

Initial Appearance

John Rubin  
UNC School of Government

Monday, February 22, 2021

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Basic Requirements

Because of COVID-19 concerns, law enforcement does not want to bring arrested people to your office for an initial appearance. Instead, they want to appear before you, provide you with the information, and have you make the necessary determinations.

- Is this OK?

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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 has issued a citation to Smith?

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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 do not determine probable cause and do not issue process.

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

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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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# TAKEETA

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## Types of Pretrial Release

- Purpose of pretrial release

Punish

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## Types of Pretrial Release (cont'd)

- Forms of pretrial release
  - Written promise, unsecured bond, custody release, secured bond, and electronic house arrest (EHA) with secured bond
- Combining forms of pretrial release?
  - Can you combine more than one form?
  - If so, which ones would you combine?
  - What is your goal?

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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).

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Types of Pretrial Release (cont'd)

- Purpose of pretrial release

Punish

Detain

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HARRIS COUNTY, TEX.    DECEMBER 2015



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Types of Pretrial Release (cont'd)

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

- Your decisions "anchor" any future decisions by judges

## Why This Matters

□ Your decisions "anchor" any future decisions by judges

Landmark	Height (ft)
Coast Redwood	379
Giant Sequoia	311
Statue of Liberty	305
United States Capitol	285

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13

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13

# 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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14

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## Types of Security

- True or False
  - There are three different types of security. They are:
    - Cash, property bond (accommodation bond), commercial bond

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16

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## Types of Security (cont'd)

- Cash bonds
  - Who can post?
  - What happens to cash at end of case?
- Property bonds
  - When is a security instrument or mortgage required?

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## Types of Security (cont'd)

- Commercial bonds
  - As good as cash in most cases
- Split bonds

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Types of Security (cont'd)

- Can one type of security required instead of another (for example, cash only?)
  - By you?
  - By a judge?

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TAKEETA

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Exceptions and Restrictions

- Delay initial appearance

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## Exceptions and Restrictions (cont'd)

- Hold initial appearance, but delay setting PTR conditions (DV offenses)
  - What are covered offenses?
  - What does 48-hour requirement mean?
- 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 "dating relationship" as defined in G.S. 50B-1(b)(6)?
- What are permissible conditions?
- Can you delay release beyond 48 hours?

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## Exceptions and Restrictions (cont'd)

- Hold initial appearance, set PTR conditions, but delay release (mainly, impaired driving offenses)

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## Exceptions and Restrictions (cont'd)

- Hold initial appearance, but deny PTR conditions
  - For certain offenses in certain circumstances, rebuttable presumption against release
  - Certain drug trafficking, gang, firearm, and methamphetamine offenses in certain circumstances

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## Exceptions and Restrictions: Firearms

- 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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## Exceptions and Restrictions (cont'd)

- Hold initial appearance, set PTR conditions, but in accordance with statute
  - After failure to appear
  - New offense while on pretrial release

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## Exceptions and Restrictions: Probation

### 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

27

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## Exceptions and Restrictions (cont'd)

- Reasons for not delaying initial appearance, delaying release, or denying PTR conditions
  - Probation absconders?
  - Paperless arrests?
  - Noncitizens and ICE holds?

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28

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