

The rule

- ◊ Hold the initial appearance without unnecessary delay. G.S. 15A-511.
- ◊ Advise of charge
- ◊ Advise of rights
- ◊ Set pretrial release conditions

The exceptions

- ◊ ONLY when required by
 - ◊ Statute
 - ◊ Court order

Categories of exceptions

- ◊ Delay initial appearance altogether
- ◊ Hold initial appearance but ...
 - ◊ delay setting PTR conditions
 - ◊ delay release after setting PTR conditions
 - ◊ deny PTR conditions
 - ◊ set certain PTR conditions only

Delay initial appearance

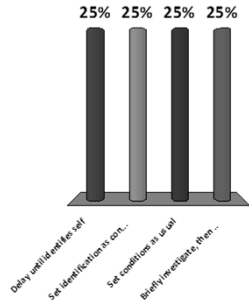
- ◊ Rationale
 - ◊ Impossible to communicate with person because too unruly, too drunk, too unconscious, unable to understand English

More on delays

- ◊ The defendant is before you, has no identification, and refuses to identify himself.
 - ◊ How should you proceed?

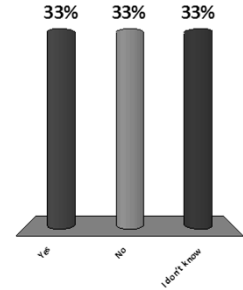
How should you proceed?

1. Delay until identifies self
2. Set identification as condition
3. Set conditions as usual
4. Briefly investigate, then do 2. or 3.



Can you delay if the defendant is not a citizen?

1. Yes
2. No
3. I don't know



Hold initial appearance, but delay setting PTR conditions

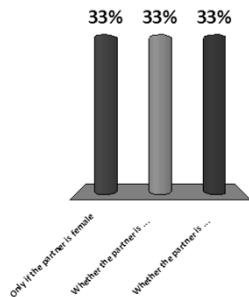
- o Rationale
 - o During first 48 hours after arrest, only a judge should set PTR conditions

Delay setting PTR conditions

- o You determine pretty quickly that the defendant is Johnny Jones and he is a citizen; you hold his initial appearance and set conditions. He makes the conditions and, when he gets out, returns home and assaults his live-in partner, with whom he has been living as if married. Jones is arrested for assault and returned to you.
 - o Do you delay setting PTR conditions under the "48-hour" law?

DV delay?

1. Only if the partner is female
2. Whether the partner is male or female
3. Whether the partner is male or female if there's a DVPO

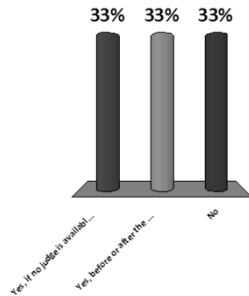


More DV

- o Johnny is resting uncomfortably in jail. You learn that Johnny is calling his partner from jail.
 - o May you set as a pretrial release condition that Johnny not contact his partner while in jail?

No-contact condition in jail?

1. Yes, if no judge is available after 48 hours
2. Yes, before or after the 48-hour hold
3. No



Hold initial appearance, set PTR conditions, but delay release

- o Rationale
 - o In impaired driving cases, to protect person from injuring others and self
 - o In testing cases, to obtain information that may protect public health and safety

Delay release

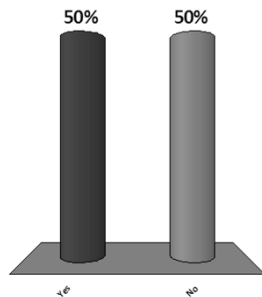
- o Johnny makes the PTR conditions you set in the DV case. Not having had a drink for awhile, Johnny knocks back several and is stopped for impaired driving. He blows a .21, is arrested, and is back before you.
- o You conclude that he may hurt himself or others if released immediately. However, you think . . .

DWI (cont'd)

- o . . . the whole impaired driving procedure is a pain in the neck. You have to get the guy to the jail, bring him back to check on his impairment, fill out a bunch of forms, blah, blah, blah.
- o Can you just set a \$1,000 secured bond, which will convert to \$1,000 unsecured after 8 hours when the guy will have sobered up?

"Convertible" bonds

1. Yes
2. No



Hold initial appearance, but deny any PTR conditions

- o Basic rationale
 - o Some people should not be released
- o Offense is extremely serious or person is extremely dangerous
 - o Ex., capital offense, certain drug offenses, certain offenses with a firearm
- o Offender belongs to another system
 - o Ex., out-of-state probationer, military deserter, person has been involuntarily committed

Certain offenses, certain circumstances

- Firearms
 - (i) charge is felony or A1 misdemeanor involving firearm **and** (ii) person is either on pretrial release for such an offense or has prior conviction for such an offense
- Drug trafficking
 - (i) charge is drug trafficking **and** (ii) person was on pretrial release for another offense **and** (iii) person has prior conviction for trafficking offense **and** (iv) not more than five years have passed since conviction of that offense or release from prison, whichever is later

More offenses, circumstances

- Methamphetamine
 - (i) charge is manufacturing or possessing/distributing precursor chemical for manufacturing **and** (ii) person is dependent on meth or has pattern of regular illegal use AND offense was committed to maintain dependency/use
- Gangs
 - (i) charged offense was for benefit of street gang **and** (ii) person was on pretrial release for any other offense **and** (iii) person has prior conviction for gang offense **and** (iv) not more than five years have passed since conviction of that offense or release for that offense, whichever is later

Hold initial appearance, but set certain PTR conditions

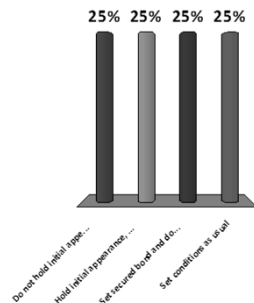
- Rationale
 - These are appropriate minimum conditions under the circumstances

Violations of pretrial release

- After making bond, Johnny goes to his partner's workplace in violation of a pretrial release condition not to have contact with the victim. The police are called, and they arrest Johnny without a warrant violating a PTR. He has already appeared in court on the DV case.
 - How should you proceed?

PTR violation

1. Do not hold initial appearance; he's already been in court
2. Hold initial appearance, but deny release
3. Set secured bond and double it (or \$1,000 if no prior bond)
4. Set conditions as usual



Secured, minimum bonds

- Set secured bond in at least twice the amount of previous bond (or \$1,000 if no previous bond)
 - (i) person has failed to appear **and** (ii) has been arrested on order for arrest or surrendered by surety
 - If OFA "recommends" amount, set that amount
 - (i) person commits new offense **and** (ii) was on pretrial release for any prior offense

Probation Cases

◦ Covered cases

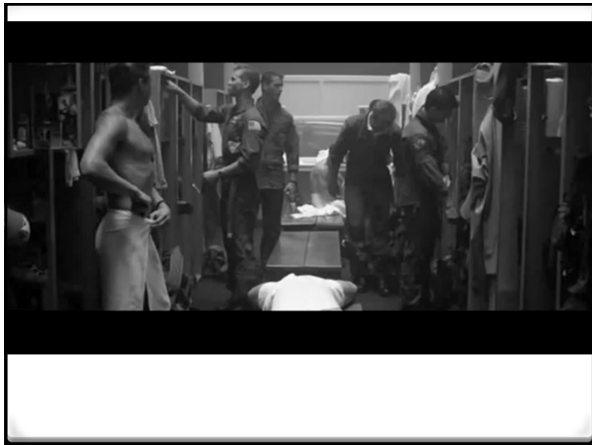
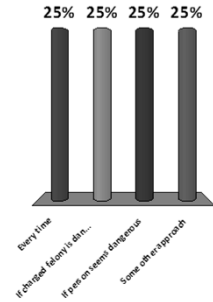
1. Felony by person on probation
2. Probation violation by person with pending felony charge or subject to sex offender registration

◦ Four choices

- Set conditions as usual . . . if not a danger
- Delay setting conditions . . . if insufficient information
- Set secured bond or EHA/secured bond only . . . if danger and category 1
- Deny release . . . if danger and category 2

On felony charge, when should you check probation status?

1. Every time
2. If charged felony is dangerous
3. If person seems dangerous
4. Some other approach



In these cases, I . . .

1. Always find dangerousness
2. Always find insufficient information
3. Always find no danger
4. Decide each case on its facts

