

Initial Appearance  
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UNC School of Government

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Basic Requirements

Because of COVID-19, 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 make the necessary determinations.

- Ok? Not Ok? Ok if the Defendant is present virtually? Something else?

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Basic Requirements (cont'd)

LEO Jones makes a warrantless arrest of Smith and, pursuant to your directive, brings Smith before you (in person or via audio visual).

- What is the first determination you should make?
- Is your answer different if LEO Jones issued a citation to Smith?
- What process would you issue?

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### Basic Requirements (cont'd)

LEO Jones arrest Smith and brings him before you. LEO Jones has a warrant in hand. You therefore do not need to determine probable cause or issue process.

- What if LEO Jones arrested Smith based on an electronic hit for an outstanding warrant but does not have the warrant in hand?
- What do you do if you discover other process?

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### Basic Requirements (cont'd)

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

- Hold the initial appearance anyway? Cut the defendant loose? Park the defendant in jail until the paperwork is available? Something else?

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### Basic Requirements (cont'd)

In addition to determining probable cause and issuing process if needed, WRITE DOWN additional steps you take.

- Inform defendant of charges and rights
- Appoint counsel. Anyone? Anyone?
- Set pretrial release conditions in accordance with law
- Set court date
- Fingerprinting by LEO if required

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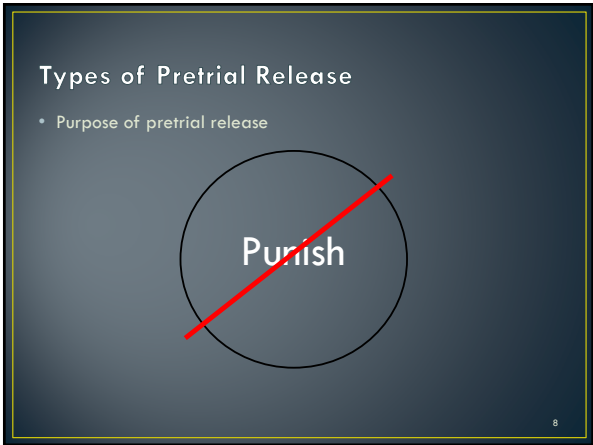
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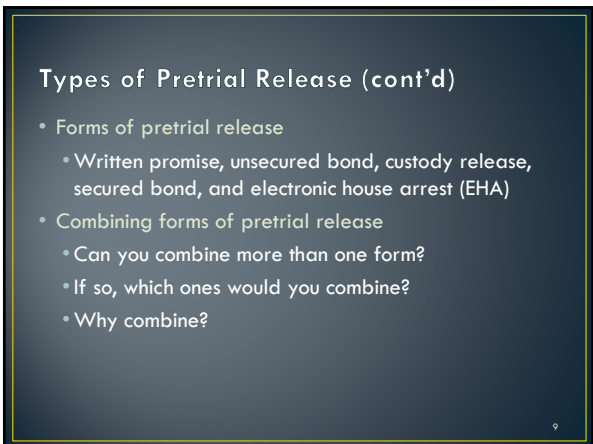
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**Types of Pretrial Release (cont'd)**

- Does the law prefer a type of pretrial release?
  - “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).
- Has use of secured bond declined?

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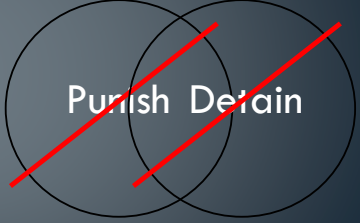
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**Types of Pretrial Release (cont'd)**

- Purpose of pretrial release



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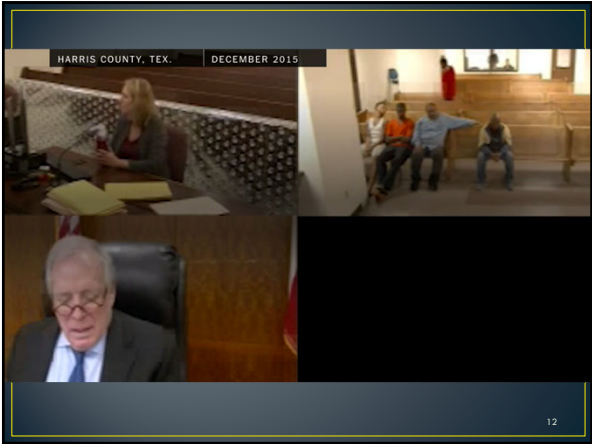
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## Types of Pretrial Release (cont'd)

- Does our law have something to say about 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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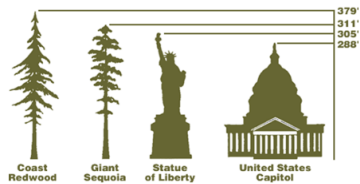
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## Why This Matters

- Your decisions "anchor" any future decisions by judges



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## Conditions of Pretrial Release

- Conditions of pretrial release
  - Can you impose conditions with any form of pretrial release?
- Effect of violation
  - Who issues OFA?
  - Is violation new offense?
  - What happens if officer arrests without OFA?

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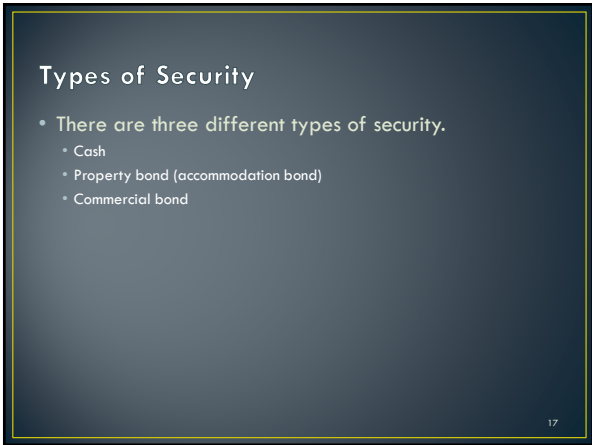
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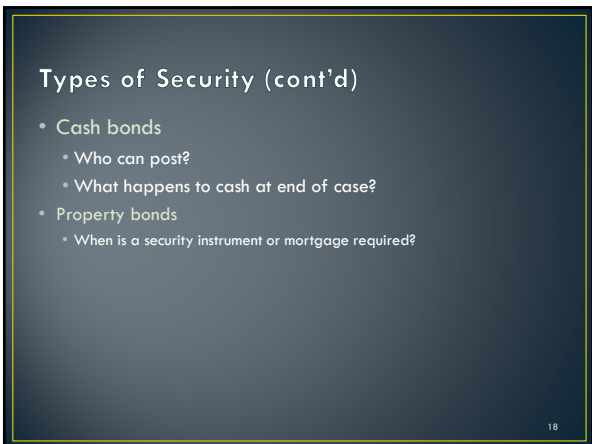
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### Types of Security (cont'd)

- Property bonds
  - When is a security instrument or mortgage required?
  - Are split bonds permissible?

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### Types of Security (cont'd)

- Commercial bonds
  - Professional and insurance bonds
  - Both as good as cash in most cases

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### Types of Security (cont'd)

- Can one type of security required instead of another (for example, cash only?)
  - Yes? No? By a judge only?

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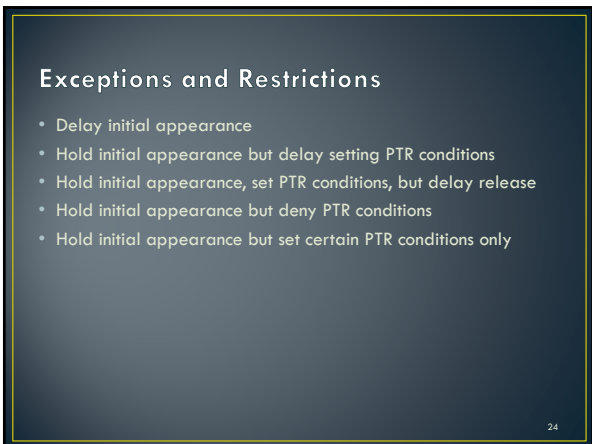
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## 1. Delay Initial Appearance

- 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 his initial appearance?

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## 2. Hold I/A, but Delay Setting PTR Conditions

- Johnny has sobered up long enough to have his initial appearance and make his PTR conditions. When he gets out, he promptly returns to where he used to live with his same sex partner, but his partner has obtained a DVPO barring him from the premises. Johnny is arrested for a DVPO violation and returned to you.
  - Can you set PTR conditions?

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## Domestic Violence Delays

- What are covered offenses?
- What is "a spouse or former spouse or a person with whom the defendant lives or has lived as if married"? G.S. 15A-534.1(a).
- What is a "dating relationship"? G.S. 50B-1(b)(6)
- What does the 48-hour requirement mean?
- What are permissible 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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### 4. Hold I/A, but Deny PTR Conditions

- Johnny is back before you after 48 hours because no judge was available (all of them were at a hunting lodge trying to retrain their dogs). The jailer says that Johnny is not a U.S. citizen and that an ICE hold has been issued.
  - Can you set PTR conditions?

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### Exceptions and Restrictions (cont'd)

- Reasons that do not justify delaying initial appearance, delaying release, or denying PTR conditions
  - Noncitizens and ICE holds
  - Paperless arrests
  - Probation hits that say no bond

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### Examples of Statutory Denials of PTR

- No PTR for certain offenses, such as capital offenses
- No PTR in certain circumstances, such as PRS violations
- Rebuttable presumption against PTR for certain offenses in certain circumstances
  - Certain drug trafficking, gang, firearm, and methamphetamine offenses in certain circumstances

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

- After failure to appear
- New offense while on pretrial release

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## Eve's Law: A Mix of Exceptions and Restrictions

### Felony by person on probation

- If danger, secured bond only
- If not danger, set conditions
- If insufficient information, delay setting conditions

### Probation violation by person with pending felony or s/o registration

- If danger, deny release
- If not danger, set conditions
- If insufficient information, delay setting conditions

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