

1.5 Types of Pretrial Release

North Carolina now recognizes five types of pretrial release: written promise to appear, unsecured bond, custody release, secured bond, and electronic house arrest with a secured bond. The judicial official must choose “at least” one of these in setting pretrial release conditions. G.S. 15A-534(a). Previously, the statute stated that the judicial official must impose “one” form of pretrial release, which apparently meant that a judicial official could impose one form only. The language was changed when house arrest with electronic monitoring (electronic house arrest or EHA) was added as a form of pretrial release and a secured bond was made a requirement for EHA. *See* 2009 N.C. Sess. Laws Ch. 547 (S 726). While the change may have been intended merely to give effect to the required combination of EHA and a secured bond, the phrasing is not limited to that situation and may authorize other combinations, such as a written promise to appear and a custody release.

A. Types Not Requiring Security

Three types of pretrial release do not require any security.

Written promise to appear. The judicial official does not specify any dollar amount for this form of pretrial release (known in some states as “release on own recognizance”). *See* G.S. 15A-534(a)(1).

Unsecured bond. The defendant executes an appearance bond promising to pay the amount specified if he or she does not appear. No one else need sign, and the defendant need not post any security. *See* G.S. 15A-534(a)(2). If the defendant fails to appear in court as required, he or she is bound to pay the specified amount to the State of North Carolina. As a practical matter, the State is unlikely to proceed civilly to collect the amount owed; instead, the court will issue an order for arrest in the criminal case and, once taken into custody, the defendant will likely have to satisfy a secured bond to obtain release. *See supra* § 1.4F, Certain Release Conditions Required: Failures to Appear, Probation, and Other Cases.

Custody release. Any individual or organization may supervise a defendant, including friends, relatives, employers, and shelters. G.S. 15A-534(a)(3). The supervising party must consent. *See State v. Gravette*, 327 N.C. 114 (1990) (court may not order probation department to supervise defendant without department’s consent). A defendant may reject a custody release and choose a secured bond instead. G.S. 15A-534(a).

B. Types Requiring Security

The fourth and fifth type of pretrial release, a secured bond and a secured bond with electronic house arrest (EHA), must be secured in one of the ways described below. For a discussion of limits on a judge’s authority in setting a secured bond, see *infra* § 1.6, Law Governing Judge’s Discretion; for a detailed discussion of the mechanics of posting a secured bond, see Smith at 38–44, *available at*

<http://sogpubs.unc.edu/electronicversions/pdfs/aojb0908.pdf>.

Cash. A defendant may secure a bond by posting cash, or having someone else post cash, in the full amount of the bond. *See G.S. 15A-534(a)(4); G.S. 58-75-1 (person may post cash or securities of State of North Carolina or United States to satisfy bond requirement).* When the defendant deposits cash, no one other than the defendant need sign the bond.

The AOC form appearance bond (AOC-CR-201) requires the defendant to agree that cash posted by him or her may be used to satisfy the defendant's other obligations in the case, such as restitution or fines imposed if the defendant is convicted. (If a family member or someone else posts cash for a defendant, and he or she wants it returned at the end of the case and not applied to the defendant's obligations, the person may so indicate on the bond form; if the person does not so indicate, the cash will be treated as belonging to the defendant and applied to the defendant's obligations.) Requiring the defendant's agreement to such a condition is not specifically authorized by statute, but it may be difficult for a convicted defendant to challenge the use of a cash bond for this purpose. Counsel should be alert, however, to the practice of bond being set in the amount alleged to be owed by the defendant—for example, the amount of child support alleged to be due in a child support contempt case. Collection of a debt allegedly due is not a recognized purpose in setting bond. *See infra § 1.6C, Secured Bond as Last Resort, and § 1.6D, Amount of Secured Bond; see also G.S. 15A-1364(b) (defendant may not be imprisoned for inability to comply with order to pay fine and costs).*

Judicial officials sometimes require all-cash bonds. The propriety of this practice is discussed *infra* in § 1.6E, Type of Security.

Mortgage. The defendant may meet the requirements of a secured bond by executing a mortgage on real property. *See G.S. 15A-534(a)(4); G.S. 58-74-5 (describing mortgage procedure).* If the defendant is the sole owner of the real property, no one else need sign the bond.

Commercial sureties. A bond may be secured by a commercial or noncommercial surety. Commercial surety companies fall into two categories—"surety bondsmen" and "professional bondsmen." A surety bondsman is a licensed agent of an insurance company, who essentially pledges the assets of the insurance company as security (G.S. 58-71-1(11)); a professional bondsman is licensed to pledge his or her own assets (G.S. 58-71-1(8)). The differences between the two types of commercial sureties may be of little consequence for the defendant unless the court has specified an all-cash bond. *See infra § 1.6E, Type of Security.*

Noncommercial sureties. A private person who receives no consideration, such as a relative or friend, may act as surety. (An attorney may not act as a surety on a bail bond except for an immediate family member. *See G.S. 15A-541.*) Such a person, called an "accommodation" or "property" bondsman, promises to pay the amount of the bond in the event of breach. The person must provide evidence that he or she has sufficient

property (real or personal) to satisfy the bond. *See G.S. 58-71-1(1)*. Although the statute does not require the person to post any property as security, some counties may require the person to provide security (such as a deed of trust, certificate of deposit, etc.) for bonds over a certain amount. For large bonds, many counties will allow two or more people to split the bond—that is, divide the liability. For example, on a \$50,000 bond, two sureties (commercial or noncommercial) could agree to be liable for half of the bond.

Automobile club bond. For motor vehicle offenses other than impaired driving or a felony, a defendant may be able to use an automobile club card to secure a bond up to \$1500. *See G.S. 58-69-50; G.S. 58-69-55*.

C. Electronic House Arrest

If a judicial official imposes electronic house arrest (EHA) as a form of pretrial release, he or she also must impose a secured bond. *See G.S. 15A-534(a)*. A magistrate should not impose EHA as a condition of release if the program is not then able to accept the defendant—for example, it does not have equipment available to place the defendant on EHA. Such a pretrial release condition would amount to denial of pretrial release, which ordinarily is impermissible. *See supra* § 1.4, Exceptions to Eligibility for Pretrial Release. Not all counties have pretrial EHA programs. In those counties with programs, counsel may be able to seek a bond reduction and get the defendant released on the condition that he or she be placed on EHA.

Can a defendant be required to reimburse the administering agency for the cost of EHA? Effective July 1, 2011, G.S. 7A-313.1 allows a county that provides the personnel, equipment, and other costs of electronic monitoring to collect a fee from the defendant as provided in that section. The fee is the lesser of the amount of the jail fee allowed by G.S. 7A-313 (\$10 for each 24 hours of confinement if the defendant is convicted) or the actual cost of providing the electronic monitoring. A county may not collect a fee from a defendant who is determined to be indigent and entitled to court-appointed counsel. An indigent defendant placed on pretrial EHA may still be responsible for a one-time fee of \$15 on conviction. *See G.S. 7A-304(a)(5)*.

D. Pretrial Services Programs

Because of their interest in reducing jail overcrowding, pretrial services programs may be a useful ally in obtaining pretrial release for a defendant. A number of North Carolina counties have pretrial services programs. Not all provide the same services, however. For example, some programs primarily gather information through interviews and record checks of defendants; others may arrange for pretrial release for defendants even before first appearance and then supervise them after release; and others become closely involved with defendants, obtaining substance abuse treatment for them and coordinating educational and employment activities.

Programs that supervise defendants can be thought of as an additional type of pretrial release. *See G.S. 15A-535(b)* (judge may release defendant to supervision of pretrial

services program, with defendant's consent, in lieu of other types of pretrial release). Defendants supervised by a pretrial services program often do not have to post bond and may obtain release more quickly than they otherwise could. Defendants may have to comply with various conditions, such as reporting periodically to a pretrial services caseworker, obtaining substance abuse treatment, etc. If the defendant complies with the conditions of supervised release, the pretrial services caseworker may be a helpful witness at sentencing. If the defendant fails to comply with the conditions, the pretrial services program may discontinue supervision and recommend that the court revoke pretrial release and set new conditions.

Check with your local program to determine the eligibility criteria for supervised release. Some use a rating system that does not depend on the nature of the charged offense; others have a list of "excluded offenses."