

Innovations in Setting Conditions of Pretrial Release

Magistrates' Conference, March 2023

Magistrate Bail Decision-Making Tools

10 Tips for Development & Implementation

1. Conduct a needs & organizational assessment.

Conduct a needs assessment to see how you are doing and identify what, if anything may need to change. Share this with your team and set outcome metrics (e.g., % reduction in jail bookings of low-level misdemeanors). Conduct an organizational assessment to ensure capacity to implement change. Examine issues like staffing shortages, other priority initiatives underway, etc. These assessments will help you decide whether or not to proceed.

2. Form a diverse team.

If you proceed, your project team should include key justice system actors: district and superior court judges, prosecutors and public defender's office (or defense lawyer if no public defender), law enforcement leaders (police department and sheriff's office), and the magistrates' office. Include others, e.g., county commissioners, clerk's office, members of the public, probation, as helpful.

3. Vet the tool.

Once the team develops a draft tool, solicit broad input from "front line" individuals such as magistrates, law enforcement, and probation officers. This can help avoid blind spots, ensure that the tool is flexible enough to accommodate the full range of cases and circumstances and build support for and begin educating stakeholders about the new tool.

4. Beta test the tool.

Have magistrates complete the tool as a parallel step to their normal decision-making process. This will let you see how the tool operates, check results to ensure they conform to your objectives, and make tweaks to make the tool as user-friendly and efficient as possible. Beta testing also may reveal a need for complementary job aids.

5. Decide on procedures for documenting decisions.

If magistrates will be completing paper or electronic forms, establish a procedure for doing so and for inclusion of forms in the case file for the district court judge at first appearance.

6. Formally adopt the tool.

This can be done in an administrative order or as part of a new bail policy.

7. Provide training.

Train magistrates and develop a plan for training new magistrates. Offer training to law enforcement so that officers know about the tool and how to best communicate relevant facts and circumstances to the magistrate.

8. Plan for quality control & coaching.

Develop a procedure for checking every form in the initial weeks. Taper down to spot checking as appropriate. Set up a system for coaching individuals as needed.

9. Assess implementation.

Reconvene early and at regular intervals to assess implementation and discuss any issues that arise.

10. Collect data & assess impact.

Data collection and impact assessment enables you to determine whether you are meeting your pretrial goals.

JUDICIAL DISTRICT 2: DETERMINING CONDITIONS OF PRETRIAL RELEASE

Pursuant to Judicial District 2's Local Pretrial Release Policy, judicial officials must use the flowchart contained here, with accompanying footnotes and tables, when determining conditions of release in all cases except where the North Carolina General Statutes or Local Policy prescribe a different process or result.

Class 3 Misdemeanor

What is the offense class of the charge?¹

Class 2-A1 Misdemeanor or Class F-I felony

Class A-E felony

Check any that apply:

- Defendant has insufficient ties to the community to assure appearance²
- Defendant has a history of FTAs³
- Defendant has a prior record of
 - a felony conviction; or
 - misdemeanor convictions within the last five years demonstrating a pattern of conduct⁴
- Charged offense was committed when Defendant was on pretrial release for a related offense⁵ or on supervised probation for any offense
- Charged offense involves domestic violence⁶
- Charged offense is a felony & involves violence⁷
- Charged offense is a felony & resulted in injury to a person⁸
- Charged offense requires sex offender registration⁹
- Charged offense is a failure to register as a sex offender offense¹⁰
- Charged offense is a drug trafficking offense¹¹
- Charged offense involves distribution of drugs¹²
- Charged offense is stalking or cyberstalking
- Charged offense is DWI and Defendant has at least 1 prior DWI conviction within the last 7 years
- Defendant is impaired such that immediate release is likely to cause harm to self/others/property¹³
- Charged offense involved Defendant's use of a firearm or deadly weapon

If no box is checked

Recommendation: Impose a written promise, custody release, or unsecured bond¹⁷

Deviations from the recommendation are permissible but must be documented¹⁸

If any box is checked

Make the statutory determination:

Statute *requires* the judicial official to impose a written promise, custody release, or unsecured bond *unless* he/she determines that such release

- 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 witnesses¹⁴

If no box is checked

If any box is checked

Recommendation: Impose a secured bond¹⁵ & record reasons for doing so¹⁶

Deviations from the recommendation are permissible but must be documented

1. If the matter is before a judge on the State's motion to increase conditions after the return of a habitual felon indictment, the judge should treat the offense at its "habitualized" offense Class level.
2. The mere fact that the Defendant is homeless and does not have a home address does not warrant checking this box; inquiry should be focused on the Defendant's connections to the community.
3. FTAs within the last 2 years are most relevant.
4. The pattern of conduct must relate to the present offense. For example: the current charge involves drug possession and the Defendant has 3 priors within the last 5 years for misdemeanor drug or drug paraphernalia possession.
5. This factor covers situations where the Defendant continues to engage in the same type of conduct (e.g., repeat larceny) or an escalating course of conduct (e.g., the defendant is charged with injury to real property while on pretrial release for communicating threats to the property owner).
6. An offense involves domestic violence when the relationship between the parties is one of the following:
 - o Current or former spouses
 - o Currently or formerly lived together as if married
 - o Currently or formerly in a dating relationship
 - o Have a child in common
 - o Parent (or one in parental role)/child
 - o Grandparent/grandchild
 - o Current or former members of the same household

Note: this list is drawn from G.S. 15A-534.1, the 48-hour domestic violence hold statute.
7. For example, robbery.
8. This factor applies when the offense involved harm to a person (e.g., assaultive conduct). It does not apply to offenses in which property is taken or harmed (e.g., larceny, embezzlement, obtaining property by false pretenses, etc.).
9. For a list of offenses requiring sex offender registration, see JAMIE MARKHAM & SHEA DENNING, NORTH CAROLINA SENTENCING HANDBOOK 2017-18 (UNC School of Government, forthcoming 2018).
10. See G.S. 14-208.11(a); JESSICA SMITH, NORTH CAROLINA CRIMES: A GUIDEBOOK ON THE ELEMENTS OF CRIME 268 (7th Ed. 2012) (discussing this offense).
11. See G.S. 90-95(h); NORTH CAROLINA CRIMES *supra* note 10, at 721-739 (discussing trafficking offenses).
12. For example, sale and delivery of a controlled substance and possession with intent to manufacture, sell, or deliver.
13. For defendants in impaired driving cases, follow impaired driving procedures. In all other cases if a secured bond is imposed only because of this factor and the defendant remains detained, conditions must be revised without consideration of this factor when the defendant's impairment no longer presents a danger of physical injury to himself or herself or others or of damage to property, but in any event, no later than 24 hours after secured bond was set.
14. 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).
15. If a secured appearance bond is imposed: (1) the judicial official must consider—among other relevant factors—the defendant's ability to pay; and (2) the amount of the secured appearance bond should not exceed the amounts listed the tables shown below; if a secured bond is set in excess of these recommended maximums, reasons for doing so must be documented.

If a secured bond is used to detain ("detention bond"), a detention bond hearing that affords the defendant appropriate procedural protections must be held before a judge on motion by the defense.
16. See G.S. 15A-534(b) (when judicial official imposes secured bond instead of written promise, custody release or unsecured bond, the judicial official "must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge").
17. Pretrial restrictions can accompany any pretrial condition. See G.S. 15A-534(a) & note 14 above.
18. A deviation is permissible if there is a risk of continuing felony-level criminal activity.

Maximum Secured Appearance Bond Amounts— Offenses Other Than Drug Trafficking

If a bond is set in excess of these recommendations, reasons for doing so must be documented.

Type of Offense	Maximum Secured Bond
Misdemeanor, Class 2	\$500
Misdemeanor, Class 1	\$1,000
Misdemeanor, Class A1	\$3,000
Driving While Impaired	\$5,000
Felony Class I	\$10,000
Felony Class H	
Felony Class G	\$25,000
Felony Class F	
Felony Class E	\$50,000
Felony Class D	\$70,000
Felony Class C	\$100,000
Felony Class B2	\$250,000
Felony Class B1	\$300,000
Felony Class A	No Bond Unless Set by a Judge
Fugitive Warrant	For Maximum bond amount, see maximum for the underlying offense
Governor's Warrant	No Bond
Parole Warrant	No Bond

Maximum Secured Appearance Bond Amounts—Drug Trafficking

If a bond is set in excess of these recommendations, reasons for doing so must be documented.

Punishment Class	Maximum Secured Bond
H	\$75,000
G	
F	
E	
D	\$150,000
C	\$250,000

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]

New Bail Procedures—FAQs for Magistrates

October 21, 2021

When Form Required/How Many Forms?

If the defendant has multiple charges, how many bail explanation forms do I complete? Complete one form for all charges that relate to the same continuous event.

Example 1: Defendant is arrested and brought to you on 3 charges: drug trafficking, felony possession of marijuana, and possession of drug paraphernalia, all arising from the same event. Complete one form, using the highest charge (trafficking) to guide your decision-making.

Example 2: After arresting the defendant for disorderly conduct, the arresting officer realizes that the defendant has an outstanding warrant for a felony assault that occurred six months ago. The officer serves the warrant on the defendant and brings the defendant before you on both charges. Since these charges do not arise out of the same event, do one form for each charge.

If it's a 48-hour case and I am not setting conditions at this time, do I fill out the form? No, if the 48-hour rule applies and you are not setting conditions, do not fill out the bail explanation form. However, if the defendant returns to you because a judge was not available in 48 hours, you must complete the form when you set conditions then.

If I'm setting bail a second (or third!) time in a case, do I have to complete another bail explanation form? Yes, you should complete a bail explanation form *every time* you set bail in a case.

What about a murder case where only the judge can set conditions—do I fill out the form? Since you're not setting conditions, you don't complete the form.

Do I fill out the form for out-of-county charges? No. Since bail is set for out-of-county charges under the bail policy of the other county, do not complete the form for out-of-county charges.

Do I fill out the form in extradition cases? A defendant arrested on a fugitive process for an offense punishable by death or life in prison is not entitled to conditions of release. In this scenario since conditions are not being set, the form would not be used.

A defendant arrested on fugitive process for an offense not subject to death or life in prison is entitled to conditions, and the condition must be a secured bond. In this instance, magistrate would complete the form and give as an explanation for the secured bond: "required by law; extradition" or something similar.

If I set a disappearing appearance bond on the magistrate's bail form, do I have to do a new explanation form when I convert the secured bond to a written promise in NC AWARE? No, once you indicate on the form that you are setting a disappearing appearance bond, you don't need to complete another form later.

Relation to AOC Forms

Since I am completing the new magistrate bail explanation form, do I still have to complete the AOC forms? Yes, the new form is *in addition* to the AOC forms that you normally complete.

Completing the Magistrate Bail Explanation Form

Top of the Form

What does “Highest Charged Offense” mean? When a defendant is charged with multiple offenses, it means the offense that carries the most serious punishment level.

Example: The defendant is charged with drug trafficking and simple assault. Drug trafficking is the Highest Charged Offense.

If two offenses are charged and they are the same offense level, which do I list under “Highest Charged Offense”? You can list either or both, it’s your choice.

The defendant is before me on an OFA after a FTA—what do I list under “Highest Charged Offense”?

List the highest charged underlying offense; *don’t* just list “OFA FTA.” For example, an OFA was issued after the defendant failed to appear on a felony larceny charge. On the form you would list “felony larceny” as the highest charged offense.

What if it’s an extradition case—what should I list for “Highest Charged Offense”? List the offense name and let us know it’s an extradition case e.g., “rape/extradition.”

What about habitual felon cases—what should I list for “Highest Charged Offense”? When setting bail in a case involving a habitual *status* charge (e.g., habitual felon, violent habitual felon, armed habitual felon) list that status and the “habitualized” underlying offense at the top of the form (e.g., “Felony Larceny (Habitual Felon)”). Be careful though—don’t mix up *habitual status charges* like habitual felon and *habitual offenses that are substantive offenses*, like habitual misdemeanor assault. For habitual offenses that are substantive offenses, treat them like any substantive offense, listing the offense at the top of the form and proceeding accordingly.

OFA

If the judge set conditions in an OFA after a FTA, do I need to do anything other than fill out the top of the form and Step 1? Nope, that’s it!

The defendant is before me on an OFA, the judge has set conditions in the OFA but the OFA isn’t because of a FTA—how do I handle that? Great question—we didn’t think of this scenario when developing the form. Handle this scenario just like an OFA after a FTA: Complete the top portion of the form and Step 1 and you’re done.

Sidebar Factors

If the defendant is charged with possession of a controlled substance with intent to sell and deliver, does the Sidebar Factor “Charged offense is a drug trafficking offense or involves distribution of drugs” apply? Yes, when there is an intent to sell and deliver, the offense involves distribution. The same thing would apply to any sale or delivery of a control substance offense.

If the defendant committed the new offense while another offense is pending, does the Sidebar Factor “Charged offense committed when defendant was on pretrial release, supervised probation, parole or post-release supervision” apply? Yes. If the new offense occurred while the defendant was released pretrial in connection with another pending charge, this sidebar factor applies.

Secured Bonds & Other Conditions

How do I know if the secured bond I’m setting is in excess of the maximum bond table? For the maximum bond tables, consult the Magistrate’s Desk Guide, page 3. If you’re setting a bond greater than the amounts shown there, you need to explain why on page 2 of the Magistrate Bail Explanation Form.

If I’m setting multiple conditions in a case, such as secured bond plus release to pretrial services, which condition should I enter on the magistrate bail explanation form? If you’re setting multiple conditions, enter all of them on the form.

IVCs

If the defendant presents a danger but will be held via an IVC and I want to deviate from the recommendation to impose a secured bond and instead impose a written promise, how do I explain my decision? To avoid any potential issues regarding confidentiality of court records regarding IVC proceedings, do not reference an IVC proceeding on the form. Instead, include a generic explanation, such as “held via other proceedings,” in the form field for explaining your decision. This generic notation can and should be used in any scenario where no bail is needed in the present case because the defendant is in custody or under supervision in another pending matter. Because the generic notation can apply to multiple situations, we have been advised that any possible conflict with the IVC confidentiality rule is avoided.

Domestic Violence Cases

Are there any special considerations when a 48-hour domestic case returns to me for pretrial conditions? If a judge isn’t available within 48 hours and the case returns to you, follow the magistrate bail process as you would for all cases. When considering whether sidebar factors are present and whether to deviate from policy recommendations, be sure to consider the totality of the circumstances including any factors that may indicate a likelihood of escalating violence and/or danger to the victim.

Ability to Pay—Generally

When imposing a secured bond, I’m supposed to consider ability to pay. How do I do that? The last page of this FAQ contains a three-step process for determining ability to pay.

Does assessing ability to pay mean that people with similar charges could get different bond amounts? Yes. If you’ve determined that the person should be released and needs a secured appearance bond, you must assess ability to pay. A person who owns a business, for example, might easily be able to pay a \$1,000 appearance bond. But a person who works part time at the grocery store might not be able to pay that same bond. If you don’t consider ability to pay, the grocery store employee might end up detained pretrial on a \$1,000 bond, not because you determined that they’re too risky to be released, but rather because they don’t have the money to pay their bond. Assessing ability to pay avoids that result. Also, to the extent that a money bond actually creates an incentive for people to appear, people with more resources (e.g., the business owner) arguably need a larger bond to create that incentive than people with fewer resources (e.g., the grocery store employee).

Probation Violation Cases

If a clerk set a bond in an OFA for a probation violation case and the bond that was set doesn't align with the new procedures, should I modify the bond? Yes, you should modify the bond to align it with the new procedures. Remember that in probation violation cases, you do not go through the step-by-step process in the bail explanation form; rather you go directly to the bond table entitled Maximum Secured Appearance Bond Amounts Probation Violations and follow the instructions there.

When the probation violation itself is a serious felony, the probation bond table says to double the maximum bond in the regular table. But when the probation violation is a Class A felony, the regular table says "By Judge." Since there's no bond amount to double what do I do? This issue came up after the magistrate's tool was created! Per Judge Baddour, when the probation violation is a Class A felony, your guidance is as follows: set bond greater than \$400,000, in the magistrate's discretion.

Local Bail Policy Rules

Does the old rule, favoring written promise or custody release over an unsecured bond still apply? Yes, and the magistrate's guide and form have been updated to reflect this.

Additional Guidance

What if I have a question about how to complete the form in a particular case? Questions will arise! Please contact your chief magistrate for guidance.

Appendix: Ability to Pay Determination

1. Only consider ability to pay after you've been through the decision-making process and found that release on other conditions won't reasonably assure appearance, poses a danger of injury to any person, or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses.
2. If the secured bond is required by statute, e.g., bond doubling, set the bond as required. Otherwise, go to Step 3.
3. If you intend for the person to be held pretrial for a first appearance, set a bond, consulting the maximum recommended bond table.

If you intend to set an appearance bond (e.g., that the person will be released), consider ability to pay so that the person doesn't end up inadvertently detained. Here's how to do that:

Begin by advising them that anything they say might be used later in evidence against them and that they shouldn't discuss the events that led to their arrest.

Then ask them: How much money do you have available that isn't needed to pay your basic necessities like housing, food, and transportation?

Based on the answer, set an appearance bond that the defendant can pay. If they can't pay anything, consider other conditions.

COLUMBUS COUNTY MAGISTRATE BAIL EXPLANATION FORM



DO NOT COMPLETE THIS FORM IF:

- > Defendant arrested on OFA after FTA
- > Specific bail statute applies e.g., recidivist firearm offense
- > Case involves only a probation violation
- > Case involves fugitive order/warrant

Defendant Name		Magistrate Name	
Case #(s)		Date	

STEP 1: What is the offense class of the most serious charge?¹

- Class 2 or 3 Misdemeanor **[GO TO STEP 4]**
- DWI, Class 1 or A1 Misdemeanor or Class F-I Felony **[GO TO STEP 2]**
- Class A-E Felony **[GO TO STEP 3]**

STEP 2: Check any that apply:

- Charged offense was committed when Defendant was on pretrial release for a related offense², or on supervised probation for any offense
- Defendant has insufficient ties to the community to assure appearance or resides out of state³
- Defendant has a history of FTAs⁴
- Defendant has a prior record of a felony conviction or misdemeanor convictions within the last five years demonstrating a pattern of conduct⁵
- Charged offense involves domestic violence⁶
- Charged offense involves violence⁷ or injury to a person⁸
- Charged offense requires sex offender registration⁹ or is a failure to register as a sex offender offense¹⁰
- Charged offense is a drug trafficking offense¹¹
- Charged offense involves distribution of drugs¹²
- Charged offense is stalking or cyberstalking
- Charged offense is DWI and Defendant has at least one prior DWI conviction within the last 7 years
- Defendant is impaired such that immediate release is likely to cause harm to self/others/property¹³
- Charged offense involves Defendant's use of a firearm or deadly weapon or possession of a firearm in connection with a drug offense.
- Charged offense related to gang activity¹⁴

[IF ANY BOX IS CHECKED, GO TO STEP 3. IF NO BOX IS CHECKED, GO TO STEP 4]

STEP 3: Make the statutory determination:

Statute *requires* the judicial official to impose a written promise, custody release, or unsecured bond *unless* he/she determines that such release **[check any that apply]**

- 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 witnesses¹⁵

[IF ANY BOX IS CHECKED, GO TO STEP 5. IF NO BOX IS CHECKED, GO TO STEP 4]

STEP 4: Follow policy recommendation & impose a written promise, custody release, or unsecured bond. **[FINISHED]**

Deviate from the policy recommendation & impose a secured bond. Record reasons below. **[GO TO STEP 6]**

STEP 5: Follow policy recommendation and impose a secured bond. Record reasons below. **[GO TO STEP 6]**

Deviate from the policy recommendation & impose a condition other than secured bond. **[FINISHED]**

STEP 6: FOR ALL SECURED BONDS, give reasons for imposing secured bond:

I considered all information presented regarding ability to pay.¹⁷ **[FINISHED]**

1. If the matter is before the judicial official on a habitual felon charge, the judicial official should treat the offense at its “habitualized” offense Class level.
 2. This factor covers situations where the Defendant continues to engage in the same type of conduct (e.g., repeat larceny) or an escalating course of conduct (e.g., the defendant is charged with an injury to real property while on pretrial release for communicating threats to the property owner).
 3. The mere fact that the Defendant is homeless and does not have a home address does not warrant checking this box; inquiry should be focused on the Defendant’s connections to the community.
 4. 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.
 5. 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.
 6. 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 household
- Note: this list is drawn from G.S. 15A-534.1, the 48-hour domestic violence hold statute.*
7. For example, robbery, assault, assault by pointing a gun, and assault by strangulation.
 8. This factor applies when the offense involved harm to a person (e.g., assaultive conduct). It does not apply to offenses in which property is taken or harmed (e.g., larceny, embezzlement, obtaining property by false pretenses, etc.)
 9. For a list of offenses requiring sex offender registration, see Jamie Markham and Shea Denning, *North Carolina Sentencing Handbook 2017-18* (UNC School of Government, forthcoming 2018)
 10. See G.S. 14-208.11(a); Jessica Smith, *North Carolina Crimes: A Guidebook on the Elements of Crime* 268 (7th Ed. 2012) (discussing this offense).
 11. See G.S. 90-95(h); *NORTH CAROLINA CRIMES supra* note 10, at 721-739 (discussing trafficking offenses).
 12. For example, sale and delivery of a controlled substance and possession with intent to manufacture, sell, or deliver.
 13. For defendants in impaired driving cases, follow impaired driving procedures. In all other cases if a secured bond is imposed only because of this factor and the defendant remains detained, conditions must be revised without consideration of this factor when the defendant’s impairment no longer presents a danger of physical injury to himself or herself or others or of damager to property, but in any event, no later than 24 hours after secured bond was set.
 14. Specific evidence of relation to gang activity must be presented (e.g., admission of defendant or social media material). The mere statement that the defendant is a “validated” gang member is insufficient by itself to establish this factor.
 15. G.S. 15A-534(b). When making this inquiry, judicial officials should consider whether pretrial restrictions (e.g., restrictions of travel, associations, conduct or place of abode, as well as abstention from alcohol consumption, as verified by the use of an approved continuous alcohol monitoring system), which can be imposed with a written promise, custody release or unsecured bond, can sufficiently mitigate pretrial risk. See G.S. 15A-534(a).
 16. Pretrial restrictions can accompany any pretrial condition. See G.S. 15A-534(a) and note 15 above.
 17. If a secured appearance bond is imposed the judicial official must consider – among other relevant factors – the defendant’s ability to pay.

Columbus County Magistrate Bail Explanation Form: Offense Class Reference Sheet

Most Common Offenses: Class 2 & Class 3 Misdemeanors			
Offense	Class	Offense	Class
ALLOW UNLICENSED TO DRIVE	3	OPEN CONT AFTER CONS ALC 1ST	3
CANCL/REVOK/SUSP CERTIF/TAG	3	OPERATE VEH NO INS	3
CARRYING CONCEALED GUN(M)	2	POSS/DISP ALT/FICT/REVD DR LIC	2
DR/ALLOW REG PLATE NOT DISPLAY	3	POSSESS MARIJ PARAPHERNALIA	3
DRIVE/ALLOW MV NO REGISTRATION	3	POSSESS MARIJUANA UP TO 1/2 OZ	3
DWLR NOT IMPAIRED REV	3	RECKLESS DRIVING TO ENDANGER	2
EXPIRED REGISTRATION CARD/TAG	3	RECKLESS DRVG-WANTON DISREGARD	2
FAIL TO RETURN RENTAL PROPERTY	3	RESISTING PUBLIC OFFICER	2
FICT/ALT TITLE/REG CARD/TAG	3	SECOND DEGREE TRESPASS	3
FICTITIOUS INFO TO OFFICER	2	SIMPLE ASSAULT	2
GIVE/LEND/BORROW LIC PLATE	3	SIMPLE POSSESS SCH VI CS (M)	3
NO LIABILITY INSURANCE	2	SPEEDING	3
NO OPERATORS LICENSE	3	WINDOW TINTING VIOL	3

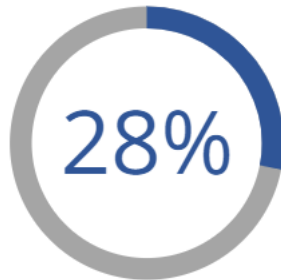
Most Common Offenses: DWI, Class 1 & A1 Misdemeanors, Class F-I Felonies			
Offense	Class	Offense	Class
ASSAULT AND BATTERY	1	FLEE/ELUDE ARREST W/MV (F)	H
ASSAULT BY POINTING A GUN	A1	INJURY TO REAL PROPERTY	1
ASSAULT GOVT OFFICIAL/EMPLY	A1	LARCENY AFTER BREAK/ENTER	H
ASSAULT ON A FEMALE	A1	LARCENY BY EMPLOYEE	H
ASSAULT WITH A DEADLY WEAPON	A1	LARCENY OF A FIREARM	H
BREAK OR ENTER A MOTOR VEHICLE	I	MAINTN VEH/DWELL/PLACE CS (F)	I
BREAKING AND OR ENTERING (F)	H	MISDEMEANOR LARCENY	1
COMMUNICATING THREATS	1	OBTAIN PROPERTY FALSE PRETENSE	H
DRIVING WHILE IMPAIRED		POSS CS PRISON/JAIL PREMISES	H
DWLR IMPAIRED REV	1	POSSESS DRUG PARAPHERNALIA	1
FELONY LARCENY	H	POSSESS STOLEN FIREARM	H
FELONY POSSESSION OF COCAINE	I	POSSESSION OF FIREARM BY FELON	G
FELONY POSSESSION SCH II CS	I	PWIMSD SCH II CS	H

Most Common Offenses: Class A-E Felonies			
Offense	Class	Offense	Class
ATT ROBBERY-DANGEROUS WEAPON	D	FIRST DEGREE KIDNAPPING	C
ATTEMPT FIRST DEGREE BURGLARY	E	FIRST DEGREE MURDER	A
AWDW INTENT TO KILL	E	FIRST DEGREE SEX OFFENSE CHILD	B1
AWDW SERIOUS INJURY	E	INT CHILD ABUSE-SER PHYS INJ	E
AWDWIKISI	C	M/S/D/P CS W/N 1000FT SCHOOL	E
CONSP ROBBERY DANGRS WEAPON	E	NEG CHILD ABUSE-SER BOD INJ	E
DIS WEAP OCC DWELL/MOVING VEH	D	ROBBERY WITH DANGEROUS WEAPON	D
DIS WEAP OCC PROP SER BOD INJ	C	SECOND DEG MURDER W/O REGARD	B2
DISCHARGE WEAPON OCCUPIED PROP	E	SECOND DEGREE KIDNAPPING	E
FELONY DEATH BY VEHICLE	D	STAT SEX OFF W/CHILD BY ADULT	B1
FIRST DEGREE ARSON	D	STAT SEX OFF WITH CHILD <= 15	B1
FIRST DEGREE BURGLARY	D	STATUTORY RAPE OF CHILD <= 15	B1
FIRST DEGREE FORCIBLE RAPE	B1	STATUTORY RAPE OF CHILD <= 15	B1

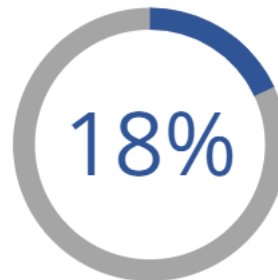
Bail Reform in North Carolina Judicial District 21: Key Findings

Low use of secured bonds in target cases

Magistrates



Judges



After reforms were implemented, magistrates & judges set a secured bond in a minority of **Class 2 & 3 misdemeanor cases that were the target of reforms.**



Average monthly detentions decreased 22.6%.

The share of individuals who acquired a new pretrial charge

DECREASED

0.84

percentage points

Within misdemeanor & felony subcategories, increases in new pretrial criminal activity were small & driven by increases in nonviolent offenses.

Impacts were similar across race



There were no statistically significant differences between Black and White individuals in the likelihood of receiving a secured bond or bond amounts.

Declines in detention rates were nearly identical for Black & White individuals.



The court non-appearance rate decreased significantly after reforms were implemented.



For more information, see the [final report](#).

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