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The rule

- o Law enforcement “must” take arrested person without unnecessary delay before a magistrate, and magistrate “must” inform the defendant of charges, rights, and conditions of release. *See* 15A-511.
- o A defendant charged with a noncapital offense “must” have conditions of pretrial release determined in accordance with 15A-534. *See* 15A-533(b).

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The exceptions

- ONLY when required by
 - Statute
 - Court order

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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
- Kahoot!

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Delay initial appearance

- o Rationale
 - o Impossible to communicate with person because too unruly, grossly intoxicated, unconscious, or unable to understand procedural rights

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Delay initial appearance

- o The defendant is very drunk. He keeps falling asleep as you're trying to hold his initial appearance for drunk and disruptive and eventually is so out of it that he can't be woken up.
 - o If you delay the initial appearance for the defendant because he's drunk and unconscious, should you set a maximum time for the delay and, if so, how long?
 - o KAHOOT

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More on delays

- o You delay the initial appearance because the defendant was unconscious. When he is back before you, he has no identification and refuses to identify himself.
 - o How should you proceed?
 - o KAHOOT

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And more on delays

- o Suppose the person was arrested on an electronic hit for a warrant from another county but you are not able to print the paperwork.
 - o Can you delay the initial appearance and/or the setting of pretrial release conditions until you get the paperwork?
 - o KAHOOT

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And even more on delays

- Suppose the person before you is not a citizen. You believe that ICE may put a hold on him/pick him up
 - Can you delay the initial appearance and/or the setting of pretrial release conditions for that reason?
 - KAHOOT

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Hold initial appearance, but delay setting conditions

- Applies mainly to DV charges under GS 15A-534.1
- Rationale
 - During first 48 hours after arrest, only a judge should set PTR conditions

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Delay setting PTR conditions

- o You determine that the defendant is John Jones (who is a citizen), and 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?
- o KAHOOT

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Why the “48 hour” law applies

- o Constitutional implications
- o Policy considerations
- o Statutory language
 - o If violation of DVPO
 - o If “living together as if married”
 - o If in “dating relationship” as defined in G.S. 50B-1(b)(6)

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“Dating relationship” as defined in G.S. 50B-1(b)(6)

- o To get a DVPO, the people must be in a “personal relationship”
 - o A “personal relationship” includes people of the opposite sex who are or have been in a dating relationship
 - o A “dating relationship” means people who are romantically involved over time and on a continuous basis
- o To be subject to the 48 hour law, the people need only be in a “dating relationship”

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More DV

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

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State v. Mitchell

259 N.C. App. 866 (2018)

North Carolina Criminal Law

A UNC School of Government Blog

Does a No Contact Order Apply While the Defendant Is in Jail?

Posted on Jun. 6, 2018, 12:38 pm by Shea Denning



SEARCH

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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

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Delay release

- o John 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 .16, is arrested, and is back before you.
- o You conclude that he may hurt himself or others if released immediately. However, you think . . .

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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 Instead, can you just set a high secured bond, which will automatically convert to an unsecured bond (or lower secured bond) after 8 hours when the guy sobers up?
- o KAHOOT

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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 (preventive detention)
 - o Capital offenses
 - o Certain drug trafficking offenses, meth offenses, gang offenses, offenses with a firearm, probation violations by person with pending felony or subject to sex offender registration
- o Offender belongs to another system
 - o Ex., out-of-state probationer, military deserter, person who has been involuntarily committed, fugitive, PRS violator

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Firearm Detention Bonds 15A-533(f)

- o Rebuttable presumption that no condition of pretrial release will assure appearance or safety of community if . . .
 - o charge is felony or Class A1 misdemeanor with firearm and one of following circumstances exist . . .
 - o defendant is on pretrial release for such an offense, or
 - o less than 5 years have passed since prior conviction or release for such an offense, whichever is later

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Firearm Detention Bonds

- o After making bond, John goes to his partner's workplace in violation of a pretrial release condition not to have contact with the victim. In addition to arresting Johnny for violating a pretrial release condition, the police arrest the VICTIM for possessing a firearm after having been convicted of a felony (embezzlement from 4 years ago).
- o What do the special firearm detention statutes require in setting pretrial release conditions for the VICTIM?
- o KAHOOT

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General Detention Bonds

- o Bill Davis is charged with multiple counts of sexual exploitation of a minor involving possession of child pornography. He has no prior convictions of any kind. None of the specific preventive detention statutes (the ones authorizing you to deny bond) apply to his case, but you think he should stay in jail.
- o Can you set a high bond (ex., \$500,000) to make sure the defendant stays in jail?
- o KAHOOT

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Hold initial appearance, but set certain PTR conditions

- o Rationale
 - o These are appropriate minimum conditions under the circumstances
 - o Ex., doubling statutes
- o No KAHOOT

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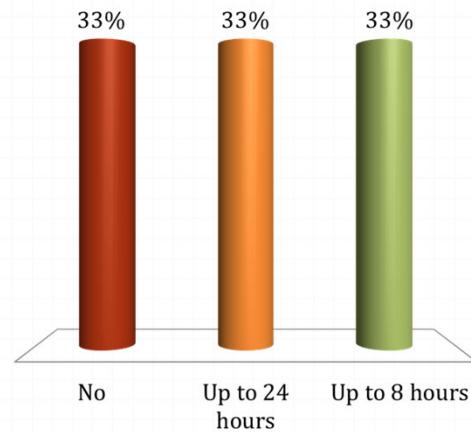
Final Takeaways

- o Default is to set conditions
- o Delay or deny release, or set specific conditions, if statute or judge authorizes it

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Should you set a maximum?

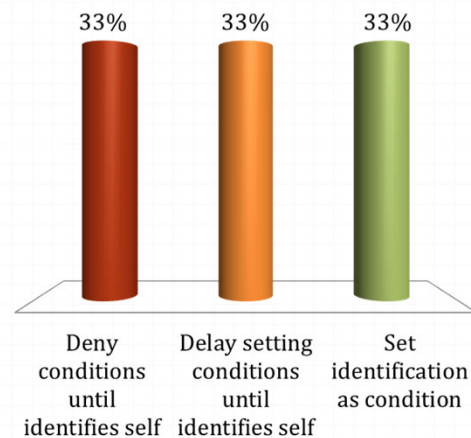
1. No
2. Up to 24 hours
3. Up to 8 hours



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How should you proceed if the person refuses ID?

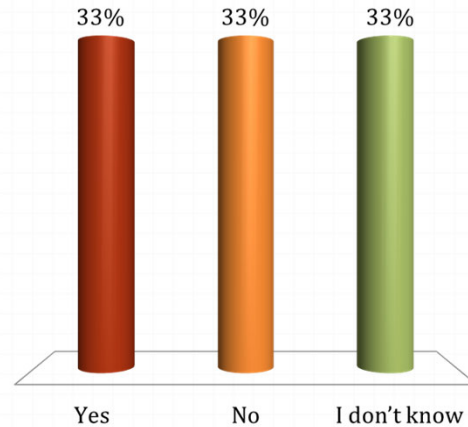
1. Deny conditions until identifies self
2. Delay setting conditions until identifies self
3. Set identification as condition



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Can you delay if the defendant is not a citizen?

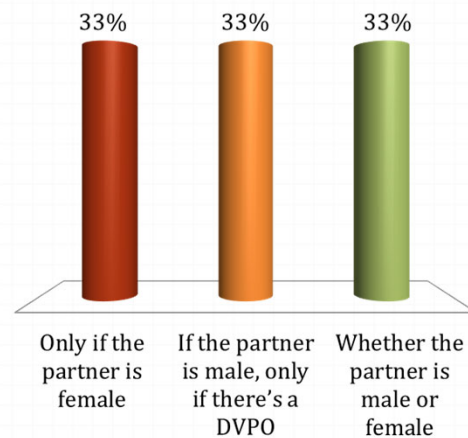
1. Yes
2. No
3. I don't know



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DV delay?

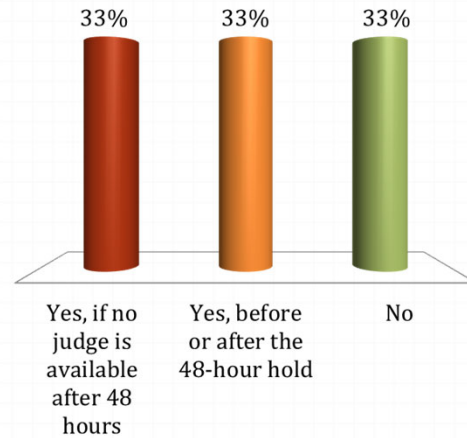
1. Only if the partner is female
2. If the partner is male, only if there's a DVPO
3. Whether the partner is male or female



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No-contact condition in jail?

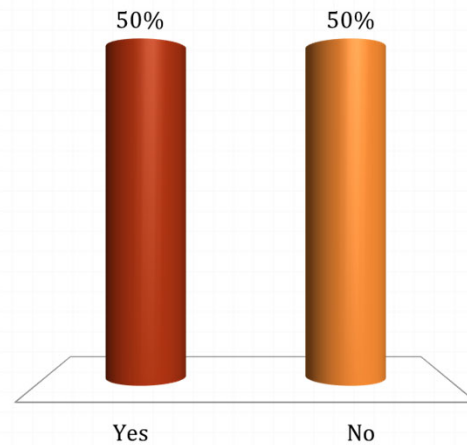
1. Yes, if no judge is available after 48 hours
2. Yes, before or after the 48-hour hold
3. No



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“Convertible” bonds

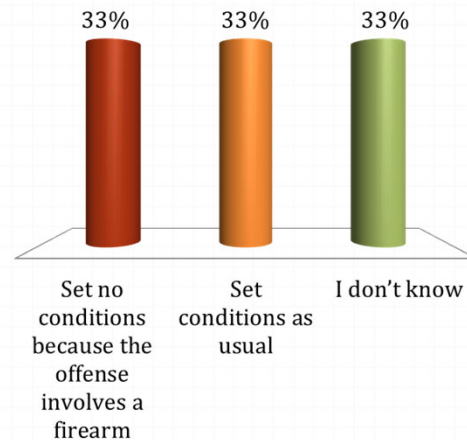
1. Yes
2. No



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Firearms

1. Set no conditions because the offense involves a firearm
2. Set conditions as usual
3. I don't know



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Certain offenses, certain circumstances

- o Firearms
 - o (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
- o Drug trafficking
 - o (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

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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

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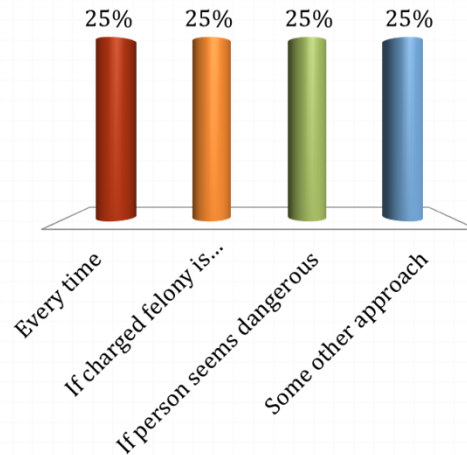
Probation Cases

- 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

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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



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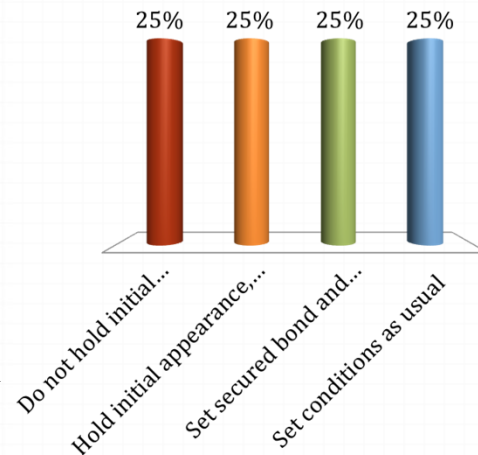
Violations of pretrial release

- o Remember John Jones? The police arrested him for violating a PTR condition not to contact his partner. John has previously had his first appearance in court on the underlying DV charge.
- o How should you proceed?

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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



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Secured, minimum bonds

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

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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

