained or objects to conditions of release imposed or allowed to stand by order of a district court judge may apply in writing to a superior court judge to modify the order. Hearings on defense motions to modify conditions of pretrial release shall be calendared as promptly as possible, taking into account statutory timing constraints including but not limited to those of G.S. Chapter 15A, Article 46, the North Carolina Crime Victim's Rights Act.
- b. State's Motion.** The State may at any time apply to an appropriate district or superior court judge for modification or revocation of a release order. G.S. 15A-539(a).

3. At Request of Pretrial Services.

Orange County Pretrial Services monitors the Orange County Detention Center list of individuals being detained pretrial. Pretrial Services staff will communicate with the District Attorney's office and defense counsel about individuals held pretrial to determine if pretrial release conditions can be reconsidered.

After providing notice to the District Attorney's office and defense counsel, Orange County Pretrial Services may contact the appropriate district or superior court judge about modifying a release order for a person supervised by Pretrial Services, including presenting a completed consent agreement to the judge.

Orange County Pretrial Services may raise the issue of modification of electronic monitoring requirements with the District Attorney's office and defense counsel, to promote effective use of limited equipment.

4. For Substitution of Surety.

The power to modify an order of release includes the power to substitute sureties upon any bond. G.S. 15A-538(b). Substitution or addition of acceptable sureties may be made at the request of any obligor on a bond or, in the interests of justice, at the request of a prosecutor under G.S. 15A-539. G.S. 15A-538(b).

5. Source of Money or Property to Be Posted.

On the State's motion or *sua sponte*, a judge may, for good cause shown, conduct a hearing into the source of money or property to be posted for any defendant who is about to be released on a secured bond. G.S. 15A-539(b). The court may refuse to accept offered money or property as security for the bond that, because of its source, will not reasonably assure the appearance of the person as required. *Id.* The State shall have the burden of proving, by a preponderance of the evidence, the facts supporting the court's decision to refuse to accept the offered money or property as security for the bond. *Id.*

K. Revoking a Pretrial Release Order.

For good cause shown a judge may, at any time, revoke an order of pretrial release. G.S. 15A-534(f). Upon application of any defendant whose order of pretrial release has been revoked, the judge shall set new conditions of release, *id.*, in accordance with this policy.

An Orange County Pretrial Services case manager shall contact an appropriate judicial official, the district attorney's office, and defense counsel in situations where a person supervised by Pretrial Services has failed to comply with a condition of release.

If the defendant already has been released from custody when the judge revokes an order of pretrial release and the defendant is not before the court at the time of entry of the revocation, the judge may issue an order for the defendant's arrest. G.S. 15A-305(b)(5).

If a secured or unsecured bond has been posted for the defendant's release and has not been ordered forfeited due to a failure to appear, the judge shall order termination of that bond pursuant to G.S. 15A-534(h)(1) to release the obligors from their obligation.

L. Habitual Felon, Violent Habitual Felon & Armed Habitual Felon.

Habitual felon, violent habitual felon and armed habitual felon are statuses not substantive criminal offenses. Thus, conditions of release, including a secured bond, shall not be set or recommended in an Order for Arrest issued upon return of an indictment alleging one of these statuses as its sole count. Conditions of release may be set only on the "habitualized"

underlying offense. When an indictment is returned solely for one of these statuses, the State may seek to have the bond modified in the underlying felony upon which the status is based.

At an initial appearance after an arrest pursuant to an Order for Arrest issued upon return of an indictment alleging one of these statuses as its sole count, the judicial official conducting the initial appearance shall reexamine the conditions of release set in the “habitualized” underlying offense and exercise discretion as to whether a modification of those conditions is necessary in light of the defendant’s alleged status, except that if a judge has ordered conditions of release in the Order for Arrest, the judicial official shall follow that directive.

M. Offense Committed While on Pretrial Release.

G.S. 15A-534(d3) provides that when a judicial official determines conditions of release for a defendant charged with an offense while on pretrial release for another offense, the judicial official may (but is not required to) impose a secured bond double the amount of any monetary bond for the previous offense, and if there was no prior monetary bond, a secured bond of at least \$1,000. This discretionary authority should be exercised only in extraordinary circumstances and the judicial official shall ensure that the new condition appropriately contemplates the circumstances and conduct associated with the new offense.

Example: A defendant on pretrial release for burglary with a \$20,000 secured bond is arrested for the new offense of misdemeanor littering. Applying the statutory provision would result in a \$40,000 secured bond for misdemeanor littering. Given the conduct associated with the new offense, the discretionary authority under the statute should not be applied.

If the new arrest or charge is for an offense alleged to have been committed before the offense for which the defendant already is on pretrial release, the provisions of G.S. 15A-534(d3) shall not be applied.

N. Warrantless Arrest for Violation of Conditions of Release.

Under G.S. 15A-401(b)(2)f, a law enforcement officer may arrest a defendant without a warrant for violation of conditions of release. When a defendant appears before a judicial official after such an arrest, the judicial official shall first determine whether or not there is probable cause to believe that a valid condition of release was violated. If there is no probable cause to believe that a valid condition of release was violated, the judicial official shall order the defendant released on the existing release order. If there is probable cause to believe that a valid condition of release was violated, the judicial official shall determine the defendant’s eligibility for and conditions of release as set out in this policy and, if new conditions of release are warranted, shall enter a new release order.

When setting new conditions of release after a warrantless arrest for a violation of conditions of release, the judicial official shall not issue new criminal process (such as a Magistrate’s Order) unless the conduct also constitutes an independent, new substantive criminal offense (such as communicating threats or trespass). Judicial officials should not charge “violation of a court order” under G.S. 14-226.1 for violations of release orders. By its

terms that statute is limited to violations of orders issued “for the purpose of maintaining or restoring public safety and public order, or to afford protection for lives or property during times of a public crisis, disaster, riot, catastrophe, or when such condition is imminent, or for the purpose of preventing and abating disorderly conduct as defined in G.S. 14-288.4.” The AOC advises that this provision applies only to orders issued in the context of civil disturbances. If the judicial official decides to pursue contempt for violation of the prior release order, the judicial official should initiate separate proceedings for contempt via show cause order, [AOC-CR-219](#), and should not issue criminal process charging “violation of court order.”

O. Issues Regarding Identity.

1. Defendants Who Refuse to Identify Themselves.

Without knowing a defendant’s identity, a judicial official cannot determine, among other things, whether the defendant has a record or has previously failed to appear. When a defendant refuses to self-identify, the following procedures shall apply:

- A judicial official shall delay the initial appearance so that a law enforcement officer can investigate the defendant’s identity.
Note: If a person (1) is charged with an offense involving impaired driving, as defined in G.S. 20-4.01(24a), or driving while license revoked when the revocation is for an impaired driving revocation, as defined in G.S. 20-28.2, and (2) cannot be identified by a valid form of identification, then the arresting officer must have the person fingerprinted and photographed. G.S. 15A-502(a6). This requirement may result in identification of the person without further investigation.
- If a defendant can be adequately identified by the investigation, the judicial official shall set conditions of release as provided in this policy, taking into account the defendant’s failure to self-identify.
- If the investigation is unsuccessful or cannot be done within 12 hours, the judicial official shall proceed with the initial appearance. A judicial official shall not allow an indefinite delay of the initial appearance for an investigation into the defendant’s identity.
- If the investigation is not feasible or is unsuccessful, the judicial official must consider the defendant’s refusal to self-identify to be evidence of flight risk. Additionally, the judicial official shall include as a condition of pretrial release that either the defendant adequately self-identify or that there is an adequate identification of the defendant. Any reasonable form of identification may meet this condition, even if it is not a written form of identification—for example, a responsible member of the community may vouch for the defendant’s identity. Because individuals may lawfully be in the country without a United States government-issued form of identification, a judicial official may not require a defendant to produce such identification as a condition of release. Except as otherwise indicated here, the judicial official has discretion with respect to appropriate conditions of pretrial release.

Note: G.S. 15A-534(a) provides that if a defendant is required to provide fingerprints or a DNA sample and the fingerprints or DNA sample have not yet been taken or the defendant has refused to provide those items, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The fingerprint requirement may facilitate identification.

P. Noncitizens.

Detainer requests from the United States Immigrations and Customs Enforcement (ICE) are not a basis for delaying the initial appearance or denying conditions of release. If a judicial official is aware of an ICE detainer for a defendant, the judicial official shall determine conditions of release pursuant to this policy. The judicial official may note the existence of the detainer on the release order but shall not impose a condition that the defendant be held subject to the detainer.

III. General Procedure for Making Pretrial Release Decisions.

Unless an exception listed in sections IV through VII applies, when setting bail *a magistrate* shall use the Orange County Magistrate Structured Decision-Making Tool, attached as Appendix B, and complete the Orange County Magistrate Bail Explanation Form, attached as Appendix C. Magistrates shall consult the Orange County Magistrate Structured Decision-Making Tool in preparing the Bail Explanation Form and the current version of the Frequently Asked Questions guidance document provided by the Chief Magistrate. The Bail Explanation Form shall be placed in the defendant's file, along with the applicable criminal process and Conditions of Release form, at the time a charge or charges are filed.

Unless an exception listed in sections IV through VII applies, when setting bail *a judge* shall consider the defendant's risk score as assessed by the pretrial risk assessment instrument and accompanying decision-making tool that has been approved for Orange County. Currently those instruments are the Virginia Pretrial Risk Assessment Instrument – Revised (VPRAI-R), as adapted for use in Orange County and the Orange County VPRAI-R Praxis (VPRAI-Praxis). The VPRAI-R Praxis recommends pretrial supervision levels depending on the offense at issue and the defendant's assessed risk score. Information about the VPRAI-R risk factors and Orange County supervision levels and the VPRAI-Praxis are included here as Appendix E. In order to assist judges in making informed decisions about pretrial release conditions, an Orange County Pretrial Release Services case manager shall meet individually with each defendant detained in the Orange County Detention Center prior to the defendant's first appearance. The case manager shall use the VPRAI-R to generate a risk assessment score and level for each defendant using VPRAI-R risk factors. On the basis of the defendant's risk assessment score and level for the primary current charge, the case manager shall provide a recommendation to the presiding judicial official as to whether supervision by Pretrial Release Services is appropriate and, if so, what level of supervision is indicated by the VPRAI-R Praxis. The case manager's recommendation shall be provided to the judicial official, the district attorney, and defense counsel using the Orange County Pretrial Services Pretrial Risk Assessment form attached as Appendix D. A copy of the Pretrial Risk Assessment form shall be placed in the defendant's file. The judge has discretion to deviate from the Pretrial Services case manager's recommendation.

In any case where the case manager's recommendation conflicts with the exceptions described in sections IV through VII, the provisions of those sections shall control. In addition to assessing VPRAI-R risk factors, the case manager shall gather and verify information about the defendant's community ties, employment, education, medical, mental health, and substance use disorder treatment needs. The pretrial risk assessment instrument and decision-making tool used for Orange County may be changed with approval by the Senior Resident Superior Court Judge and Chief District Court Judge, after consultation with the Pretrial Services Program.

A. Statutory Preference for Conditions of Release Other Than Secured Bond.

Under state law, a judicial official must impose a written promise, unsecured bond or custody release unless the judicial 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. G.S. 15A-534(b). This mandate applies to all offenses, unless a specific statutory exception applies. All such exceptions are set forth hereinbelow in sections III.K, IV, V, VI, and VII. If release on a written promise, unsecured bond or custody release will not reasonably assure appearance, 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, the judicial official shall impose a secured bond. *Id.*

B. Policy Preference for Non-Monetary Conditions of Release.

When setting conditions of release, this policy requires a preference for non-financial conditions of release (written promise and custody release) over financial conditions (unsecured and secured bond).

C. Class 3 Misdemeanors.

Unless otherwise required by law, this policy, or other district policies, if the highest charged offense is a Class 3 misdemeanor and the defendant would not be subject to a custodial sentence, a secured bond is strongly discouraged absent substantial evidence that the defendant will not appear as required; the defendant's release presents a danger of injury to any person; or the defendant's release is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses.

D. Placement on Probation for Deferred Prosecution/Conditional Discharge.

A court order placing a defendant on probation pursuant to a deferred prosecution, G.S. 15A-1341, or a conditional discharge, see, e.g., G.S. 15A-1341(a4); G.S. 90-96, terminates the obligation of any bond previously posted, secured or unsecured. G.S. 15A-534(h)(5).

E. Probation Violations.

Unless a specific statute exists requiring other conditions of release or procedures, see sections IV through VII below, conditions of release for probation violations shall be based primarily on the nature of the probation violation, not the offense class of the underlying offense. Release conditions and bond amounts for probation violations must be set using the tables presented in section III.I. As used in those tables, the term "technical violation" refers to a violation other than absconding or conduct that constitutes a new criminal offense. Note that bond amounts listed in the tables presented in section III.I are maximum bond amounts; in many cases it may be appropriate for bonds to be set in a lower amount.

Except in extraordinary circumstances, a secured bond should not be set as a condition of release when the alleged probation violation is a technical violation; commission of a Class 2 or 3 misdemeanor; or commission of an impaired driving offense (DWI) by a defendant who has no prior DWI convictions.

When determining conditions of release in probation violation cases, the judicial official shall consider the number of alleged violations, prior violations, and the nature of the offense of conviction. Those factors, along with an allegation of absconding, may be deemed extraordinary circumstances warranting deviation from the amounts listed in the Maximum Bond Table below.

For probation violation cases where the probation officer is requesting an OFA, the OFA should be issued by a judge or clerk. When issuing an OFA for a probation violation, the clerk shall not set a condition of release in the OFA; in these cases, conditions of release shall be determined by the judicial official before whom the defendant is brought upon arrest.

If a judge sets conditions of release in an OFA for a probation violation, the magistrate conducting the initial appearance shall follow the conditions set by the judge. Although clerks should not set conditions in an OFA for a probation violation, if the clerk does so, the magistrate shall review those conditions and set conditions that conform to this policy.

F. Written Findings & Other Explanations

Magistrates *shall* document their reasons for denying release and imposing a secured bond on the Orange County Magistrate Bail Explanation Form, included here as Appendix C.

Judges *may* document their reasons for denying release or imposing secured bond.

G. Consideration of Other Factors.

In determining which conditions of release to impose, the judicial official must, on the basis of information provided to them, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that the defendant would be endangered by being released without supervision; the length of the defendant's residence in the community; the defendant's record of convictions; the defendant's history of flight to avoid prosecution or failure to appear at court proceedings; and any other information that is provided and is relevant to the issue of pretrial release. G.S. 15A-534(c). Magistrates must take these factors into account when applying the Orange County Magistrate Structured Decision-Making Tool and judges must do so when setting or revising bail and when deciding whether to follow or deviate from the release condition recommendations of Orange County Pretrial Services as discussed in section III. The mere fact that the defendant is homeless or not a resident of the local community is not, by itself, a reason to impose a secured bond.

Section VI below discusses situations where specific additional information must be considered.

H. Ability to Pay.

1. Generally.

When determining the type of condition to impose and the amount of any secured or unsecured bond, the judicial official shall consider all information provided to them to make an individualized assessment of the defendant's ability to pay. Ability to pay must be determined as to the total amount of the bond, not a percentage that might be due to a commercial surety.

As noted in footnote 13 of the Orange County Magistrate Structured Decision-Making Tool, magistrates must consider information provided to them regarding a defendant's ability to pay when setting conditions of release.

In assessing a defendant's ability to pay when setting conditions of release, a judge shall consider all information provided to them, including if applicable, the affidavit of indigency, if prepared, and/or information from Pretrial Services, the defendant, defense counsel and prosecutor regarding the defendant's income and/or assets. If presented to the judge, information appropriate to consider includes whether the defendant:

- Is a juvenile
- Is eligible for appointment of counsel
- Is/has been homeless in the last 6 months
- Has household income at/below 200% of federal poverty guidelines
- Is a full-time student
- Was incarcerated on active sentence within the last six months
- Resides in mental health/other treatment program, or has resided there in last 6 months
- Is or has dependents eligible for any federal or state public assistance based on financial hardship (e.g. Social Security disability income, food stamps, etc.)

2. When Multiple Bonds Are Imposed.

As discussed in section II.1.3 above, in certain circumstances more than one bond may be imposed on a single defendant at one proceeding. In these circumstances, ability to pay must be assessed as to the total financial obligations imposed at one time.

3. Ability to Pay Determinations.

Except when a secured bond is statutorily required (see section VII below) or required by order of a superior tribunal in the case in question, before imposing secured bond, a judge shall determine that either

- (1) The defendant is able to pay the bond imposed; or
- (2) The defendant appears to be unable to pay the bond imposed or there is insufficient information to determine ability to pay but that pretrial detention is necessary because no less restrictive type of release will reasonably assure the appearance of the defendant as required;

address the danger of injury to any person; or prevent destruction of evidence, subornation of perjury, or intimidation of potential witnesses within the meaning of G.S. 15A-534(b).

This determination need not be made in writing.

4. Infractions.

See section VII.D for the ability to pay rule that applies to out-of-state residents charged with infractions.

I. Maximum Bond Table.

The Maximum Bond Table includes maximum bond amounts that may be imposed for various classes of offenses. This table should not be construed as guidance that a secured bond should be imposed or that the listed amounts should be imposed. Judicial officials may exercise discretion to impose a bond in excess of the listed maximum bond amounts.

1. Habitual Felon Charges.

For purposes of applying the Maximum Bond Table to defendants charged with any type of habitual felon status, the charge level of the offense is the “habitualized” charge level of the underlying felony charge.

2. Probation Violations.

When using the Maximum Bond Table to set a bond in a probation violation case, the relevant maximum bond amount is the one associated with the new charge that constitutes the probation violation, if any. For instructions on setting conditions of release when the probation violation is not a new criminal offense, see section III.E.

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

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

These suggested maximum 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. These suggested maximum bond amounts are not mandatory and do not replace the use discretion.

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 to B1 felony	Double the maximum bond allowed for the new offense in the Felonies and Misdemeanors (Other than DWI) Table
Violation is a new crime – Class A felony	Set bond greater than \$400,000, in the judicial official’s discretion

* 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 the Felonies and Misdemeanors (Other than DWI) Table for other offenses of the same class

J. Additional Restrictions & Conditions of Release.

- 1. DNA & Fingerprints.** If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1), (a2), (a4), or (a6), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and the fingerprints or DNA sample have not yet been taken or the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. G.S. 15A-534(a).

2. Restrictions on Place of Abode, Contact with Victim, Use of CAM, Etc.

a. Permissible in All Cases. In all cases, in addition to types of release specified in 15A-534(a) (written promise to appear; unsecured bond; custody release to a person or organization agreeing to supervise the defendant; secured bond; and secured bond and house arrest with EHA), the judicial official may place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of release. G.S. 15A-534(a). The judicial official also may include as a condition of pretrial release that the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, and that any violation of this condition be reported by the monitoring provider to the district attorney. G.S. 15A-534(a). When imposing CAM in non-domestic violence cases, the judicial official shall use form AOC-CR-242; domestic violence cases are discussed immediately below. Any restrictions imposed shall be reasonable and related to the purpose of pretrial release. Restrictions shall not be used as punishment.

b. Domestic Violence Cases. In domestic violence cases subject to the 48-hour rule, see section IV.J below, the following additional conditions of release may be imposed:

- That the defendant stay away from the home, school, business or place of employment of the alleged victim.
- That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim.
- That the defendant refrain from removing, damaging or injuring specifically identified property.
- That the defendant may visit the defendant's child or children at times and places provided by the terms of any existing order entered by a judge.
- That the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, and that any violation of this condition be reported by the monitoring provider to the district attorney.

G.S. 15A-534.1(a)(2). Form AOC-CR-630 shall be used when imposing these additional conditions of release.

c. Cases Involving Certain Child Victims. In all cases where the defendant is charged with

- (1) felonious or misdemeanor child abuse;
- (2) taking indecent liberties with a minor in violation of G.S. 14-202.1;
- (3) rape or any other sex offense in violation of G.S. Article 7B, Chapter 14, against a minor victim, incest with a minor in violation of G.S. 14-178, kidnapping, abduction, or felonious restraint involving a minor victim;
- (4) a violation of G.S. 14-320.1 (transporting child outside the State with intent to violate custody order);

- (5) assault or any other crime of violence against a minor victim, or with communicating a threat against a minor victim,

the judicial official shall impose the following additional conditions of release:

- That the defendant stay away from the home, temporary residence, school, business, or place of employment of the alleged victim.
- That the defendant refrain from communicating or attempting to communicate, directly or indirectly, with the victim, except under circumstances specified in an order entered by a judge with knowledge of the pending charges.
- That the defendant refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.

G.S. 15A-534.4(a). Upon request of the defendant, the judicial official may waive one or more of these conditions of release if the judicial official makes written findings of fact that it is not in the best interest of the alleged victim that the condition be imposed. G.S. 15A-534.4(b). Form AOC-CR-631 shall be used to impose the additional conditions of release and to record the findings required for waiver, when appropriate.

d. Cases Involving Certain Threats of Mass Violence. When the defendant is charged with:

- (1) communicating a threat of mass violence on educational property in violation of G.S. 14-277.6; or
- (2) communicating a threat of mass violence at a place of religious worship in violation of G.S. 14-277.7,

the following conditions of release may be imposed:

- That the defendant stay away from the educational property or place of religious worship against which the threat was communicated.
- That the defendant stay away from any other educational property or place of religious worship unless permission to be present is granted by the person in control of the property.

G.S. 15A-534.7. Form AOC-CR-660 shall be used when imposing these additional conditions of release.

e. Arrest after Failure to Appear (FTA). G.S. 15A-534(d1) provides that when setting conditions of release after arrest on an OFA for a FTA, the judicial official shall impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. *Id.* As discussed in section VII.A, G.S. 15A-534(d1) requires imposition of certain conditions of release after arrest on an OFA for a FTA.

K. Special Cases.

Sections IV through VII below detail the exceptions to the general rules set out in this section, and are organized by type of exception: when release is not authorized; when statutory presumptions against release apply; when the statute requires consideration of certain information; and when the statute requires or prohibits certain conditions. To streamline application of this policy, this section provides an at a glance summary of the rules that apply in three recurring situations that involve several types of exceptions.

48-Hour Domestic Violence Cases

- Only a judge may set conditions within first 48 hours of arrest. Section II.B.2.b
- Additional conditions may be imposed. Section III.J.2.b
- Special hold for conditions when immediate release poses a danger of injury or is likely to result in intimidation of victim. Section IV.J.1
- Must consider criminal history when setting conditions. Section VI.A

Probation Violator with Pending Felony/Conviction Requiring Sex Offender Registration

- Judicial official must determine if poses a "danger to the public" before setting conditions of release.
 - If yes, deny conditions of release pending the probation violation hearing.
 - If no, follow general rules.
 - If insufficient information, detain until determination can be made.
- If detention lasts seven days, must immediately be brought to any judicial official who must set conditions of release per this policy.

Sections IV.L, VI.D.

Probationer Charged with Felony

- Judicial official must determine if poses a "danger to the public" before setting conditions of release.
 - If yes, must impose secured bond.
 - If no, follow general rules.
 - If insufficient information, detain until determination can be made, making required written findings & setting case for first appearance.
- At first appearance, judge determines conditions per this policy.

Sections IV.K, VI.C, VII.C.

IV. Exceptions—Release Not Authorized.

In the circumstances listed in this section, state law provides that the defendant may not be released pretrial or may be detained temporarily. In these circumstances, and unless another form is specified below, the judicial official shall complete form AOC-CR-200, checking the option for “Your release is not authorized” and documenting on that form a brief description of the basis for denying release, such as “Capital Case” or “Governor’s Warrant.”

A. Capital Cases.

It is within the discretion of a judge (and only a judge) to decide whether a defendant charged with a capital offense will be released before trial. G.S. 15A-533(c). A magistrate or clerk must deny release when determining conditions of release for a defendant charged with a capital offense. A judge shall determine eligibility for release and conditions of release for a defendant charged with a capital offense as provided in this policy.

B. Parole or Post-Release Supervision Violators.

A defendant arrested on an order of “temporary or conditional revocation” of post-release supervision or parole is not entitled to conditions of release. G.S. 15A-1368.6; G.S. 15A-1376. Upon committing the defendant to custody, if a probation/parole officer was not the arresting officer, the presiding judicial official should notify the local chief probation or parole officer of the arrest as soon as feasible or ensure that such notification is made.

C. Certain Fugitives.

A fugitive defendant charged in another state with an offense punishable by death or life imprisonment has no right to pretrial release. G.S. 15A-736. Also, a fugitive arrested on a governor’s warrant has no right to pretrial release. ROBERT L. FARB, STATE OF NORTH CAROLINA EXTRADITION MANUAL 57 (3d ed. 2013). These defendants shall be committed to jail without conditions of release being set. *Id.* at 43.

As discussed in section VII.B below, a defendant arrested on a fugitive process for an offense that is not punishable by death or life in prison is entitled to conditions of release and that condition must be a secured bond. G.S. 15A-736.

D. Probationers—Interstate Compact Supervision.

A defendant supervised on probation in North Carolina on behalf of another state pursuant to the Interstate Compact on Adult Supervision (Interstate Compact) may be arrested for a “retaking” hearing to determine whether or not the defendant should be returned to the other state for a probation violation proceeding. A probationer arrested for such a proceeding is not entitled to conditions of release. G.S. 148-65.8(a). Upon committing the defendant to custody, if a probation/parole officer was not the arresting officer, the presiding judicial official should notify the local chief probation or parole officer of the arrest as soon as feasible or ensure that such notification is made, so that the local probation office can notify North Carolina’s Interstate Compact office of the arrest.

E. Offenses Committed During Involuntary Commitment.

There is no right to pretrial release for a defendant who is alleged to have committed a crime while involuntarily committed or while an escapee from commitment. G.S. 15A-533(a). In addition to imposing the condition that “Your release is not authorized,” the

judicial official's release order shall direct the custodian to return the defendant to the treatment facility for continuation of treatment, pending additional proceedings on the criminal offense. G.S. 15A-533(a).

F. Military Deserters.

Military deserters arrested and presented to civilian authorities for confinement are not entitled to conditions of release. 10 U.S.C. § 808, et. seq. In addition to committing the deserter to custody, the judicial official's release order should direct the custodian to contact the relevant military authority to take custody of the deserter.

G. Impaired Driving Hold.

An impaired driving hold must be imposed when a magistrate finds both probable cause to charge the defendant with an offense involving impaired driving, as defined in G.S. 20-4.01(24a), and clear and convincing evidence that if the defendant is released, his or her physical or mental impairment presents a danger of physical injury to self or others or of damage to property. G.S. 15A-534.2(b). Specifically, the judicial official must order that the defendant be held in custody until one of the following requirements is met:

- the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to self or others or of damage to property if released; or
- a sober, responsible adult is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.

G.S. 15A-534.2(a)-(c). Form AOC-CR-270 shall be used to document an impaired driving hold and the judicial official also shall determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534 and this policy. G.S. 15A-534.2. Note that a release to a sober responsible adult is not a custody release for purposes of pretrial release. When a person is released from an impaired driving hold to a sober responsible adult, that person agrees to supervise the defendant only until the defendant is no longer impaired; under a custody release, the custodian agrees to supervise the defendant during the entire pretrial period.

An impaired driving hold may last no longer than 24 hours. G.S. 15A-534.2(c). If the defendant has not been released within 24 hours, a judicial official shall rescind the impaired driving hold.

For detailed information about conducting initial appearances in impaired driving cases and impaired driving holds, see JESSICA SMITH, CRIMINAL PROCEEDINGS BEFORE NORTH CAROLINA MAGISTRATES 23 (UNC School of Government 2014).

H. Hold for Violators of Health Control Measures.

If a judicial official conducting an initial appearance finds by clear and convincing evidence that a person arrested for violating an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 (incident involving nuclear, biological, or chemical agents) or G.S. 130A-145 (quarantine and isolation authority) poses a threat to the health and safety of

others, the judicial official must deny pretrial release. G.S. 15A-534.5. The judicial official must order that the person be confined in a designated area or facility. This pretrial confinement ends when a judicial official determines that the confined person does not pose a threat to the health and safety of others. *Id.* These determinations shall be made only after the state health director or local health director has made recommendations to the judicial official. *Id.* Upon recommendation of the State or local health director that the defendant may be released, if any criminal charge related to the alleged violation is pending, a judicial official shall determine conditions of release as otherwise provided in this policy.

I. Communicable Disease Testing Hold.

If a judicial official conducting an initial or first appearance finds probable cause that an individual had a nonsexual exposure to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by the defendant, the judicial official shall order the defendant to be detained for a reasonable period of time, not to exceed 24 hours, for investigation by public health officials and for testing for AIDS virus infection and Hepatitis B infection if required by public health officials pursuant to G.S. 130A-144 and G.S. 130A-148. G.S. 15A-534.3. This provision does not authorize a delay in setting conditions of release; the judicial official shall set conditions of release as appropriate but, when required by the statute, also shall impose the temporary detention for testing. Form AOC-CR-270 shall be used for this purpose. Immediately after detention for testing is ordered, the judicial official or custodian shall contact the local public health department to notify appropriate officials of the detention.

J. Hold for Conditions of Release in Certain Domestic Violence & Threat Cases.

1. Domestic Violence Cases.

As discussed in section II.B.2.b above, only a judge can set conditions of release for cases that fall within the scope of the 48-hour domestic violence rule. G.S. 15A-534.1(a)(1) allows for a separate hold that may be ordered when conditions actually are set in these cases. Specifically, it provides that upon a determination that

- (1) the defendant's immediate release will pose a danger of injury to the alleged victim or any other person or is likely to result in intimidation of the alleged victim; and
- (2) execution of an appearance bond will not reasonably assure that such injury or intimidation will not occur,

the judicial official may order the defendant detained for a reasonable period of time while determining the conditions of release. G.S. 15A-534.1(a)(1).

2. Threat of Mass Violence Cases.

As discussed in section II.B.2.c above, only a judge can set conditions of release for cases that fall within the scope of the 48-hour threat of mass violence rule. G.S. 15A-534.7 allows for a separate hold that may be ordered when conditions actually are set in these cases. Specifically, it provides that upon a determination that

- (1) immediate release of the defendant will pose a danger of injury to persons; and

- (2) that execution of an appearance bond will not reasonably assure that such injury will not occur,

the official may order the defendant detained for a reasonable period of time while determining the conditions of release. G.S. 15A-534.7(a)(1).

K. Limited Hold–Probationer Charged with Felony.

When determining conditions of release for a defendant who is

- (1) charged with a felony; and
- (2) currently on probation for a prior offense,

the judicial official shall determine whether the defendant poses a "danger to the public" prior to setting conditions of release. G.S. 15A-534(d2).

If the defendant poses such a danger, a secured bond must be imposed. G.S. 15A-534(d2)(1). If the defendant does not pose such a danger, conditions of release are determined under the general rules set out in this policy. G.S. 15A-534(d2)(2). If, however, the judicial official has insufficient information to determine whether the defendant poses a danger to the public, the judicial official must order the defendant detained in custody until a determination can be made. G.S. 15A-534(d2)(3). If such a detention is ordered, the judicial official must record, in writing

- that the defendant is being held pursuant to G.S. 15A-534(d2);
- the basis for the decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information; and
- a date, within 72 hours of arrest or 96 hours of arrest if the courthouse is closed for transactions for a period longer than 72 hours, when the defendant will be brought to a judge for a first appearance.

G.S. 15A-534(d2)(3). Form AOC-CR-272 (Side One) shall be used for these purposes. If the necessary information is provided at any time before to the first appearance, the first available judicial official shall set the conditions of release. *Id.* The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of release as provided in this policy.

L. No Bail & Limited Hold–Probation Violator with Pending Felony or Conviction Requiring Sex Offender Registration.

When a judicial official is determining conditions of release for a defendant arrested for a probation violation and the defendant has either

- (1) a pending felony charge; or
- (2) a prior conviction for an offense that requires registration as a sex offender under G.S. Chapter 14, Article 27A, or that would have required registration but for the effective date of the legislative acts establishing the sex offender registration program under that Article and the offenses subject to it,

the judicial official shall determine whether the defendant poses a "danger to the public" prior to setting conditions of release. G.S. 15A-1345(b1).

If the judicial official determines that the defendant presents a danger to the public, then the official shall deny conditions of release pending the probation violation hearing. G.S. 15A-1345(b1)(1). If the judicial official determines that the defendant does not present a danger to the public, then the official shall set conditions of release as normal and as otherwise provided in this policy. G.S. 15A-1345(b1)(2). If the judicial official has insufficient information to determine whether the defendant poses a danger to the public, then the judicial official shall order the defendant detained without bail so that sufficient information can be obtained to make the required determination. G.S. 15A-1345(b1)(3). Form AOC-CR-272 (Side Two) shall be used for this purpose. If the defendant has been detained without bail for seven days from the date of arrest for this reason, the defendant must be brought immediately to any judicial official, who shall record that fact in writing and set conditions of release as otherwise provided in this policy. G.S. 15A-1345(b1)(4).

V. Exceptions—Statutory Presumptions Against Release.

A. Recidivist Drug Trafficking.

Under G.S. 15A-533(d) there is a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds:

- reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;
- the offense was committed while the person was on pretrial release for another offense; and
- the person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

If the presumption applies, then the magistrate or clerk conducting the initial appearance shall deny release and set the case for the first available appearance before a judge. The clerk or magistrate shall complete form AOC-CR-200 by checking the option for "Your release is not authorized" and documenting on that form a brief description of the basis for denying release, such as "G.S. 15A-533(d)." The person only may be released by a district or superior court judge after 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. G.S. 15A-533(g).

B. Recidivist Gang Offense.

Under G.S. 15A-533(e) there is a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds:

- reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal gang, as defined in G.S. 14-50.16A(1);
- the offense was committed while the person was on pretrial release for another offense; and
- the person has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20; or has been convicted of a criminal offense and received an enhanced sentence for that offense pursuant to G.S. 15A-1340.16E, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

If the presumption applies, then the magistrate or clerk conducting the initial appearance shall deny release and set the case for the first available appearance before a judge. The clerk or magistrate shall complete form AOC-CR-200 by checking the option for "Your release is not authorized" and documenting on that form a brief description of the basis for denying release, such as "G.S. 15A-533(e)." The person only may be released by a district or superior court judge after 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. G.S. 15A-533(g).

C. Recidivist Firearm-Involved Offense.

Under G.S. 15A-533(f) there is a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds:

- reasonable cause to believe that the person committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; and either
- the offense was committed while the person was on pretrial release for another felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; or
- the person has previously been convicted of a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm and not more than five years have elapsed since the date of conviction or the person's release for the offense, whichever is later.

If the presumption applies, then the magistrate or clerk conducting the initial appearance shall deny release and set the case for the first available appearance before a judge. The clerk or magistrate shall complete form AOC-CR-200 by checking the option for "Your release is not authorized" and documenting on that form a brief description of the basis for denying release, such as "G.S. 15A-533(f)." The person only may be released by a district or superior court judge after 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. G.S. 15A-533(g).

D. Manufacture of Methamphetamine.

Under G.S. 15A-534.6, there is a rebuttable presumption that no conditions of release on bond will assure the safety of the community if the State shows by clear and convincing evidence that:

- the person was arrested for a violation of G.S. 90-95(b)(1a) (manufacture of methamphetamine) or G.S. 90-95(d1)(2)b (possession of an immediate precursor chemical knowing/having reasonable cause to know that the chemical will be used to manufacture methamphetamine); and
- the person is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine, and the current charge was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner.

If the presumption applies and is not rebutted, then the judicial official shall complete form AOC-CR-200 by checking the option for “Your release is not authorized” and documenting on that form a brief description of the basis for denying release, such as “G.S. 15A-534.6.” If the judicial official denying release is a magistrate or clerk, the judicial official shall set the case for the first available appearance before a judge.

Even if the rebuttable presumption does not apply, the statute requires that in all cases where the defendant is charged with a covered offense, in determining bond and other conditions of release, the judicial official must consider any evidence that the person is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine. G.S. 15A-534.6.

VI. Exceptions—Statute Requires Consideration of Certain Information.

A. Domestic Violence Cases.

G.S. 15A-534.1(a) provides that when setting conditions of release in 48-eight-hour rule domestic violence cases, see section IV.J above, the judicial official must direct a law enforcement officer or district attorney to provide the defendant’s criminal history report and must consider that history when setting conditions of release. After setting conditions of release, the judge must return the report to the providing agency or department and it shall not be included with the paperwork delivered to the clerk for filing. The judge may not unreasonably delay the determination of conditions of release to review the criminal history report. G.S. 15A-534.1(a).

B. Threat of Mass Violence Cases.

G.S. 15A-534.7 provides that when setting conditions of release in 48-hour rule threat of mass violence cases, see section IV.J above, the judicial official must direct a law enforcement officer or district attorney to provide a criminal history report for the defendant for consideration when setting conditions of release. If the report is not provided promptly, the judicial official shall proceed without it and so note in the applicable section of form AOC-CR-660. If provided, the report shall be returned to the providing agency after conditions of release have been set and shall not be included with the paperwork delivered to the clerk for filing.

C. Probationer Charged With Felony.

G.S. 15A-534(d2) provides that when determining conditions of release for a defendant who is

- (1) charged with a felony; and
- (2) currently on probation for a prior offense,

the judicial official shall determine whether the defendant poses a "danger to the public." If the judicial official finds that the defendant poses a danger to the public, then the judicial official shall impose a secured bond. G.S. 15A-534(d2)(1). If the judicial official finds that the defendant does not pose a danger to the public, then the official shall set conditions of release as normal and as otherwise provided in this policy. G.S. 15A-534(d2)(2). If the judicial official has insufficient information to make the required determination, then the judicial official shall proceed as instructed in section IV.K above.

D. Probation Violator with Pending Felony or Conviction Requiring Sex Offender Registration.

When a judicial official determines conditions of release for a defendant arrested for a probation violation, if the defendant has either

- (1) a pending felony charge; or
- (2) a prior conviction for an offense that requires registration as a sex offender under G.S. Chapter 14, Article 27A, or that would have required registration but for the effective date of the legislative acts establishing the sex offender registration program under that Article and the offenses subject to it,

the judicial official shall determine whether the defendant poses a "danger to the public." G.S. 15A-1345(b1). If the judicial official determines that the defendant presents a danger to the public, then the official shall deny conditions of release pending the probation violation hearing. G.S. 15A-1345(b1)(1). If the judicial official determines that the defendant does not present a danger to the public, then the official shall set conditions of release as normal and as otherwise provided in this policy. G.S. 15A-1345(b1)(2). If the judicial official has insufficient information to make the required determination, then the judicial official shall proceed as instructed in section IV.L above.

E. Manufacture of Methamphetamine Cases.

Whenever a defendant is arrested for certain methamphetamine offenses, in determining bond and other conditions of release, the judicial official must consider any evidence that the person is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine. G.S. 15A-534.6. Whenever there is evidence of such a dependence or pattern of use, the presumption discussed in section V.D above may apply.

VII. Exceptions—Statute Requires or Prohibits Certain Conditions of Release.

A. Arrest after Failure to Appear (FTA).

When conditions of release are being imposed on a defendant who has failed to appear for the charges to which the conditions of release apply, the judicial official must, at a minimum, impose the conditions of release recommended by the Order for Arrest (OFA). G.S. 15A-534(d1). If no conditions of release are recommended in the OFA, the judicial

official shall require a secured appearance bond of at least double the most recent secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least \$1,000. *Id.* The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. *Id.* The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. *Id.* If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order. *Id.*

If the defendant has been arrested on an OFA after a failure to appear (FTA), the judicial official conducting the initial appearance shall check for a prior surrender by the surety for the same FTA. If the defendant already has been surrendered and a new release order was entered and a new bond was set and posted, the judicial official shall re-release the defendant on the bond already posted. If the defendant has not already been surrendered by a surety for the same FTA, the judicial official shall set conditions of release as described immediately above.

G.S. 15A-534(d1) frequently is referred to as “the bond doubling statute.” That provision applies to judicial officials setting conditions of release after an OFA has been issued; it does not restrict the judge’s decision-making when issuing the OFA. As discussed in section IX.B below, this policy’s procedures for district court judges’ responses to non-appearances include having the district court judge set conditions of release in an OFA for a FTA to avoid application of the bond doubling statute in appropriate cases. Although those procedures do not apply to superior court judges, those judges are encouraged to set conditions of release in OFAs for FTAs to avoid mandatory application of the bond doubling statute in appropriate cases. When a judge has set conditions in the OFA, the judicial official shall set conditions of release as recommended by the judge.

Magistrates may, in their discretion, contact a district court judge to set conditions other than a secured bond in situations where such a bond otherwise would be required by G.S. 15A-534(d1).

B. Extradition—Fugitive Arrests.

As discussed in section IV.C above, a defendant arrested on a fugitive process under G.S. Chapter 15A, Article 37 is not entitled to conditions of release if the offense is punishable by death or life in prison. However, a defendant arrested on a fugitive process for an offense that does not carry punishment of death or life in prison is entitled to conditions of release, and that condition must be a secured bond. G.S. 15A-736. When setting a secured bond in these cases, judicial officials must consider ability to pay, see section III.H above, and should consult the Maximum Bond Table in section III.I above. A requesting state's preference regarding bail (e.g., a "no bail" note in an automated record of the outstanding process) is not binding on the judicial official's determination of conditions of release; conditions of release shall be imposed as provided here.

C. Probationer Charged With Felony.

When determining conditions of release for a defendant who is

- (1) charged with a felony; and
- (2) currently on probation for a prior offense,

the judicial official shall determine whether the defendant poses a "danger to the public." G.S. 15A-534(d2). If the judicial official finds that the defendant poses a danger to the public, then the judicial shall impose a secured bond. G.S. 15A-534(d2)(1). If the judicial official finds that the defendant does not pose a danger to the public, then the official shall set conditions of release as normal and as otherwise provided in this policy. G.S. 15A-534(d2)(2). If the judicial official has insufficient information to make the required determination, then the judicial official shall proceed as instructed in section IV.K above.

D. Infractions.

1. North Carolina Residents.

A North Carolina resident charged only with an infraction, may not be required to post an appearance bond. G.S. 15A-1113(c)(2), and may not be committed to custody with conditions of release.

2. Motor Vehicle Infractions—Non-NC Residents.

A non-North Carolina resident charged with a motor vehicle infraction may not be required to post an appearance bond if:

- (1) the person is licensed to drive by a state that subscribes to the nonresident violator compact as defined in G.S. Chapter 20 Article 1B;
- (2) the infraction charged is subject to the provisions of the compact; and
- (3) the person executes a personal recognizance as defined by the compact.

G.S. 15A-1113(c)(1). The compact carves out from its scope infractions that would result in the suspension or revocation of a license. G.S. 20-4.19(b). As a result, an appearance bond may be set for an infraction that would result in revocation. *Id.*; G.S. 15A-1113(c). However, only one motor vehicle infraction *requires* revocation: Failure to yield resulting in serious bodily injury in violation of G.S. 20-160.1. Because it is not clear that the two other infractions allowing for discretionary revocations fall within the scope of the compact carve out, see G.S. 20-154(a2); G.S. 20-141 and -16(a)(10), appearance bonds should not be set in those cases.

If a secured bond is imposed on a non-North Carolina resident for a motor vehicle infraction and the person is unable to post the bond, the judicial official *must* allow release on an unsecured bond. G.S. 15A-1113(c).

For a list of compact member states, see [this website](#).

3. Wildlife Infractions—Non-NC Residents.

A non-North Carolina resident charged only with a North Carolina wildlife infraction may not be required to post a secured bond if:

- (1) the person is a resident of a state that is a member of the Interstate Wildlife Violator Compact; and
- (2) provides adequate proof of his or her identity.

G.S. 113-300.6, Art. III. State law provides that people who do not meet these requirements may be required to post an appearance bond for a wildlife infraction. However, bond may be imposed for wildlife infractions only if extraordinary circumstances are present. If a secured bond is imposed and the person is unable to post the secured bond, the judicial official *must* allow the person to be released on an unsecured bond. G.S. 15A-1113(c).

Almost all states are members of the compact; for a map showing interstate wildlife violator compact member states, see [this website](#).

4. Other Infractions—Non-NC Residents.

For other infractions, state law provides that non-North Carolina residents may be required to post an appearance bond. G.S. 15A-1113(c). However, bond may be imposed for other infractions only if extraordinary circumstances are present. If a secured bond is imposed and the person is unable to post the secured bond, the judicial official must allow the person to be released on an unsecured bond. *Id.*

VIII. Judicial Review of Bail Conditions of Release.

A. First Appearances.

1. In Custodial & Non-Custodial Cases.

In order to afford all individuals a timely judicial review of pretrial conditions of release that result in pretrial detention, individuals who remain in custody pretrial after the initial appearance shall be brought before a judge at the next scheduled session of the appropriate trial division designated for first appearances.

To ensure the early appointment of counsel and efficient case processing, individuals charged with a criminal offense or arrested for a probation violation for which venue lies in this county or as otherwise required by the General Statutes who do not remain in pretrial detention also shall receive a first appearance at their next scheduled court date.

2. Scheduling.

First appearances for detained defendants shall be held every weekday at 2 pm or as soon thereafter as those matters may be reached by the presiding judge. This schedule for first appearances may be modified only by the Senior Resident Superior Court Judge or the Chief District Court Judge.

First appearances for defendants who are released pretrial shall be scheduled according to a policy set by the Senior Resident Superior Court Judge or the Chief District Court Judge.

3. First Appearance Docket.

Each weekday when court is in session the detention center liaison and clerk's office shall identify persons entitled to a first appearance before a judge. Clerk's office staff will create a docket listing each defendant scheduled for a first appearance. For cases pending in other counties, clerk's office staff shall note the charging county on the

docket. Clerk's office staff shall provide the first appearance docket to the District Attorney, defense counsel, and detention center liaison.

4. Counsel.

Although defendants do not have a statutory right to counsel at first appearances, it is the intent of this policy to make counsel available to defendants at first appearances, except when doing so would delay the first appearance in violation of the statute. If counsel is provided and the defendant is indigent, counsel shall be appointed by the court unless the defendant, after the opportunity to consult with counsel, waives either the right to court appointed counsel (and thus appears with retained counsel) or the right to counsel (and thus appears self-represented).

This policy recognizes the value of counsel at first appearances. Counsel thus is encouraged to consult privately with the defendant before the proceeding so that counsel can address matters to be decided at the first appearance, including but not limited to financial considerations and other factors related to the defendant's conditions of release.

5. Procedure—Generally.

First appearances shall be conducted as provided in Chapter 15A, Article 29, and as otherwise provided in this policy. Provisions of Article 29 clearly inapplicable to misdemeanors within the original jurisdiction of the District Court shall not apply.

When reviewing the defendant's conditions of release pursuant to G.S. 15A-605(3), the judge may consider factual findings made and conditions of release imposed at the initial appearance but shall make an independent determination of the defendant's eligibility for and conditions of release in compliance with this policy.

6. Notice.

When meeting with persons detained after an initial appearance, an Orange County Pretrial Services case manager shall inform those individuals of the general nature and scheduled date of the first appearance.

B. Subsequent Judicial Review Hearings.

Defendants detained with or without secured bond at the conclusion of the first appearance shall have the right to a meaningful judicial review of release conditions at the earlier of

- (1) a hearing promptly scheduled upon a defense motion; or
- (2) the probable cause hearing.

The judge conducting the first appearance may, in the judge's discretion, set the case for an earlier review hearing on release conditions. Such hearings shall comply with all applicable statutory rules, including but not limited to those of G.S. Chapter 15A, Article 46, the North Carolina Crime Victim's Rights Act.

At the subsequent judicial review hearing, the defendant shall have the right to counsel. If the defendant is indigent, counsel shall be provided at the state's expense unless the

defendant, after the opportunity to consult with counsel, waives either the right to state provided counsel (and thus appears with retained counsel) or the right to counsel (and thus appears self-represented). Additionally, the defendant shall have the right to testify, to present evidence, and to cross-examine witnesses.

Judges may, but are not required to, document their bail decisions in writing.

IX. Promoting Court Appearances and Responding to Non-Appearances.

A. Promoting Court Appearances.

Judicial officials and other court stakeholders are encouraged at every opportunity to assist defendants in signing up for the NC AOC court date notification system.

District attorneys and defense counsel may agree to excuse defendants from in-person attendance on court dates that are scheduled as “Not For Trial.” If either party declines to excuse attendance, the defendant’s attendance is required.

B. Responding to Non-Appearances

1. Responding to Non-Appearances in District Court—Generally.

District court judges shall use their discretion in determining the response to each non-appearance. In exercising that discretion, judges shall consider the decision-making framework set out in the Orange County Bench Card: Responding to Non-Appearances in Criminal District Court, included here as Appendix F. Whenever a court date is rescheduled, the defendant shall be sent a copy of Orange County’s Pretrial Non-Appearance Letter.

2. Responding to Non-Appearances in District Court—Driving While License Revoked (DWLR) Charges.

District court judges shall use their discretion in determining the response to each non-appearance. The following procedures are recommended for a non-appearance on a Class 3DWLR charge:

- Upon a defendant’s first non-appearance for a Class 3 DWLR charge, the judge shall re-set the court date with notice sent to the defendant and counsel, if the defendant is represented. Notice shall include Restoration Legal Counsel Information as well as educational information about missed court dates.
- Upon a defendant’s non-appearance after the initial missed court date was rescheduled, the district court judge may issue an OFA with a written promise to appear as the stated condition of release. Upon arrest, the defendant shall be taken to the magistrate for a review of the release conditions and to receive a new court date. The magistrate shall provide the defendant with Restoration Legal Counsel information.
- If the defendant has any non-appearances subsequent to the first OFA, the district court judge may issue an OFA with a secured bond.

Notwithstanding this procedure, defendants charged with DWLR may use the Strike Order Hearing system, see section IX.B.3 below, if an OFA is issued for a second or subsequent missed court date.

Whenever a court date is rescheduled, the defendant shall be sent a copy of Orange County's Pretrial Non-Appearance Letter, which includes information about Orange County Restoration Legal Services.

3. Strike Order Hearing.

The Orange County Clerk of Superior Court administers a weekly strike order docket for defendants who have failed to appear at a previous court date. This docket is administered pursuant to Orange County Strike Order Policy Administrative Order.

X. Surrender.

A. Arrest for Surrender.

A surety may arrest a defendant for the purpose of surrender. G.S. 15A-540; G.S. 58-71-30. A magistrate shall not issue an OFA for these purposes at the request of a surety.

B. Who Can Accept Surrender.

Judicial officials may not accept surrenders directly. Surrender only may be made to the Sheriff. G.S. 15A-540. Any surety offering a defendant to a judicial official for surrender shall be directed to the Sheriff. Judicial officials shall not advise the Sheriff about the validity or legitimacy of a potential surrender.

C. Surrender Before a Breach.

When a surety surrenders a defendant before a breach (FTA) and the defendant is brought before a judicial official, the judicial official shall not enter a new release order. The judicial official shall notify the custodian that the existing release order in effect at the time of the surrender remains in place.

D. Surrender After a Breach.

When a surety surrenders a defendant after a breach (FTA) and the defendant is brought before a judicial official, the judicial official shall determine conditions of release as provided in this policy. Additionally, the judicial official shall determine whether or not an OFA for the FTA remains unserved. If so, the judicial official shall immediately recall the OFA. If the defendant already was arrested on the OFA for the FTA and new conditions of release were set at that time, conditions of release shall not be determined at the time of surrender; a new release order already was entered after the breach and the judicial official shall direct the custodian to hold or release the defendant pursuant to the release order that was entered after arrest on the OFA.

XI. Release after Conviction in Superior Court.

Entry of final judgment in Superior Court terminates any bond posted to secure the defendant's release. G.S. 15A-534(h). Entry of judgment occurs when sentence is pronounced. G.S. 15A-101(4a). Release of a defendant pending appeal who otherwise would be confined (for example for an active sentence) is within the discretion of the superior court judge and shall be determined in accordance with G.S. 15A-536. When imposing conditions of release after conviction in Superior Court, the court shall enter a new commitment order with conditions of release rather than modifying an existing pretrial release order. Conditions of release shall be

determined as otherwise provided in this policy. Any bond posted to satisfy a monetary condition of post-conviction release imposed by the court shall be entered on form AOC-CR-238.

XII. Diversion & Early Case Resolution.

Law enforcement and court stakeholders should utilize county programs and community resources available for pre- and post-arrest diversion. In addition, appropriate defendants should be referred to therapeutic and specialty courts that operate in Orange County. Pretrial Services and court stakeholders are encouraged to identify defendants held pretrial who can be considered for expedited case disposition.

XIII. Summons in Lieu of Arrest.

To promote efficiency and least harm resolutions, magistrates are encouraged to issue a criminal summons rather than a warrant for arrest when the Orange County Magistrate's Structured Decision-Making Tool, included here as Appendix B, recommends a condition other than a secured bond and no additional pretrial restrictions (e.g., "stay away" restriction) are required. A judicial official may issue a warrant for arrest, based upon the same or another showing of probable cause, notwithstanding the prior issuance of a criminal summons. G.S. 15A-303(e)(1).

XIV. Citation in Lieu of Arrest.

To promote efficiency and least harm resolutions, law enforcement officers are encouraged to issue a citation rather than make a custodial arrest in appropriate cases.

XV. Review of this Policy.

In consultation with local stakeholders, this policy shall be reviewed at least once every three years.

Appendix A – Orange County Pretrial Release Agreement

File # _____

Court Date _____

Charges _____

PIN: _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT / SUPERIOR COURT DIVISION
COUNTY OF ORANGE
PRETRIAL RELEASE AGREEMENT

STATE OF NORTH CAROLINA

V.

Supervision Level: _____

(1) I will contact Pretrial Services every _____

(919)-752-4552 until my case is resolved. *In-person visits are required _____

(2) I will notify the Pretrial Services staff if my address or employment changes

(3) If employed or in school, I will remain employed or in school during my Pretrial Services reporting period.

(4) I will notify the Pretrial Services staff if my attorney changes

(5) I will **STAY AWAY** from (have no contact with) any and all victims or co-defendants named in my cases, if ordered by the court

(6) I will attend all current and pending court dates unless my attorney instructs me otherwise.

(7) I will **NOT** obtain any additional charges while supervised by Pretrial Services. If I am charged with a new offense, I will immediately notify Pretrial Services staff.

(8) Additional release conditions:

I understand this agreement and acknowledge that failure to comply with any of these conditions may result in an Order for Arrest being issued

Defendant

Witness

I hereby order the named defendant released according to the above conditions.

Judge / Magistrate

Date

Bond Modification: _____

Appendix B – Orange County Magistrate’s Structured Decision-Making Tool

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
Misdemeanor	I	Written Promise
	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.

Appendix C – Orange County Magistrate’s Bail Explanation Form

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]

Appendix D – Orange County Pretrial Services Pretrial Risk Assessment



CRIMINAL JUSTICE RESOURCE DEPARTMENT

**Orange County Pretrial Services
Pretrial Risk Assessment**

Section I: Client & Case Information:

Date: _____ **Case Number(s):** _____

Name		DOB	
Address		Confirmed	
Employment		Confirmed	
Charges		Arrest Date	
Contact:			
Contact:			
Contact:			

Section II: Risk Assessment Level:

Level 1	Level 2	Level 3	Level 4	Level 5	Level 6
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Risk Assessment Score: _____ Prior Compliance with Pretrial Services Supervision: _____

Risk factors Considered:

Charge is a felony (drug, theft, fraud) (3 pts.)	Additional charges pending at time of arrest (2 pts.)
Currently on Supervised Probation (2 pts.)	Two or more prior failures to appear (1 pt.)
Two or more prior violent convictions (1 pt.)	Prior criminal history (2 pts.)
Unemployed at time of arrest (1 pt.)	History of substance abuse (2 pts.)

Section III: Additional Considerations:

Section IV: Recommendations:

Release without supervision	Administrative Supervision	Level I Supervision	Level II Supervision	Level III Supervision	Detain or No Recommendation
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Appendix E – VPRAI-R and Praxis



Virginia Pretrial Risk Assessment Instrument Revised (VPRAI-R) - Weighted Risk Factors

Charge is a felony (drug, theft, fraud) (3 pts.)	Additional charges pending at time of arrest (2 pts.)
Currently on Supervised Probation (2 pts.)	Two or more prior failures to appear (1 pt.)
Two or more prior violent convictions (1 pt.)	Prior criminal history (2 pts.)
Unemployed at time of arrest (1 pt.)	History of substance use (2 pts.)

VPRAI-R Score	Risk Level
0-2	Level 1
3-4	Level 2
5-6	Level 3
7-8	Level 4
9-10	Level 5
11-14	Level 6

Pretrial Services Supervision Levels- These supervision levels describe the basic elements of supervision for each category. Additional supervision requirements not listed here appear on the Pretrial Release Agreement. The Court may add requirements to any category to address the specific needs of each case. The supervision level is based on the primary current charge and the risk level obtained from the objective risk assessment. Refer to the Praxis on the next page for specific information.

Supervision Level	Description
Administrative	<ul style="list-style-type: none"> Receive reminders in advance of court dates Telephone report to Pretrial Services once per week
Level I	<ul style="list-style-type: none"> Telephone report to Pretrial Services twice per week Subject to monthly state-wide criminal background checks Receive reminders in advance of court dates Special condition compliance verification
Level II	<ul style="list-style-type: none"> Telephone report to Pretrial Services three times per week Subject to monthly state-wide criminal background checks Office visits with Pretrial Services as directed Receive reminders in advance of court dates Special condition compliance verification
Level III	<ul style="list-style-type: none"> Telephone report to Pretrial Services Monday through Friday Subject to monthly state-wide criminal background checks Receive reminders in advance of scheduled court dates Monthly office / Court visits with Pretrial Services Special condition compliance verification May also be subject to SCRAM, GPS monitoring, and drug screens

VPRAI-R Pretrial Praxis

Non-Violent Misdemeanor

Risk Level	Supervision Level
Level 1	No Supervision
Level 2	No Supervision
Level 3	Administrative
Level 4	Level I
Level 5	Level II
Level 6	Detain

Driving While Impaired

Risk Level	Supervision Level
Level 1	No Supervision
Level 2	Administrative
Level 3	Administrative
Level 4	Level I
Level 5	Level II
Level 6	Detain

Non-Violent Felony

Risk Level	Supervision Level
Level 1	No Supervision
Level 2	Administrative
Level 3	Level I
Level 4	Level II
Level 5	Level III
Level 6	Detain

Violent Misdemeanor

Risk Level	Supervision Level
Level 1	No Supervision
Level 2	Administrative
Level 3	Level I
Level 4	Level II
Level 5	Detain
Level 6	Detain

Violent Felony or Firearm

Risk Level	Supervision Level
Level 1	Level II
Level 2	Level III
Level 3	Detain
Level 4	Detain
Level 5	Detain
Level 6	Detain

Appendix F – Orange County Response to Non-Appearance Bench Card

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 procedures set out in the local bail policy.

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