



PRETRIAL INTEGRITY ACT

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S.L. 2023-75, p.12-13
Pretrial Integrity Act

- Effective October 1, 2023
- Two distinct statutes affecting pretrial release
 - Right to pretrial release for defendants charged with high level felonies
 - 48-hour defendants



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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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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.



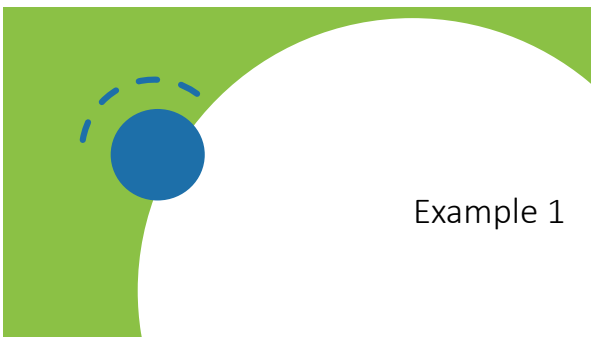
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Important notes

- 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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Example 1

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Defendant is arrested for misdemeanor larceny and released on PTR on August 15. On October 3, defendant is arrested for first degree trespass.

What do you do as the magistrate?

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Defendant is arrested for misdemeanor larceny and released on PTR on August 15. On October 3, defendant is arrested for first degree trespass.

What do you do as the magistrate?

Conduct the initial appearance, but do not set conditions of release. Order that the defendant be taken to the first available court session in the county and that the person be returned to a magistrate if a judge does not set PTR conditions within 48 hours.

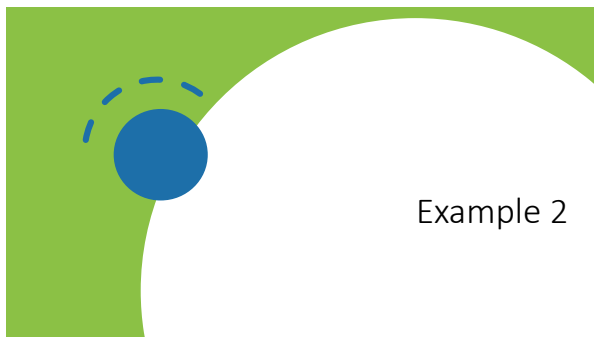
Why?

Defendant was on PTR for a pending proceeding and was arrested for a new offense allegedly committed while on PTR.

Example 1

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Example 2

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Defendant is arrested for misdemeanor larceny and released on PTR on August 15. On October 3, defendant is arrested for speeding to elude arrest.

What do you do as the magistrate?

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Defendant is arrested for misdemeanor larceny and released on PTR on August 15. On October 3, defendant is arrested for speeding to elude arrest.

What do you do as the magistrate?

Conduct the initial appearance and set conditions of release.

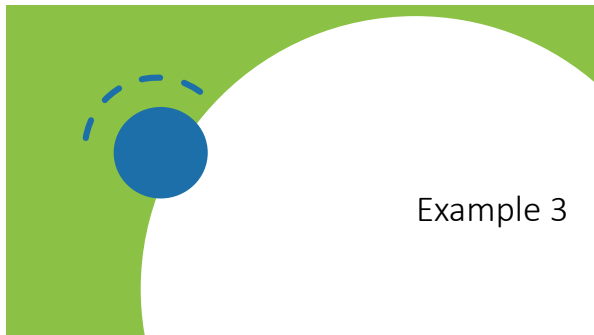
Why?

Defendant was on PTR for a pending proceeding and was arrested for a new offense allegedly committed while on PTR, BUT new offense was a Chapter 20 offense not specifically excluded

Example 2

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Example 3

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D is arrested for burglary and released on PTR on 9/25. D's first appearance is scheduled for 10/2. D fails to appear in court for the first appearance, and an order for arrest issued. D is arrested and brought before you for failing to appear.

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Defendant is arrested for burglary and released on PTR on September 25. Defendant's first appearance is scheduled for October 2. Defendant fails to appear in court for the first appearance, and an order for arrest issued. Defendant is arrested and brought before you for failing to appear.

What do you do as the magistrate?

Conduct the initial appearance and set conditions of release in accordance with OFA or with G.S. 15A-534(d1).

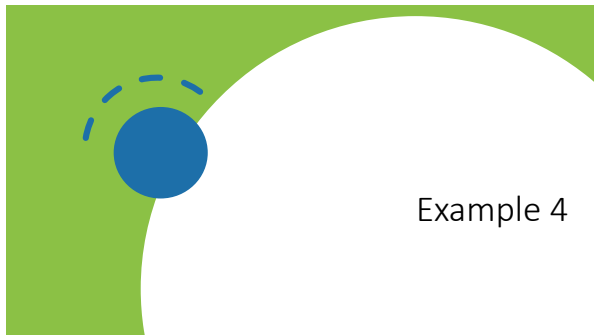
Why?

Although defendant was on PTR, defendant was not arrested for a new offense

Example 3

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Example 4

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Defendant is arrested for misdemeanor larceny and released on PTR on August 15. On October 3, defendant is arrested for first degree kidnapping.

What do you do as the magistrate?

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Defendant is arrested for misdemeanor larceny and released on PTR on August 15. On October 3, defendant is arrested for first degree kidnapping.

What do you do as the magistrate?

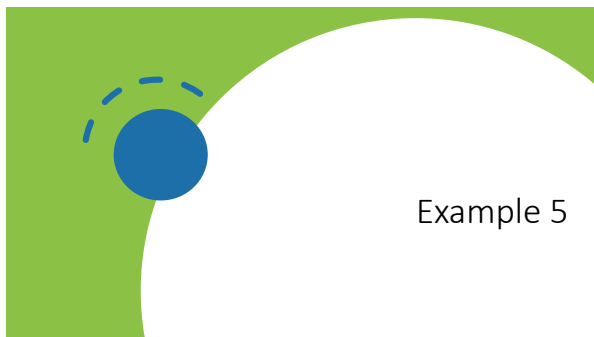
Conduct the initial appearance, but do not set conditions of release.

Why?

After October 1, only a judge may set conditions of release for first-degree kidnapping.

Example 4

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Example 5

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Defendant is arrested for possession of marijuana and released on PTR on 9/1. A warrant is issued for the defendant's arrest on 9/30 for obtaining property by false pretenses. The defendant is arrested and brought before a magistrate on 10/25.

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Defendant is arrested for possession of marijuana and released on PTR on September 1. A warrant is issued for the defendant's arrest on September 30 for obtaining property by false pretenses. The defendant is arrested and brought before a magistrate on October 25.

What do you do as the magistrate?

Conduct the initial appearance and set conditions of release.

Why?

Defendant is arrested for a new offense allegedly committed while the defendant was on pretrial release BUT offense was committed on September 30, so new PTR law wasn't effective yet

Example 5

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Suggested procedures for magistrates

<p>1</p> <p>Ensure arrest isn't for one for the newly listed offenses</p>	<p>2</p> <p>Conduct a CILEADS* search to determine whether D has any pending criminal proceedings</p>	<p>3</p> <p>Determine whether D was out on PTR</p> <ul style="list-style-type: none"> • If a pending criminal proceeding was initiated by summons, D would not have been out on PTR, and magistrate may set conditions as normal
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PTIA and probation violations

D on PTR + OFA for probation violation → magistrate set conditions of release
• Probation violation is not new offense

D on PTR + warrant for offense probation violation is based on → judge set conditions of release
• New offense being charged

D on PTR for probation violation + arrest for new offense → judge set conditions of release
• D with pre-hearing conditions of release for a probation violation proceeding is on "pretrial release"

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PTR more generally

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UNC SCHOOL OF GOVERNMENT

North Carolina Magistrates' Guide To

Pretrial Release

- Initial Appearance
- Pretrial Release Conditions
- Release

Brittany Bromell

Guiding Principles

Initial Appearance

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