

1.8 Procedure for Bond Reduction Motion

A. Who Hears the Motion

Case pending in district court. As long as the case remains in district court, a district court judge may modify a release order of a magistrate or clerk or an order entered by him or her. *See* G.S. 15A-534(e) (authorizing district court judge to modify pretrial release conditions except when superior court judge has ruled on prosecutor's application for revocation or modification of pretrial release under G.S. 15A-539). In a felony case, the district court retains jurisdiction to review a defendant's pretrial release conditions even upon finding probable cause to bind the defendant over to superior court. *See* G.S. 15A-614 (requiring judge to review the defendant's conditions of pretrial release upon binding the defendant over to superior court).

A district court judge appears able to modify a pretrial release order entered by another district court judge. Although G.S. 15A-534(e) states that a district court judge may modify a release order "entered by him," case law establishes that one judge may modify an interlocutory order (that is, an order that's not final) of another judge when the order involves the exercise of discretion and circumstances have changed. *See State v. Turner*, 34 N.C. App. 78 (1977) (stating general principle). Pretrial release orders clearly entail the exercise of discretion; and counsel should be prepared to argue that new circumstances have arisen, allowing one district court judge to modify a release order entered by another.

Case pending in superior court. 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 order entered by him or her. *See* G.S. 15A-534(e). Here, again, general case law (discussed above) would appear to allow one superior court judge to modify a pretrial release order entered by another superior court judge when circumstances have changed.

Appeal of pretrial release determinations. A defendant may seek superior court review of a district court judge's pretrial release order (or refusal to modify pretrial release conditions) by written application to a superior court judge. *See* G.S. 15A-538(a). Alternatively, the defendant may petition the superior court for a writ of habeas corpus. *See* G.S. 15A-547 (pretrial release statutes do not abridge right of habeas corpus).

A defendant may seek appellate review of a superior court's pretrial release order, but such relief may be difficult to obtain. *See generally* G.S. 7A-32 (setting out types of remedial writs); *In re Reddy*, 16 N.C. App. 520 (1972) (treating motion to review bond in appellate court as petition for writ of habeas corpus). *See also* 2 NORTH CAROLINA DEFENDER MANUAL Ch. 35 (Appeals, Post-Conviction Litigation, and Writs) (UNC School of Government, 2d ed. 2012).

B. Uncontested Bond Reductions

Many bond reductions are the result of a negotiated agreement between the defense attorney and prosecutor. A form bond reduction motion, with a place for the prosecutor to stipulate to the reduction, appears in the non-capital trial motions bank at www.ncids.org.

C. Contested Bond Hearings

Filing and scheduling. There is no time limit on the filing of a bond reduction motion; however, the court and prosecutor may be more receptive to a bond reduction at certain points in the case, such as when counsel first enters the case, at the time of a scheduled probable cause hearing in a felony case, or after some time has passed without the case coming to trial.

G.S. 15A-951, which governs motions practice in general, provides that pretrial motions must be in writing and served on the prosecutor. Oral bond motions may be permissible at certain stages of the case, such as at a first appearance in district court. *See* G.S. 15A-605 (directing district court judge to review pretrial release at first appearance). In most instances, and in all felony cases, a written motion is advisable. A sample bond motion may be found in the non-capital trial motions bank at www.ncids.org.

Local practice varies on how much notice should be given to the prosecutor and how bond motions are scheduled for hearing.

Hearing. The rules of evidence do not apply at pretrial release hearings. *See* G.S. 15A-534(g). Counsel usually presents the information rather than offering testimony. If relatives, friends, or employers of the defendant attend the hearing, defense counsel can tender them to the court or prosecutor for questioning rather than have them formally sworn.

As the seriousness of the charged offense increases, so may the degree of formality of the hearing. Consider having the hearing recorded if you believe that a witness may make statements that you later may be able to use for impeachment or other purposes.

In most cases, you will want the defendant to be present. It is generally inadvisable, however, for the defendant to make any statements at the hearing because the prosecutor may seek to use such statements at trial.

Audio-visual transmission. Some counties have facilities for audio-visual transmission between the jail and courthouse. An initial appearance before the magistrate may be conducted by audio-visual transmission. *See* G.S. 15A-511(a1). Pretrial release hearings thereafter in noncapital cases may be conducted by audio-video transmission unless the defendant makes a motion objecting to the procedure. The transmission must allow for counsel and the defendant to confer fully and confidentially during the proceeding. *See* G.S. 15A-532(b).

D. Successive Motions

There is no limit on how often a defendant may seek modification of a pretrial release order, although counsel should be prepared to argue that changed circumstances justify reconsideration of pretrial release conditions. For example, a continuance of proceedings at the prosecutor's request may provide grounds for reconsideration of pretrial release conditions.