

# Initial Appearances

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Tuesday, August 20, 2024

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WRITE  
DOWN the  
steps to take

- Ensure that the defendant can see and hear you
- Determine validity of arrest
  - If warrantless, determine probable cause
  - If with warrant, verify that it's still good
- Inform the defendant of rights
- Appoint counsel if authorized by chief district judge
- Set pretrial release conditions in accordance with law
- Set court date

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## See and Hear

Because of concerns about the re-emergence of COVID, law enforcement does not want to bring arrested people to your office for an initial appearance. They want to appear alone, provide you with the information, and have you proceed.

- Is that permissible? *See 7A-49.6*

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## Arrests

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## Arrests without Warrant

LEO Jones makes a warrantless arrest of Smith.

- If you find probable cause, what process should you issue? *See 15A-511(c)(3)*
- If you find no probable cause, what should you do? *See 15A-511(c)(2)*

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## Arrests with Warrant

LEO Jones arrests Smith based on an electronic hit for an outstanding warrant but does not have the warrant in hand.

- What do you do?

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## Arrests with Warrant

Suppose you cannot print out the paper warrant for an arrest based on an electronic hit.

- What then?

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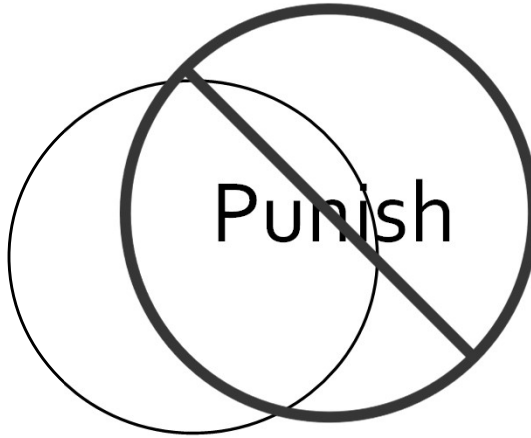
## Pretrial Release

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## The Purpose of Pretrial Release?



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## Forms of Pretrial Release

1. Written promise
2. Unsecured bond
3. Custody release
4. Secured bond
5. Electronic house arrest with secured bond

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## The Law's Purpose

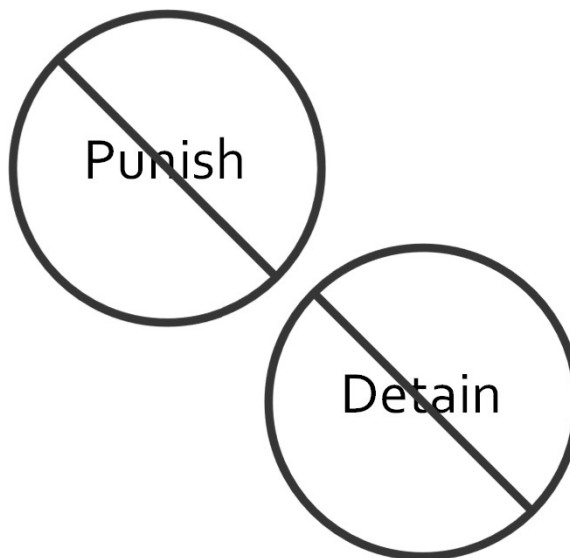
"The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless he determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses." G.S. 15A-534(b).

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## Another Purpose of Pretrial Release?



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### Ability to Pay

- "In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the . . . defendant's family ties, employment, financial resources, character, and mental condition . . . ."  
G.S. 15A-534(c).

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## Conditions of Pretrial Release

- Permissible conditions of pretrial release
- Effect of violations
  - You may issue OFA before first appearance
  - A violation alone is not a new offense
  - If officer makes warrantless arrest, set new release terms

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## Three Types of Security

- Cash
- Property bond (accommodation bond)
- Commercial bond

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## Cash Bonds

- Anyone can post cash
- If a family member or friend posts cash, determine their intent

### Posting a Cash Bond: Who Gets the Money After a Defendant's Case is Complete?



June 17, 2024 [Brittany Bromell](#)

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## Property Bonds

- Local policy determines
  - whether a security instrument or mortgage is required
  - whether split bonds are permissible

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## Commercial Bonds

- Commercial bond may be professional or insurance
- Both are as good as cash in most cases

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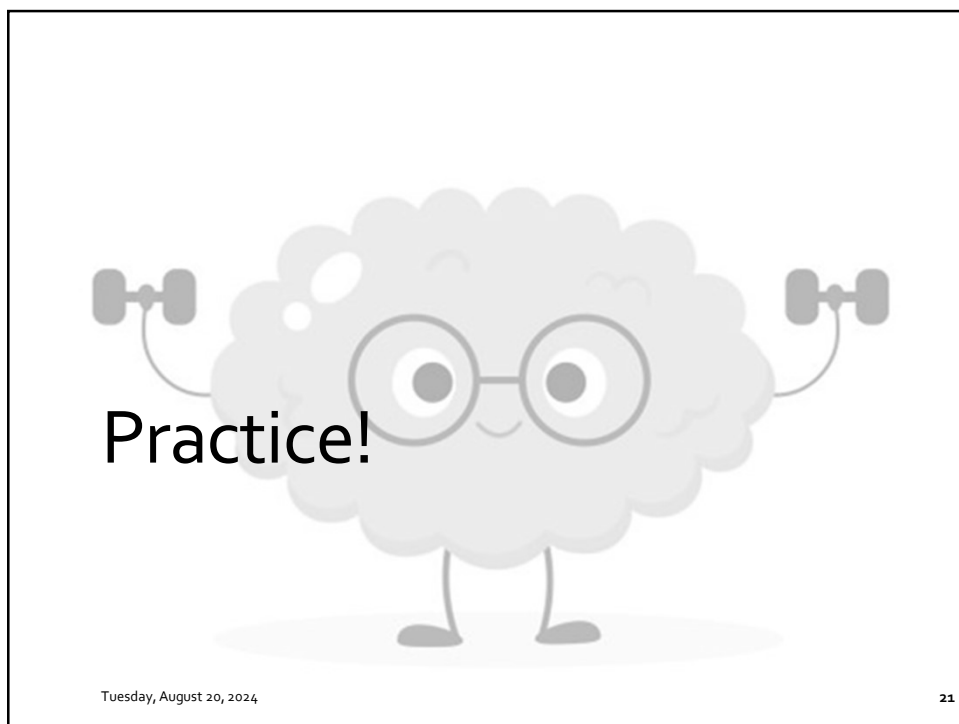
## Cash-Only Bonds

- In child support contempt cases, cash-only bonds are permissible.
  - Are cash-only bonds permissible for offenses that do not involve child support contempt?

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## Exceptions and Restrictions

- Rule
  - Following arrest, hold the initial appearance and set pretrial release conditions without unnecessary delay
- Except
  - When required by statute or court order

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North Carolina  
Magistrates' Guide To

Pretrial  
Release



Initial Appearance



Pretrial Release Conditions



Release

## Exceptions and Restrictions

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- Delay initial appearance
- Hold initial appearance but delay setting PTR conditions
- Hold initial appearance, set PTR conditions, but delay release
- Hold initial appearance but deny PTR conditions
- Hold initial appearance but set certain PTR conditions only

## Exceptions and Restrictions

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## Question 1

Johnny Jones 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.

Can you delay the initial appearance?

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## Question 2

Johnny has sobered up long enough to have his initial appearance and make his PTR conditions. When he gets out, he promptly goes to his favorite bar, has a few too many, and gets into a fight. Johnny is arrested for misdemeanor assault and is returned to you.

Can you set pretrial release conditions?

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48-hour  
defendants

### GENERAL RULE:

- If a defendant is arrested for a new offense allegedly committed while the defendant was on pretrial release, a judge must set PTR conditions within 48 hours of arrest

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## 48-hour defendants

### EXCEPTION:

- If the new offense is a violation of G.S. Chapter 20 EXCEPT
  - impaired driving, G.S. 20-138.1;
  - habitual impaired driving, G.S. 20-138.5;
  - impaired driving in a commercial vehicle, G.S. 20-138.2;
  - operating a commercial vehicle after consuming alcohol, G.S. 20-138.2A;
  - operating a school bus, school activity bus, child care vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle after consuming alcohol, G.S. 20-138.2B; and
  - death or injury by vehicle, G.S. 20-141.4.
- Then, a magistrate may set conditions at any time

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## 48-hour defendants

If a judge does not set conditions within 48 hours after arrest of a defendant who is arrested for a new offense allegedly committed while the defendant was on pretrial release, then a magistrate may set conditions.

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## Important notes

- Applies for offenses committed on or after October 1
  - If offense occurred before then, magistrates set conditions as normal
- Does apply to defendants who were on PTR before October 1
  - Not looking at date of PTR, looking at date of offense
- Magistrate may set conditions if D on PTR is arrested for failing to appear

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## Question 3

Mary Martin is arrested for driving while impaired. While she seems to be alert and coherent as she's standing before you for the initial appearance, the arresting officer informs you that she blew a .18 at the scene a mere 45 minutes ago.

Can you set pretrial release conditions?

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### 3. Hold I/A, Set PTR Conditions, but Delay Release

- Mainly for impaired driving offenses
- Also available for AIDS or hepatitis B testing in nonsexual cases

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### Question 4

Paul Parker is arrested on an outstanding warrant and brought before you for an initial appearance. You realize that the warrant was issued in another county.

Can you set pretrial release conditions?

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## Improper Reasons to Delay or Deny PTR

- Noncitizen arrests
- Arrests for out-of-county offenses or violations
- Arrests without paperwork
- When a search of the state Division of Criminal Information network returns a “no bond” result
- When an in-state probationer or “absconder” has committed a probation violation\*

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## Statutory Denials of PTR

- Some offenses always must be decided by a judge
  - List of high-level felony offenses in G.S. 15A-533(b)
- Some defendants belong to other systems
  - For example, post-release supervision (PRS) violations

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Right to  
pretrial  
release for  
defendants  
charged with  
high level  
felonies

- Previously: Only offense for which a magistrate could not set pretrial release under any circumstance was first-degree murder.
- Judge had discretion to determine whether a defendant charged with first degree murder may be afforded pretrial release.

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Expanded list:

- First and second-degree murder, G.S. 14-17, and attempts to commit those offenses.
- First and second-degree kidnapping, G.S. 14-39.
- First-degree forcible rape and sexual offense, G.S. 14-27.21; G.S. 14-27.26.
- Second-degree forcible rape and sexual offense, G.S. 14-27.22; G.S. 14-27.27.
- Statutory rape of and sexual offense with a child by an adult, G.S. 14-27.23; G.S. 14-27.28.
- First-degree statutory rape and sexual offense, G.S. 14-27.24; G.S. 14-27.29.
- Statutory rape of and sexual offense with a person 15 years old or younger, G.S. 14-27.25; G.S. 14-27.30.
- Human trafficking, G.S. 14-43.11.
- Assault with a deadly weapon with intent to kill inflicting serious injury, G.S. 14-32(a).
- Discharging barreled weapons or a firearm into occupied property, G.S. 14-34.1.
- First-degree burglary, G.S. 14-51.
- First-degree arson, G.S. 14-58.
- Armed robbery, G.S. 14-87.

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### Statutory Denials in Some Circumstances

- If specific statutory criteria are met, there is a rebuttable presumption that no pretrial release conditions are appropriate
  - Drug trafficking
  - Gang offenses
  - Firearm offenses
  - Methamphetamine offenses

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### Rebuttable Presumption for Firearm Offenses

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

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## Question 5

Ashley Adams missed her last court date and an order for arrest was issued. Ashley is arrested on the OFA and brought before you.

- Can you set pretrial release conditions?
- What conditions can you set?

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## 5. Hold I/A, but Set Certain PTR Conditions Only

- Mandatory “doubling” scheme after failure to appear
- Discretionary “doubling” scheme for new offense while on pretrial release
  - But after Oct. 1, 2023, only after 48 hours without judge

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<p>Felony by person on probation</p> <ul style="list-style-type: none"> <li>• If danger, secured bond only</li> <li>• If not danger, set conditions</li> <li>• If insufficient information, delay setting conditions</li> </ul>	<p>Probation violation by person with pending felony or s/o registration</p> <ul style="list-style-type: none"> <li>• If danger, deny release</li> <li>• If not danger, set conditions</li> <li>• If insufficient information, delay setting conditions</li> </ul>
<h2>A Mix of Exceptions and Restrictions</h2>	
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