



Criminal Procedure for Magistrates

Jessica Smith

CONTENTS

Criminal Process and Pleadings	4
Types of Criminal Process and Pleadings	4
Issuing Criminal Process and Pleadings	4
<i>Required Determinations</i>	4
<i>Independent Determination</i>	4
Requirements of Criminal Pleadings	4
Probable Cause	5
<i>Generally</i>	5
<i>Meaning of Probable Cause</i>	5
<i>The Probable Cause Determination</i>	5
Charging Language	6
<i>Generally</i>	6
<i>Finding Charging Language</i>	6
Citation	7
<i>Statute and Forms</i>	7
<i>Defined</i>	7
<i>Who May Issue</i>	7
<i>Used Only for Misdemeanors and Infractions</i>	7
<i>Contents</i>	7
<i>Failure to Appear</i>	8
<i>Processing a Citation</i>	8
<i>Issuing a Summons or Warrant</i>	8
Criminal Summons	8
<i>Statute and Forms</i>	8
<i>Defined</i>	9
<i>Who May Issue</i>	9
<i>Used for Any Crime or Infraction</i>	9
<i>Contents</i>	9
<i>Warrant for Arrest May Issue</i>	9
<i>Failure to Appear</i>	9
Warrant for Arrest	9
<i>Statute and Forms</i>	9
<i>Defined</i>	10

Jessica Smith is a School of Government faculty member who specializes in criminal law and procedure.

<i>Who May Issue</i>	10
<i>Used for Any Crime</i>	10
<i>Contents</i>	10
<i>When Issued: Warrant versus Summons</i>	10
<i>Cross Warrants</i>	11
Magistrate's Order	11
<i>Statute and Forms</i>	11
<i>When Used</i>	11
<i>Used for Any Crime</i>	11
<i>Contents</i>	11
<i>Conversion of Citation</i>	11
<i>Magistrate's Order for Fugitive</i>	11
Order for Arrest	11
<i>Statute and Forms</i>	11
<i>Defined</i>	12
<i>Who May Issue</i>	12
<i>When Issued</i>	12
<i>Contents</i>	12
Special Problems with Issuing Process and Pleadings	12
<i>Statute of Limitations</i>	12
<i>Venue</i>	12
<i>Transmittal of Out-of-County Process</i>	13
<i>Service of Criminal Process</i>	13
Requirements for Criminal Pleadings	13
<i>Generally</i>	13
<i>Name of Defendant</i>	13
<i>Witnesses</i>	13
<i>Separate Counts</i>	13
<i>County</i>	14
<i>Offense Date</i>	14
<i>Factual Statement</i>	14
<i>Law Violated</i>	14
<i>Miscellaneous Issues</i>	14
Recall of Process	15
Conducting the Initial Appearance and Setting Conditions of Pretrial Release	15
Initial Appearance Procedure	15
<i>Timing of the Initial Appearance</i>	15
<i>Defendant's Presence</i>	15
<i>Audio and Video Transmission and Videoconferencing</i>	15
<i>Federal Offenses</i>	16
<i>Appointing Counsel</i>	16
<i>Non-English-Speaking Defendants</i>	16
<i>Initial Appearance Procedure—Generally</i>	17
<i>Initial Appearance—Implied Consent Cases</i>	19
Initial Appearance Procedure—Exceptions	21
<i>Generally</i>	21
<i>Delaying the Initial Appearance</i>	21
<i>Delaying the Setting of Conditions</i>	23
<i>Delaying Release</i>	25
<i>Denying Release</i>	28
<i>Other Cases</i>	31
Determining the Conditions of Pretrial Release	33
<i>Right to Conditions</i>	33
<i>Pretrial Release Options</i>	33
<i>Deciding Which Pretrial Release Options to Impose</i>	33

<i>Restrictions</i>	34
<i>Special Cases</i>	35
<i>Modification of Conditions</i>	37
<i>Term of the Bond</i>	37
<i>AOC Forms</i>	37
Taking Bonds	38
<i>Generally</i>	38
<i>Local Procedure</i>	38
<i>AOC Form</i>	39
<i>Unsecured Bonds—Described</i>	39
<i>Secured Bonds—Described</i>	39
<i>Types of Secured Bonds</i>	39
<i>When Cash Secures the Bond</i>	39
<i>When a Mortgage Secures the Bond</i>	40
<i>When a Surety Secures a Bond</i>	40
<i>Wrapping</i>	44
<i>Splitting</i>	44
Surrender of Defendant by Surety	44
<i>Surety's Authority to Arrest</i>	44
<i>Surrender</i>	45
<i>AOC Form</i>	45
Fugitives	45
Fugitive from Another State Before Magistrate after Warrantless Arrest	46
Fugitive Warrant	47
Fugitive from Another State Before Magistrate after Arrest on a Warrant	47
Fugitive from Another State Who Has Not Been Charged	48
Governor's Warrant	48
Fugitives from North Carolina	49
Search Warrants	49
<i>Generally</i>	49
<i>Forms</i>	49
<i>Authority to Issue</i>	50
<i>Modification</i>	50
The Application	50
<i>Generally</i>	50
<i>AOC Form</i>	50
Issuance of a Search Warrant	53
<i>Examination of the Applicant</i>	53
<i>Probable Cause Determination</i>	53
<i>Completing the Form</i>	54
Execution of a Warrant	54
<i>Forty-Eight-Hour Rule</i>	54
<i>Jurisdiction</i>	54
<i>Stating Identity and Purpose</i>	54
<i>Breaking and Entering</i>	54
<i>Notice</i>	54
<i>Scope of Search</i>	55
<i>Paperwork</i>	55
Appendix A	57

This bulletin summarizes criminal procedure for North Carolina magistrates. Coverage includes criminal process and pleadings, initial appearance, pretrial release, fugitives, and search warrants. It replaces Administration of Justice Bulletin 2007/06 and serves as the new criminal procedure text for the School of Government's Basic School for Magistrates.

Criminal Process and Pleadings

Types of Criminal Process and Pleadings

You will issue and encounter five different types of criminal process and pleadings in your daily work: citation, criminal summons, warrant for arrest, order for arrest (OFA), and magistrate's order. Other types of pleadings, including statement of charges, information, and indictment, will not be a part of your daily work, and thus they are not discussed in this bulletin.

The purpose of criminal process is to require a person to come to court. Official Commentary to Article 17 of the North Carolina General Statutes (hereinafter G.S.), Chapter 15A. When a warrant for arrest or OFA is issued, this is accomplished by taking the person into custody. When a citation or criminal summons is used, it is accomplished by ordering the person to appear in court. Most forms of criminal process also can serve as the criminal pleading (the OFA, discussed later, is the only type of criminal process that cannot serve as a pleading). Criminal pleadings have three main functions: to give the court jurisdiction to enter judgment on the offense charged, to give the defendant notice of the charges, and to allow the defendant to raise a double jeopardy defense. 238 N.C. 325.

Issuing Criminal Process and Pleadings

Required Determinations

Before issuing criminal process and pleadings, you must determine

- that probable cause exists,
- which crime(s) to charge,
- what charging language to use, and
- which type of process or pleading to issue.

This bulletin focuses on all but the second of these inquiries. New magistrates will learn more about which crime(s) to charge in their Basic School sessions on the elements of the crimes. The School of Government publication JESSICA SMITH, NORTH CAROLINA CRIMES: A GUIDEBOOK ON THE ELEMENTS OF CRIME (School of Government, UNC Chapel Hill, 6th ed. 2007) (hereinafter NORTH CAROLINA CRIMES), describes the more commonly charged North Carolina crimes.

Independent Determination

You are an independent judicial official, not an agent of law enforcement. Thus, when you determine whether to issue criminal process and pleadings, your determinations must be neutral and independent.

Requirements of Criminal Pleadings

Because the requirements for a sufficient pleading are more stringent than those for simply taking a person into custody, criminal pleadings always should be drafted to satisfy the special pleading requirements discussed below.

Probable Cause

Generally

Criminal process and pleadings require a finding of probable cause. With a citation, a law enforcement officer determines whether probable cause exists. For all of the other forms of criminal process and pleadings discussed in this bulletin, a judicial official determines whether probable cause exists.

Meaning of Probable Cause

To issue any of the forms of criminal process or pleadings discussed in this section, you must determine that there is probable cause to believe that a crime has been committed and that the person who has been arrested or who will be arrested or summoned committed that crime. Probable cause means a fair probability; the standard is not proof beyond a reasonable doubt. ROBERT FARB, ARREST, SEARCH, AND INVESTIGATION IN NORTH CAROLINA 26 (3d ed. 2003) (hereinafter ARREST, SEARCH, AND INVESTIGATION). Thus the probable cause determination is whether there is a fair probability that: (1) a crime was committed, and (2) the person arrested or to be arrested or summoned committed the crime. In order to find probable cause that an offense was committed, you must find probable cause for each element of the offense.

The Probable Cause Determination

Forms of evidence. The information establishing probable cause must be shown by one or more of the following:

- Affidavit
- Oral testimony under oath or affirmation (e.g., by a law enforcement officer or a complaining witness) before you
- Oral testimony under oath or affirmation presented by a law enforcement officer to you by means of an audio and video transmission in which both parties can see and hear each other. The procedure and equipment must be approved by the Administrative Office of the Courts (AOC), based on a submission to the AOC by the senior resident superior court judge and the chief district court judge. G.S. 15A-303(c); -304(d); -511(c). A 2009 law, S.L. 2009-270, provides for a pilot program that would allow videoconferencing for these determinations under specified conditions for individuals in the custody of the Department of Correction (DOC) or a local confinement facility. However, due to a lack of funding, the pilot program has not yet been initiated. In any event, videoconferencing already is permitted for probable cause determinations pursuant to the statutory provisions cited above.

Rules of evidence not applicable. When making a probable cause determination, you are not bound by the rules of evidence. Thus hearsay that might be inadmissible at trial may be considered, N.C. R. EVID. 1101(b), provided it is reliable.

Factors that should not be considered. When making the probable cause determination, you should not be influenced by the fact that the defendant already is in custody. Nor should you consider, as a general rule, application of the exclusionary rule (such as the legality of an arrest or search). Finally, you should not consider defenses, such as self-defense, unless all of the evidence presented clearly establishes that the defense applies.

Relevant factors. When making the probable cause determination, factors that may indicate guilt include

- eyewitness observations and other reports, including scientific evidence;
- furtive movements or attempts to hide evidence;
- resistance to officers;
- evasive and untruthful answers to questions; and
- flight by the defendant.

Credibility. *ASSESSING CREDIBILITY.* As a general rule, when assessing credibility, a witness's story is more likely to be true if he or she has no motive to lie, provides a detailed statement, and is consistent.

CITIZEN WITNESSES. Citizen witnesses are regular people who witness crime. For example, a person who saw robbers flee from a crime scene is a citizen witness. Absent some reason to doubt the credibility of a citizen witness, such as a dispute between the witness and the alleged perpetrator, you may presume that he or she is truthful.

ANONYMOUS TIPSTERS. An anonymous tip is a lead from someone whose identity is unknown. Such a tip cannot, standing alone, constitute probable cause. However, it can contribute to probable cause, if there is adequate corroboration by officers.

Sometimes people make face-to-face reports to officers, but the officer fails to obtain the person's name. In these situations, case law suggests that because the person has put his or her identity at risk, he or she should be treated more like a citizen witness than an anonymous tipster. 362 N.C. 614.

CONFIDENTIAL INFORMANTS. A confidential informant is one whose identity is known to officers but not revealed to you when the statement of probable cause is provided. So that information from a confidential informant will establish probable cause, an officer typically will provide you with facts indicating (1) the basis for the informant's information (e.g., that the informant personally observed the defendant doing the illegal act) and (2) the informant's credibility or the reliability of the information. *ARREST, SEARCH, AND INVESTIGATION* at 137–38. The second showing typically is made by facts indicating the officer's track record with the informant or that the officer corroborated the informant's information. *ARREST, SEARCH, AND INVESTIGATION* at 138.

Charging Language

Generally

Once you have identified the relevant criminal offense and that there is probable cause to charge, you must prepare the appropriate criminal process or pleading. Except for an OFA, all criminal process and pleadings issued by a magistrate—criminal summons, warrant for arrest, and magistrate's order—must include charging language.

Finding Charging Language

You can find the appropriate charging language in one of two places. When issuing criminal process through the AOC Magistrate System or NCAWARE, the charging language will appear automatically when the offense is entered on the criminal form in the computer. For magistrates who are not yet on either the AOC Magistrate System or NCAWARE and for times when the computer system is not operating, charging language can be found in the School of Government publication, *ROBERT FARB, ARREST WARRANT AND INDICTMENT FORMS* (5th ed. 2005) (hereinafter *WARRANT AND INDICTMENT FORMS*). That book indicates whether there is an AOC form for the crime; forms may be obtained through the clerk's office or on the AOC website, www.nccourts.org/Forms/FormSearch.asp. *WARRANT AND INDICTMENT FORMS* does not

include all North Carolina offenses that might be charged. If the facts presented do not fit into the charging language for the included offenses, do not force the form language to fit. Instead, modify the form language to fit the facts or draft new language. For offenses that WARRANT AND INDICTMENT FORMS does not cover, you will need to draft charging language based on the relevant statute. See pages 13–14 for general guidelines on drafting charging language. For a quick listing of most of the criminal offenses in North Carolina, you can consult the contents at the beginning of Chapter 14 in NORTH CAROLINA CRIMINAL LAW AND PROCEDURE (LexisNexis 2009) (the “red book” provided annually to all magistrates by the AOC; the books are shipped to the clerk’s office; check there if you have not received your book) or the table of contents in NORTH CAROLINA CRIMES, which the AOC provides to all magistrates.

Citation

Statute and Forms

G.S. 15A-302; AOC-CR-500 (standard citation form used by Highway Patrol, included in Appendix A); AOC-CR-501 (standard citation form used by all other law enforcement agencies); AOC-CR-502 (alcohol beverage control offenses); AOC-CR-503 (wildlife and forestry offenses); and AOC-CR-504 (railroad offenses). For all citation forms, one copy goes to each of the following: the clerk, the defendant, the Department of Motor Vehicles in traffic cases, the officer’s agency, and the officer.

Defined

A citation is a directive that a person appear in court to answer a charge. G.S. 15A-302(a).

Who May Issue

A citation is issued by a law enforcement officer or other person authorized by statute who has probable cause to believe that a person has committed a misdemeanor or infraction. G.S. 15A-302(a), (b). Magistrates do not have the authority to issue citations.

Used Only for Misdemeanors and Infractions

A citation may be used for any misdemeanor or infraction, though it is used most often for traffic cases. G.S. 15A-302(b). Legally, the citation is not limited to on-the-scene situations, and it may be issued any time a citizen provides a law enforcement officer with probable cause to believe that a defendant committed a misdemeanor or infraction. For example, an officer could use a citation to charge a person with shoplifting instead of arresting the person.

Contents

The citation must

- identify the crime charged, including the date, and where material, the property and other persons involved;
- list the name and address of the person cited, or provide other identification if that cannot be determined;
- identify the officer issuing the citation; and
- direct the person to whom the citation is issued to appear in a designated court, at a designated time and date.

G.S. 15A-302(c).

If a defendant refuses to sign a citation, it is still effective. G.S. 15A-302(d). When this happens, the officer may write “defendant refused to sign” in the space for the defendant’s signature.

If there are two charges, the officer should use the lower portion of the citation to write out the second charge (the officer should not charge two offenses on the top half of the form). If there are more than two charges, the officer should use a separate citation for every two charges. This procedure is required because each charge against a defendant must be pleaded in a separate count, G.S. 15A-924(a)(2), and the AOC uniform citation form is drafted for only two counts per form.

Failure to Appear

Because a citation is not issued by a judicial official, it is not criminal contempt under Section 5A-11(a)(3) of the North Carolina General Statutes (hereinafter G.S.) if the defendant fails to appear in court. If the defendant fails to appear in court on a citation for a misdemeanor, an OFA may be issued. G.S. 15A-302(f); -305(b)(3). If the defendant fails to appear in court on a citation for an infraction, a criminal summons may be issued. G.S. 15A-1116(b). An arrest warrant cannot be used for a failure to appear (FTA) on an infraction. If the defendant fails to appear in court when charged with an infraction in a criminal summons, then an order to show cause for contempt may be issued [but not an OFA—unless it is issued with the order to show cause under G.S. 5A-16(b)].

Processing a Citation

If an officer brings a citation to you without having arrested the person charged, there is nothing for you to do other than forward it to the clerk’s office. If the person charged has been arrested, you may want to convert the citation into a magistrate’s order as a part of the initial appearance, as discussed on page 17.

Issuing a Summons or Warrant

The fact that a citation has been issued for a misdemeanor does not prevent the later issuance of a summons or warrant for that offense. G.S. 15A-302(f). For example, suppose an officer cites a defendant for a misdemeanor and later wants to arrest the defendant. The citation cannot be used to take the defendant into custody. If the defendant is not already in the officer’s custody, an arrest warrant is needed. If the officer appears before you for an arrest warrant, the officer must swear to the facts and you should proceed under the procedures set forth below for issuing an arrest warrant. If the officer has issued a citation and has the defendant in custody, the proper process is a magistrate’s order, discussed below.

Criminal Summons

Statute and Forms

G.S. 15A-303; AOC-CR-113 (standard misdemeanor criminal summons; included in Appendix A); AOC-CR-114 (abandonment and nonsupport of spouse and nonsupport of children); AOC-CR-115 (misdemeanor worthless check); AOC-CR-140 (communicating threats); AOC-CR-144 (failure to return rental property); AOC-CR-145 (misdemeanor assault); AOC-CR-147 (injury to personal or real property); AOC-CR-916M (employment security law violation). For all criminal summons forms, one copy goes to the officer to be filed with the clerk after execution, one copy is for the clerk, and one copy is for the defendant.

Defined

A criminal summons consists of a statement of the crime or infraction charged and an order directing that the accused appear and answer the charges; it does not order a law enforcement officer to take the defendant into custody. G.S. 15A-303(a). It is based on a showing of probable cause supported by oath or affirmation. G.S. 15A-303(a).

Who May Issue

A criminal summons is issued by any person authorized to issue a warrant for arrest. G.S. 15A-303(f). Those individuals include a justice, judge, clerk, or magistrate. G.S. 15A-304(f).

Used for Any Crime or Infraction

A criminal summons legally may be used for any felony, misdemeanor, or infraction. G.S. 15A-303(a). However, because of how it is drafted, the AOC criminal summons form may not be used to charge a felony.

Contents

A criminal summons must contain a statement of the crime or infraction charged. Using the appropriate charging language, see page 6, and following the guidelines for criminal pleadings, see pages 13–14, will ensure that the summons contains a proper statement. The summons must order the defendant to appear in a designated court at a designated time and date to answer to the charges. G.S. 15A-303(d). Except for cause noted in the criminal summons by the issuing official, an appearance date may not be set more than one month following the date the summons is issued. G.S. 15A-303(d). The summons must advise the defendant that he or she may be held in contempt of court for failure to appear as directed. G.S. 15A-303(d).

Warrant for Arrest May Issue

G.S. 15A-303(e)(1) provides that the issuance of a criminal summons does not bar the later issuance of a warrant for arrest.

Failure to Appear

A defendant who fails to appear as ordered in a criminal summons may be held in contempt of court. G.S. 15A-303(e)(3). Additionally, an OFA may be issued if the offense charged is a crime (misdemeanor or felony). G.S. 15A-303(e)(2).

Warrant for Arrest***Statute and Forms***

G.S. 15A-304; AOC-CR-100 (generic warrant form; included in Appendix A); AOC-CR-102 (misdemeanor assault); AOC-CR-103 (felony breaking or entering, larceny, or possession); AOC-CR-105 (communicating threats); AOC-CR-107 (misdemeanor worthless checks); AOC-CR-108 (misdemeanor motor vehicle offenses); AOC-CR-109 (forgery and uttering); AOC-CR-110 (shoplifting); AOC-CR-111 (drug offenses). For all warrant forms, one copy is for the officer to be filed with the clerk after execution, one copy is for the clerk, and one copy is for the defendant.

Defined

A warrant for arrest consists of a statement of the crime charged and an order directing that the accused be arrested and held to answer the charges. Thus, unlike the citation and criminal summons, which merely direct an individual to appear in court to answer charges, the warrant for arrest directs law enforcement officers to arrest the accused. The warrant must be based on a showing of probable cause on oath or affirmation. G.S. 15A-304(a).

Who May Issue

A warrant for arrest may be issued by a justice, judge, clerk, or magistrate. G.S. 15A-304(f).

Used for Any Crime

A warrant for arrest may be used for any crime, whether a misdemeanor or felony. It may not be used for an infraction.

Contents

A warrant for arrest must contain a statement of the crime charged. G.S. 15A-304(c). Using the appropriate charging language, see page 6, and following the guidelines for criminal pleadings, see pages 13–14, will ensure that the warrant contains a proper statement. The warrant must direct that a law enforcement officer take the defendant into custody and bring the defendant, without unnecessary delay, before a judicial official. G.S. 15A-304(e).

When Issued: Warrant versus Summons

G.S. 15A-304(b) provides that a warrant may be used instead of or after a summons has been issued when the person needs to be taken into custody. If the person already has been taken into custody under a warrantless arrest, the proper procedure is to complete a magistrate's order, not a warrant. See the discussion of magistrate's orders below.

G.S. 15A-304(b) directs that the circumstances to be considered in determining whether the person should be taken into custody may include, but are not limited to, the following:

- Failure to appear when previously summoned
- Facts making it apparent that a person summoned will fail to appear
- Danger that the accused will escape
- Danger that there may be injury to a person or property
- Seriousness of the offense

Another factor sometimes considered is that under G.S. 15A-502, a person charged with a misdemeanor or felony may be fingerprinted upon arrest, if allowed by your local fingerprint plan adopted pursuant to G.S. 15A-1383. Issuance of a warrant will lead to an arrest; issuance of a summons will not.

Follow the local policy issued by your senior resident superior court judge or chief district court judge on whether a summons or warrant is appropriate. In the absence of a specific policy, many magistrates apply the following two guidelines:

1. A criminal summons should be used instead of an arrest warrant when the magistrate believes that the accused will appear in court without being jailed or placed under conditions of pretrial release.
2. A criminal summons should be used for most minor misdemeanors (unless the defendant might flee) and an arrest warrant should be used for all felonies.

Note that the arrest warrant provisions in G.S. 15A-304(b) state that the criminal summons is the process of first choice and that an arrest warrant only should be used when a criminal summons specifically has been ruled out. Also, note that officers often ask for a warrant when in fact they would settle for a criminal summons.

Cross Warrants

G.S. 15A-304(d) provides that a judicial official may not refuse to issue a warrant solely because a prior warrant has been issued for the arrest of another person involved in the same matter. A judicial official retains discretion to issue a criminal summons instead of an arrest warrant in these instances.

Magistrate's Order

Statute and Forms

G.S. 15A-511(c); AOC-CR-116 (generic magistrate's order form; included in Appendix A); AOC-CR-117 (shoplifting); AOC-CR-118 (felony or misdemeanor larceny or possession). For all magistrate's order forms, one copy of the form is for the clerk, and one copy is for the defendant.

When Used

A magistrate's order is used only when a defendant has been arrested without a warrant. G.S. 15A-511(c). As described in the section "Conducting the Initial Appearance and Setting Conditions of Pretrial Release," below, when a defendant is arrested without a warrant, he or she must be brought, without unnecessary delay, to a magistrate for an initial appearance. If the magistrate finds that there is probable cause to charge the defendant with a crime, the magistrate must issue a magistrate's order.

Used for Any Crime

The magistrate's order may be used for any crime, both felonies and misdemeanors. G.S. 15A-511(c).

Contents

A magistrate's order must contain a statement of the crime, as required for a warrant for arrest, and a finding that the defendant has been arrested without a warrant and that there is probable cause for his or her detention. G.S. 15A-511(c)(3).

Conversion of Citation

A citation may be converted into a magistrate's order. See page 17 for instruction.

Magistrate's Order for Fugitive

AOC-CR-909M (included in Appendix A) is the form for a magistrate's order for a fugitive. It has a different purpose than the magistrate's order discussed in this section. The magistrate's order for a fugitive form is discussed in the section "Fugitives," below.

Order for Arrest

Statute and Forms

G.S. 15A-305; AOC-CR-217 (included in Appendix A). One copy of the OFA form is filed with clerk, and one copy is for the defendant.

Defined

An OFA is an order that a law enforcement officer take a person into custody. G.S. 15A-305(a).

Who May Issue

An OFA may be issued by a justice, judge, clerk, or magistrate. G.S. 15A-305(a) and (d).

When Issued

G.S. 15A-305(b) lists all of the circumstances in which an OFA may be issued. For example, an OFA may be issued when a defendant fails to appear after being released on conditions of pre-trial release, or if he or she fails to appear as directed in a criminal summons. However, a magistrate is likely to issue an OFA only in one circumstance: when a defendant is released subject to conditions, violates those conditions, and needs to be brought back before the magistrate—but only if this happens *before* the first appearance in district court. G.S. 15A-305(b)(5); -534(e).

Contents

When a magistrate issues an OFA, the order must state why it is being issued and order an officer to take the defendant into custody. G.S. 15A-305(c).

Special Problems with Issuing Process and Pleadings**Statute of Limitations**

Misdemeanors. There is a two-year statute of limitations for misdemeanors. G.S. 15-1. This means that valid process must be issued within two years of the completion of the misdemeanor.

Felonies. There is no statute of limitations for felonies. 275 N.C. 264. This means that there is no outer limit on the time when process may be issued for a felony.

Venue

Generally. When you issue a criminal summons, arrest warrant, or OFA, it is valid throughout the state. For good reasons, however, arrest warrants (and other process) usually are issued only for crimes committed in the magistrate's own county. The reason for this informal rule is that a person will be tried (venue) in the county where the charged offense occurred. G.S. 15A-131. Thus, if a magistrate from County X issues arrest warrants for crimes committed in County Y, then the defendant and all the paperwork will need to be transferred to County Y for the trial.

Concurrent venue. G.S. 15A-131(e) states that an offense "occurs" in a county if any act constituting part of the offense occurs within the territorial limits of the county. If acts constituting part of the offense occur in more than one county (for example, worthless check, when the check is written in one county and mailed to another county), then each county has venue to conduct the trial. G.S. 15A-132(a). Put another way, the two counties have concurrent venue. If counties have concurrent venue, then the first county in which a criminal process is issued has exclusive venue. G.S. 15A-132(c).

Venue for rape or sexual offenses. G.S. 15A-136 is a special venue statute that applies when a defendant transports a person for the purpose of committing a rape, sexual offense, or sexual battery and commits one of those offenses. Under G.S. 15A-136, venue is in any county where the transportation began, continued, or ended.

Venue for initial appearance and first appearance. Although venue for initial appearance before a magistrate may be anywhere, venue for first appearance before a district court judge must be in a judicial district embracing the county where the felony occurred. G.S. 15A-131(b) and (f).

Transmittal of Out-of-County Process

As noted in the section on venue above, if a crime has been committed in your county and the defendant lives in another county, you may issue criminal process. Original process is no longer required for service in the other county; see “Initial appearance for paperless arrests” on pages 18–19. However, there may be circumstances in which you want a paper copy of the process delivered to the other county, with recommendations for conditions of release, when the initial appearance will be held there. In this case, form AOC-CR-236 (included in Appendix A) should be used. The form has a space where you may recommend conditions for release. However, this is only a recommendation, and it does not have to be followed. Be sure to include the court date in your county because the magistrate in the arresting county may not know your county’s court dates.

Service of Criminal Process

As noted on page 18, law enforcement officers are authorized to make an arrest without having the actual warrant or OFA in hand (“paperless arrests”), provided that they have knowledge that it has been issued and not executed (such as a DCI-PIN message). G.S. 15A-401(a)(2). Although the warrant or OFA—like all criminal process—must be served on the defendant, the arrest itself is valid without service. See pages 18–19 for a discussion of service of process and paperless arrests.

Requirements for Criminal Pleadings***Generally***

The citation, criminal summons, warrant for arrest, and magistrate’s order serve as the state’s pleading in certain criminal cases. The requirements for valid pleadings, set out in G.S. 15A-924, are specific and technical. It is important that you follow all of these requirements, which are discussed below, along with other helpful pleading rules.

Name of Defendant

A criminal pleading must contain the name or other identification of the defendant. G.S. 15A-924(a)(1). If the defendant’s name is unknown, you do not have to use “John Doe” as a substitute. Instead, give a detailed physical description of the defendant and his or her address, if known. If the defendant’s aliases are known, you may use them in the warrant, if done in good faith. 61 N.C. App. 589.

Witnesses

Complaining witnesses are witnesses who give testimony under oath. People who give statements that are not under oath should be listed as witnesses but not as complaining witnesses. A complaining witness can be a victim, an officer, a friend or relative of a victim, or any other person who has information about the alleged crime and gives testimony under oath.

Separate Counts

A pleading must contain a separate count for each charged offense, although allegations in one count may be incorporated by reference in another count. G.S. 15A-924(a)(2). The general rule is that a separate warrant should be used for each offense charged by a magistrate (except that some computer and preprinted AOC forms allow charging more than one offense). If all offenses occurred as part of a single, continuous transaction, they may be joined for trial in one pleading.

G.S. 15A-926(a). However, even in that situation, you should use a separate process for each offense. This procedure makes things much simpler if, for example, the defendant is convicted of two offenses in district court and appeals only one to superior court. On this issue, follow local practice.

County

Each count of the pleading must contain a statement or cross reference indicating the county in which the charged offense was committed. G.S. 15A-924(a)(3).

Offense Date

Each count of the pleading must contain a statement or cross reference indicating on or about what date the offense occurred. G.S. 15A-924(a)(4). The phrase “on or about” appears on all AOC forms. An error regarding a date in a pleading will not provide grounds for dismissal, as long as time is not of the essence to the offense charged and the error or omission did not mislead the defendant to his or her prejudice. G.S. 15A-924(a)(4).

Factual Statement

Each count must contain a plain and concise statement asserting facts supporting every element of the offense and the charge that the defendant committed the offense. G.S. 15A-924(a)(5). The offense must be charged with sufficient certainty so that the defendant may prepare a defense. G.S. 15A-924(a)(5). The standard charging language serves as this factual statement. See page 6 for a discussion on charging language.

Law Violated

Each count must cite the statute, rule, regulation, ordinance, or other provision of law alleged to have been violated. G.S. 15A-924(a)(6). The pleading will not be subject to dismissal simply because the cited statute is erroneous or even missing. G.S. 15A-924(a)(6). If a city or county ordinance violation is alleged, the pleading must cite the section number and caption (e.g., “Sec. 5-20, Letting chickens run loose prohibited”). If the ordinance is not codified, the caption must be pleaded. The last form in WARRANT AND INDICTMENT FORMS provides an example of charging language to use in this situation.

Miscellaneous Issues

Abbreviations (such as a/d/w with IK or ccw) should never be used in the charging language of the criminal pleading. The abbreviation might be clear to you, but it might not be clear to others.

If you must prepare process for an offense for which there is no standard charging language, avoid the use of the word “or.” Courts have ruled that use of this word in charging some offenses may not adequately inform a defendant of the charge.

The word “feloniously” must appear in a pleading that charges the defendant with a felony or the pleading will be defective. However, use of that word in a misdemeanor pleading will be considered harmless surplusage.

When naming businesses in criminal pleadings, refer to the formal name of the business, not its common name, that is, be sure to include inc., corp., ltd., and so forth (e.g., “Roses Stores, Inc.,” not “Roses Store”). If you have a question about the name of a North Carolina corporation, you can search for information regarding the proper name on the North Carolina Secretary of State’s website (www.secretary.state.nc.us/corporations/csearch.aspx).

For information on charging fugitives from other states, see “Fugitives,” below.

Recall of Process

Sometimes it becomes necessary to recall process, such as when you learn that the wrong person was identified as a perpetrator. Recall of process is governed by G.S. 15A-301(g). The relevant rules are summarized in Table 1, below. Unless specifically directed to do so, never recall process issued by a judge.

When you recall process, you must enter the recall into the AOC Magistrate System or NCAWARE, if the process was created in those systems, and promptly communicate the recall to each law enforcement agency that has an original or copy of the process. G.S. 15A-301(g). You do not need to communicate with those agencies if the process was created in the AOC Magistrate System or NCAWARE and the agencies have remote electronic access to those systems. G.S. 15A-301(g).

Conducting the Initial Appearance and Setting Conditions of Pretrial Release

Initial Appearance Procedure

The initial appearance is a defendant’s first contact with the judicial system. Every person who is arrested must appear before a judicial official for an initial appearance. This section describes the procedure for conducting an initial appearance. This procedure applies in all cases except those in which you are authorized to dispose of the matter under G.S. 7A-273 (magistrate can accept guilty pleas for certain infractions and misdemeanors). G.S. 15A-511(a)(2). In most cases the procedure for conducting the initial appearance is to hold it without delay, make a probable cause determination and, if you find probable cause, inform the defendant of his or her rights and set conditions of pretrial release. The next section, starting on page 21, discusses the exceptions to the procedure discussed here.

Timing of the Initial Appearance

A law enforcement officer must take a person arrested (with or without a warrant) before a judicial official *without unnecessary delay*. G.S. 15A-501(2); -511(a)(1).

Defendant’s Presence

The defendant must be present for his or her initial appearance.

Audio and Video Transmission and Videoconferencing

An initial appearance for noncapital offenses may be conducted by an audio and video transmission between the magistrate (or other judicial official) and the defendant, in which both people may see and hear each other. G.S. 15A-511(a1). If the defendant has counsel, the defendant must be allowed to communicate fully and confidentially with counsel during the proceeding. G.S. 15A-511(a1). The procedure and equipment must be approved by the AOC, based on a submission to the AOC by the senior regular resident superior court judge and the chief district court judge. G.S. 15A-511(a1).

A 2009 law (S.L. 2009-270) authorizes a pilot program for the use of videoconferencing or similar technology to conduct proceedings, including an initial appearance, for defendants in the custody of the DOC or local confinement facilities. At the time of publication, funding

Table 1. Magistrate's Recall of Process

Type of Process	Recall Allowed/ Required?	By Whom?	When?
Citation	No	No one	Never
Warrant	Required	Issuing official or person authorized to act for such official	(1) Before defendant has been served and (2) No probable cause for issuance
Summons	Required	Issuing official or person authorized to act for such official	(1) Before defendant has been served and (2) No probable cause for issuance
Order for Arrest (OFA)	Allowed	Judicial official in trial division where issued or person authorized to act for that official	(1) Before defendant has been served and (2) Good cause is shown, including that <ul style="list-style-type: none"> • a copy of the process has been served on the defendant; • all relevant charges have been disposed of; • the defendant did not commit the charged offense; or • grounds for issuing the OFA did not exist, no longer exist, or have been satisfied.

Source: G.S. 15A-301(g)

issues prevented the start of this pilot project. In any event, audio and video transmission already is authorized, as discussed above.

Federal Offenses

You may hold an initial appearance for a person arrested for a federal offense. 18 U.S.C. § 3041. Conditions of pretrial release are determined according to federal law.

Appointing Counsel

Effective July 1, 2009, magistrates who are licensed attorneys may be designated by their chief district court judge to appoint counsel pursuant to G.S. Ch. 7A, Art. 36. S.L. 2009-419. However, such magistrates may not appoint counsel for potentially capital offenses, as defined by rules adopted by the Office of Indigent Defense Services, or accept waivers of counsel. S.L. 2009-419. Any magistrate who has been so designated should get guidance from his or her chief district court judge on when the counsel appointment should be made, the procedure to be followed, and how to determine indigency.

Non-English-Speaking Defendants

When a non-English-speaking defendant is brought before you for an initial appearance, you should use the telephone interpreting services, installed by the AOC's Court Services Division, to ensure that the defendant understands the proceedings and his or her rights. At the time of publication, the Court Services Division had implemented telephone interpreting services in almost all magistrates' offices. If you need information about or training on this system, contact Brooke Bogue, Manager, Interpreting Services, AOC Court Programs and Management Services Division (tel: 919.890.1213; e-mail: brooke.a.bogue@nccourts.org).

Initial Appearance Procedure—Generally

Initial appearance for warrantless arrests. The procedure for conducting an initial appearance after a warrantless arrest is as follows:

1. Determine whether there is probable cause to believe that a crime has been committed and that the arrestee committed it. G.S. 15A-511(c)(1). The probable cause determination is discussed on pages 5–6.
2. If you find no probable cause, release the arrestee. G.S. 15A-511(c)(2). No paperwork is required for such a release, but it is a good idea to make a written record of your action.
3. If you find probable cause, issue a magistrate's order. G.S. 15A-511(c)(3).
4. To prepare the magistrate's order, use AOC-CR-116, one of the other AOC forms for specific offenses noted on page 11, or convert the citation into a magistrate's order following the procedure below. Because the magistrate's order also may be used as the criminal pleading, it must satisfy all of the requirements for a criminal pleading specified by G.S. 15A-924. See pages 13–14 for more detail regarding the contents of a magistrate's order and the requirements of G.S. 15A-924.
5. If a law enforcement officer arrests a person for a misdemeanor, brings that person to you with a completed citation, swears to facts establishing probable cause, and you find probable cause to believe that the person committed the crime charged, you may convert the citation into a magistrate's order by signing the citation in the appropriate location. This saves you from having to complete a separate magistrate's order form. Once a citation is converted into a magistrate's order, it becomes your form, and you are responsible for ensuring that the charge is made properly. You must make sure that the defendant gets a copy of the order.
6. Inform the defendant of
 - the charges,
 - the defendant's right to communicate with counsel and friends, and
 - the circumstances under which the defendant may obtain pretrial release.

G.S. 15A-511(b).

7. If you find probable cause, the defendant must be released under G.S. Ch. 15A, Art. 26 (Bail) or committed under G.S. Ch. 15A, Art. 25 (Commitment). G.S. 15A-511(e). Pages 28–31 discuss the situations when the defendant is not entitled to release; pages 33–38 discuss how to set conditions of pretrial release.
8. Regardless of whether the defendant is released on bail, when you are conducting an initial appearance you need to set a court date on the release order (the relevant form is discussed in more detail in "Determining the Conditions of Pretrial Release," below). When setting court dates, keep in mind the timing rules for first appearances discussed in the next step.
9. Every defendant charged with a felony (or one of the accompanying misdemeanors described in G.S. 7A-271) is entitled to a first appearance. G.S. 15A-601(a). A first appearance usually is held before a district court judge. G.S. 15A-601(a). If the defendant is not released, first appearance before a district court judge must be held within ninety-six hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first. G.S. 15A-601(c). If the defendant is not taken into custody or is released within ninety-six hours of being taken into custody, first appearance must be held at the next session of district court held in

the county. G.S. 15A-601(c). However, these timing rules do not apply to a defendant whose first appearance before a district court judge has been set by criminal summons. G.S. 15A-601(c). It is important that you set an appropriate court date, in light of these requirements.

Initial appearance for arrests with warrants. You do not need to make a finding of probable cause during an initial appearance for an arrest with a warrant because probable cause already was found when the process was issued. Except for this difference, conduct an initial appearance for an arrest with a warrant just like an initial appearance for a warrantless arrest: notify the defendant of his or her rights, and release the defendant on conditions of pretrial release or, if the defendant is not entitled to conditions of pretrial release, order the defendant to be held in jail.

Initial appearance for paperless arrests. Law enforcement officers may make arrests without having the actual warrant or OFA in hand, provided that they have knowledge that it has been issued and not executed (such as a DCI-PIN message). G.S. 15A-401(a)(2). This bulletin refers to such arrests as “paperless arrests.” When an officer brings a defendant before you on a paperless arrest, do not release the defendant simply because the officer cannot provide the paperwork. Paperless arrests are valid in North Carolina, even for out-of-county process. Also, do not delay the initial appearance until the officer can serve the paperwork on the defendant. You have no authority to delay the initial appearance for this purpose. Note that a faxed copy of criminal process constitutes an original. G.S. 15A-101.1(9)a. Thus an officer can convert a paperless arrest into an arrest with a warrant by obtaining a faxed copy of the original process and serving it on the defendant. Also, note that a printed copy of a document that was created in the AOC Magistrate System or in NCAWARE constitutes an original, and electronic signatures are valid. G.S. 15A-101.1(5) and (9)b; G.S. 15A-301.1(f). Thus, when the warrant was originally created in the AOC Magistrate System or in NCAWARE, a second way to convert a paperless arrest into an arrest with a warrant is to print a signed copy of the warrant from the computer and have it served on the defendant. The following procedure should be followed for an initial appearance following a paperless arrest:

1. Determine whether the warrant or OFA is still outstanding. To do this, you can
 - check with the relevant clerk’s office or law enforcement agency;
 - ask the law enforcement officer to contact DCI (available twenty-four hours a day, seven days a week); or
 - check the AOC Magistrate System, which includes warrants (but not OFAs) from ninety-seven counties, or NCAWARE.
2. If the warrant or OFA is no longer outstanding (e.g., because it has been recalled), let the person go without holding an initial appearance or setting release conditions. Also, notify, or have the law enforcement officer notify, authorities of the erroneous information so that the person will not be rearrested.
3. If the warrant or OFA is valid, investigate appropriate pretrial release conditions and obtain a copy of the original paperwork, if possible, to determine whether any pretrial release conditions were set. Although the initial appearance must be conducted without unnecessary delay, the law allows you time to make a reasonable investigation regarding pretrial release conditions. If the warrant or OFA is from another county, contact the other county to get any pertinent information about the defendant and to get the officer’s and county’s court schedule. Two other ways of getting the officer’s court schedule are to do an Automated Criminal/Infraction System (ACIS) witness search for pending cases or

by using the AOC's Web search, "Officer Court Appearance Query," located in the Court Calendars section of the website, www1.aoc.state.nc.us/www/calendars/OfficerQuery.html. Also, notify the officers in that county that processing is underway because they may want to arrange for service of process on the defendant or to pick up the defendant.

4. Do not delay holding the initial appearance because the officers from the other county say they will be coming at some time to get the defendant. Remember that the initial appearance must be held without unnecessary delay. Proceed with the initial appearance unless the officers are from a nearby county and can pick the defendant up *quickly* for an initial appearance in the originating county.
5. As noted above, you have no authority to hold a defendant for service of criminal process. Also as noted above, a law enforcement officer may validly serve a defendant with a faxed copy of the criminal process or with process created in and printed from the AOC Magistrate System or NCAWARE, provided the process contains an electronic signature. The only time you are authorized to hold a defendant in these circumstances is when a hold has been specifically authorized by a judge. A DCI-PIN message to hold the defendant is insufficient if there is no way to verify that a judge ordered the hold.
6. After completing a reasonable investigation, conduct an initial appearance and set conditions of pretrial release as for an arrest with a warrant. Conditions of pretrial release should be set based on available information. If you have no information about the amount of a bond in an OFA for a FTA, follow the requirements of G.S. 15A-534(d1), discussed on pages 36–37. If the case involves a warrant in the AOC Magistrate System or NCAWARE, generate a release order in that system. As discussed above on pages 17–18, when a defendant is charged with a felony, he or she has right to a first appearance, which sometimes must be held within ninety-six hours. Thus, when handling an out of county warrant, you must obtain accurate court date information from the county in which the charges are pending and assign an appropriate court date, based on the rules for scheduling a first appearance. As noted above, when an officer is the complainant, you can obtain a court date by doing an ACIS witness search for pending cases or by using the AOC's Web search, "Officer Court Appearance Query," located in the Court Calendars section of the website, www1.aoc.state.nc.us/www/calendars/OfficerQuery.html.
7. After concluding the initial appearance for an arrest made pursuant to a warrant or OFA from another county, notify the appropriate authorities of the action, including sending the paperwork to the other county's clerk, and ask the law enforcement officer to provide the information to Division of Criminal Information (DCI). This is particularly important in paperless arrest situations to prevent the person from being rearrested.

Initial Appearance—Implied Consent Cases

G.S. 15A-511 sets out the basic procedure for initial appearances in criminal cases, and its provisions are discussed above. In 2006 the General Assembly enacted several additional statutes that apply to initial appearances for implied consent offenses. S.L. 2006-253, sec. 5. Implied consent offenses are listed in Table 2.

The first of the 2006 statutes, G.S. 20-38.3, provides, in part, that a law enforcement officer must take a person arrested for an implied consent offense to a judicial official for an initial appearance after completing all investigatory procedures, crash reports, chemical analyses, and related procedures specified in the new provision. G.S. 20-38.3. Before this provision was enacted, there was some question as to whether completing these tasks before the initial appear-

ance violated the rule that the initial appearance must be held without unnecessary delay. This statute makes it clear that the officer must complete these tasks before the initial appearance.

The 2006 legislation also enacted G.S. 20-38.4, pertaining to initial appearances in implied consent cases. That statute has four primary provisions. First, it provides that a magistrate may hold an initial appearance anywhere in the county and that a magistrate “shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.” G.S. 20-38.4(a)(1). This provision authorizes you to hold initial appearances at a location other than your office, such as on location when officers are conducting an impaired driving checkpoint operation with a mobile testing unit (sometimes referred to as a “Batmobile”). Of course, the statute only requires magistrates to conduct initial appearances outside of their offices “to the extent practicable.” Some practical issues that might arise include: lack of access to computer systems and records; the ability of the defendant’s witnesses to find and gain access to the remote location (the defendant’s rights in this regard are discussed below); and when the magistrate and law enforcement officers share a space, whether that close proximity unduly undermines the magistrate’s role as a neutral and independent judicial official.

Second, the statute provides that when determining whether there is probable cause to believe a person is impaired, a magistrate may review “all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.” G.S. 20-38.4(a)(2). This provision appears to simply have codified existing practice. However, prior to 2006, the results of an alcohol screening test could be considered at the probable cause stage. The 2006 legislation changed that, amending G.S. 20-16.3(d) to provide that although a positive or negative result on an alcohol screening test can be considered when determining probable cause, the results of the alcohol screening test (e.g., 0.09) cannot be used for that purpose.

Third, the statute states that if you find probable cause, you *must* consider whether an impaired driving hold is required. G.S. 20-38.4(a)(3). Before enactment of this provision, some magistrates were not consistently considering impaired driving detentions, out of concern about *Knoll* motions, or for other reasons. This statute makes clear that you have no choice but to consider such a detention. The procedure for impaired driving detentions and the *Knoll* case are discussed on pages 25–28.

Fourth, the new statute requires you to (1) inform the defendant in writing of the established procedure to have people appear at the jail to observe the defendant’s condition or to administer an additional chemical analysis if the defendant is unable to make bond and (2) require a defendant unable to make bond to list everyone he or she wishes to contact, along with their telephone numbers, on a form setting forth the procedure for contacting the persons listed; a copy of the form must be filed with the case file. G.S. 20-38.2(a)(4). The 2006 legislation also required each chief district court judge, along with others, to adopt procedures, by December 1, 2006, indicating how family, friends, and specified others can gain access to a defendant who has been arrested for an implied consent offense and is unable to obtain pretrial release from jail. G.S. 20-38.5. New magistrates will need to obtain these written procedures so that they can provide the required notice to implied consent offense defendants as required by the statute. The AOC form on which you certify that the new procedures have been complied with and on which the defendant lists those people who the defendant wishes to contact or appear at jail is AOC-CR-271 (included in Appendix A).

Table 2. Implied Consent Offenses

-
1. Impaired driving under G.S. 20-138.1
 2. Impaired driving in a commercial vehicle under G.S. 20-138.2
 3. Habitual impaired driving under G.S. 20-138.5
 4. Any death by vehicle or serious injury by vehicle offense under G.S. 20-141.4, when based on impaired driving or a substantially similar offense under previous law
 5. First- or second-degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18, when based on impaired driving
 6. Driving by person under twenty-one after consuming under G.S. 20-138.3
 7. Violating no-alcohol condition of limited privilege under G.S. 20-179.3
 8. Impaired instruction under G.S. 20-12.1
 9. Operating commercial motor vehicle after consuming alcohol under G.S. 20-138.2A
 10. Operating school bus, school activity bus, or child care vehicle after consuming alcohol under G.S. 20-138.2B
 11. Transporting open container of alcoholic beverage under G.S. 20-138.7(a)
 12. Driving in violation of restriction requiring ignition interlock under G.S. 20-17.8(f)
-

Source: G.S. 20-16.2(a1); -4.01(24a).

Initial Appearance Procedure—Exceptions

Generally

As noted above, in most cases, you conduct the initial appearance without delay and make a probable cause determination. If probable cause is found, you then inform the defendant of his or her rights and set conditions of pretrial release. This section discusses the exceptions to that general procedure. Unless the case before you fits within one of the exceptions discussed below, you should follow the general procedure, outlined above, for conducting the initial appearance.

Delaying the Initial Appearance

In some situations it is necessary to delay the initial appearance. This section discusses when such a delay is permissible.

Reasonable delay to determine conditions. As noted, the initial appearance must be held without unnecessary delay. Of course, the time it takes you to do a timely and reasonable investigation into the facts relevant to your pretrial release decision is a necessary delay.

DEFENDANTS WHO REFUSE TO IDENTIFY THEMSELVES. Sometimes defendants brought before you for an initial appearance will refuse to identify themselves. Without knowing a defendant's identity, it is almost impossible to determine what conditions of pretrial release should be imposed. You will not be able to determine, among other things, whether the defendant has a record, has previously failed to appear, or what connections the defendant has with the community that are relevant to a risk of flight. When this happens, and there is no written local procedure that applies, you have a couple of options. (Note that if this issue consistently arises in your county and you do not have a written policy addressing it, you may want to ask your chief district court judge for a written policy or other formal advice so that all magistrates respond to this problem in a consistent manner.)

First, it seems reasonable to delay the initial appearance while a law enforcement officer completes an investigation into the defendant's identity. Such an investigation may not be feasible in

all cases, particularly when the crime is not a serious one. Note, however, that if a person (1) is charged with an offense involving impaired driving, as defined in G.S. 20-4.01(24a), or driving while license revoked when the revocation is for an impaired driving revocation, as defined in G.S. 20-28.2, and (2) the person cannot be identified by a valid form of identification, then the arresting officer must have the person fingerprinted and photographed. G.S. 15A-502(a2). This requirement does not necessarily result in an identification of the person, but it does impose additional duties on law enforcement. If you delay the initial appearance to allow the officer to investigate and the officer's investigation is unsuccessful or cannot be done quickly, you should consider the other option set out below; you should not allow an indefinite delay of the initial appearance.

A second option for dealing with a defendant who refuses to identify himself or herself is to hold the initial appearance, set conditions in light of the potential flight risk associated with a person who will not identify himself or herself, and include as a condition of pretrial release that either the defendant adequately identify himself or herself or that there is an adequate identification of the defendant. In counties without a written policy or formal advice addressing this procedure, consider contacting a judge before using it.

Note that regardless of which procedure is used, it is probably not permissible and it is not advisable to require a defendant to produce a U.S. government-issued picture identification. Also, any reasonable form of identification may be satisfactory even if the defendant does not have any written form of identification—for example, when a responsible member of the community vouches for the defendant's identity.

Statutory authorization to delay because defendant is unruly, intoxicated, etc. Under G.S. 15A-511(a)(3), you may delay the initial appearance and order a defendant confined without bond for a "reasonable time" if the defendant, when brought before you,

- is so unruly that the defendant disrupts and impedes the proceedings,
- becomes unconscious,
- is grossly intoxicated, or
- is otherwise unable to understand his or her procedural rights (for example, the defendant needs a sign language interpreter).

The purpose of this delay is not to punish the defendant but simply to postpone the process until the defendant can understand his or her rights. The procedure for delaying the initial appearance in these circumstances is as follows:

1. Decide whether to delay before beginning the initial appearance and determining conditions. In some circumstances, however, you might not realize that one of the statutory reasons for delay is at issue until the initial appearance has begun. For example, the defendant may not get unruly until you start the initial appearance. In this situation, stop the proceeding and continue as outlined below in the steps that follow.
2. If the defendant simply is being disruptive and needs to cool off, you can order an officer to place the defendant in a holding cell for a short period of time, such as twenty minutes, or have the officer supervise the defendant on a bench in the magistrate's office, if there is no holding cell.
3. If you order the defendant confined to jail, you must use the Release Order, AOC-CR-200 (included in Appendix A), to do so. Never commit a defendant to jail without a written order.

4. When using the Release Order to commit the defendant to jail, only complete the “Order of Commitment” portion of form. Check only the second box (“hold him/her for the following purpose”). The purpose listed will vary according to the reason that the defendant is confined. If the defendant is simply disruptive, you may direct the jailer to “hold defendant until defendant is calm and agrees not to disrupt the proceedings.” Check regularly with the jailer about the defendant’s condition. If the defendant is grossly intoxicated, direct the jailer to “hold defendant until sober enough to understand rights.” Again, check regularly with the jailer about the defendant’s condition. Do not leave complete discretion with a jailer. Also, put an outer time limit on the confinement. It is your responsibility—not the jailer’s—to determine whether the defendant is ready for his or her initial appearance. Do not complete the upper portion of the Release Order concerning conditions of release. Because the initial appearance is being delayed, conditions should not be determined at this time. If the upper portion of the Release Order is completed, the defendant must be released if he or she satisfies the conditions. G.S. 15A-537. That is true regardless of what directions are given under the Order of Commitment (except for impaired driving detentions under G.S. 15A-534.2, discussed below).
5. A defendant may be brought back before a different magistrate for the initial appearance. The second magistrate is not modifying the first magistrate’s release order, but rather is changing the order of commitment, which is expressly allowed by G.S. 15A-521(b) (order of commitment may be modified “by the same or another judicial official”). Conditions should never have been set, and therefore they are being determined for the first time.
6. After the defendant is returned, conduct the initial appearance and set conditions as usual.

Finally, do not confuse the statutory authorization to delay discussed above—for example, when the defendant is too intoxicated to understand his or her rights—with an impaired driving hold. In the situations addressed in this section, you are delaying the initial appearance because of the defendant’s condition. The impaired driving hold, discussed below, only comes into play once the defendant is sober enough so that you can conduct the initial appearance.

Delaying the Setting of Conditions

As noted above, the general procedure for initial appearances is to conduct the initial appearance without delay, make a probable cause determination and if probable cause is found, inform the defendant of his or her rights and set conditions of pretrial release. This section discusses a second exception to the general procedure: when you hold the initial appearance but delay setting conditions of release. Currently, domestic violence cases are the only situations that fall into this exception. However, effective December 1, 2009, certain probationers also will fall within this exception. Both situations are discussed below.

Forty-eight-hour rule for domestic violence cases. G.S. 15A-534.1 provides that in all cases in which the defendant is charged with an assault on, stalking, communicating a threat to, or committing a felony as provided in G.S. Ch. 14, Art. 7A, 8, 10, or 15 upon a current or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with a violation of a 50B order, only a judge can set conditions of pretrial release in the forty-eight-hour period after an arrest. Thus, when a defendant is brought before you for an offense covered by this provision, hold an initial appearance and order the defendant held for

the next available session of district or superior court, to have conditions of release determined by a judge. To do this, use the release order form, AOC-CR-200 (included in Appendix A), and check the third box in the Order of Commitment portion of the form that states “Check in all domestic violence cases covered by G.S. 15A-534.1(b).” Then, enter an appropriate date and time as instructed on the form. If a judge does not act within forty-eight hours, the magistrate sets conditions. G.S. 15A-534.1(b). For a helpful chart that lists all offenses covered by the forty-eight-hour rule and clarifies the required relationship between the parties, go to the School of Government’s Web page for magistrates, www.sog.unc.edu/programs/ncmagistrates/index.html, and click on “Domestic Violence: 48-Hour Rule Offense Chart.”

Other domestic violence holds. G.S. 15A-534.1(a)(1) provides another domestic violence hold for defendants who are charged with an assault on, stalking, communicating a threat to, or committing a felony as provided in G.S. Ch. 14, Art. 7A, 8, 10, or 15 upon a current or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with a violation of a 50B order. The statute provides that upon a determination that the defendant’s immediate release will pose a danger of injury to the alleged victim or another person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond will not reasonably assure that such injury will not occur, a judicial official may retain the defendant in custody for a reasonable period of time while determining conditions of pretrial release. It is unlikely that you will have an opportunity to apply this provision. Only a judge can set conditions of pretrial release within the first forty-eight hours of the defendant’s arrest; once forty-eight hours has expired, it is unlikely that the circumstances would warrant application of this exception.

Probation cases. *DEFENDANT CHARGED WITH A FELONY WHILE ON PROBATION FOR ANOTHER OFFENSE.* Effective December 1, 2009, S.L. 2009-412, as amended by S.L. 2009-547, amended G.S. 15A-534 to add a new subsection (d2) providing that when conditions of pretrial release are being determined for a defendant who is charged with a felony while on probation for an earlier offense, you must determine whether the defendant poses a danger to the public (and make a written record of that determination) before imposing conditions of pretrial release. If the defendant does not pose such a danger, he or she is entitled to release as in all cases. If the defendant poses such a danger, you must impose a secured bond or a secured bond with electronic house arrest. However, if there is insufficient information to determine whether the defendant poses a danger, then you must keep the defendant in custody until that determination can be made. If you detain the defendant for this reason, you must make a written record, at the time you detain the defendant, of the following: (1) the fact that the defendant is being held pursuant to G.S. 15A-534(d2); (2) the basis for the decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information; and (3) a date, within ninety-six hours of the time of arrest, when the defendant will be brought before a judge for a first appearance. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official must set the conditions of pretrial release. One consequence of this statute is that effective December 1, 2009, every time a defendant is brought before you on a felony charge, you must determine whether the defendant is on probation for an earlier offense. If so, the new statutory procedure must be followed. At the time of publication, the AOC Forms Committee was considering changes to the Release Order, AOC-CR-200, and a new form to accommodate these statutory changes.

PROBATION VIOLATOR WHO HAS A PENDING FELONY OR IS A SEX OFFENDER REQUIRED TO REGISTER. Effective December 1, 2009, G.S. 15A-1345(b1) provides that if a probationer is arrested for violating probation

and either (1) has a pending felony charge or (2) has been convicted of an offense that requires registration under the sex offender registration statutes or that would have required registration but for the effective date of the registration program, you must determine whether the probationer poses a danger to the public (and make a written record of that determination) before imposing conditions of release. If the probationer does not pose such a danger, determine the conditions of release as in any other case. If the probationer poses such a danger, he or she must be denied release. If there is insufficient information to determine whether the defendant poses such a danger, then you must detain the defendant in custody for no more than seven days from the date of the arrest to obtain sufficient information to make that determination. If the defendant has been held seven days from the date of arrest and the court has been unable to obtain sufficient information to determine whether the defendant poses a danger to the public, then the defendant must be brought before any judicial official, who must record that fact in writing and must impose conditions of pretrial release. One consequence of this statute is that effective December 1, 2009, every time a person is brought before you for a probation violation, you will need to determine whether he or she has a pending felony charge and whether he or she is or could be subject to the sex offender registration program. If so, the new statutory procedure must be followed. For a list of offenses requiring reporting under the sex offender registration statute, see Table 3. At the time of publication, the AOC Forms Committee was considering changes to the Release Order, AOC-CR-200, and a new form to accommodate these statutory changes.

Delaying Release

As noted above, the general procedure for initial appearances is to conduct the initial appearance without delay, make a probable cause determination and if probable cause is found, inform the defendant of his or her rights, and set conditions of pretrial release. The sections above discussed several exceptions to this general rule. This section discusses another exception: when you hold the initial appearance, set conditions of pretrial release but delay the defendant's release. Only two situations fall within this exception; both are discussed below.

Communicable disease holds. Under G.S. 15A-534.3, if you find probable cause to believe that a person was exposed to the defendant in a manner that poses a significant risk, through a non-sexual contact, of transmission of the AIDS virus or Hepatitis B infection, you must order the defendant detained for a reasonable period, not to exceed twenty-four hours, for investigation by public health officials and testing, if required by those officials under G.S. 130A-144 and -148. To order a hold in these circumstances, use form AOC-CR-270, side two (included in Appendix A).

You can contact a public health official for advice on whether the person was in fact exposed to the defendant in a manner posing a significant risk of transmission when deciding whether probable cause exists to justify detaining the defendant.

Although G.S. 15A-534.3 does not address whether you should set pretrial release conditions that would be applicable after the defendant has been examined by public health officials, it would appear wise to do so. That way, once the public health officials have completed their investigation and testing, the defendant will not have to be brought back again before a magistrate for the setting of pretrial release conditions.

Impaired driving holds. Impaired driving detentions under G.S. 15A-534.2 cause more confusion among magistrates than almost any other area of criminal procedure.

Table 3. Offenses Requiring Sex Offender Reporting

1. First-Degree Rape (14-27.2)
2. Second-Degree Rape (14-27.3)
3. First-Degree Sex Offense (14-27.4)
4. Second-Degree Sex Offense (14-27.5)
5. Sexual Battery (14-27.5A)
6. Attempted Rape or Sex Offense (14-27.6)
7. Intercourse/Sex Offense With Certain Victims (14-27.7)
8. Statutory Rape (13-15 Year Old by Certain Defendants) [14-27.7A(a)]
9. Sexual Servitude (14-43.13)
10. Incest (14-178)
11. Minor Assisting in Public Morality Offense (14-190.6)
12. Felony Indecent Exposure [14-190.9(a1)]
13. First-Degree Sexual Exploitation of Minor (14-190.16)
14. Second-Degree Sexual Exploitation of Minor (14-190.17)
15. Third-Degree Sexual Exploitation of Minor (14-190.17A)
16. Promoting Prostitution of Minor (14-190.18)
17. Participating in Prostitution of Minor (14-190.19)
18. Indecent Liberties With Children (14-202.1)
19. Computer Solicitation of Child (14-202.3)
20. Indecent Liberties with Student [14-202.4(a)]
21. Rape of Child by Adult Offender (14-27.2A)
22. Sex Offense w/Child by Adult Offender (14-27.4A)
23. Parent/Caretaker Prostitution [14-318.4(a1)]
24. Parent Commit/Allow Sexual Act [14-318.4(a2)]
25. Kidnapping When Victim is a Minor (14-39)
26. Felonious Restraint When Victim is a Minor (14-43.3)
27. Abduction of Child (14-41)
28. Attempt to commit an offense listed above
29. Solicitation to commit an offense listed above
30. Conspiracy to commit an offense listed above
31. Conviction in federal jurisdiction (including court martial) for offense substantially similar to offense listed above
32. Conviction from another state substantially similar to offense listed above
33. Any conviction from another state that requires registration in that state

"TRIGGERING" OFFENSES. G.S. 15A-534.2 contains a special detention provision that applies when a magistrate finds probable cause to charge the defendant with one or more of offenses listed in Table 4.

RELEVANT DETERMINATION. An impaired driving detention must be imposed when you find probable cause to charge the defendant with one of the offenses listed in Table 4 and you find, by clear and convincing evidence, that impairment of the defendant's physical or mental faculties

Table 4. Offenses That Can Trigger an Impaired Driving Hold

-
1. Impaired driving under G.S. 20-138.1
 2. Impaired driving in a commercial vehicle under G.S. 20-138.2
 3. Habitual impaired driving under G.S. 20-138.5
 4. Any death by vehicle or serious injury by vehicle offense under G.S. 20-141.4, when based on impaired driving or a substantially similar offense under previous law
 5. First- or second-degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18, when based on impaired driving
-

presents a danger, if the defendant is released, of physical injury to himself or herself or others or damage to property. If so, you must order the defendant detained until one of the following events occurs:

- The defendant's impairment no longer presents a danger of physical injury to himself or herself or others or damage to property; or
- A sober, responsible adult (eighteen years old or older) is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.

REQUIRED DETERMINATION. The determination under G.S. 15A-534.2 is not optional. G.S. 20-38.4, enacted in 2006, makes clear that once there is a finding of probable cause that the defendant committed a "triggering" offense, you must determine whether an impaired driving detention must be imposed. Before enactment of G.S. 20-38.4, some magistrates reported that impaired driving detentions were not done in their counties out of concern that the underlying criminal case would have to be dismissed on a "*Knoll* motion." This concern stemmed from a belief that the North Carolina Supreme Court's decision in *State v. Knoll*, 322 N.C. 535 (1988), invalidates a magistrate's authority to order a detention of impaired drivers under G.S. 15A-534.2. This suggestion, however, is incorrect. *Knoll* involved situations in which magistrates failed to follow statutory procedures, including failing to advise defendants of their rights and declining to release them to appropriate adults. Cases since *Knoll* suggest that if you comply with G.S. 15A-534.2, no *Knoll* violation will be found. In any event G.S. 20-38.4 now makes it clear that you are required to make the impaired driving detention determination. For more information about *Knoll* and later cases on point, see Shea Riggsbee Denning, "Knoll Motions and Implied Consent Cases," posted online at www.sog.unc.edu/programs/crimlaw/faculty.htm

NOTIFICATION OF RIGHTS AND LISTING OF PERSONS TO CONTACT. As discussed on pages 19–20, in implied consent cases (note that as indicated by the list of implied consent offenses in Table 2 on page 21, this category of cases includes offenses involving impaired driving subject to G.S. 15A-534.2, as well as other offenses), G.S. 20-38.4 requires you to (1) inform the person in writing of the established procedure to have others appear at the jail to observe the person's condition or to administer an additional chemical analysis if the person is unable to make bond and (2) require anyone unable to make bond to list everyone he or she wishes to contact, along with their telephone numbers, on a form setting forth the procedure for contacting the persons listed; a copy of the form must be filed with the case file. G.S. 20-38.4(a)(4). Also as noted on page 20, 2006 legislation required each chief district court judge, along with others, to adopt procedures, by December 1, 2006, indicating how family, friends, and specified others can gain access to a defendant who has been arrested for an implied consent offense and is unable to obtain pretrial

release from jail. New magistrates will need to obtain these written procedures so that they can provide the required notice to defendants as required by the statute. The AOC form on which you certify that the new procedures have been complied with and on which the defendant lists those people whom the defendant wishes to contact or appear at jail is AOC-CR-271 (included in Appendix A). Use this form any time a defendant charged with an implied consent offense is confined to jail, even if only for a short time.

EFFECT OF THE DETENTION. Once the defendant meets one of the two conditions above (impairment no longer a danger or release to sober, responsible adult), the defendant still must satisfy the conditions of pretrial release (for example, \$500 secured bond) before the defendant can be released.

WRITTEN FINDINGS REQUIRED. Whenever you order a defendant detained under G.S. 15A-534.2, you must make written findings to support the detention. 188 N.C. App. 120. Use form AOC-CR-270, side one, (included in Appendix A) to make these findings.

TIMING OF THE DETENTION DECISION. Decide whether or not to detain the defendant under G.S. 15A-534.2 at the time of the initial appearance. If you detain a defendant under G.S. 15A-534.2, you still must determine the conditions of pretrial release.

MAXIMUM PERIOD OF THE DETENTION. A defendant may not be detained under G.S. 15A-534.2 for longer than twenty-four hours, even if he or she never meets one of the two conditions. However, at the end of the twenty-four-hour period, the defendant still must satisfy the conditions of pretrial release before being released. G.S. 15A-534.2(c).

ALCOHOL TESTING. When making the determination whether or not a detained defendant remains impaired, you may request that the defendant take periodic tests to determine his or her alcohol concentration. G.S. 15A-534.2(d). The testing instrument may be an Intoxilyzer or other alcohol testing instrument; it also may be an alcohol screening unit used for roadside checks. G.S. 15A-534.2(d). If the defendant takes a test and the results indicate that his or her alcohol concentration is less than 0.05, unless there is evidence that the defendant is still impaired from a combination of alcohol and drugs, you must determine that the defendant is no longer impaired. G.S. 15A-534.2(d).

RELEASE FROM DETENTION. You must release a defendant from the impaired driving detention if (1) the maximum twenty-four-hour period for the detention has expired (but remember that the defendant still must satisfy any conditions of pretrial release that have been ordered before he or she can be released); (2) the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to the defendant or others or of damage to property; or (3) if a sober, responsible adult appears and is willing and able to take custody of the defendant until the defendant's physical and mental faculties are no longer impaired so as to present a danger of physical injury to the defendant or others or of damage to property. To release for one of these reasons, use form AOC-CR-270, checking the appropriate box under the section entitled "Release from Detention Order." Note that if the release is to a sober, responsible adult, that person's name should be listed on the form and he or she should sign where indicated. Also note that a release to a sober, responsible adult for this purpose is not the same as a custody release, discussed below.

Denying Release

As noted above, the general procedure for initial appearances is to conduct the initial appearance without delay, make a probable cause determination and if probable cause is found, inform the defendant of his or her rights and set conditions of pretrial release. The sections above

discussed various exceptions to this general rule. This section discusses a final exception: when you must deny release and commit the defendant to jail.

Capital offenses. It is within the discretion of a judge (and only a judge) as to whether a defendant charged with a capital offense will be released before trial. G.S. 15A-533(c). Thus, if you find probable cause to charge a defendant with first-degree murder—the only capital offense in North Carolina—you should commit the person to jail for a judge to determine the conditions of release at the first appearance.

Certain fugitives. A fugitive defendant charged in another state with an offense punishable by death or life imprisonment has no right to pretrial release. G.S. 15A-736. Also, a fugitive arrested on a Governor's Warrant has no right to pretrial release. These defendants should be committed to jail without conditions of release being set. For more information on handling fugitives, see "Fugitives," below.

Involuntarily committed defendants charged with crimes. There is no right to pretrial release for a defendant who is alleged to have committed a crime while involuntarily committed or while an escapee from commitment. Such a defendant should be returned to the treatment facility in which he or she was residing at the time of the alleged crime or from which he or she escaped. G.S. 15A-533(a).

Certain drug trafficking offenses. G.S. 15A-533(d) provides that it is presumed (subject to rebuttal by the defendant) that there is no condition of release that will reasonably assure the appearance of the defendant as required and the safety of the community if a judicial official finds

- reasonable cause to believe that the defendant committed a drug-trafficking offense;
- the drug-trafficking offense was committed while the defendant was on pretrial release for another offense; and
- the defendant has been convicted of a Class A through Class E felony or a drug-trafficking offense and not more than five years has passed since the date of conviction or the defendant's release from prison, whichever is later.

If all of these criteria are found, only a district or superior court judge may set pretrial release conditions after finding that there is a reasonable assurance that the defendant will appear and that the release does not pose an unreasonable risk of harm to the community. G.S. 15A-532(d).

Certain gang offenses. G.S. 15A-533(e) provides that it is presumed (subject to rebuttal by the defendant) that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds

- reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.16;
- the offense was committed while the person was on pretrial release for another offense; and
- the defendant has a previous conviction for a gang offense under G.S. 14-50.16 through -50.20 and not more than five years have passed since the date of conviction or the defendant's release for the offense, whichever is later.

If all of these criteria are found, only a district or superior court judge may set pretrial release conditions after finding that there is a reasonable assurance that the defendant will appear and that the release does not pose an unreasonable risk of harm to the community. G.S. 15A-532(e).

Violators of certain health control measures. G.S. 15A-534.5 provides that if a judicial official conducting an initial appearance finds by clear and convincing evidence that a person arrested for violating an order limiting freedom of movement or access issued pursuant to G.S. 130A-475

(incident involving nuclear, biological, or chemical agents) or G.S. 130A-145 (quarantine and isolation authority) poses a threat to the health and safety of others, the judicial official must deny pretrial release. The judicial official must order that the person be confined in a designated area or facility. This pretrial confinement ends when a judicial official determines that the confined person does not pose a threat to the health and safety of others. The statute requires that these determinations be made in conjunction with recommendation by the state health director or local health director.

Certain methamphetamine offenses. G.S. 15A-534.6 authorizes judicial officials to deny pretrial release for specified methamphetamine offenses under certain conditions. The statute provides that a rebuttable presumption arises that no conditions of release would assure the safety of the community if the State shows, by clear and convincing evidence, that

- the defendant was arrested for a violation of G.S. 90-95(b)(1a) (manufacture of methamphetamine) or G.S. 90-95(d1)(2)b (possession of precursor chemical knowing that it will be used to manufacture methamphetamine), and
- the defendant is dependent on or has a pattern of regular illegal use of methamphetamine and the violation was committed or attempted to maintain or facilitate the defendant's dependence or use.

Military deserters. A military deserter is not entitled to have conditions of pretrial release set by a magistrate. 149 Ga. 139, 99 S.E. 307. The deserter should be committed to the local detention facility without setting conditions of pretrial release. Military authorities should be contacted as soon as possible to take custody of the deserter.

Parole violators. A person taken into custody for a violation of parole or post-release supervision under structured sentencing is not subject to the provisions on pretrial release. G.S. 15A-1368.6 (post-release supervision); G.S. 15A-1376 (parole).

Certain probation violators. As a general rule, when a defendant has been convicted in North Carolina, put on probation, and later arrested for a probation violation that occurs in North Carolina, he or she is entitled to conditions of release. G.S. 15A-1345(b). There are two exceptions to this rule. New G.S. 15A-1345(b1) provides that if a probationer is arrested for violating probation and either (1) has a pending felony charge or (2) has been convicted of an offense that requires registration under the sex offender registration statutes or that would have required registration but for the effective date of the registration program, the judicial official must determine whether the probationer poses a danger to the public before imposing conditions of release and must record that determination in writing. If the judicial official determines that the probationer poses such a danger, the judicial official must deny the probationer release pending the revocation hearing. If the judicial official finds that the defendant does not pose such a danger, the judicial official determines conditions as usual. The procedure for handling the situation where there is insufficient information to make the required determination is discussed above on pages 24–25. The provision in G.S. 15A-1345(b) regarding no release for probation violators subject to sex offender registration who pose a danger is not new. However, it was amended by a 2009 law that enacted the provision regarding no release for probation violators who have a pending felony and pose a danger. S.L. 2009-412. The 2009 legislation is effective December 1, 2009, and applies to offenses committed on or after that date. One consequence of this new provision is that every time a person is brought before you on an arrest for a probation violation, you will need to know whether person has a pending felony charge and whether he or she is or could be subject to the sex offender registration program. To determine whether a probation violator has

a pending felony charge, you will have to do a statewide record search. To determine whether a defendant is subject to the sex offender registration program or could be subject to that program but for its effective date, you should:

1. Search the on-line North Carolina Sex Offender Registry, <http://sexoffender.ncdoj.gov/> and click on “Search the Registry.” If the probation violator’s name appears, he or she is subject to G.S. 15A-1345(b1), as discussed above. If the person’s name does not appear, go to step (2).
2. Determine the probation violator’s prior convictions. If any one of those prior convictions is included in Table 3 on page 26, apply the provisions on G.S. 15A-1345(b1), as discussed above.

Out-of-state probation violators covered by the Interstate Compact. The general rule that probation violators are entitled to conditions of release does not apply to defendants who are arrested on out-of-state warrants for probation violations when the state that imposed the probation and is now seeking to violate the defendant has a supervision agreement in place with the State of North Carolina pursuant to the Interstate Compact for Adult Offender Supervision. G.S. Chapter 148, Article 4B. Unlike other out-of-state offenders, out-of-state probation violators covered by Interstate Compact supervision agreements are not dealt with through extradition (discussed in “Fugitives,” below); rather, the Interstate Compact statutes govern. One of those statutes, G.S. 148-65.8(a) provides that such a defendant may be detained for up to fifteen days and is not entitled to bail pending the required hearing.

Out-of-state warrants for probation violators covered by the Interstate Compact are supposed to go through the North Carolina Compact Administrator, which is part of the DOC Division of Community Corrections. If Interstate Compact offenders are processed in this way, the warrant will come to you with an “Authority to Detain and Hold” form, notifying you that the offender is not entitled to pretrial release. Sometimes, however, the other state fails to go through North Carolina’s Compact Administrator. In these instances, it can be difficult for you to determine whether the person is covered by the Interstate Compact. When this happens, you can obtain the relevant information from a probation officer. Another alternative is to go to the DOC website, www.doc.state.nc.us. From there, click on “Offender Search,” then click on “Offender Search—Public Information,” and then “Search For An Offender.” Enter the offender information and the search should indicate, below probation and parole status, whether the offender is subject to the Interstate Compact. If so, immediately contact a local probation officer or the Compact Administrator (Anne Precythe at 919.716.3139 or pal02@doc.state.nc.us).

Other Cases

Magistrates sometimes are asked to deviate from the general procedure for initial appearance—for example, delay the initial appearance or hold the defendant—for reasons other than those listed above. Unless your situation falls within one of the exceptions discussed above, you have no authority to deviate from the general procedure for initial appearances. Some common scenarios that arise are discussed below.

Out-of-county paperwork. As noted on page 18, there is no authority to delay an initial appearance “for out-of-county paperwork.”

Arrest without paperwork. As discussed on page 18, paperless arrests are valid and are no impediment to holding the initial appearance and proceeding as usual.

Noncitizens. In recent years a number of issues have arisen about magistrates' authority to hold defendants for a variety of immigration related issues. You have no authority to hold an arrestee simply because he or she is not a United States citizen. Effective January 1, 2008, G.S. 162-62 provides that whenever a person charged with a felony or an impaired driving offense is confined to a jail or a local confinement facility, the person in charge of the facility must attempt to determine if the prisoner is a legal resident of the United States by questioning the person and/or examining documents. If the prisoner's status cannot be determined, the person in charge must, if possible, make an inquiry through the DCI system to the Law Enforcement Support Center of Immigration and Customs Enforcement of the United States Department of Homeland Security. However, the new law imposing these requirements expressly states that it cannot be construed to deny bond to a prisoner or prevent the prisoner from being released from confinement when the prisoner is otherwise eligible for release.

Of course, citizenship status may be relevant in determining conditions of pretrial release, such as when the arrestee has no contacts in the community and was planning on returning to his or her home country shortly, thus creating a flight risk. How such factors play into your determination of the conditions of pretrial release is discussed in the section that follows.

Another immigration issue sometimes arises when the arresting officers tells you that there is an ICE detainer or that ICE is "interested" in the defendant. ICE refers to United States Immigration and Customs Enforcement, a component of the Department of Homeland Security. Although ICE has many functions, one of its responsibilities is detaining and removing non-citizens who are not legally in the country. An ICE detainer refers to a document issued by ICE, frequently to a local jail, asking the jailer to hold a person for up to forty-eight hours so that ICE can take custody of that person. For example, suppose a defendant is in jail on a \$5,000 secured bond. Normally, when the defendant is able to make that bond, he or she must be released. However, if an ICE detainer is in place, the jailer will hold the defendant, for up to forty-eight hours after the defendant makes bond so that ICE can take custody.

When an officer brings a defendant to you and an ICE detainer is in place, follow your normal procedure for conducting the initial appearance and setting conditions of pretrial release. There is no special hold to implement, and you are not authorized to hold the defendant. The detainer is in place, and if the defendant meets his or her conditions of pretrial release, the jail will hold the defendant per the detainer. However, the fact that a detainer is in place may affect your decision about appropriate conditions, for example, if the defendant is facing deportation, there may be a flight risk.

Likewise, when an officer brings a defendant to you and informs you that ICE is "interested" or is "investigating whether a detainer should issue," follow your normal procedure for conducting an initial appearance and setting conditions of pretrial release. There is no special hold to implement, and you are not authorized to hold the defendant for this purpose. However, in this situation you may learn of facts that will be relevant to your determination regarding the appropriate conditions of pretrial release.

DCI "No Bond" Message. As discussed on page 19, the fact that a DCI-PIN message says "no bond" is not a basis for denying pretrial release conditions, unless you can verify that it was ordered by a judge.

Probation violation by in-state probationer or "absconder." As discussed on pages 30–31, when a defendant is sentenced to probation by a North Carolina court and is arrested for violating the conditions of probation, the defendant is entitled to condition of release, unless subject to new G.S. 15A-1345(b1), discussed above.

Determining the Conditions of Pretrial Release

Right to Conditions

Unless the defendant falls within one of the categories listed in the section above requiring that you deny conditions, the defendant is entitled to pretrial release.

Pretrial Release Options

G.S. 15A-534 provides that in determining conditions of pretrial release, a judicial official must impose at least one of the following five conditions:

1. *Release on written promise to appear.* This release involves no money. The defendant simply is released on his or her written promise to appear in court.
2. *Custody release.* A custody release is a release to a designated person or organization that agrees to supervise the defendant. Like a release on a written promise to appear, no money is involved. Note that G.S. 15A-534(a) provides that if this condition is imposed, the defendant may elect to execute a secured appearance bond instead.
3. *Release on unsecured appearance bond.* An unsecured bond is one that is backed only by the integrity of the defendant; it is not backed by assets or collateral.
4. *Release on secured appearance bond.* A secured appearance bond is one that is backed by a cash deposit in the full amount of the bond, by a mortgage, or by at least one solvent surety.
5. *House arrest with electronic monitoring.* This condition may be imposed effective December 1, 2009, for offenses committed on or after that date. S.L. 2009-547. If this condition is imposed, you also must impose a secured appearance bond. S.L. 2009-547. It is not yet clear how this condition will be implemented or which jurisdictions are equipped to implement it. Because imposing this condition in the absence of available equipment will result in a hold, if your county lacks the available equipment or does not have a device immediately available for the defendant involved, you should check with your chief district court judge before imposing this condition.

Deciding Which Pretrial Release Options to Impose

Local procedure. When setting conditions of pretrial release, you need to know and follow the written pretrial release policy issued by your senior resident superior court judge. Note that G.S. 15A-535 provides that the senior resident superior court judge must create and issue recommended pretrial release policies. If you have not seen your local policy, ask for it.

Purpose of conditions of pretrial release. The purpose of conditions of pretrial release is to make sure that the defendant appears in court when required and does no harm while on release. Keep these purposes in mind when deciding which conditions to impose.

Special considerations regarding secured bonds and house arrest with electronic monitoring. *IMPOSE A SECURED BOND ONLY AFTER REJECTING OTHER OPTIONS.* G.S. 15A-534(b) provides that you must impose a release on written promise to appear, a release on an unsecured appearance bond, or a custody release unless you determine that

- those forms of release will not reasonably assure the defendant's appearance;
- release under those conditions will pose danger of injury to any person; or
- release under those conditions is likely to result in the destruction of evidence, intimidation of witnesses, or subornation of perjury.

MAKE WRITTEN FINDINGS IF REQUIRED BY LOCAL POLICY. G.S. 15A-534(b) provides that when imposing a secured bond or house arrest with electronic monitoring, you must record, in writing, the reasons for doing so if required by your local policy on pretrial release issued by your senior resident superior court judge.

SPECIFYING "CASH" OR "GREEN MONEY ONLY" SECURED BOND. G.S. 15A-534 suggests that when you designate a secured bond as the condition of release, you may not also dictate which type of secured bond a defendant may post. Therefore, even if you see that a judge has set a cash bond or a "green money only" bond on one or more occasions, do not assume that you have authority to specify a cash bond. On this issue you should consult the written bond policy issued by your senior resident superior court judge. If no written policy is available or if the policy does not address this issue, seek advice from your senior resident superior court judge or chief district court judge before setting a cash bond. Cash bonds are discussed on pages 39–40. As discussed there, even if a cash bond is set, G.S. 15A-531(4) provides that a cash bond may be satisfied by the posting of a secured bond by a "bail agent" (also known as a surety bondsman) in all cases except child support contempt proceedings.

Factors to consider. G.S. 15A-534(c) provides that in determining which conditions of release to impose, you must take into account

- the nature and circumstances of the offense charged;
- the weight of the evidence against the defendant;
- the defendant's family ties, employment, financial resources, character, and mental condition;
- whether the defendant is intoxicated to such a degree that he or she would be endangered by being released without supervision;
- the length of the defendant's residence in the community;
- the defendant's record of convictions;
- the defendant's history of flight to avoid prosecution or failure to appear at court proceedings; and
- any other evidence relevant to the issue of pretrial release.

Evidence to consider. G.S. 15A-534(g) provides that when imposing conditions of pretrial release, you must take into account all available evidence that you consider reliable. You are not bound by the rules of evidence when making this determination. G.S. 15A-534(g).

Restrictions

G.S. 15A-534(a) authorizes magistrates to impose restrictions on travel, association, conduct, or place of abode. You are allowed to impose these restrictions no matter what type of pretrial release condition you set. Any restrictions imposed should be reasonable and related to the purpose of pretrial release. Restrictions should not be used as punishment. The restrictions should relate to reasons listed under G.S. 15A-534(b):

- Assurance of defendant's appearance (travel)
- Danger of injury (conduct/association)
- Destruction of evidence (conduct/travel/association)
- Intimidation of witnesses (conduct/association)

Special Cases

As a general rule, and subject to your local bond policy, the law gives magistrates a great deal of discretion to determine the appropriate conditions of pretrial release. In some situations, however, the law or a judge requires you to impose certain conditions, forbids you from imposing certain conditions, or allows you to consider special conditions. This section discusses those special cases.

Infractions. As a general rule, any person who is not a North Carolina resident and who is charged with an infraction may be required to post a bond to secure his or her appearance in court. G.S. 15A-1113. The charging officer may require the person to accompany the officer to the magistrate's office to determine if a bond is necessary to secure the person's court appearance, and if so, what kind of bond is to be used. G.S. 15A-1113(c). However, if you find that the person is unable to post a secured bond, you *must* allow the person to be released by executing an unsecured bond. G.S. 15A-1113(c).

There are several exceptions to this rule. First, as suggested by the rule itself, a North Carolina resident who is charged with an infraction cannot be required to post bond. Second, a person charged with an infraction cannot be required to post an appearance bond if the person is licensed to drive by a state that is a member of the motor vehicle nonresident violator compact, the charged infraction is subject to the compact, and the person executes a personal recognizance required by the compact. G.S. 15A-1113. Third, certain individuals charged with infractions that are subject to the Wildlife Violator Compact cannot be required to post a bond. G.S. 113-300.6.

Probationer charged with a felony. Effective December 1, 2009, S.L. 2009-412 amended G.S. 15A-534 to add a new subsection (d2) providing that when you are determining conditions of pretrial release for a defendant who is charged with a felony while he or she was on probation for an earlier offense, you must determine whether the defendant poses a danger to the public before imposing conditions of pretrial release and must record that determination in writing. If you determine that the defendant poses a danger to the public, the new law requires you to impose a secured bond. As noted above, if you find that the defendant does not pose a danger to the public, impose conditions as usual. The procedure for handling these defendants when the information is insufficient to make the required determination is discussed above in the section on delaying setting conditions.

Domestic violence cases. G.S. 15A-534.1(a)(2) sets out special restrictions that may be imposed on a defendant who is charged with specified crimes of domestic violence or with a violation of a civil domestic protective order. They include that the defendant

- stay away from the home, school, business, or place of employment of the alleged victim;
- refrain from assaulting, beating, molesting, or wounding the alleged victim;
- refrain from removing, damaging, or injuring specifically identified property;
- may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

Use form AOC-CR-630 (included in Appendix A) to impose these restrictions.

G.S. 15A-401(b)(2)f provides that a law enforcement officer may arrest a person without an arrest warrant if the person has violated pretrial release conditions imposed under G.S. 15A-534.1(a)(2). Upon making such an arrest, the law enforcement officer must take the person without unnecessary delay to a magistrate and the magistrate has the responsibility of setting new

Table 5. Child Abuse Crimes Triggering G.S. 15A-534.4

-
1. Felonious or misdemeanor child abuse
 2. Taking indecent liberties with a minor in violation of G.S. 14-202.1
 3. Rape or any other sex offense in violation of G.S. Ch. 14, Art. 7A against a minor victim
 4. Incest with a minor in violation of G.S. 14-178
 5. Kidnapping, abduction, or felonious restraint involving a minor
 6. Transporting a child outside the state with intent to violate a custody order, as prohibited by G.S. 14-320.1
 7. Assault or any other crime of violence against a minor
 8. Communicating a threat against a minor
-

pretrial release conditions. If the defendant also is charged with a new domestic violence offense subject to G.S. 15A-534.1, the forty-eight-hour rule applies to the new offense.

Certain cases involving child victims. G.S. 15A-534.4 sets out specific conditions that must be imposed on a defendant who is charged with certain sex offenses or crimes of violence against child victims listed in Table 5. If the defendant is charged with one of those crimes, you must impose conditions that the defendant (1) stay away from the victim's home, temporary residence, school, business, or place of employment; (2) refrain from communicating or attempting to communicate with the victim, except as specified in an order entered by a judge with knowledge of the pending charges; and (3) refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim. However, upon request of the defendant, you may waive one or both of conditions (1) and (2), if you make written findings of fact that it is not in the best interest of the alleged victim that the condition be imposed. Use form AOC-CR-631 (included in Appendix A) for these cases.

Prior failures to appear and bond doubling. Special provisions apply when a defendant has been surrendered by a surety after a FTA or arrested on an OFA after a FTA.

ARREST ON AN OFA AFTER A FTA. When a defendant is arrested on an OFA after a FTA, follow these steps:

1. *Check for prior surrender.* Determine whether the defendant already has been surrendered by a surety for the same FTA. If so, and a new release order has been entered and a new bond set, re-release the defendant on the bond already posted and attempt to have the OFA recalled. If the defendant has not already been surrendered by a surety for the same FTA, set conditions of release as described directly below.
2. *Setting conditions of release.* Begin by examining the OFA. If the OFA recommends any conditions, impose them. G.S. 15A-534(d1). If the OFA says nothing about the conditions of release, find out what conditions were set in the prior release order. If a secured or unsecured bond was set in the prior release order, require a secured bond in at least twice that amount. G.S. 15A-534(d1). If a written promise to appear or custody release was set in the prior release order, require a secured bond of at least \$500.00. G.S. 15A-534(d1). You also must impose restrictions on the defendant's travel, associations, conduct, or place of abode to assure that the defendant will not fail to appear again. G.S. 15A-534(d1). Be sure to check the box on the release order indicating that the defendant was arrested after failing to appear as required by a prior release order. If it is the defendant's second

or subsequent FTA in the case, you must check the box indicating that on the release order. S.L. 2009-437, sec. 2.

SURRENDER AFTER A FTA. When a defendant is surrendered by a surety after a FTA, follow these steps:

1. *Check for prior arrest.* Determine whether the defendant already has been arrested by a law enforcement officer for the same FTA. If so, and a new release order has been entered and new bond posted, simply re-release the defendant on the bond already posted. If the defendant has not already been arrested, try to recall any outstanding OFA so that the defendant will not be rearrested for the same FTA. Then, set conditions of release as described in step 2.
2. *Setting conditions of release.* Obtain the certified copy of the bond that was provided to the jailer by the surety when the defendant was surrendered. Require a secured bond in at least twice that amount. G.S. 15A-534(d1). Be sure to check the box on the release order indicating that the defendant surrendered after failing to appear as required by a prior release order. If it is the defendant's second or subsequent FTA in the case, you must check the box indicating that on the release order. S.L. 2009-437, sec. 2.

Order of a judge. If the judge has ordered that certain conditions of pretrial release be imposed—for example in an OFA—impose those conditions as ordered.

Modification of Conditions

G.S. 15A-534(e) permits a magistrate to modify his or her pretrial release order at any time before the first appearance before a district court judge. If you believe that there are compelling reasons to modify another magistrate's pretrial release order, consult with the other magistrate before making the modification, if possible.

Term of the Bond

A defendant is covered by a bond until judgment is entered in district court from which no appeal is taken, or until judgment is entered in superior court. G.S. 15A-534(h). However, the bond ends earlier if: (1) a judge releases the obligor from the bond; (2) the defendant is properly surrendered by a surety; (3) the proceeding is terminated by voluntary dismissal by the state before forfeiture is ordered; or (4) an indefinite prayer for judgment continued has been entered in district court. G.S. 15A-534(h).

AOC Forms

Form AOC-CR-200 (included in Appendix A) must be completed every time you determine whether conditions of release are warranted and what conditions will be imposed. This section discusses how to use that form.

Upper portion of form. In the upper portion of the form, fill in basic information such as the file number, county, and name and address of the defendant. If a bond is imposed, list the amount of the bond there as well.

Defendant not entitled to release. If the defendant's release is not authorized (for example, in a capital case), check the box that says "Your release is not authorized," order the person's commitment on the appropriate portion of the form, and sign and date the form.

Custody release or written promise to appear. When ordering a custody release or a release on a written promise to appear, check the box for “Custody Release” or “Written Promise,” ensure that the relevant information in the section of the form entitled “Written Promise to Appear or Custody Release,” is completed, and sign and date the form. Note that a release of a defendant held on an impaired driving detention to a sober, responsible adult, see pages 25–28, is not a custody release.

Unsecured or secured bond. When ordering an unsecured or secured bond, check the appropriate box for “Secured Bond” or “Unsecured Bond” and sign and date the form. To take a bond, form AOC-CR-201 (included in Appendix A) also must be completed. To take an unsecured bond, check the box on AOC-CR-201 for “Unsecured Appearance Bond,” sign and date the form, and make sure the defendant signs the form. Instructions for taking a secured bond are provided below.

FTA boxes. When a defendant has been arrested by a law enforcement officer or surrendered by a surety after a FTA, check the box on form AOC-CR-200 that states, “The defendant was arrested after failing to appear as required under a prior release order.” G.S. 15A-534(d1). If the defendant has had any other FTAs in the case, check the box noting that this was the defendant’s second or subsequent FTA. G.S. 15A-534(d1). Be sure to follow the bond doubling procedures described above on pages 36–37.

Impaired driving or communicable disease detention. Impaired driving and communicable disease detentions are discussed above on pages 25–28. If such a detention has been imposed, check the box that says that the defendant’s release is not authorized until the detention is complete. Checking this box will help to ensure that a defendant is not mistakenly released when he or she satisfies a condition of release (for example, by putting down cash on a bond) and a detention is not yet complete.

Restrictions. Any restrictions that are imposed should be listed in the space designated on the form.

Additional information. The form contains a box for additional information. Most commonly, this box is used to specify that a secured bond must be satisfied by cash only. Your authority to set a cash bond is discussed on page 34. If you have been authorized to impose a cash bond and deem a cash bond appropriate, check the box for “Secured Bond” and write “Cash Bond” in the additional information box.

Taking Bonds

Generally

When you have set a written promise to appear or a custody release as the condition of pretrial release, the only paperwork needed to effect the release is the Conditions of Release and Release Order (AOC-CR-200, included in Appendix A). However, when a bond is set—whether secured or unsecured—an appearance bond is required. This section discusses how to take bonds and ensure that an appearance bond is properly executed. For more information on all of the topics discussed below, see the paper, “Taking Bail Bonds,” at www.sog.unc.edu/programs/ncmagistrates/2009AdvCrimProcedure_001.html, by Troy Page of the AOC.

Local Procedure

Many of the legal issues discussed in this section have not been decided by the North Carolina appellate courts. You should follow local procedures adopted by your senior resident superior court judge and the advice of your chief district court judge or senior resident superior court judge when those procedures and advice differ from statements in this section.

AOC Form

The form for taking bonds is AOC-CR-201. Form AOC-CR-201A is used when more space is needed to list multiple sureties. Both forms are included in Appendix A.

Unsecured Bonds—Described

An unsecured bond essentially is a promise by the defendant to forfeit the amount of the bond if the defendant fails to appear as required. In an unsecured bond, the defendant's promise is not backed by money or property. Although a defendant does not appear to have to satisfy any requirements regarding solvency for an unsecured appearance bond, the defendant does have to sign the appearance bond form to make it a valid contract.

Secured Bonds—Described

A secured bond essentially is a promise by the defendant or a surety to forfeit the amount of the bond if the defendant fails to appear as required. Unlike an unsecured bond, a secured bond is backed by money or other property. Because taking a secured bond is more complicated than taking an unsecured bond, the rest of this section focuses on taking secured bonds.

Types of Secured Bonds

G.S. 15A-534(a)(4) provides that there are three ways to secure a bond:

- A cash deposit in the full amount of the bond
- A mortgage pursuant to G.S. 58-74-5
- At least one solvent surety

Each of these ways of securing a bond is discussed below.

When Cash Secures the Bond

Full amount of the bond. G.S. 15A-534(a)(4) provides that a bond may be secured by a cash deposit in the “full amount of the bond.” Thus, when cash is provided, it must be for the total amount of the bond.

When “cash” means cash. G.S. 15A-531(4) provides that a cash bond may be satisfied by the posting of a secured bond by a “bail agent” (also known as a surety bondsman) in all cases except child support contempt proceedings. A bail agent is a surety bondsman acting as an agent for an insurance company. A “professional bondsman” is not a bail agent (surety bondsman), and therefore a professional bondsman may not post a secured bond when a cash bond is required.

Taking a cash bond. The procedure for taking a cash bond varies, depending on who is providing the cash. To take a cash bond when the defendant tenders the cash, form AOC-CR-201 should be completed as follows:

- Fill in the top portion of the form.
- Check the box for “Cash Appearance Bond.”
- Swear the defendant, have the defendant sign the bond, and complete the section entitled “Sworn and Subscribed Before Me.”
- Complete the section entitled “Complete if Cash Deposited.”
- Issue a receipt to the defendant.

When another person tenders cash to satisfy the bond, clarify that person's intentions about the use of the cash upon disposition of the charges. Specifically, determine whether the person intends the cash to be available to satisfy the defendant's obligations (for example, fine and

costs) if the defendant is convicted or found in contempt. If the person intends the cash to be available to satisfy the defendant's obligations (or to be given to the defendant if there are no obligations to be satisfied), it is as if the person has given the cash to the defendant. Thus AOC-CR-201 should be completed as if the defendant personally tendered the cash. If the person expects to get the cash back even if the defendant is convicted or found in contempt (that is, the person is offering his or her cash for the limited purpose of securing the bond), AOC-CR-201 should be completed as follows:

- Fill in the top portion of the form.
- Have the defendant sign the bond.
- Check the box for "Surety Appearance Bond" and check the box below that option for "Cash Deposited by Surety."
- Under "Accommodation Bondsman" enter the information about the person tendering the cash and have that person sign as an accommodation bondsman.
- Swear that person and complete the section entitled "Sworn and Subscribed Before Me."
- Complete the section entitled "Complete if Cash Deposited."
- Issue a receipt to the person depositing the cash.

Cash bonds greater than \$10,000. Special reporting requirements apply when you receive cash in excess of \$10,000 to satisfy an appearance bond. Willful failure to file the required reporting form for a qualifying transaction is a felony. 26 U.S.C. § 7203. For more information on these reporting requirements, see the AOC paper, "Taking Bail Bonds," at www.sog.unc.edu/programs/ncmagistrates/2009AdvCrimProcedure_001.html.

Accepting cash. Although many sheriffs and chief jailers may have a policy against it, G.S. 15A-537 permits jailers to release a defendant if a judicial official is not available. This statute can be interpreted to mean that jailers may accept cash. However, the "Notes on Cash Bonds" on form AOC-CR-201, side two, indicates that jailers may not take cash bonds. Any cash collected by sheriffs and jailers should be deposited with the clerk's office.

When a Mortgage Secures the Bond

Generally. As noted above, a bond may be secured with a mortgage pursuant to G.S. 58-74-5. Specifically, a person can secure a bond by executing a mortgage on real or personal property that has a value that can cover the bond, payable to the state of N.C., conditioned with power of sale to be executed by the clerk upon a breach. G.S. 58-74-5. For more detailed information about taking mortgage bonds, see the AOC paper, "Taking Bail Bonds," noted above.

When a Surety Secures a Bond

Types of sureties. There are four types of sureties:

- An accommodation bondsman
- A professional bondsman or his or her runner
- An insurance company, acting through a bail agent (surety bondsman)
- A motor club

Each surety is discussed in more detail in the sections that follow.

Persons prohibited from serving as surety. G.S. 15A-541(a) prohibits the following types of people (or their spouses) from serving as a surety for anyone other than an immediate family member: sheriff, deputy sheriff, law enforcement officer, judicial official, attorney, parole officer, probation

officer, jailer, assistant jailer, employee of the General Court of Justice, or other public employee assigned to duties relating to the administration of criminal justice. These people also are prohibited from having an interest in the financial affairs of any firm or corporation whose principal business is acting as bondsman. G.S. 15A-541(a). Violation of these provisions is a Class 2 misdemeanor. G.S. 15A-541(b).

Accommodation or “property” bonds. *LOCAL POLICIES.* Some counties have specific accommodation bond policies that magistrates must follow (for example, no accommodation bonds in the amount of \$5,000 or more may be accepted without a deed of trust). Make sure that you know your local policy.

ACCOMMODATION BONDSMAN DEFINED. An accommodation bondsman must

- be a natural person;
- be eighteen-years-old or older;
- be a resident of North Carolina;
- receive no consideration (for example, money or other valuables) for acting as a surety;
- endorse the bond; and
- provide satisfactory evidence of ownership, value, and marketability of real or personal property that is sufficient to fully satisfy the bond in the event of breach.

G.S. 15A-531; G.S. 58-71-1(1).

TAKING AN ACCOMMODATION BOND. To take an accommodation bond, complete form AOC-CR-201 as follows:

- Fill in the top portion of the form.
- Check the box for “Surety Appearance Bond.”
- Have the defendant sign the bond.
- Complete the sections under “Accommodation Bondsman.”
- Swear the person and complete the section entitled “Sworn and Subscribed Before Me.”

If there are more than two accommodation bondsmen, use form AOC-CR-201A to list the additional names. When using this form, remember to check the box on AOC-CR-201, indicating that there are additional accommodation bondsmen. If the property pledged is owned by spouses as tenants in the entirety, both spouses must sign the bond.

The person wanting to be a surety must be placed under oath and you must determine that the person satisfies the requirements for an accommodation bondsman, including that the person has sufficient assets (real or personal) to cover the bond above liabilities and exemptions. The amount of assets must be over and above the homestead exemption in land of \$1,000 in real property and the personal property exemption of \$500. N.C. CONST. Art. X, sec. 1–2.

Sources that may be consulted in determining whether to accept real property for the bond include the following:

- Tax office (ownership of real property and appraised value of real property)
- Register of deeds office (deeds of trust and mortgages on real property)
- Clerk’s office (outstanding judgments docketed against the person who wants to be a surety)
- Surety (ask the person who wants to be a surety about outstanding debts)
- Third person (third party you trust vouches that the surety has sufficient assets)

The misdemeanor of false qualification occurs if the surety signs and knows or reasonably should know that there is insufficient property over and above his or her exemption. G.S. 15A-542.

SPECIAL ISSUES REGARDING ACCOMMODATION BONDS. Some special rules apply to accommodation bonds. First, a defendant may not sign his or her own accommodation bond. The surety must be someone who is liable in addition to a defendant (although a defendant can post his or her own cash for a cash bond or execute a mortgage on his or her property under G.S. 58-74-5 for a mortgage bond). The definition of “surety” in G.S. 58-71-1(10) states that a surety is one, who with the defendant, is liable for the amount of the bail bond when it is forfeited.

Second, a defendant’s spouse may be a surety only if the property is in the spouse’s own name (and not jointly owned). The reason is that G.S. 58-71-1(1) requires that the surety be personally solvent for the amount of the bond. The bond should be separate from and in addition to the defendant’s obligation. It is intended as an additional security.

Professional bondsman. *DEFINED.* A professional bondsman is a person who

- is approved and licensed by the Commissioner of Insurance;
- pledges cash or approved securities with the Commissioner as security for bail bonds; and
- receives or is promised money or other things of value for writing the bond.

G.S. 15A-531(7); G.S. 58-71-1(8).

RUNNERS. A professional bondsman may employ “runners” who are agents of the bondsman for purposes of executing bail bonds and other functions. G.S. 58-71-1(9).

TAKING A PROFESSIONAL BONDSMAN BOND. When taking a bond that is secured by a professional bondsman, begin by checking the Surety Report (available online at www.nccourts.org/Courts/OCO/Magistrates/Bondsman/) to confirm that the surety is authorized to execute bonds in the charging county. If so, complete form AOC-CR-201 as follows:

- Fill in the top portion of the form.
- Check the box for “Surety Appearance Bond.”
- Check the next box, which indicates that the affidavit is complete and true.
- Have the defendant sign the bond.
- Make sure the name and license of the professional bondsman or runner is provided under the section entitled “Professional Bondsman” on the front of the form.
- Make sure that the professional bondsman or the runner completes the affidavit on the back of the bond.
- Verify that the professional bondsman or his or her runner attach a stamp to the back of bond.
- Swear the bondsman or his or her runner regarding the truth of the statements in the bond, have the person sign the bond, then complete the portion designated “Sworn and Subscribed Before Me.”

Insurance company acting through a bail agent (surety bondsman). *DEFINED.* A bail agent (surety bondsman) is a person who

- is licensed by the Commissioner of Insurance as a surety bondsman;
- is appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer; and
- receives or is promised money or other things of value for writing the bond.

G.S. 15A-531(3); G.S. 58-71-1(11).

INSURANCE COMPANY IS SURETY. The bail agent (surety bondsman) is an agent for the insurance company, which is the surety.

RUNNERS CANNOT SIGN. Although a runner may sign a bond for a professional bondsman, only a bail agent (surety bondsman) may sign for the insurance company. The bail agent (surety bondsman) cannot have a runner sign the bond.

Example: A professional bondsman has a runner. The bondsman is also a bail agent (surety bondsman). The bondsman wants to post a \$10,000 appearance bond. If the bond is executed on behalf of the insurance company, the runner cannot sign the bond. If the bond is executed on behalf of the professional bondsman, the runner can sign the bond.

TAKING A BAIL AGENT (SURETY BONDSMAN) BOND. To take a bond secured by a bail agent (surety bondsman) begin by checking the Surety Report (available online at www.nccourts.org/Courts/OCO/Magistrates/Bondsman/) to confirm that the surety is authorized to execute bonds in the charging county. If so, complete form AOC-CR-201 as follows:

- Fill in the top portion of the form.
- Check the box for “Surety Appearance Bond.”
- Check the next box, which indicates that the affidavit is complete and true.
- Have the defendant sign the bond.
- Make sure the portion of the form designated “Insurance Company” on the front of the form is completed.
- Make sure that the bail agent (surety bondsman) completes the affidavit on the back of the bond.
- Verify that the bail agent (surety bondsman) has affixed to the bond one of the individual powers of attorney given to him or her by the insurer.
- Swear the bail agent (surety bondsman) regarding the truth of the statements in the bond, have the bail agent (surety bondsman) sign the bond, and then complete the portion designated “Sworn and Subscribed to Before Me.”

NOTE ON POWERS OF ATTORNEY. The insurance company gives the bail agent (surety bondsman) two different kinds of powers of attorney. One power is the authorization for the bail agent (surety bondsman) to act as surety for the company and gives the total amount of money for which the agent (surety bondsman) is entitled to bind the insurance company. This power of attorney is registered with the license. The insurance company also gives the bail agent (surety bondsman) several individual powers of attorney, usually sequentially numbered. One of the individual powers of attorney must be attached to a bond signed by the bail agent (surety bondsman) on behalf of the insurance company. These powers are usually for less than the total amount of bonds that can be written and constitute the maximum amount for which one bond can be written.

Many powers of attorney provide that a bail agent (surety bondsman) may not stack powers of attorney.

Example: An insurance company gives a bail agent (surety bondsman) a power of attorney to write bonds for a total amount of \$100,000 and gives the bail agent (surety bondsman) separately numbered powers of attorney to attach to each bond written with a face amount of \$20,000, each providing that the power of attorney is “void if used with other powers.” The defendant is placed under a \$60,000 bond. The bail agent (surety bondsman) may not attach three powers of attorney and write a \$60,000 bond (called “stacking”) for one defendant because the insurance company has limited the authority of the agent in one bond to the amount in the individual, numbered power of attorney. A bail agent (surety bondsman) who is the agent for three different insurance companies may not put up \$20,000 from each company.

Motor club bail bond. *DEFINED.* Some motor clubs provide bonds guaranteed by a surety for motor vehicle offenses. G.S. 58-69-2(3).

MUST BE ACCEPTED. Subject to exceptions, you must accept a guaranteed arrest bond certificate in place of cash bail or other bond in an amount not exceeding \$1,500 for any motor vehicle offense. G.S. 58-69-55. The two exceptions are that the arrest bond certificate cannot be accepted for an impaired driving offense or a felony offense. G.S. 58-69-55.

VARIATIONS IN COVERAGE. When taking a motor club bail bond, read the motor club card carefully and check the expiration date. Some cards require that the court appearance rather than the date of taking the bond must occur before the expiration. The card must indicate that a surety company guarantees the defendant's appearance. Also, the card sometimes specifies offenses to which it will or will not apply and will indicate the maximum amount of a bond that will be guaranteed, which may be less than \$1,500.

Example: A card may specify: "The General Insurance Co. of America (GICA) guarantees the appearance of the AAA member named on this card in any court up to the card's expiration date. The card can be accepted against an arrest bond up to \$1,000 or to secure a bail bond up to \$5,000 from GICA for any motor vehicle law violation except violations involving driving while under the influence of intoxicating liquors, drugs or narcotics, failure to appear for violations, driving on a suspended/revoked driver's license, hit and run, failure to present evidence of insurance, illegal use or falsification of license or registration, engaging in a felony, attempting to elude/eluding police, or while driving a vehicle used for commercial purposes."

TAKING A MOTOR CLUB BAIL BOND. For instructions on taking a motor club bail bond, see the AOC paper, "Taking Bail Bonds," at www.sog.unc.edu/programs/ncmagistrates/2009AdvCrimProcedure_001.html.

Wrapping

Some counties allow wrapping of bonds—that is, the bundling of multiple offenses into one bond. Consult the written bond policies in your county to determine whether wrapping is allowed in your jurisdiction.

Splitting

The general rule is that when multiple sureties sign a bond, they are jointly and severally liable on the bond. G.S. 15A-544.3(a); -544.7(a). That means that the full amount of the bond can be collected from each surety. Splitting of the bond refers to a practice where multiple sureties divide up the bond, agreeing to be liable for only a portion of it; for example, for a \$1,000 bond, sureties A and B agree to be liable for \$500 each. It is not clear whether splitting of a bond is permissible. Therefore, you should allow splitting only if permitted by the written bond policy issued by your senior resident superior court judge.

Surrender of Defendant by Surety

Surety's Authority to Arrest

A surety (and a runner for a bail bondsman) may arrest a defendant for purpose of surrender. G.S. 15A-540; G.S. 58-71-30.

Although G.S. 58-71-30 permits you to issue an OFA for a defendant when a surety makes a written request on a certified copy of the bond, do not do so without consulting with your chief district court judge or senior resident superior court judge. It ordinarily would not be a good practice to issue an OFA under such circumstances; this is additionally true as G.S. 58-

71-30 may conflict with G.S. 15A-305, which only authorizes the issuance of an OFA on certain grounds. Note that G.S. 58-71-195 provides that if there is a conflict between the provisions of G.S. Ch. 58 and G.S. Ch. 15A, the provisions of G.S. Ch. 15A govern.

Surrender

Surrender after breach. After a breach of conditions of a bail bond, a surety (and a runner for a bail bondsman) may surrender the defendant to the sheriff of the county where the defendant is bonded to appear for trial or to the sheriff of the county where the defendant was bonded. G.S. 15A-540(b). Alternatively, a surety may surrender a defendant who is already in the custody of any sheriff in the state by appearing in person and informing the sheriff that the surety wishes to surrender the defendant. G.S. 15A-540(b). Before surrendering a defendant to a sheriff, the surety must provide the sheriff with a certified copy of the bail bond. G.S. 15A-540(b). Upon surrender of the defendant, the sheriff must provide the surety with a receipt. G.S. 15A-540(b).

When a defendant is surrendered after a breach, the sheriff must take the defendant, without unnecessary delay, before a judicial official for new conditions of pretrial release. G.S. 15A-540(c).

Surrender before breach. Before a breach of conditions of a bail bond, a surety may surrender a defendant to the sheriff of the county where the defendant is bonded to appear or to the sheriff where the defendant was bonded. G.S. 15A-540(a); G.S. 58-71-20. When the surrender is made before a breach, new conditions of pretrial release should not be set. In this case, the defendant remains in custody until the conditions of the original release order are satisfied.

AOC Form

The form to be used when the surety surrenders the defendant is AOC-CR-214 (included in Appendix A).

Fugitives

Extradition is the procedure by which a person who has committed a crime in one state, escaped from prison in one state, or violated probation or parole imposed by one state and has fled to another state is returned to the first state. For more information about extradition, see *STATE OF NORTH CAROLINA EXTRADITION MANUAL* (2d ed. 1987), from which most of the text in this section is drawn directly. Note that separate procedures apply to defendants who violate probation imposed by another state and are in North Carolina pursuant to a supervision agreement under the Interstate Compact for Adult Supervision (Interstate Compact). In those cases, the Interstate Compact rules, discussed on page 31, apply. When a defendant has violated probation imposed by another state and is found in North Carolina with no Interstate Compact supervision agreement in place, extradition rules govern the process for returning the defendant to the other state.

Most commonly, magistrates will deal with fugitives from other states who are found in North Carolina. Consider the case of a person who committed a crime—say, armed robbery—in Ohio and fled to North Carolina. Probably the person already has been charged formally in Ohio, either by indictment or by an arrest warrant. When he or she is discovered in North Carolina, the person may be arrested by a North Carolina officer, either with or without an arrest warrant from a North Carolina magistrate. The sections below discuss the procedures that apply

in these circumstances. See page 49 for a discussion of your involvement when a fugitive from North Carolina is found in another state.

Fugitive from Another State Before Magistrate after Warrantless Arrest

When a fugitive from another state is found in North Carolina, an officer may arrest the fugitive without a warrant only if the person has been charged with a crime in the other state that is punishable there by death or more than one year's imprisonment. After arresting without a warrant, the officer must take the fugitive before a North Carolina magistrate as soon as possible. When an officer brings a fugitive to you after making a warrantless arrest, you should:

1. *Determine whether the officer had adequate grounds for the arrest.* Place the officer under oath and ask the officer the reasons for the arrest. An officer may arrest without a warrant only when the person has been charged with a crime in another state and that crime is punishable by death or by imprisonment for more than one year. The person might have been charged in the other state by the issuance of an arrest warrant, indictment, or information. You determine only whether the person has been charged in the other state, not whether there was probable cause for the charge. The officer's information that the person has been charged must be reliable. Usually it will be a DCI-PIN message, but it could be a letter, facsimile, or telephone call from an officer in the other state. Sometimes the officer will have a copy of the warrant or indictment from the other state. If the information is a DCI-PIN message, ask the officer whether he or she has telephoned the other state to verify that the charge is still outstanding and that the other state wishes to extradite. This verification is not essential—the DCI-PIN message is sufficient justification for arresting the fugitive—but it is a highly recommended practice. Of course, you also must determine that the person arrested is the person charged in the other state.
2. *Complete a magistrate's order for fugitive.* Make sure the Fugitive Affidavit (AOC-CR-911M) is completed and complete the Magistrate's Order for Fugitive (AOC-CR-909M), following the usual procedure on the number of copies to be completed. Both forms are included in Appendix A. Send the original to the clerk's office and attach to the original the DCI-PIN message or other written document used to establish that the person is a fugitive. Next, remind the officer to obtain a copy of the other state's warrant or indictment as soon as possible and attach it to the original copy of the magistrate's order in the clerk's office.
3. *Inform the fugitive of the charge.* Inform the fugitive of the charge, the right to communicate with counsel and friends, and whether he or she is entitled to pretrial release.
4. *Determine appropriate conditions.* G.S. 15A-736 allows a fugitive to be given bail unless the offense with which the defendant is charged in the other state is punishable by death or life imprisonment. See page 29. Apparently the only form of pretrial release that may be used is a bail bond with sureties. Your local bail bond schedule may include instructions on what bond to set for fugitives. Sometimes the same amount is required as for a similar North Carolina crime; sometimes that amount is doubled or otherwise multiplied. If bail is not allowed, or if the fugitive cannot meet the bail, he or she should be committed to the county jail.
5. *Order the fugitive to appear in district court.* Whether the fugitive is released on bond, cannot make bond, or is ineligible for bail, the release or commitment order should direct

the fugitive to appear before a district court judge at the earliest possible time. Although the statute does not require an immediate district court appearance for a fugitive who is released on bond, such an appearance will give the district judge an early opportunity to review the fugitive's bond, explain the extradition process, and appoint counsel if necessary. Fugitives often waive formal extradition once they are told about the process and have talked to a lawyer. If your chief district judge prefers not to deal with the fugitive at this point, release is on condition that the person either (a) return for a district court appearance at a specific time within thirty days or (b) surrender when a Governor's Warrant, discussed below, is issued.

Fugitive Warrant

More commonly, the officer will come to you to obtain a North Carolina arrest warrant, called a fugitive warrant, AOC-CR-910M (included in Appendix A), before arresting a fugitive from another state. When this happens, you should:

1. *Determine whether there are grounds for an arrest.* Place the officer under oath and ask about the reasons for making an arrest. The three grounds that justify an arrest are that the person (1) is charged with a crime in another state and fled, (2) was convicted of a crime in another state and has escaped from imprisonment there, or (3) was convicted of a crime in another state and violated the conditions of probation or parole by fleeing. The officer's information must be reliable. Usually it will consist of a DCI-PIN message, but it could be a letter, facsimile, telephone call from an officer in the other state, or even a copy of the warrant or indictment from the other state. You do not determine whether there is probable cause to believe the person committed the crime. You only determine that one of the three grounds for arrest exist and that this is the person who is wanted by the other state.
2. *Complete the affidavit and arrest warrant.* Both the Fugitive Affidavit (AOC-CR-911M) and the Warrant for Arrest for Fugitive (AOC-CR-910M) must be completed and attached to each other. Follow the usual procedure on the number of copies to be completed and send the original to the clerk's office. Also, attach to the original the DCI-PIN message or any other document used to establish that the person is a fugitive. It is good practice to remind the officer to obtain a copy of the arrest warrant or indictment in the other state as soon as possible and attach it to the original copy of the warrant in the clerk's office.

Fugitive from Another State Before Magistrate after Arrest on a Warrant

Once the fugitive warrant is issued, the officer makes the arrest and takes the defendant before a magistrate as soon as possible for the setting of pretrial conditions, just as would be done for a North Carolina crime. When an officer arrests a fugitive on the basis of a warrant and brings the fugitive before you, inform the fugitive of the charges, determine whether to allow bail, and order the fugitive to appear in district court, as described in "Fugitive from Another State Before Magistrate after Warrantless Arrest," above.

Fugitive from Another State Who Has Not Been Charged

Another possibility, though unusual, is that the person has not yet been formally charged in the other state. For example, a person may have robbed a convenience store in Virginia late at night and fled to North Carolina but no warrant was issued because no judicial official was on duty in Virginia.

The extradition statutes allow a fugitive to be arrested in North Carolina even though the fugitive has not yet been formally charged in the other state. However, the officer only may do so with an arrest warrant. The procedure for issuing such a warrant is the same as that for charging someone with a North Carolina crime; that is, the officer must be placed under oath and must state facts from which you can independently determine that there is probable cause to believe that the person committed the crime in another state. You cannot simply accept the word of the officers from the other state that the person committed the crime; you must be told the reasons for reaching that conclusion. (This is different from other situations involving a fugitive in which you need only establish that the person has been charged in the other state.)

If you determine that there is probable cause, complete an arrest warrant. The standard arrest warrant form will need to be modified to indicate that the crime is one committed against the law of another state. You need not spell out the elements of the offense but simply can state the name of the other state's crime. The name of the crime given by the officers from that state should be used, even if it is different from the name used in North Carolina (for example, "second degree robbery"). After the warrant is issued, the case proceeds like any other one involving a fugitive.

Governor's Warrant

Once arrested, a fugitive is held until formal extradition procedures can take place. If he or she wishes to do so, the fugitive may waive extradition before a clerk of court or a judge and be immediately released to the state from which the fugitive fled. Many fugitives choose to do this, knowing that they will be extradited and not wishing to spend the time required for formal extradition.

If the fugitive does not waive extradition, the state from which the fugitive fled then must formally request the governor of North Carolina to extradite. If the governor decides to extradite, a Governor's Warrant will be issued. A Governor's Warrant authorizes the taking of the fugitive into custody—in fact, the fugitive already may be in custody if he or she was not allowed bail or could not make bail—to be turned over to an agent of the other state.

When a fugitive is brought before you on a Governor's Warrant, you should:

1. *Inform the fugitive of the charges.* Tell the fugitive what crime he or she is charged with in the other state and that the governor of North Carolina has issued a warrant to take him or her into custody and be returned to the state from which he or she fled. The fugitive also should be informed of the right to communicate with counsel and friends. The Governor's Warrant requires that the fugitive be held without bond.
2. *Commit the fugitive to jail.* Commit the fugitive to jail to await his or her appearance before a district court judge.
3. *Order the fugitive returned to district court at the earliest possible date.* The order of commitment should specify the time and date that the fugitive is to appear before a district court judge, which should be as soon as possible.

Fugitives from North Carolina

If a person who committed a crime in North Carolina flees to another state and is found there, a similar procedure takes place. Once the fugitive is arrested in the other state, the North Carolina district attorney of the county where the fugitive is charged is notified and must put together the documents that the North Carolina governor's office will need in requesting extradition (assuming that the fugitive does not waive extradition).

Magistrates only are involved in the process of extraditing a fugitive from North Carolina who has fled to another state if an arrest warrant is used as the charging document. In that case, the warrant must be accompanied by an affidavit (usually by the investigating officer or the victim) that states the grounds for charging the defendant. This affidavit must be sworn to before a magistrate or judge and should have the same date as the warrant (or earlier). Some states will not extradite if the date of the affidavit (for example, January 25, 2009) is later than the date of the arrest warrant (for example, January 20, 2009). Therefore, when a warrant is issued without an accompanying affidavit (oral sworn testimony is sufficient to support an arrest warrant in North Carolina), a new arrest warrant must be issued when the affidavit is prepared so that the dates of the arrest warrant and the affidavit will be the same. Also, if a warrant and affidavit are submitted, they must be accompanied by a certification of the magistrate or judge who issued the warrant or took the affidavit. A clerk of court may certify copies of documents when he or she is the keeper of the original. Each copy must be certified. When a judge or magistrate certifies a document, the clerk of court must certify that person's official character. Then a district court or superior court judge must certify the official character of the clerk. And, in turn, the clerk must certify the official character of the judge who certified the clerk.

Search Warrants

Generally

A search warrant directs a law enforcement officer to search premises, vehicles, persons, or other places in order to seize specified items or persons. G.S. 15A-241. Any item is subject to seizure under a search warrant if there is probable cause to believe it is stolen or embezzled, is contraband or otherwise unlawfully possessed, has been used or is possessed for the purpose of being used to commit or conceal the commission of a crime, or is evidence of an offense or the identity of a person participating in an offense. G.S. 15A-242. Typically, officers will need a search warrant to seize items. Sometimes, however, they will need a search warrant to seize a person—for example, when the officers have a warrant for arrest of a person but that person is inside a friend's house and the friend will not allow the officers to enter.

This section focuses on a magistrate's role in issuing search warrants. For an extensive discussion of search warrants, including among other issues, the advantages of using them and the consequences of unlawful searches, see *ARREST, SEARCH, AND INVESTIGATION*.

Forms

Two basic documents are used for search warrants: the application for the warrant and the warrant itself. Form AOC-CR-119 (included in Appendix A) contains a generic application (on one side) and a generic warrant (on the other side). A special form, AOC-CR-155 (included in Appendix A), is used for search warrants to seize blood or urine in impaired driving cases.

Authority to Issue

Only judicial officials may issue search warrants. G.S. 15A-243. Appellate justices and judges and superior court judges may issue search warrants to search throughout North Carolina. G.S. 15A-243(a). District court judges are limited to searches within their respective judicial districts. G.S. 15A-243(b)(1). Clerks and magistrates are limited to searches within their counties. G.S. 15A-243(b)(2)-(3). One magistrate can issue a search warrant even if another magistrate has refused to do so under the same factual circumstances. However, the second magistrate should view the first magistrate's refusal as a cautionary signal.

Modification

Once a search warrant has been issued and changes need to be made to it, it is a better practice to issue a new warrant and have the first warrant returned unexecuted.

The Application**Generally**

An application for a search warrant must be in writing, on oath or affirmation. G.S. 15A-244. It is best to use the standard AOC forms noted above. All applications must contain: (1) the name and title of the applicant; (2) a statement that there is probable cause to believe that the items subject to seizure may be found in or upon a designated or described place, vehicle, or person; (3) allegations of fact supporting the statement, and the statement must be supported by one or more affidavits setting forth the facts and circumstances establishing probable cause to believe that the items are in the places or in the possession of the individuals to be searched; and (4) a request that the court issue a search warrant directing a search for and seizure of the items in question. G.S. 15A-244.

It does not matter who fills out the application for the search warrant, as long as it accurately represents what the applying officer knows. Thus an officer may fill out most of the application before bringing it to you, provided that you swear the officer, see G.S. 11-11 regarding oaths, and carefully examine the officer about the information contained in the application.

AOC Form

This section walks you through the contents of the application for a search warrant. You might find it helpful to have a copy of form AOC-CR-119 in front of you as you review this material.

Name of applicant. The first item on the application form is the name and address of the person applying for the warrant, or if an officer, the officer's name, rank, and agency. Most commonly, an officer will apply for the search warrant.

Description of property to be seized/person to be arrested. The next part of the application form provides space for a listing of the property to be seized or the person to be arrested. The officer who executes a search warrant need not be the officer who applies for the warrant. Therefore, the description of the property to be seized must be sufficiently detailed so that an officer executing the search warrant does not seize the wrong property. The subsections below provide more detail on how the property or person to be seized should be described.

PROPERTY. The more common the property, the more detailed the description must be to avoid seizure of the wrong thing. Thus "stolen gun" and "refrigerator" are not sufficient. When dealing with common items, including the serial number, brand, model, and visual description of an item to be seized would be helpful identifying information. A detailed description is less important for obvious contraband, such as a machine gun or nontaxpaid liquor. Moreover,

an officer may seize obvious contraband not described in the affidavit, if seen in plain view or seized incident to arrest. Not much detail is needed if the property is drugs, which ordinarily may not be possessed lawfully. Although it is best to state the name of the drug, the generic name is adequate. Thus “marijuana” is sufficient. It is not necessary to state the amount of illegal drugs being sought.

PERSON. As noted above, there are situations when an officer will be required to obtain a search warrant to enter premises to make an arrest with an arrest warrant or an OFA. In such a case, the officer must describe the person to be seized by giving that person’s name and description. If the person’s name is known, only the name is required; a physical description can be helpful or can be a substitute for the name if the name is unknown (e.g., “white male, 6’5”, long blond hair and mustache”).

Crime that was committed. The next item on the application is the crime at issue. It is useful to give a short phrase describing the crime, such as “possession of marijuana,” “armed robbery,” or “felonious breaking or entering.” It is also better practice to refer to the date and location of the crime and the crime’s statutory citation. Avoid abbreviations such as “A/R” or “FB/E.”

The description of the crime need not be as detailed as in criminal process, because a person is not being charged with a crime by this document. After all, it is possible that a person whose home is being searched may have nothing to do with the crime under investigation.

What is to be searched. The next section on the application form requires that the applicant specify and describe where the person or item sought is located. The options on the form include “premises,” “person(s),” “vehicle(s),” and “other places or items.” The application may specify any combination of these locations, if justified by the facts. As noted above, the officer who executes a search warrant need not be the officer who applies for the warrant. Therefore, the descriptions of the premises, persons, vehicles, or other places or items to be searched must be sufficiently detailed so that an officer executing the search warrant does not search the wrong person or property.

PREMISES. If the premises is a house, the street number is sufficient, however, it is best to include a physical description in case the street number is wrong. If the street number is wrong but the officer searches the correct house based on the physical description, the search warrant still would be valid. If the house and street numbers are incorrect and the application contains no description, the warrant will be invalid. If the premises is an apartment, give the apartment number or description of its location in the apartment complex. Remember that an officer unfamiliar with the investigation must be able to find the premises based on the description in the application.

A search warrant to search premises does not give authority to search persons on the premises at the time of the search, except as provided in G.S. 15A-256. Thus, if particular suspects are involved and evidence may be hidden on them, the search warrant should authorize a search of them under the “person(s)” block. If a search of such persons is not authorized, then officers only can detain them (and frisk them for weapons, if appropriate) while the officers search the premises. If the search of the premises fails to uncover items being searched for, then the officers can conduct a full search of such persons.

If a search warrant only authorizes a search of premises, courts have ruled in certain circumstances that officers may search a vehicle on the premises (if the vehicles might contain evidence described in the application) when the officer knows the vehicle belongs to the suspect whose premises is being searched. However, to avoid any question of lawfulness, and also to authorize search of the vehicle if it is found away from the premises, a search warrant should authorize

search of vehicles under “vehicle(s)” block, if there is probable cause that the items sought might be in the vehicle.

Although usually not legally required, it is best to describe outbuildings on the premises that the officer wants to search or simply state “outbuildings on the premises.”

If there are more than one premises to be searched, separate warrants should be issued for each to help officers comply with the forty-eight-hour rule, discussed below, and to avoid infecting the search of one premises with a problem in the affidavit regarding the search of the other premises.

PERSONS. When listing persons, the application should include person’s name, age, height, weight, race, distinguishing marks, and so forth.

VEHICLES. When listing vehicles, the application should include model, make, year, color, license tag, and anything else that distinguishes it from other similar vehicles, such as its vehicle identification number, if known.

OTHER PLACES OR ITEMS TO BE SEARCHED. This category may be used when the place or item to be searched is not in premises or vehicles or on a person. For example, an officer may need a search warrant to search luggage that the officer has seized in a situation when a warrantless search cannot be made.

Statement of facts establishing probable cause. The next part of the application provides space to list the facts that establish probable cause for the issuance of the search warrant. This portion of the form is where the applicant provides the required supporting affidavit.

WHEN ADDITIONAL SPACE IS NEEDED. If all of the facts establishing probable cause do not fit on the form, additional sheets may be attached. At the very bottom of the application form, there is a note that says: “If more space is needed for any section, continue the statement on an attached sheet of paper with a notation saying ‘see attachment.’ Date the continuation and include on it the signatures of applicant and issuing official.” It is important to follow this procedure so that there is no question later as to whether the attachments were part of the original application. It is also a good idea to include a name on the attachment, such as “In the Matter of Murder of Steve Jones,” and to staple the additional sheets to the form.

ADDITIONAL AFFIDAVITS. In some cases, affidavits by people other than the officer applying for the warrant may be submitted to support the warrant. For example, the officer may provide affidavits by other officers or by an informant. When this happens, check the box on the form that says “In addition to the affidavit included above, this application is supported by additional affidavits, attached, made by _____” and should fill in the person’s name and address or if a law enforcement officer, name, rank, and agency. The additional affidavits should be dated and clearly marked as attachments to the application.

ADDITIONAL TESTIMONY ESTABLISHING PROBABLE CAUSE. In some cases, in addition to the affidavit, a person will provide sworn testimony setting out the facts establishing probable cause. When this happens, check the box on the form that says “In addition to the affidavit included above, this application is supported by sworn testimony, given by _____” and fill in the person’s name and address. When testimony is given in this way, it either should be reduced to writing or tape-recorded and filed with the clerk. Check the appropriate box on the form to indicate whether the testimony has been reduced to writing or tape-recorded.

If the officer believes that it is important to exclude some supporting information from the suspect’s copy of the application (e.g., to keep information from a suspect that might reveal an informant’s identity), the officer may wish to have the informant’s testimony tape-recorded and filed with the clerk.

GENERAL RULES FOR THE AFFIDAVIT. The most common problem with search warrants is that the application fails to contain enough of what the officer knows. When preparing the statement of facts establishing probable cause, usually it is best to write a statement telling a story with a clear plot in chronological order. The officer should tell what led to the conclusion that the evidence sought is related to a crime and why the officer believes it is where he or she wants to search.

There are no set rules about what needs to be in the statement. A good statement need not have an informant's report. On the other hand, a good statement could consist solely of an informant's report, although it is better if the officer corroborates some of the informant's information. What is important is whether all the facts stated together establish a *fair probability* that the evidence is where the officer wants to search. Reliable hearsay is permitted, such as information obtained from another officer or an informant.

If a confidential informant is used, it is helpful if the confidential informant's report shows how the informant got his or her information (e.g., the informant was there or someone told the informant) and why the informant should be believed (has given good information before, for example; the report should provide details regarding the information previously provided such as when the information was provided, how often, and whether it resulted in arrests or convictions). An officer's corroboration (through personal knowledge or reliable hearsay) of a confidential informant's report adds weight to the informant's report. It is not necessary to establish that an identified, reliable citizen informant has previously given good information to the police.

Personal observations should be stated in a way that makes it clear that the officer was the person making the observation. Including truthful phrases such as "I saw . . ." or "Affiant saw . . ." are helpful ways to do this.

Signatures. The officer applying for a search warrant must sign the application under oath or affirmation. G.S. 15A-245(a). There is a place on the application form for the officer's signature and for you to sign and date the form indicating that the officer's statement was sworn.

Issuance of a Search Warrant

Examination of the Applicant

When an officer applies for a search warrant, you may examine the officer and/or other witnesses under oath or affirmation to determine that probable cause exists to issue the warrant. G.S. 15A-245. Information supporting the issuance of a search warrant may be offered by oral testimony under oath or affirmation presented by a sworn law enforcement officer to the issuing judicial official by means of an audio and video transmission in which both parties can see and hear each other. Before using this method, the procedures and type of equipment for audio and video transmission must be submitted to the AOC by the senior resident superior court judge and the chief district court judge for a judicial district and approved by the AOC. G.S. 15A-245(a)(3). The statute does not say how such testimony is to be memorialized or served.

Probable Cause Determination

Independent determination. You must make an independent judgment as to the existence of probable cause. You must be told the facts that support the officer's conclusion that probable cause exists; for example, simply stating the officer's or informant's conclusion that drugs are in the apartment is not sufficient. You must determine that there is probable cause—a fair probability—that the items or persons sought are in the places to be searched.

Materials considered. As described above, sometimes the applicant will offer additional affidavits or additional sworn testimony. These additional materials may be considered if they have

been properly attached to the affidavit, reduced to writing, or tape-recorded. At a hearing to suppress evidence seized pursuant to a search warrant, only affidavits attached to the application or sworn testimony reduced to writing or tape-recorded and filed with the clerk may be considered. Other information told or given to the magistrate is inadmissible at the hearing.

Completing the Form

The search warrant side of form AOC-CR-119 is largely self-explanatory.

In the matter of. There are no hard and fast rules for completing the “In the Matter of” portion of the form, and practices vary. One option is to list the crime, for example, “Murder of Mary Smith.”

Signature and date. It is a good practice to put original signatures on all copies of the warrant. Additionally, you should list the time and date of issuance of the warrant. This is important because of the forty-eight-hour rule, described below.

Copies. Three copies must be completed: the original, one copy to be filed in the clerk’s office, and one copy to be served on the suspect by the executing officer.

Execution of a Warrant

Forty-Eight-Hour Rule

An officer must execute a search warrant within forty-eight hours of its issuance. G.S. 15A-248. Any warrant not executed within forty-eight hours is void, must be marked “not executed,” and returned without unnecessary delay to the clerk. G.S. 15A-248.

Jurisdiction

Officers may execute a search warrant only within their territorial jurisdiction and if their investigative authority encompasses the crime or crimes involved. G.S. 15A-247. Thus city officers usually cannot go more than one mile outside city limits.

Stating Identity and Purpose

When executing a search warrant and before entering premises, officers must identify themselves and their purpose. G.S. 15A-249.

Breaking and Entering

An officer may break and enter any premises or vehicle to execute a search warrant if: (1) after identifying himself or herself and purpose, the officer reasonably believes that the officer’s admittance is being denied or unreasonably delayed or that the premises or vehicle is unoccupied; or (2) the officer has probable cause to believe that giving notice would endanger the officer’s life or the safety of any person. G.S. 15A-251.

Notice

The officer must read the search warrant (but not the application) and give a copy of the application and affidavit to the person to be searched or in apparent control of the premises or vehicle to be searched. G.S. 15A-252. If no one in apparent and responsible control is there, the officer must leave a copy of the warrant attached to the premises or vehicle. G.S. 15A-252.

Scope of Search

The search may include any area within the premises large enough to contain the evidence being sought. G.S. 15A-253. During the search, evidence related to any crime seen in plain view also may be seized. G.S. 15A-253. No particular time limit is set on the length of the search.

Paperwork

If items are seized, the officer must leave an inventory receipt with a person or attached to the premises if no one is home. G.S. 15A-254.

An officer who has executed a search warrant must, without unnecessary delay, return the warrant and inventory of items seized to the clerk. G.S. 15A-257. The inventory, if any, and return must be signed and sworn to by the officer who executes the warrant. G.S. 15A-257.

This bulletin is published and posted online by the School of Government to address issues of interest to government officials. This publication is for educational and informational use and may be used for those purposes without permission. Use of this publication for commercial purposes or without acknowledgment of its source is prohibited.

To browse a complete catalog of School of Government publications, please visit the School's website at www.sog.unc.edu or contact the Publications Division, School of Government, CB# 3330 Knapp-Sanders Building, UNC Chapel Hill, Chapel Hill, NC 27599-3330; e-mail sales@sog.unc.edu; telephone 919.966.4119; or fax 919.962.2707.

Appendix A
AOC-CR-100

File No.		Law Enforcement Case No.		LID No.	SID No.	FBI No.	
WARRANT FOR ARREST							
Offense							
STATE OF NORTH CAROLINA County In The General Court Of Justice District Court Division							
To any officer with authority and jurisdiction to execute a warrant for arrest for the offense(s) charged below:							
I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did							
THE STATE OF NORTH CAROLINA VS.							
Name And Address Of Defendant							
Race	Sex	Date Of Birth	Age				
Social Security No.		Drivers License No. & State					
Name Of Defendant's Employer							
Offense Code(s)		Offense In Violation Of G.S.					
Date Of Offense							
Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)							
Complainant (Name, Address Or Department)							
Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)							
This act(s) was in violation of the law(s) referred to in this Warrant. This Warrant is issued upon information furnished under oath by the complainant listed. You are DIRECTED to arrest the defendant and bring the defendant before a judicial official without unnecessary delay to answer the charge(s) above.							
Signature		Location Of Court		Court Date			
<input type="checkbox"/> Magistrate <input type="checkbox"/> Assistant CSC		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk Of Superior Court		Court Time		<input type="checkbox"/> AM <input type="checkbox"/> PM	

AOC-CR-100 (continued)

If this Warrant For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon. The officer must state all steps taken by the department in attempting to execute the Warrant and any information obtained about the whereabouts of the defendant.	RETURN OF SERVICE I certify that this Warrant was received and served as follows: Date Received _____ Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM Date Returned _____ <input type="checkbox"/> By arresting the defendant and bringing the defendant before: Name Of Judicial Official _____	District Attorney <input type="checkbox"/> Waived <input type="checkbox"/> Not Indigent	Attorney For Defendant <input type="checkbox"/> Appointed <input type="checkbox"/> Retained	PRIOR CONVICTIONS: No Level: <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+)
PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> not guilty	VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> guilty <input type="checkbox"/> guilty <input type="checkbox"/> not guilty	JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is ORDERED that the defendant: <input type="checkbox"/> pay costs and a fine of \$ _____ <input type="checkbox"/> be imprisoned for a term of _____ days in the custody of <input type="checkbox"/> the sheriff. <input type="checkbox"/> DOC.* Pretrial credit _____ <input type="checkbox"/> Work release <input type="checkbox"/> is recommended. <input type="checkbox"/> is not recommended. <input type="checkbox"/> is ordered. (use form AOC-CR-602) <input type="checkbox"/> The Court finds that a <input type="checkbox"/> longer <input type="checkbox"/> shorter period of probation, than that which is specified in G.A. 15A-1343.2(d) is necessary. <input type="checkbox"/> Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.		
Signature Of Officer Making Return _____ Department Or Agency Of Officer _____	Name Of Officer (Type Or Print) _____ Signature _____	Restitution* \$ _____ Attorney's Fee \$ _____ Community Service Fee \$ _____ Other \$ _____	*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution: _____	
REDELIVERY/REISSUANCE Date _____ Signature _____ <input type="checkbox"/> Dep. CSC <input type="checkbox"/> Assist. CSC <input type="checkbox"/> CSC	RETURN FOLLOWING REDELIVERY/REISSUANCE I certify that this Warrant was received and served as follows: Date Received _____ Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM Date Returned _____ <input type="checkbox"/> By arresting the defendant and bringing the defendant before: Name Of Judicial Official _____	6. complete _____ hours of community service during the first _____ days of probation, as directed by the community service coordinator, and pay the fee prescribed by G.S. 143B-262.4(b) within _____ days. 7. not be found in or on the premises of the complainant or _____ 8. not assault, communicate with or be in the presence of the complainant or _____ 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319) 10. Other: _____		
Signature Of Officer Making Return _____ Department Or Agency Of Officer _____	Name Of Officer (Type Or Print) _____ Signature _____	It is ORDERED that this: <input type="checkbox"/> Judgment is continued upon payment of costs. <input type="checkbox"/> case be consolidated for judgment with _____ <input type="checkbox"/> sentence is to run at the expiration of the sentence in _____		
APPEAL ENTRIES <input type="checkbox"/> The defendant, in open court, gives notice of appeal to the Superior Court. <input type="checkbox"/> The current pretrial release order is modified as follows:	Signature Of District Court Judge _____	COMMITMENT: It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.		
WAIVER OF PROBABLE CAUSE HEARING The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing. Date Waived _____ Signature Of Defendant _____	Signature Of Attorney _____	PROBABLE CAUSE: <input type="checkbox"/> Probable cause is found as to all Counts except _____, and the defendant is bound over to Superior Court for action by the grand jury. <input type="checkbox"/> No probable cause is found as to Count(s) _____ of this Warrant, and the Count(s) is dismissed.		
I certify that this Judgment is a true and complete copy of the original which is on file in this case.		CERTIFICATION Date _____ Name Of District Court Judge (Type Or Print) _____ Signature Of District Court Judge _____		
AOC-CR-100, Side Two, Rev. 3/09 (Structured Sentencing) © 2009 Administrative Office of the Courts		*NOTE: If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.		

AOC-CR-113

File No.		Law Enforcement Case No.		LID No.	SID No.	FBI No.	
MISDEMEANOR CRIMINAL SUMMONS				STATE OF NORTH CAROLINA County			
Offense				In The General Court Of Justice District Court Division			
To the defendant:							
I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above you unlawfully and wilfully did							
THE STATE OF NORTH CAROLINA VS.							
Name And Address Of Defendant							
County Of Residence		Telephone No.					
Race	Sex	Date Of Birth	Age				
Social Security No.		Drivers License No. & State					
Name Of Defendant's Employer							
Offense Code(s)		Offense In Violation Of G.S.					
		Date Of Offense					
Complainant (Name, Address Or Department)							
County of Residence		Telephone No.					
Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)							
Signature							
<input type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued		Location Of Court			
				Court Date		Court Time	
				Magistrate Assistant CSC		Deputy CSC Clerk Of Superior Court	
						AM PM	

AOC-CR-113, Rev. 12/03 (Structured Sentencing)
© 2003 Administrative Office of the Courts

(Over)

This act was in violation of the law referred to in this Criminal Summons. This Summons is issued upon information furnished under oath by the complainant listed. You are ORDERED to appear before the Court at the location, date and time indicated below to answer to the charge. If you fail to appear, an order for your arrest may be issued and you may be held in CONTEMPT OF COURT and imprisoned for up to thirty (30) days or fined up to \$500.00 or both. This penalty for failure to appear is in addition to any sentence which may be imposed for the crime charged.

AOC-CR-113 (continued)

If this Criminal Summons is not served within ninety (90) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon. The officer must state all steps taken by the department in attempting to serve the Summons and any information obtained about the whereabouts of the defendant.	RETURN OF SERVICE I certify that this Criminal Summons was received and served as follows: <table style="width: 100%;"> <tr> <td>Date Received</td> <td>Date Served</td> <td>Date Returned</td> </tr> </table> <input type="checkbox"/> By personally serving this Criminal Summons on the defendant. <input type="checkbox"/> This Criminal Summons WAS NOT served for the following reason:	Date Received	Date Served	Date Returned	District Attorney <input type="checkbox"/> Waived <input type="checkbox"/> Not Indigent	Attorney For Defendant <input type="checkbox"/> Appointed <input type="checkbox"/> Retained
Date Received	Date Served	Date Returned				
PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> no contest <input type="checkbox"/> not guilty VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 PRIOR CONVICTIONS: No./Level: <input type="checkbox"/> 0 <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+)						
JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea, on the above verdict it is ORDERED that the defendant: <input type="checkbox"/> pay costs and a fine of \$ _____ <input type="checkbox"/> be imprisoned for a term of _____ days in the custody of the <input type="checkbox"/> sheriff. <input type="checkbox"/> DOC.* Pretrial credit _____ days served. <input type="checkbox"/> Work release <input type="checkbox"/> is recommended. <input type="checkbox"/> is not recommended. [<input type="checkbox"/> is ordered. (use form AOC-CR-602)] <input type="checkbox"/> The Court finds that a <input type="checkbox"/> longer <input type="checkbox"/> shorter period of probation, than that which is specified in G.S. 15A-1343.2(d), is necessary. <input type="checkbox"/> Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.						
Fine \$ _____		Restitution* \$ _____				
Attorney's Fee \$ _____		Community Service Fee \$ _____				
*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:						
6. complete _____ hours of community service during the first _____ days of probation, as directed by the community service coordinator, and pay the fee prescribed by G.S. 143B-475.1(b) within _____ days. 7. not be found in or on the premises of the complainant or _____ 8. not assault, communicate with or be in the presence of the complainant or _____ 9. Other: _____						
It is ORDERED that this: <input type="checkbox"/> Judgment is continued upon payment of costs. <input type="checkbox"/> case be consolidated for judgment with _____ <input type="checkbox"/> sentence is to run at the expiration of the sentence in _____						
<input type="checkbox"/> COMMITMENT: It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.						
Date _____		Signature Of District Court Judge _____				
Name Of District Court Judge (Type Or Print) _____		Signature Of District Court Judge _____				
CERTIFICATION						
I certify that this Judgment is a true and complete copy of the original which is on file in this case.						
Date _____		Signature _____				
Date Delivered To Sheriff _____		Signature _____				
*NOTE: If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.						

AOC-CR-116

File No.		Law Enforcement Case No.		LID No.	SID No.	FBI No.	
MAGISTRATE'S ORDER							
Offense							
THE STATE OF NORTH CAROLINA VS.							
Name And Address Of Defendant							
County Of Residence		Telephone No.					
Race	Sex	Date Of Birth		Age			
Social Security No.		Drivers License No. & State					
Name Of Defendant's Employer							
Offense Code(s)		Offense In Violation Of G. S.					
		Date Of Offense					
Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)							
Arresting Officer (Name, Address Or Department)							
Name & Address Of Witnesses (Including Counties & Telephone Nos.)							
Signature							
Location Of Court							
<input type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued		Court Date		Court Time	
<input type="checkbox"/> Magistrate <input type="checkbox"/> Assistant CSC		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk Of Superior Court				<input type="checkbox"/> AM <input type="checkbox"/> PM	

AOC-CR-116, Rev. 2/03 (Structured Sentencing)
2003 Administrative Office of the Courts

I, the undersigned, find that the defendant named above has been arrested without a warrant and the defendant's detention is justified because there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

This act was in violation of the law referred to in this Magistrate's Order. This Magistrate's Order is issued upon information furnished under oath by the arresting officer(s) shown. A copy of this Order has been delivered to the defendant.

(Over)

AOC-CR-116 (continued)

District Attorney	Attorney For Defendant At Time Of Trial Or Plea	<input type="checkbox"/> Appointed <input type="checkbox"/> Retained <input type="checkbox"/> Waived	PRIOR CONVICTIONS: No Level: <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+)
PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> not guilty		VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3	
JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict it is ORDERED that the defendant: <input type="checkbox"/> pay costs and a fine of \$ _____ <input type="checkbox"/> be imprisoned for a term of _____ days in the custody of the sheriff. <input type="checkbox"/> DOC. Pretrial Credit _____ days served. <input type="checkbox"/> Work release <input type="checkbox"/> is recommended. <input type="checkbox"/> is not recommended. <input type="checkbox"/> is ordered. (use form AOC-CR-602) <input type="checkbox"/> The Court finds that a <input type="checkbox"/> longer <input type="checkbox"/> shorter period of probation, than that which is specified in G.S. 15A-1343.2(d), is necessary. <input type="checkbox"/> Execution of the sentence is suspended and the defendant is placed on unsupervised probation for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.			
Fine \$ _____	Restitution* \$ _____	Attorney's Fee \$ _____	Community Service Fee \$ _____
*Name(s), address(es), amount(s), & social security number(s) of aggrieved party(ies) to receive restitution:			
<input type="checkbox"/> 6. complete _____ hours of community service during the first _____ days of probation, as directed by the service coordinator, and pay the fee prescribed by G.S. 143B-475.1 (b) within _____ days. <input type="checkbox"/> 7. not be found in or on the premises of the complainant or _____ <input type="checkbox"/> 8. not assault, communicate with or be in the presence of the complainant or _____ <input type="checkbox"/> 9. Other: _____ _____ _____ _____ _____			
It is ORDERED that this: <input type="checkbox"/> Judgment is continued upon payment of costs. <input type="checkbox"/> case be consolidated for judgment with _____ <input type="checkbox"/> sentence is to run at the expiration of the sentence in _____			
<input checked="" type="checkbox"/> COMMITMENT: It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.			
PROBABLE CAUSE: <input type="checkbox"/> Probable cause is found as to all Counts except _____, and the defendant is bound over to Superior for action by the grand jury. <input type="checkbox"/> No probable cause is found as to Count(s) _____ of this Warrant, and the Count(s) is dismissed.			
Date	Signature Of District Court Judge Or Magistrate	Signature Of District Court Judge Or Magistrate	
CERTIFICATION			
I certify that this Judgment is a true and complete copy of the original which is on file in this case.			
Date	Date Delivered To Sheriff	Signature	
NOTE: If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.			

APPEAL ENTRIES

- ☐ The defendant, in open court, gives notice of appeal to the District Superior Court.
- ☐ The current pretrial release order is modified as follows:

Date _____ Signature Of District Court Judge Or Magistrate

WAIVER OF PROBABLE CAUSE HEARING

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

Date Waived _____ Signature Of Defendant

Signature Of Attorney

☐ Deputy CSC ☐ Assist. CSC ☐ CSC

AOC-CR-119

STATE OF NORTH CAROLINA In The General Court Of Justice District/Superior Court Division _____ County	
<p>To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:</p> <p>I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.</p> <p>You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.</p> <p>You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.</p> <p>This Search Warrant is issued upon information furnished under oath by the person(s) shown.</p>	
Date _____ _____ _____ <input type="checkbox"/> I made a search of _____ _____ _____ _____ as commanded. <input type="checkbox"/> I seized the items listed on the attached inventory. <input type="checkbox"/> I did not seize any items. <input type="checkbox"/> This Warrant WAS NOT executed within forty-eight (48) hours of the date of issuance and I hereby return it not executed.	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> Signature _____ </div> <div style="display: flex; justify-content: space-between; font-size: small;"> Date _____ Signature _____ Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> CSC <input type="checkbox"/> </div> <div style="display: flex; justify-content: space-between; font-size: small;"> Magistrate <input type="checkbox"/> District Ct. Judge <input type="checkbox"/> Superior Ct. Judge <input type="checkbox"/> </div>
<p>This Search Warrant was returned to me on the date and time shown below.</p>	
Department Or Agency Of Officer _____ Signature Of Officer Making Return _____	<div style="display: flex; justify-content: space-between; font-size: small;"> Date _____ Time _____ AM <input type="checkbox"/> PM <input type="checkbox"/> Signature _____ </div> <div style="display: flex; justify-content: space-between; font-size: small;"> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> </div>

(Over)

APPLICATION FOR SEARCH WARRANT

I, _____, _____
 (Insert name and address; or if law enforcement officer, name, rank and agency)

being duly sworn, request that the Court issue a warrant to search the person, place, vehicle, and other items described in this application and to find and seize the property and person described in this application. There is probable cause to believe that (Describe property to be seized; or if search warrant is to be used for searching a place to serve an arrest warrant or other process, name person to be arrested)

constitutes evidence of a crime and the identity of a person participating in a crime, (Name crime) _____

and is located (Check appropriate box(es) and fill-in specified information)

☐ in the following premises (Give address and, if useful, describe premises)

(and)

☐ on the following person(s) (Give name(s) and, if useful, describe person(s))

(and)

☐ in the following vehicle(s) (Describe vehicle(s))

(and)

☐ (Name and/or describe other places or items to be searched, if applicable)

The applicant swears to the following facts to establish probable cause for the issuance of a search warrant:

SWORN AND SUBSCRIBED TO BEFORE ME

Date

Signature of Applicant

Signature

☐ Magistrate ☐ Dep. CSC ☐ Asst. CSC ☐ Clerk of Superior Court ☐ Judge

☐ In addition to the affidavit included above, this application is supported by additional affidavits, attached, made by _____

☐ In addition to the affidavit included above, this application is supported by sworn testimony, given by _____

This testimony has been (check appropriate box) ☐ reduced to writing ☐ tape recorded and I have filed each with the clerk.

NOTE: If more space is needed for any section, continue the statement on an attached sheet of paper with a notation saying "see attachment." Date the continuation and include on it the signatures of applicant and issuing official.

AOC-CR-155

File No. _____	STATE OF NORTH CAROLINA In The General Court Of Justice District Court Division _____ County _____
SEARCH WARRANT FOR BLOOD OR URINE IN DWI CASES	
IN THE MATTER OF Name _____	
Date Issued _____	Time Issued <input type="checkbox"/> AM <input type="checkbox"/> PM
Name Of Applicant _____	
Name Of Additional Affiant _____	
Name Of Additional Affiant _____	
RETURN OF SERVICE	
I certify that this Search WARRANT was received and served as follows:	
Date Received _____	Time Received <input type="checkbox"/> AM <input type="checkbox"/> PM
Date Executed _____	Time Executed <input type="checkbox"/> AM <input type="checkbox"/> PM
<input type="checkbox"/> I made a search of _____	

_____ as commanded.	
<input type="checkbox"/> I seized the items listed on the attached inventory.	
<input type="checkbox"/> I did not seize any items.	
<input type="checkbox"/> This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed.	
Signature Of Officer Making Return _____	
Department Or Agency Of Officer _____	
Date _____	Time <input type="checkbox"/> AM <input type="checkbox"/> PM Signature _____
This Search Warrant was returned to me on the date and time shown below.	
Date _____	Time <input type="checkbox"/> AM <input type="checkbox"/> PM Signature _____
Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/>	

(Over)

APPLICATION FOR SEARCH WARRANT FOR BODILY FLUIDS <small>(Attach additional sheets if necessary.)</small>			
Name Of Law Enforcement Officer (Applicant)	Rank	<input type="checkbox"/> N.C. Patrol <input type="checkbox"/> Police/Sheriff	
Name Of Individual To Be Searched	Race	<input type="checkbox"/> Male <input type="checkbox"/> Female	
Location Of Individual To Be Searched	Fluid to be seized <input type="checkbox"/> Blood <input type="checkbox"/> Urine		
Crime(s) Charged <input type="checkbox"/> DWI, G.S. 20-138.1. <input type="checkbox"/> Commercial DWI, G.S. 20-138.2. <input type="checkbox"/> Habitual DWI, G.S. 20-138.5. <input type="checkbox"/> Felony Death By Vehicle, G.S. 20-141.4. <input type="checkbox"/> Other (specify) _____			
<p>I, the law enforcement officer named above, being duly sworn, request that the Court issue a warrant to search the person of the individual named above, who may be found at the location described above, and to seize sample(s) of the above specified bodily fluid(s) of that individual.</p> <p>I swear to the following facts to establish probable cause for the issuance of a search warrant.</p> <p>I am a sworn law enforcement officer of the above named agency. As such I am empowered to search for and seize evidence described in N. C. General Statutes Chapter 14, Criminal Law, Chapter 20, Motor Vehicle Law, and Chapter 90, Controlled Substances. I have received training in the detection and apprehension of impaired drivers and the investigation of motor vehicle collisions. I have been a sworn law enforcement officer for over _____ years and during that time I have investigated over _____ incidents of offenses related to impaired driving.</p> <p><input type="checkbox"/> 1. I rely on the facts stated in the following report(s), of which a copy or copies is/are attached and incorporated by reference: (Attach a copy of the report(s) checked below if available and if either contains relevant facts.) <input type="checkbox"/> Affidavit and Revocation Report (AOC-CVR-1A/DHHS 3907). <input type="checkbox"/> Driving While Impaired Report Form/Alcohol Influence Report Form.</p> <p><input type="checkbox"/> 2. The following facts establish on or about the _____ day of _____, at _____ AM <input type="checkbox"/> PM, the individual named above was operating a _____ (<input type="checkbox"/> commercial motor) vehicle to wit: (type, make and year) _____ on _____ a _____ highway/street <input type="checkbox"/> public vehicular area in _____ County at or near the city/town of _____ in violation of the statute(s) specified above: <i>Check all that apply.</i> <input type="checkbox"/> a. At the time and place stated above: <input type="checkbox"/> I observed the above named individual operating the above-described vehicle. <input type="checkbox"/> I observed the above-described vehicle being operated in the following manner: _____</p> <p><input type="checkbox"/> b. On or about the date stated above, at _____ AM <input type="checkbox"/> PM, I responded to a report of a vehicle crash and, after arriving at the scene, I ascertained that the above named individual was operating the described vehicle at the time and place stated from the following facts:</p>			
<p><input type="checkbox"/> c. The above named individual admitted to me operating the described vehicle at the time and place indicated.</p> <p><input type="checkbox"/> d. On or about the date stated above, at _____ AM <input type="checkbox"/> PM <input type="checkbox"/> I detected a <input type="checkbox"/> strong <input type="checkbox"/> moderate <input type="checkbox"/> faint odor of alcohol coming from the breath of the above named person: <input type="checkbox"/> at the scene. <input type="checkbox"/> at the following hospital _____ <input type="checkbox"/> at other location _____</p> <p><input type="checkbox"/> I observed the following behaviors of the individual named above, which evidence impairment of the person's mental and/or physical faculties as follows:</p> <p><input type="checkbox"/> e. The above named individual stated to me that before or while operating the described vehicle he/she: <input type="checkbox"/> had consumed alcohol. <input type="checkbox"/> was consuming alcohol. <input type="checkbox"/> had consumed controlled substance, to wit: _____ <input type="checkbox"/> had consumed other impairing substance, to wit: _____.</p> <p><input type="checkbox"/> f. The above named individual refused to submit to a chemical analysis.</p> <p><input type="checkbox"/> g. I observed the following facts:</p> <p><input type="checkbox"/> h. Other reliable persons stated to me the following facts: (Note: Name officer or witness(es) and list facts related to impairment, vehicle operation, etc.) _____</p> <p><input type="checkbox"/> 3. The above named individual has previously been convicted of one or more offenses involving impaired driving.</p> <p>Based on all the foregoing, and on my training in detecting impaired driving violations and my experience as a law enforcement officer, I have formed an opinion satisfactory to myself that the above named person had consumed a sufficient quantity of some impairing substance(s) to appreciably impair that person's physical or mental faculties or both, and that the person drove the above described vehicle on the above described highway or public vehicular area while under the influence of impairing substance(s). It is my further opinion that evidence of impairing substance(s) is at this time present in the body or bodily fluids of the above named person, and that unless a warrant is issued and executed without delay, the evidence may dissipate and be lost.</p>			
SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		Date	Signature of Applicant
Signature _____		Date My Commission Expires _____	County Where Notarized _____
<input type="checkbox"/> Magistrate <input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> CSC <input type="checkbox"/> Judge <input type="checkbox"/> Notary Public		SEAL	

STATE OF NORTH CAROLINA _____ County		File No. _____ In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division	
STATE VERSUS Name And Address Of Defendant _____ _____ _____		CONDITIONS OF RELEASE AND RELEASE ORDER # _____ G.S. Chapter 15A, Art. 25, 26 Amount Of Bond \$ _____ \$ _____	
Offenses And Additional File Numbers _____ _____		<input type="checkbox"/> See Attachment	
Location Of Court _____		<input type="checkbox"/> District <input type="checkbox"/> Superior	Date _____ Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM
<p>To The Defendant Named Above, you are ORDERED to appear before the Court as provided above and at all subsequent continued dates. If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear.</p> <p>The defendant has been advised of charge(s) against him/her and his/her right to communicate with counsel and friends.</p> <p><input type="checkbox"/> Your release is authorized upon execution of your:</p> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> WRITTEN PROMISE to appear <input type="checkbox"/> CUSTODY RELEASE </div> <div> <input type="checkbox"/> UNSECURED BOND in the amount shown above <input type="checkbox"/> SECURED BOND in the amount shown above </div> </div> <p>You will be arrested if you violate the following restrictions:</p> <p><input type="checkbox"/> Your release is not authorized.</p> <p><input type="checkbox"/> The defendant was arrested or surrendered after failing to appear as required under a prior release order.</p> <p><input type="checkbox"/> This was the defendant's second or subsequent failure to appear in this case.</p> <p><input type="checkbox"/> Your release is subject to the conditions as shown on the attached <input type="checkbox"/> AOC-CR-270. <input type="checkbox"/> Other: _____.</p>			
Additional Information _____ _____ _____			
Date _____		Signature Of Judicial Official _____ <input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge	
ORDER OF COMMITMENT			
<p>To The Custodian Of The Detention Facility Named Below, you are ORDERED to receive in your custody the defendant named above who may be released if authorized above. If the defendant is not sooner released, you are ORDERED to: <input type="checkbox"/> produce him/her in Court as provided above.</p> <p><input type="checkbox"/> hold him/her for the following purpose: _____</p> <p><input type="checkbox"/> [Check in all domestic violence and stalking cases covered by G.S. 15A-534.1(b)] produce him/her at the first session of District or Superior Court held in this county after the entry of this Order or, if no session is held before (enter date and time 48 hours after time of arrest) _____, _____ <input type="checkbox"/> AM <input type="checkbox"/> PM produce him/her before a magistrate of this county at that time to determine conditions of pretrial release.</p>			
Name Of Detention Facility _____		Date _____	Signature Of Judicial Official _____
WRITTEN PROMISE TO APPEAR OR CUSTODY RELEASE			
<p>I, the undersigned, promise to appear at all hearings, trials or otherwise as the Court may require and to abide by any restrictions set out above.</p> <p>I understand and agree that this promise is effective until the entry of judgment in the District Court from which no appeal is taken or until the entry of judgment in Superior Court. If I am released to the custody of another person, I agree to be placed in that person's custody, and that person agrees by his/her signature to supervise me.</p>			
Date _____	Signature Of Defendant _____	Signature Of Person Agreeing To Supervise Defendant _____	
Name Of Person Agreeing To Supervise Defendant (Type or Print) _____		Address Of Person Agreeing To Supervise Defendant _____	
DEFENDANT RELEASED ON BAIL			
Date _____	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Signature Of Jailer _____	

AOC-CR-200

CONDITIONS OF RELEASE MODIFICATIONS				
The Conditions of Release on the reverse are modified as follows:				
Modification	Date	Signature Of Judicial Official		
SUPPLEMENTAL ORDERS FOR COMMITMENT				
The defendant is next Ordered produced in Court as follows:				
Date	Time	Place	Purpose	Signature Of Judicial Official
DEFENDANT RECEIVED BY DETENTION FACILITY				
Date	Time	Signature Of Jailer		
DEFENDANT RELEASED FOR COURT APPEARANCE				
Date	Time	Signature Of Jailer		

NOTE TO CUSTODIAN: This form shall accompany the defendant to court for all appearances.

STATE OF NORTH CAROLINA		File No.		
County		In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division		
Name And Mailing Address Of Defendant		APPEARANCE BOND FOR PRETRIAL RELEASE		
Social Security No. Telephone No. Of Defendant				
Total Bond Required \$		Amount Of This Bond \$		# G.S. 15A-531, 15A-534, 15A-544.2
Offenses And Additional File Numbers				
<input type="checkbox"/> See Attachment				
<input type="checkbox"/> Unsecured Appearance Bond - I, the undersigned defendant, acknowledge that my personal representatives and I are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side. <input type="checkbox"/> Cash Appearance Bond (See note on reverse side.) - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, and hereby deposit the cash identified below as security with the understanding that the deposit will be returned upon the Court's determination that the conditions of release have been performed, subject to the conditions of this Bond stated on the reverse side, and that it will be available to satisfy my obligations. <input type="checkbox"/> Defendant's Property Appearance Bond - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side, and as security for said Bond have executed a mortgage or deed of trust to real or personal property, payable to the State of North Carolina and with power of sale conditioned upon the breach of any condition of this Bond. <input type="checkbox"/> Surety Appearance Bond - We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side. <input type="checkbox"/> (Professional bondsman, Bail Agent and Runners) - The "Affidavit" on the reverse side of this Bond is complete and true. <input type="checkbox"/> Cash Deposited By Surety (See note on reverse side.) - We have deposited the cash identified below to secure our obligations as sureties on this bond with the understanding that the deposit will be returned to us upon the Court's determination that the conditions of pretrial release have been performed, and that it will NOT be available to satisfy defendant's obligations.				
Date Of Execution Of Bond		Signature Of Defendant		
ACCOMMODATION BONDSMAN				
<input type="checkbox"/> See Page Two for additional accommodation bondsman executing this bond.				
Name And Address Of Accommodation Bondsman		Name And Address Of Accommodation Bondsman		
Social Security No.		Telephone No.		
Social Security No.		Telephone No.		
PROFESSIONAL BONDSMAN				
Name Of Bondsman		Name Of Runner, If Applicable		
License No. Of Bondsman		License No. Of Runner		
INSURANCE COMPANY				
Name Of Insurance Company		Name Of Bail Agent		
Power Of Appointment No. Of Bail Agent		License No. Of Bail Agent		
SIGNATURE				
Signature Of Surety		Signature Of Surety		
SWORN AND SUBSCRIBED TO BEFORE ME		SWORN AND SUBSCRIBED TO BEFORE ME		
Date	Signature	Date	Signature	
<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Custodian Of Detention Facility [G.S. 15A-537(c)]		<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Custodian Of Detention Facility [G.S. 15A-537(c)]		
COMPLETE IF CASH DEPOSITED				
Signature Of Official Accepting Cash		Name Of Official Accepting Cash (Type Or Print)		Receipt No.

NOTE: If cash deposited, see note on reverse side.

CONDITIONS			
<p>The conditions of this Bond are that the above named defendant shall appear in the above entitled action(s) whenever required and will at all times remain amenable to the orders and processes of the Court. It is agreed and understood that this Bond is effective and binding upon the defendant and each surety throughout all stages of the proceedings in the trial divisions of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or until the entry of judgment in the superior court. If the defendant appears as ordered and otherwise performs the foregoing conditions of the bond, then the bond is to be void, but if the defendant fails to obey any of these conditions, the Court will forfeit the bond pursuant to Part 2 of Article 26 of Chapter 15A of the General Statutes.</p> <p>Each accommodation bondsman, by signing on the reverse or on Page Two, states: "I have reached the age of 18 years and am a bona fide resident of North Carolina. Aside from love and affection and release of the above named defendant, I have received no consideration for acting as surety. I own sufficient property over and above all liabilities, homestead and other exemptions allowed me by law to enable me to pay this Bond should it be ordered forfeited. I understand that if I sign this Bond without sufficient property, I am guilty of a crime."</p>			
AFFIDAVIT			
<p>NOTE: "Professional bondsmen, surety bondsmen [bail agent], and runners must file with the clerk of court having jurisdiction over the principal, an affidavit on a form furnished by the Administrative Office of the Courts." G.S. 58-71-140(d). Check all options that apply.</p>			
<p><input type="checkbox"/> 1. I have not, nor has anyone for my use, been promised or received any collateral, security or premium for executing this Bond.</p> <p><input type="checkbox"/> 2. I have been promised a premium in the amount shown below, which is due on the date shown below.</p> <p><input type="checkbox"/> 3. I have received a premium in the amount shown below.</p> <p><input type="checkbox"/> 4. I have been given collateral security by the person named below, of the nature and in the amount shown below.</p>			
<p>Amount Of Premium Promised \$</p>	<p>Date Due</p>	<p>Amount Of Premium Received \$</p>	
<p>Name Of Person From Whom Collateral Received</p>	<p>Nature Of Collateral</p>		<p>Value</p>

**AFFIX STAMP OR
POWER OF ATTORNEY
HERE**

RETURN OF CUSTODIAN OF DETENTION FACILITY			
<p>The defendant named on the reverse was released from my custody on the date shown below upon the execution of this Appearance Bond.</p>			
<p>Date Defendant Released</p>	<p>Signature Of Custodian</p>	<p><input type="checkbox"/> Sheriff <input type="checkbox"/> Deputy Sheriff <input type="checkbox"/> Other _____</p>	
<p>NOTES ON CASH BONDS:</p> <p>(1) To Official Taking The Bond. Use this form for all cash bonds. Only magistrate or clerk may take cash bond. Jailer may not take cash bond. Complete this form as follows:</p> <p>When Cash Deposited By Defendant Or By Another Person Who Intends For The Cash To Be Used To Satisfy The Defendant's Obligations. Enter defendant's name, address and SS# at the top of Side One. Check "Cash Appearance Bond." Have defendant sign. Do no more. No other person's name should appear on this form. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to DEFENDANT, not to any other person.</p> <p>When Cash Deposited By Another Person Who Does NOT Intend For The Cash To Be Used To Satisfy The Defendant's Obligations. Enter defendant's name, address and SS# at the top of Side One. Check "Surety Appearance Bond." Also check "Cash Deposited By Surety." Have defendant sign. Enter name, address and SS# of person depositing cash under "Accommodation Bondsman." Have that person sign under "Signature of Surety." Complete notarization for that person. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to person depositing the cash.</p> <p>(2) To Bookkeeper. When case disposed, disburse cash as follows: (1) If "Cash Appearance Bond" checked on Side One, disburse to Defendant or apply to defendant's obligations if court so orders. (2) If "Surety Appearance Bond" and "Cash Deposited by Surety" are checked on Side One, disburse only to person named under "Accommodation Bondsman."</p> <p>(3) Bond With Insurance Company As Surety Same As Cash Except In Child Support. G.S. 15A-531(4) provides that an appearance bond executed by a bail agent acting on behalf of an insurance company is the same as a cash bond, except in child support contempt proceedings where only cash may satisfy a cash bond requirement.</p>			
<p>AOC-CR-201, Side Two, Rev. 3/09 © 2009 Administrative Office of the Courts</p>			

STATE VERSUS		File No. 	
Name Of Defendant			
ADDITIONAL ACCOMMODATION BONDSMAN			
Name And Address Of Accommodation Bondsman		Name And Address Of Accommodation Bondsman	
Social Security No.		Telephone No.	
Social Security No.		Telephone No.	
SIGNATURE			
Signature Of Surety		Signature Of Surety	
SWORN AND SUBSCRIBED TO BEFORE ME		SWORN AND SUBSCRIBED TO BEFORE ME	
Date	Signature	Date	Signature
<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court <input type="checkbox"/> Custodian Of Detention Facility [G.S. 15A-537(c)]		<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court <input type="checkbox"/> Custodian Of Detention Facility [G.S. 15A-537(c)]	

ADDITIONAL ACCOMMODATION BONDSMAN			
Name And Address Of Accommodation Bondsman		Name And Address Of Accommodation Bondsman	
Social Security No.		Telephone No.	
Social Security No.		Telephone No.	
SIGNATURE			
Signature Of Surety		Signature Of Surety	
SWORN AND SUBSCRIBED TO BEFORE ME		SWORN AND SUBSCRIBED TO BEFORE ME	
Date	Signature	Date	Signature
<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court <input type="checkbox"/> Custodian Of Detention Facility [G.S. 15A-537(c)]		<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court <input type="checkbox"/> Custodian Of Detention Facility [G.S. 15A-537(c)]	

ADDITIONAL ACCOMMODATION BONDSMAN			
Name And Address Of Accommodation Bondsman		Name And Address Of Accommodation Bondsman	
Social Security No.		Telephone No.	
Social Security No.		Telephone No.	
SIGNATURE			
Signature Of Surety		Signature Of Surety	
SWORN AND SUBSCRIBED TO BEFORE ME		SWORN AND SUBSCRIBED TO BEFORE ME	
Date	Signature	Date	Signature
<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court <input type="checkbox"/> Custodian Of Detention Facility [G.S. 15A-537(c)]		<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court <input type="checkbox"/> Custodian Of Detention Facility [G.S. 15A-537(c)]	

STATE OF NORTH CAROLINA		File No.
_____ County		In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
STATE VERSUS		SURRENDER OF DEFENDANT BY SURETY
Name Of Defendant		
Name Of Surety(ies)		
Date Of Appearance Bond	Amount Of Bond \$	
All File Nos. And Offenses		
<p>I, the undersigned surety for the named defendant, request that the Court release me from the defendant's Appearance Bond which I signed as indicated above. A certified copy of the bail bond is attached. (You must complete both I. and II. below.)</p> <p>I. Form Of Surrender (check only one)</p> <p><input type="checkbox"/> (a) I arrested the defendant and now surrender the defendant to the jail in this county where the defendant <input type="checkbox"/> is to appear on these charges. <input type="checkbox"/> was bonded on these charges.</p> <p><input type="checkbox"/> (b) I surrender the defendant who is currently in the jail in this county where the defendant <input type="checkbox"/> is to appear on these charges. <input type="checkbox"/> was bonded on these charges. <input type="checkbox"/> Other: _____</p> <p>II. Status Of Order Of Forfeiture (check only one)</p> <p><input type="checkbox"/> (a) The surrender of the defendant has occurred after an Order of Forfeiture was entered for the appearance bond for the offense(s) listed above, and after an order for arrest was issued.</p> <p><input type="checkbox"/> (b) The surrender of the defendant has occurred before an Order of Forfeiture was entered for the appearance bond for the offense(s) listed above.</p> <p>I understand that this Surrender does not relieve me from my responsibility if an Order of Forfeiture has been entered before this Surrender. I also understand that I must apply to the Court for relief in that matter.</p>		
Date	Name Of Surety (Type Or Print)	Signature Of Surety
RECEIPT OR ACKNOWLEDGMENT OF CUSTODIAN		
I, the undersigned custodian, acknowledge that the defendant is in custody as indicated.		
Date	Name Of Custodian/Jailer (Type Or Print)	Signature Of Custodian/Jailer
<p>NOTES TO CUSTODIAN:</p> <p>(1) Only an actual surety may surrender the defendant. If the person offering the defendant for surrender presents an appearance bond form (AOC-CR-201) with the box checked for a "Cash Appearance Bond," then the person is not the surety for the defendant's appearance. Do not accept the surrender of the defendant. If the boxes for "Surety Appearance Bond" and "Cash Deposited By Surety" are checked, and the person attempting to surrender the defendant is the same person who signed the bond as surety, then that person is the surety and you may accept the surrender.</p> <p>(2) G.S. 15A-540(b) requires that a defendant surrendered by a surety must have an immediate hearing on whether the defendant is again entitled to release and, if so, upon what conditions. Take the defendant, with this form, to a judicial official for this hearing. When the above Receipt is completed, provide surety with a copy of this form.</p>		
<p>(See NOTES TO MAGISTRATE on reverse)</p> <p>Original-Clerk Copy-Surety Copy-Custodian</p>		
<p>AOC-CR-214, Rev. 6/08 © 2008 Administrative Office of the Courts</p>		

NOTES TO MAGISTRATE:

- (1) *If the defendant was surrendered **before** a breach of the conditions of release, the original conditions of release should be reentered. The defendant remains in custody until conditions of original release order are again satisfied. The court date remains the same.*
- (2) *If the defendant was surrendered **after** a breach of the conditions of release, G.S. 15A-540(c) requires that a judicial official determine whether the defendant is again entitled to pretrial release and, if so, upon what conditions. If the breach was a failure to appear for any charge(s) covered by the appearance bond provided at the time of surrender, G.S. 15A-534(d1) provides that the official shall at a minimum impose the conditions of release recommended in an order for arrest issued for that failure to appear. If no conditions were recommended, the judicial official shall require a secured bond at least double the amount of the most recent secured or unsecured bond, or at least \$500 if there was no monetary bond previously required. On the new release order, check the appropriate box(es) indicating the failure to appear.*
- (3) *If an order for arrest was issued for the defendant's failure to appear, the court date in the new release order should be the same as the court date, if any, in the order for arrest. The order for arrest should be served on the defendant, if possible, without detaining the defendant beyond the time when he or she should be released under the new release order. If the order for arrest cannot be served in that time, use the court's records to learn the court date in the order for arrest, and arrange to have order for arrest recalled.*
- (4) *If the defendant was surrendered in a county other than the county where the defendant is to appear, return original order for arrest, if any, with return of service completed, along with this form and a copy of the new release order, to the county where the defendant is to appear. When conditions of pretrial release are satisfied, return original of the new release order with any custodian's entries completed, together with the original appearance bond, if any, to the county where the defendant is to appear.*

AOC-CR-217

File No.	Law Enforcement Case No.			LID No.	SID No.	FBI No.
ORDER FOR ARREST STATE OF NORTH CAROLINA In The General Court Of Justice County <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division						
# Offense						
To any officer with authority and jurisdiction to serve an Order For Arrest: The Court finds that:						
<input type="checkbox"/> 1. FTA - RELEASE ORDER [G.S. 15A-305(b)(2)] the defendant has been arrested and released from custody and has failed on the date shown to appear as required by the Release Order. <input type="checkbox"/> The defendant has failed to appear on these charges on two or more prior occasions.						
<input type="checkbox"/> 2. FTA - CRIMINAL SUMMONS OR CITATION (Do not use for infraction.) [G.S. 15A-305(b)(3)] the defendant has failed on the date shown to appear as required by a duly executed Criminal Summons or by a Citation that charged the defendant with a misdemeanor.						
<input type="checkbox"/> 3. TRUE BILL OF INDICTMENT [G.S. 15A-305(b)(1)] a Grand Jury has returned a true bill of indictment against the defendant, a copy of which is attached. [Note To Arresting Officer: If this option is checked, defendant must be fingerprinted. G.S. 15A-502(a)]						
<input type="checkbox"/> 4. FTA - SHOW CAUSE AFTER FTC [G.S. 15A-305(b)(8)] the defendant has failed on the date shown to appear as required in a Show Cause Order entered in this criminal proceeding.						
<input type="checkbox"/> 5. FTA - SHOW CAUSE ORDER IN ORIGINAL CRIMINAL JUDGMENT [G.S. 15A-305(b)(8); -1362(c); -1364(a)] the defendant has failed by the date shown to pay a fine or costs or both as required by a judgment entered in this case and has also failed, as required upon such failure, to appear on that date and show cause why the defendant should not be imprisoned.						
<input type="checkbox"/> 6. PROBABLE CAUSE THAT DEFENDANT MAY FAIL TO APPEAR - CRIMINAL CONTEMPT [G.S. 15A-305(b)(9); 5A-16] this Court has initiated plenary proceedings for contempt against the defendant under G.S. 5A-16, has issued a show cause order and finds probable cause to believe that the defendant will not appear as required in response to that order.						
<input type="checkbox"/> 7. PROBATION VIOLATION [G.S. 15A-305(b)(4); -1345(a)] the probation officer has provided the court with a written statement, signed by the probation officer, alleging that the defendant has violated specified conditions of the defendant's probation and a copy of the written statement is attached.						
<input type="checkbox"/> 8. Other: (specify)						
You are DIRECTED to take the defendant into custody and bring the defendant before a judicial official for the purpose of:						
<input type="checkbox"/> determining conditions of release, and for commitment if the defendant is unable to comply. <input type="checkbox"/> commitment since release of the defendant is not authorized.						
Signature		Location Of Court			Court Date	
<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> DC Judge <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> SC Judge					Court Time <input type="checkbox"/> AM <input type="checkbox"/> PM	

THE STATE OF NORTH CAROLINA VS. Name, Address & Telephone No. Of Defendant	
Race Sex Date Of Birth Age	Social Security No. Drivers License No. & State Name And Address Of Defendant's Employer
Date Defendant Failed To Appear	
Amount Of Bond \$	Type Of Bond
TRUE BILL OF INDICTMENT ONLY Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)	
Offense Code	Offense In Violation Of G.S.
Date Of Offense	Date Issued

AOC-CR-217 (continued)

<p>If this Order For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon. The officer must state all steps taken by his/her department in attempting to serve the order and any information obtained about the whereabouts of the defendant.</p>	
RETURN OF SERVICE	
I certify that this Order was received and served as follows:	
Date Received	Date Returned
<input type="checkbox"/> By arresting the defendant and bringing the defendant before: Name Of Judicial Official	
<input type="checkbox"/> This Order WAS NOT served for the following reason: Signature Of Officer Making Return Department Or Agency Of Officer	
REDELIVERY/REISSUANCE	
Date	Signature <input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> CSC
RETURN FOLLOWING REDELIVERY/REISSUANCE	
I certify that this Order was received and served as follows:	
Date Received	Date Returned
<input type="checkbox"/> By arresting the defendant and bringing the defendant before: Name Of Judicial Official	
<input type="checkbox"/> This Order WAS NOT served for the following reason: Signature Of Officer Making Return Department Or Agency Of Officer	
APPEAL ENTRIES	
<input type="checkbox"/> The defendant, in open court, gives notice of appeal to the Superior Court. <input type="checkbox"/> The current pretrial release order is modified as follows:	
Date	Signature Of District Court Judge
WAIVER OF PROBABLE CAUSE HEARING	
The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.	
Date Waived	Signature Of Defendant
	Signature Of Attorney

STATE OF NORTH CAROLINA

File No. _____

_____ County

In The General Court Of Justice
☐ District ☐ Superior Court Division**STATE VERSUS**

Name Of Defendant

Name And Address Of Law Enforcement Agency

**TRANSMITTAL OF
OUT-OF-COUNTY PROCESS****TO THE LAW ENFORCEMENT AGENCY NAMED ABOVE:**Attached please find an ☐ Order For Arrest ☐ Criminal Summons ☐ Warrant For Arrest for execution in your county or city.

The judicial official who issued the process has made the following recommendations for conditions of release:

The judicial official in your county before whom the defendant is brought should set the trial or hearing at the date, time and location shown below.

Date Of Hearing

Time Of Hearing

☐ AM ☐ PM

Location of Hearing

If the defendant is committed to jail, the person or agency listed below should be contacted for return to this county.

Name Of Person Or Agency

Date

Telephone No.

Signature

☐ Superior Court Judge ☐ District Court Judge ☐ CSC
☐ Assistant CSC ☐ Deputy CSC ☐ Magistrate
NOTE TO EXECUTING OFFICER: Following execution of the attached process, deliver this form to the judicial official before whom defendant is brought.

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
☐ District ☐ Superior Court Division**STATE VERSUS**

Name Of Defendant

Date Of Birth

DETENTION OF IMPAIRED DRIVER

G.S. 15A-534.2

FINDINGS

The undersigned judicial official conducting an initial appearance for the defendant named above finds the following by clear and convincing evidence:

1. The defendant has been charged with an offense involving impaired driving as defined in G.S. 20-4.01(24a).
2. At the time of the defendant's initial appearance, the impairment of the defendant's physical or mental faculties presents a danger, if the defendant is released, of physical injury to the defendant or others or damage to property in that (*specify reasons*):

DETENTION ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS that the defendant be detained in the custody of the Sheriff until an appropriate judicial official determines that

1. the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to the defendant or others or of damage to property if the defendant is released or
2. a sober, responsible adult is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.

The period of detention under this Order shall not exceed twenty-four (24) hours.

Date

Time

☐ AM☐ PM☐ Magistrate☐ Clerk Of Superior Court☐ Deputy CSC☐ District Court Judge☐ Assistant CSC☐ Superior Court Judge

Signature Of Judicial Official

RELEASE FROM DETENTION ORDER

The undersigned judicial official ORDERS that the defendant be released from the detention order entered above because

- ☐ 1. the defendant's physical and mental faculties are no longer impaired to the extent that the defendant presents a danger of physical injury to the defendant or others or of damage to property if the defendant is released.
- ☐ 2. _____ (name), a sober, responsible adult, has indicated by signing below that he/she is willing and able to assume responsibility for the defendant until the defendant's physical and mental faculties are no longer impaired.
- ☐ 3. the period of detention has reached twenty-four (24) hours.

By signing immediately below, I certify that I am a sober, responsible person, age 18 or older, who is willing and able to assume responsibility for the defendant until the defendant's physical or mental faculties are no longer impaired.

Date

Signature Of Sober Responsible Adult

The conditions, if any, of the defendant's pretrial release are contained on form AOC-CR-200.

Date

Time

☐ AM☐ PM☐ Magistrate☐ Clerk Of Superior Court☐ Deputy CSC☐ District Court Judge☐ Assistant CSC☐ Superior Court Judge

Signature Of Judicial Official

NOTE: "If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed." G.S. 20-38.4(a)(3).

STATE OF NORTH CAROLINA		File No. _____ In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division	
_____ County			
STATE VERSUS		DETENTION FOR COMMUNICABLE DISEASE TESTING G.S. 15A-534.3	
Name Of Defendant _____			
Date Of Birth _____			
FINDINGS			
The undersigned judicial official conducting an initial appearance or first appearance for the defendant named above finds probable cause that an individual was exposed to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by the defendant to the individual in that (<i>specify reasons</i>): 			
DETENTION ORDER			
Based upon the foregoing findings, the undersigned judicial official ORDERS that the defendant be detained in the custody of the Sheriff to allow for investigation by public health officials and for testing for AIDS virus infection and Hepatitis B infection if required by public health officials pursuant to G.S. 130A-144 and G.S. 130A-148. The period of detention under this Order shall not exceed twenty-four (24) hours.			
Date _____	Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge
Signature Of Judicial Official _____			
RELEASE FROM DETENTION ORDER			
The undersigned judicial official ORDERS that the defendant be released from the detention order entered above because <input type="checkbox"/> 1. public health officials have completed their investigation and testing, if any, under G.S. 130A-144 and G.S. 130A-148. <input type="checkbox"/> 2. the period of detention has reached twenty-four (24) hours. The conditions, if any, of the defendant's pretrial release are contained on form AOC-CR-200.			
Date _____	Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge
Signature Of Judicial Official _____			

AOC-CR-270 (continued)

STATE OF NORTH CAROLINA		File No. _____
_____ County		In The General Court Of Justice Before The Magistrate
STATE VERSUS		IMPLIED CONSENT OFFENSE NOTICE G.S. 20-38.4
Name Of Defendant _____		
OBSERVATION PROCEDURE		
TO THE DEFENDANT: The established local procedure to contact other persons and have other persons appear at the jail to observe your condition or administer an additional chemical analysis to you is provided in writing with this form and incorporated into this form by reference. You are hereby notified of this procedure.		
CONTACT PERSONS		
TO THE DEFENDANT: Pursuant to G.S. 20-38.4(a)(4), you are required to list all persons you wish to contact and their telephone numbers: <i>(attach additional sheets if necessary)</i>		
Name	Telephone Number	
1. _____	_____	
2. _____	_____	
3. _____	_____	
<input type="checkbox"/> I do not wish to contact anyone.		
SIGNATURE		
By signing below, the defendant indicates that he/she has received notice of the contact and observation procedure and has listed all persons that he/she wishes to contact.		
Date _____	Signature Of Defendant _____	
MAGISTRATE'S CERTIFICATION		
The undersigned magistrate certifies that pursuant to Article 24 of Chap. 15A and G.S. 20-38.4 that		
1. An initial appearance was held and the undersigned found probable cause to believe the defendant committed an implied consent offense.		
2. The undersigned reviewed all alcohol screening tests, chemical analyses and testimony from law enforcement officers concerning impairment and the circumstances of the arrest, and observed the defendant.		
3. The undersigned considered whether the defendant was impaired to the extent that the provisions of G.S. 15A-534.2 should have been imposed.		
4. The undersigned informed the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or to administer an additional chemical analysis.		
5. The undersigned required the defendant to list all persons the defendant wishes to contact and telephone numbers on a copy of this form.		
<input type="checkbox"/> The defendant returned this form to the undersigned at the initial appearance.		
<input type="checkbox"/> The defendant failed to return this form at the initial appearance.		
Date _____	Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM	Signature Of Magistrate _____
The defendant returned this form to the undersigned after the initial appearance.		
Date _____	Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM	Signature _____ <input type="checkbox"/> Magistrate <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk Of Superior Court
NOTE: If a defendant charged with an implied consent offense is unable to make bond, the magistrate must (1) inform the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or administer an additional chemical analysis and (2) require the defendant to list all persons the defendant wishes to contact and their telephone numbers. A copy of this form must be placed in the case file. G.S. 20-38.4(a)(4).		
AOC-CR-271, New 12/06 © 2006 Administrative Office of the Courts		

AOC-CR-271

NOTE: (If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.) ☐ DOC

MAGISTRATE'S ORDER - MISDEMEANOR ONLY			
The named defendant has been arrested without a warrant and there is probable cause for the defendant's detention on the stated charges. This Magistrate's Order is issued upon information furnished under oath by the named officer. A copy of this Order has been delivered to the defendant.		Date	Signature Of Magistrate/Deputy/Assistant/CSC
COURT USE ONLY			
District Attorney	Attorney For Defendant At Time Of Trial Or Plea	<input type="checkbox"/> Appointed <input type="checkbox"/> Retained <input type="checkbox"/> Waived	PRIOR CONVICTIONS: No./Level: 0 <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+)
PLEA <input type="checkbox"/> guilty/resp. <input type="checkbox"/> no contest <input type="checkbox"/> guilty/resp. <input type="checkbox"/> no contest <input type="checkbox"/> not guilty/resp.		VERDICT/FINDING: <input type="checkbox"/> guilty/resp. <input type="checkbox"/> MISD. CLASS: A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> guilty/resp. <input type="checkbox"/> MISD. CLASS: A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> not guilty/resp. <input type="checkbox"/> V/D	
JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict/finding, it is ORDERED that the defendant: <input type="checkbox"/> pay costs and a fine/penalty of \$ _____ <input type="checkbox"/> be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. <input type="checkbox"/> The Court finds that a longer <input type="checkbox"/> shorter period of probation than specified in G.S. 15A-1343.2(d) is necessary. <input type="checkbox"/> Execution of sentence is suspended and the defendant is placed on unsupervised probation for _____ months, subject to the regular conditions of probation and the following: <input type="checkbox"/> (1) pay costs and a fine/penalty of \$ _____; <input type="checkbox"/> (2) not operate a motor vehicle until properly licensed by DMV; <input type="checkbox"/> (3) complete _____ hours of community service within _____ days and pay the fee; <input type="checkbox"/> (4) Other: _____			
<input type="checkbox"/> It is ORDERED that this: <input type="checkbox"/> Judgment is continued upon payment of costs. <input type="checkbox"/> case be consolidated for judgment with _____ sentence is to run at the expiration of the sentence in _____			
<input type="checkbox"/> COMMITMENT: It is ORDERED that the Clerk deliver <u>two</u> certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.			
<input type="checkbox"/> The defendant in open court, gives notice of appeal to the Superior Court. <input type="checkbox"/> The current pretrial release order is modified as follows: _____			
Date	Signature Of District Court Judge	I certify that this Judgment is a true copy.	Date Signature Of Deputy/Assistant/CSC

In The General Court Of Justice District Court Division

C

NORTH CAROLINA UNIFORM CITATION			
Defendant is To Appear In District Court			
Day Of Week	Month	Day	Year
			Time
			<input type="checkbox"/> AM <input type="checkbox"/> PM
<input type="checkbox"/> D.L. <input type="checkbox"/> D.C.I. <input type="checkbox"/> Other _____ No. Of Charges _____			
THE STATE OF NORTH CAROLINA VS.			
Name Of Defendant			
Address			
City		State Zip	
Drivers License No.		State CDL Class	
Race Sex		Date Of Birth Age	
Social Security No. Of Defendant		Telephone No.	
Vehicle License No.		State	
Vehicle Type Trailer Type		CMV Haz. Mat. Make Year	
Name And Telephone No. Of Defendant's Employer			
Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)			
DEPARTMENTAL USE ONLY			
I acknowledge receipt of this Citation <input type="checkbox"/> and I promise to appear in the named court at the time and place designated herein to answer the charge(s). I understand that my failure to appear or to dispose of this Citation by other acceptable legal means, such as waiver, will result in my operator's license issued by my state or residence being suspended until I have done so. Also, I may go before a magistrate and make bail in lieu of my personal recognizance.			
Date		Signature Of Defendant	
Officer		No. Troop District	
SHP Code <input type="checkbox"/> N.C. Patrol		Police/Sheriff	
Area Wea. Vis. Traffic Accident		Speed	
On Highway No./Street		<input type="checkbox"/> Injury Or Serious Injury <input type="checkbox"/> Passenger(s) Under 16	
In Vicinity/City Of		At/Near Intersection	
Wit. Chemical Analyst		<input type="checkbox"/> AC <input type="checkbox"/> Refused	

ORIGINAL-COURT COPY

STATE OF NORTH CAROLINA County

STATE OF NORTH CAROLINA	
The undersigned officer has probable cause to believe that on or about _____, (a.) (p.) m., the _____ day of _____, in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area) 77. <input type="checkbox"/> work zone. G.S. 20-141(2). 88. <input type="checkbox"/> school zone. G.S. 20-141.1. 2. In forward motion without having the provided seat belt properly fastened about the defendant's body. G.S. 20-135.2A. 3. By transporting a passenger of less than 16 years of age without having the passenger in a (weight appropriate child passenger restraint system) (seat belt). G.S. 20-137.1. 4. By transporting a child of less than five years of age and less than 40 pounds in weight without the child being secured in the rear seat, when the vehicle was equipped with an active passenger-side front air bag and the vehicle had a rear seat. G.S. 20-137.1(a1). 5. While subject to an impending substance. G.S. 20-138.1. 6. Without being licensed as a driver by the Division of Motor Vehicles of North Carolina. G.S. 20-7(a). 7. While the defendant's driver's license was revoked. G.S. 20-28. 8. While displaying an expired registration plate on the vehicle knowing the same to be expired. G.S. 20-111(2). 9. Without (displaying thereon a current approved inspection certificate) (having a current electronic inspection authorization for the vehicle), such vehicle requiring inspection in North Carolina. G.S. 20-183.8. Month Expired: _____. 10. By failing to see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154. 11. By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158(b)(1), (b)(3). 12. By entering an intersection while a traffic signal was emitting a steady red circular light for traffic in defendant's direction of travel. G.S. 20-158(b)(2). 13. Without having in full force and effect the financial responsibility required by G.S. 20-313. The defendant was the owner of the motor vehicle that was (registered) (required to be registered) in this State. G.S. 20-313. 14. (Possess an open container of) (Consume) an alcoholic beverage in the passenger area of a motor vehicle. G.S. 20-138.7(a1). [NOTE: Strike "operate a (motor) vehicle" and "(public vehicular area)" above.] 15. Without decreasing speed as necessary to avoid colliding with a (vehicle) (person). G.S. 20-141(m). 16. _____	17. And on or about the date and time shown above in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)
Date	Signature Of Officer

005-RJ-00V

STATE OF NORTH CAROLINA		File No. _____ In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
_____ County		
STATE VERSUS	CONDITIONS OF RELEASE FOR PERSON CHARGED WITH A CRIME OF DOMESTIC VIOLENCE	
Name Of Defendant <div style="border: 1px solid black; height: 60px; width: 100%;"></div>	G.S. 15A-534.1	
NOTE: Use this form in conjunction with form AOC-CR-200, Conditions Of Release And Release Order.		
FINDINGS		
The undersigned judicial official finds that the defendant named above is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes.		
ORDER		
Based upon the foregoing findings, the undersigned judicial official ORDERS the following conditions of release IN ADDITION TO the conditions of release set out on the attached form AOC-CR-200:		
<div style="margin-bottom: 10px;"> <input type="checkbox"/> 1. The defendant shall stay away from the home, school, business or place of employment of the alleged victim. </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> 2. The defendant shall refrain from assaulting, beating, molesting, or wounding the alleged victim. </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> 3. The defendant shall refrain from removing, damaging or injuring the property listed below: </div> <div style="border: 1px solid black; height: 150px; width: 100%; margin-bottom: 10px;"></div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> 4. The defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge. </div> <div> <input type="checkbox"/> 5. Other restrictions: <div style="margin-left: 20px;"> <input type="checkbox"/> a. The defendant shall have no contact with the alleged victim. <input type="checkbox"/> b. The defendant shall comply with any valid domestic violence protective order in effect. <input type="checkbox"/> c. Other: </div> </div>		
Date	Signature Of Judicial Official	<input type="checkbox"/> Magistrate <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge

AOC-CR-630

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice

☐ District ☐ Superior Court Division**STATE VERSUS**

Name Of Defendant

**CONDITIONS OF RELEASE FOR PERSON
CHARGED WITH SEX OFFENSE OR CRIME OF
VIOLENCE AGAINST CHILD VICTIM**

G.S. 15A-534.4

NOTE: Use this form in conjunction with form AOC-CR-200, Conditions Of Release And Release Order.**FINDINGS**

The undersigned judicial official finds that the defendant named above is charged with felonious or misdemeanor child abuse, with taking indecent liberties with a minor in violation of G.S 14-202.1, with rape or any other sex offense in violation of Article 7A, Chapter 14 of the General Statutes, against a minor victim, with incest with a minor in violation of G.S. 14-178, with kidnapping, abduction, or felonious restraint involving a minor victim, with a violation of G.S. 14-320.1, with assault or any other crime of violence against a minor victim, or with communicating a threat against a minor victim.

- ☐ The undersigned judicial official, upon request of the defendant, has waived one or more of the conditions required by No. 2 or No. 3 below based on the following findings that imposing the condition(s) on the defendant would not be in the best interest of the alleged victim: (specify reasons)

ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS the following conditions of release IN ADDITION TO the conditions of release set out on the attached form AOC-CR-200:

1. The defendant shall refrain from assaulting, beating, intimidating, stalking, threatening, or harming the alleged victim.
- ☐ 2. The defendant shall stay away from the home, temporary residence, school, business, or place of employment of the alleged victim. (Strike through and initial any waived conditions if block is checked, but not all conditions apply.)
- ☐ 3. The defendant shall refrain from communicating or attempting to communicate, directly or indirectly, with the victim, except under circumstances specified in an order entered by a judge with knowledge of the pending charges. (Strike through and initial any waived conditions if block is checked, but not all conditions apply.)

Date

Signature Of Judicial Official

☐ Magistrate☐ Clerk Of Superior Court☐ Deputy CSC☐ District Court Judge☐ Assistant CSC☐ Superior Court Judge

AOC-CR-909M

File No. AOC-CR-909M	STATE OF NORTH CAROLINA In The General Court Of Justice District Court Division _____ County	I, the undersigned, find that the defendant named above has been arrested without a warrant and the defendant's detention is justified because the crime named above is punishable by death or imprisonment for a term exceeding one year and there is probable cause to believe that on or about the date of offense shown and in the demanding state and county named above the crime named above was committed and the defendant named above has been charged with the commission of that crime and has fled from justice. This Magistrate's Order is issued pursuant to Section 15A-734 of the North Carolina General Statutes upon information furnished under oath by the arresting officer(s) shown. A copy of this Order has been delivered to the defendant.
MAGISTRATE'S ORDER FOR FUGITIVE		
Crime(s) In Demanding State		
Date Of Offense		
Name Of Demanding State And County Of Offense		
THE STATE OF NORTH CAROLINA VS.		
Name And Address Of Defendant		
County Of Residence	Telephone No.	
Race	Sex	Date Of Birth
Social Security No.	Age	
Name Of Defendant's Employer		
Offense Code(s)	Arrest Under G.S.	15A-734
Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)		
Arresting Officer (Name, Department, Phone No.)		
Date Issued		Signature
Location Of Court		Court Date
<input type="checkbox"/> Magistrate <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge		Court Time <input type="checkbox"/> AM <input type="checkbox"/> PM

AOC-CR-910M

STATE OF NORTH CAROLINA _____ County In The General Court Of Justice District Court Division		WARRANT FOR ARREST FOR FUGITIVE	
To and officer with authority and jurisdiction to execute a warrant for arrest: I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the demanding state and county named above the crime named above was committed and the defendant named above is now in the State of North Carolina and <input type="checkbox"/> has been charged with the commission of that crime and has fled from justice. <input type="checkbox"/> has been convicted of that crime and has escaped from confinement. <input type="checkbox"/> has broken the terms of his/her bail, probation and parole.		This Warrant is issued pursuant to Section 15A-733 of the North Carolina General Statutes upon information furnished under oath by the complainant listed. You are DIRECTED to arrest the defendant and bring the defendant before a judicial official without unnecessary delay to answer the charge above.	
File No. _____		Date Issued _____	
County Of Residence _____ Telephone No. _____		Signature _____ Location Of Court _____	
Race _____ Sex _____ Date Of Birth _____ Age _____		Court Date _____ Court Time _____	
Social Security No. _____ Drivers License No. & State _____		<input type="checkbox"/> Magistrate <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge <input type="checkbox"/> AM <input type="checkbox"/> PM	
Name Of Defendant's Employer _____		Date Issued _____	
Offense Code(s) 9801 Arrest Under G.S. 15A-733		Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card) _____	
Complainant (Name, Address Or Department, Phone No.) _____		(Over)	

AOC-CR-910M (continued)

If this Warrant For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon. The officer must state all steps taken by the department in attempting to execute the Warrant and any information obtained about the whereabouts of the defendant.		
RETURN OF SERVICE		
I certify that this Warrant was received and served as follows:		
Date Received	Date Served	Date Returned
<input type="checkbox"/> By arresting the defendant and bringing the defendant before:		
Name Of Judicial Official		
<input type="checkbox"/> This Warrant WAS NOT served for the following reason:		
Signature Of Officer Making Return		
Department Or Agency Of Officer		
RETURN FOLLOWING REDELIVERY		
I certify that this Warrant was received and served as follows:		
Date Received	Date Served	Date Returned
<input type="checkbox"/> By arresting the defendant and bringing the defendant before:		
Name Of Judicial Official		
<input type="checkbox"/> This Warrant WAS NOT served for the following reason:		
Signature Of Officer Making Return		
Department Or Agency Of Officer		

STATE OF NORTH CAROLINA _____ County		File No. _____ In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
STATE VERSUS		FUGITIVE AFFIDAVIT G.S. 15A-733, 15A-734
<i>Name Of Defendant</i> _____		
<i>Crime(s) In Demanding State</i> _____		
<i>Date Of Crime</i> _____		
<i>Name Of Demanding State And County Of Crime</i> _____		
<i>Name, Address And Telephone No. Of Contact Person In Demanding State</i> _____		<i>Title</i> _____
<p>I, the undersigned, state that this Affidavit is based upon</p> <p> <input type="checkbox"/> 1. criminal process issued by a judicial official of the demanding state, a copy of which is attached. <input type="checkbox"/> 2. the affidavit of the contact person named above, a copy of which is attached. <input type="checkbox"/> 3. a NCIC-DCI message from the contact person named above, a copy of which is attached. <input type="checkbox"/> 4. a telephone message from the contact person named above. <input type="checkbox"/> 5. Other: _____ </p> <p>On or about the date of offense shown and in the demanding state and county named above the crime named above was committed and the defendant named above is now in the State of North Carolina and has</p> <p> <input type="checkbox"/> 1. been charged with the commission of that crime and has fled from justice. <input type="checkbox"/> 2. been convicted of that crime and has escaped from confinement. <input type="checkbox"/> 3. broken the terms of bail, probation or parole. </p>		
SWORN AND SUBSCRIBED TO BEFORE ME		<i>Date</i> _____
<i>Date</i> _____		<i>Signature Of Affiant</i> _____
<i>Signature</i> _____		<i>Name Of Affiant (Type Or Print)</i> _____
<input type="checkbox"/> Magistrate <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge		<i>Title Of Person Signing</i> _____
AOC-CR-911M, Rev. 9/98 ©1998 Administrative Office of the Courts		

AOC-CR-911M