

## 4.1 Scope of Chapter

“The bail determination is crucial to the legitimacy of the criminal process.” THE ABELL FOUNDATION, [THE PRETRIAL RELEASE PROJECT: A STUDY OF MARYLAND’S PRETRIAL RELEASE AND BAIL SYSTEM](#) vi (2001). Pretrial detention not only results in loss of liberty pending resolution of a case, it also may increase the chances of conviction and further incarceration. Pretrial release determinations thus have a huge impact on defendants’ cases and lives.

There are two primary ways in which racial minorities may be at a disadvantage in the context of pretrial release. First, pretrial release decisions may be affected by implicit or explicit racial biases of court actors. Second, Black and Latino defendants are more likely to live in poverty and therefore less able to satisfy financial conditions of release. Thus, non-White defendants may be more likely to remain in pretrial confinement than their White counterparts in cases in which a secured bond is imposed. The strategies discussed in this chapter are aimed at addressing these two ways in which pretrial release determinations may produce racially disparate outcomes.

State and federal constitutional provisions guarantee equal protection and due process and prohibit excessive bail. North Carolina statutes state generally that pretrial release is favored and make money bail a last resort. Lawyers can rely on these protections in at least three contexts: (1) arguing for more favorable pretrial release conditions at bond reduction hearings; (2) seeking relief in some cases following an unlawful pretrial release decision; or (3) working with other court actors in implementing systemic changes to address any disparities in pretrial detention. The legal bases for these claims and strategies for raising them are discussed *infra* in § 4.3, Legal Restrictions, and § 4.4, Pretrial Advocacy Strategies.