

Chapter 1

Pretrial Release

1.1 Importance of Pretrial Release	1-3
1.2 Required Proceedings	1-3
A. Initial Appearance	
B. Misdemeanors	
C. Felonies	
1.3 Eligibility for Pretrial Release	1-6
A. Noncapital Offenses	
B. Capital Offenses	
1.4 Exceptions to Eligibility for Pretrial Release	1-8
A. Generally	
B. Initial Appearance Delayed	
C. Setting of Pretrial Release Conditions Delayed: Domestic Violence and Probation Cases	
D. Pretrial Release Conditions Set but Release Delayed: Impaired Driving and Other Cases	
E. Pretrial Release Conditions Denied: Capital, Probation, and Other Cases	
F. Certain Release Conditions Required: Failures to Appear, Probation, and Other Cases	
G. Circumstances Not Justifying Delay or Denial of Pretrial Release	
1.5 Types of Pretrial Release	1-15
A. Types Not Requiring Security	
B. Types Requiring Security	
C. Electronic House Arrest	
D. Pretrial Services Programs	
1.6 Law Governing Judge's Discretion	1-18
A. Factors	
B. Restrictions on Activities	
C. Secured Bond as Last Resort	
D. Amount of Secured Bond	
E. Type of Security	
F. Source of Funds for Secured Bond	

1.7 Investigation and Preparation for Bond Reduction Motion	1-22
1.8 Procedure for Bond Reduction Motion	1-22
A. Who Hears the Motion	
B. Uncontested Bond Reductions	
C. Contested Bond Hearings	
D. Successive Motions	
1.9 Post-Release Issues	1-25
A. Modification of Pretrial Release Conditions	
B. Consequences of Violation of Conditions	
C. Consequences of Failure to Appear	
D. Orders for Arrest	
E. Bond Forfeitures	
F. Surrender by Surety	
G. Return of Security	
H. Post-Release Issues Affecting Noncitizen Clients	
1.10 Release Pending Appeal	1-32
A. Appeal from District Court Conviction	
B. Appeal from Superior Court Conviction	
1.11 Dismissal as Remedy for Violations	1-35
A. Impaired Driving Cases	
B. Domestic Violence Cases	
C. Other Holds	
Appendix 1-1: Interview Checklist for Bond Hearing	1-46

Sections 15A-531 through 15A-547.1 of the North Carolina General Statutes (hereinafter G.S.) contain the basic provisions on pretrial (and posttrial) release for criminal charges. *See also* G.S. 15A-1345(b), (b1) (release conditions in probation cases). Subject to these general requirements, local policies and practices may vary. *See* G.S. 15A-535(a) (senior resident superior court judge, in consultation with chief district court judge or all district court judges in district, must issue pretrial release policies for each county in judicial district); *see also State v. Harrison*, ___ N.C. App. ___, 719 S.E.2d 204 (2011) (district court judge did not err by *not* following administrative order issued by senior resident superior court judge on pretrial release conditions where superior court judge did not consult with district court as required by G.S. 15A-535(a)).

In many instances, prosecutors may not oppose the setting of pretrial release conditions that your client can meet. At other times, defense counsel must overcome the prosecutor’s or court’s resistance to a bond reduction. For sample bond reduction and other pretrial release motions,

consult the motions bank for non-capital cases on the IDS website, www.ncids.org (select “Training & Resources,” then “Motions Bank, Non-Capital”).

Conditions of pretrial release are set by judicial officials. *See* G.S. 15A-532(a). Typically, conditions are set by a magistrate or a district or superior court judge, but the term judicial official also includes clerks and appellate judges and justices. *See* G.S. 15A-101(5). There are certain situations, discussed in this chapter, in which only a specific judicial official is authorized to set conditions.

For a discussion of preadjudication custody in juvenile delinquency cases, see NORTH CAROLINA JUVENILE DEFENDER MANUAL Ch. 8 (Custody and Custody Hearings) (UNC School of Government, 2008), *available at* www.ncids.org (select “Training & Resources,” then “Reference Manuals”).