



Advanced Criminal Procedure for Magistrates

December 12-13, 2022 UNC School of Government, Chapel Hill, NC Room 2402

Monday, December 12

1:00 p.m.	Welcome Thomas Thornburg, School of Government
1:05 p.m.	Determining Probable Cause (1.50 CE, <i>Issuing Criminal Process</i>) Jeff Welty, School of Government
2:35 p.m.	Break
2:45 p.m.	Initial Appearance: Advanced Issues (1.50 CE, Setting Conditions of Pretrial Release) John Rubin, School of Government
4:15 p.m.	Promoting Court Appearance and Responding to Non-Appearance (1.00 CE) Hannah Turner, Project Manager, Criminal Justice Innovation Lab, School of Government
5:15 p.m.	Recess
6:00 p.m.	Optional Group Dinner at Nantucket Grill, Chapel Hill (Individual Pay)

Tuesday, December 13

9:00 a.m.	Search Warrants: Advanced Issues (1.00 CE, <i>Issuing Search Warrants</i>) Jeff Welty, School of Government
10:00 a.m.	Break
10:05 a.m.	Procedures for Taking Bail Bonds (1.50 CE, <i>Setting Conditions of Pretrial Release</i>) Troy Page, Assistant Legal Counsel, North Carolina Administrative Office of the Courts
11:35 a.m.	Break
11:40 a.m.	Ethics Code and Magistrates' Criminal Duties (1.00 CE) Thomas Thornburg, School of Government

12:40 p.m. Lunch (provided by SOG)

1:45 p.m.	First Appearance & Pretrial Release(1.00 CE, Setting Conditions of Pretrial Release)as They Affect Magistrate Duties
	Honorable Stephen Stokes, District Court Judge, 12 th Judicial District, Cumberland County
2:45 p.m.	Extradition (1.00 CE) Angie West Byrd, Extradition Secretary, North Carolina Department of Justice
3:45 p.m.	Break
3:55 p.m.	Probation, Post-Release Supervision, and Related Issues (0.75 CE) Jamie Markham, School of Government
4:40 p.m.	Closing Remarks Thomas Thornburg, School of Government
4:45 p.m.	Adjourn

DETERMINING PROBABLE CAUSE

School of Government

1

A WIDELY USED STANDARD

- Required to issue arrest warrants and other criminal process
- G.S. 15A-304(d)
- Required to issue search warrants
- U.S. Const. Am. IV
- G.S. 15A-245
- Required for civil license revocations
- G.S. 20-16.5

2

IMPORTANT TO GET IT RIGHT

- Setting the bar too highHamstrings law enforcement
- Setting the bar too low
- Infringes on citizens' freedom
- Leads to the suppression of evidence found during arrests or searches
- Can lead to civil liability for officers

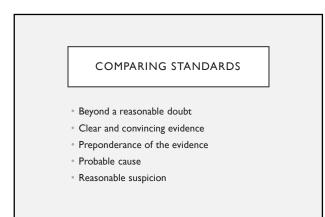


- Is a "fluid concept ... not readily, or even usefully, reduced to a neat set of legal rules"
- <u>Illinois v. Gates</u>, 462 U.S. 213 (1983)
 Requires a "substantial basis"

• <u>ld.</u>

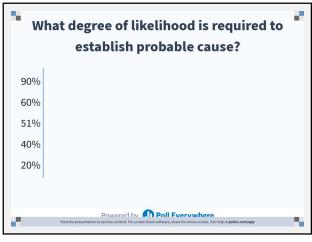
- Means a "reasonable ground for belief"
- <u>State v.Weakley</u>, 176 N.C.App. 642 (2006)

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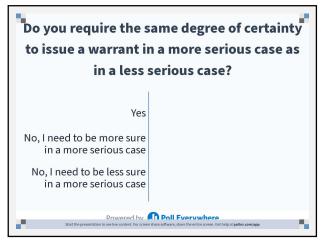














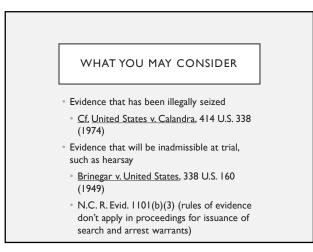
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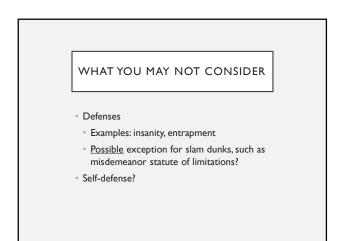


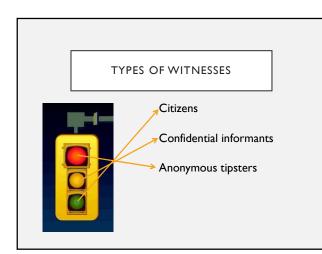
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IS PC A SINGLE STANDARD?

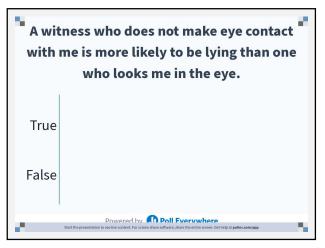
- "[O]fficers need a greater quantum of evidence when making arrests for less serious crimes"
- <u>Pasiewicz v. Lake Co. Forest Preserve Dist.</u>, 270 F.3d 520 (7th Cir. 2001)
- "Common sense demands" that determining PC includes considering "the gravity of the investigated offense"
- Craig S. Lerner, <u>The Reasonableness of</u> <u>Probable Cause</u>, 81 Tex. L. Rev. 951 (2003)

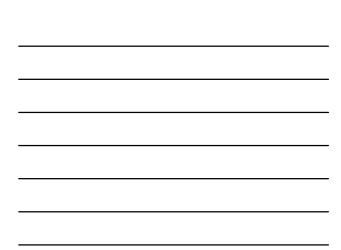


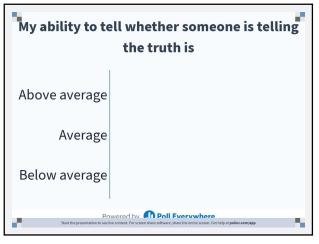


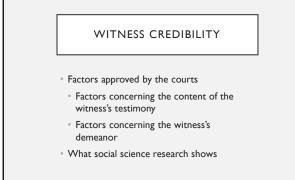


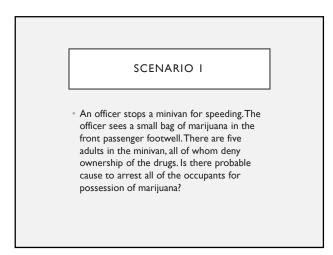


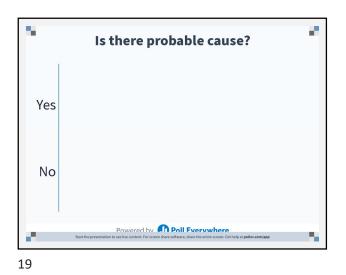








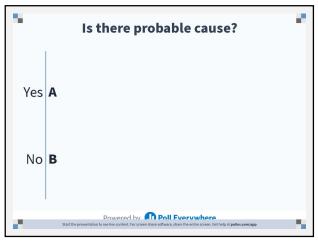






SCENARIO 2



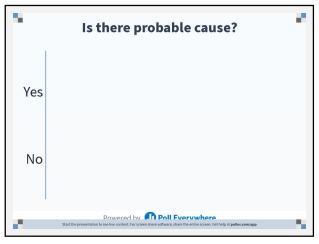


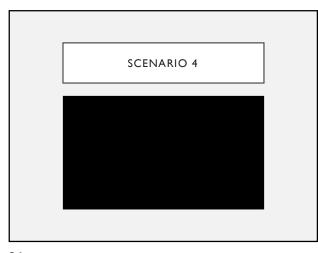




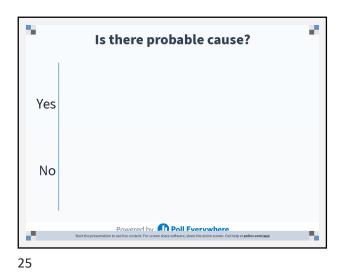








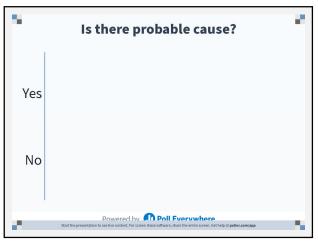




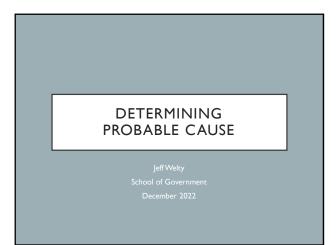


SCENARIO 5









Probable Cause: What to Consider

Proper considerations.

- The experience level of the officer involved, if any. State v. Barnhardt, 92 N.C. App. 94 (1988).
- The credibility of any witnesses, including officers. *State v. Harris*, 25 N.C. App. 404 (1975).
 - See the discussion of citizen witnesses, confidential informants, and anonymous tipsters on the reverse.
 - Factors courts have recognized as relevant to credibility:
 - Inconsistencies. "Contradictions and inconsistencies in a witness's testimony are credibility factors the jury considers." *State v. Thaggard*, 168 N.C. App. 263 (2005).
 - Vague or non-detailed statements. *Elzour v. Ashcroft*, 378 F.3d 1143 (10th Cir. 2004).
 - Bias/incentive to lie. *State v. Murphy*, 152 N.C. App. 335 (2002) (witnesses' close relationship to defendant justified court's decision to discount information provided by witnesses).
 - Nervousness. *State v. Jacobs*, 162 N.C. App. 251 (2004) (officer appropriately considered a suspect's nervousness in doubting the suspect's version of events and detaining the suspect for further investigation).
 - Lack of eye contact. *State v. Bullock*, N.C. , S.E.2d , 2017 WL 5017435 (2017); United States v. Dillard, 43 F.3d 299 (7th Cir. 1994).
 - Pauses/interrupted speech. Cf. Casey v. O'Bannon, 536 F. Supp. 350, 354-55 (D. Pa. 1982).
 - Demeanor generally. *Yurek v. Shaffer*, 198 N.C. App. 67 (2009) ("[W]hen acting as the finder of fact, the trial court has the opportunity to observe the demeanor of the witnesses and determine their credibility.").
 - <u>Caution</u>: social science research suggests that it is difficult to determine whether a witness is telling the truth based on the witness's demeanor.
- Evidence that is inadmissible at trial, such as hearsay. Brinegar v. United States, 338 U.S. 160 (1949).
- Evidence that may have been obtained illegally.
 - Legally may consider such evidence. *Cf. United States v. Calandra*, 414 U.S. 338 (1974) (grand jury may consider evidence obtained illegally, and "the validity of an indictment is not affected by the character of the evidence considered"); G.S. 15A-611 (at probable cause hearing, judge "not required to exclude" illegally obtained evidence).
 - Practically, attempting to "exclude" such evidence is problematic.
 - Magistrates are not trained in the law of search and seizure.
 - No prosecutor is present to argue that the evidence in question was obtained legally.
 - <u>Possible</u> exception for evidence that was <u>manifestly</u> obtained illegally?
- The seriousness of the crime? See the additional handout on this issue.

Improper considerations.

- Defenses.
 - The burden is on the defendant to present these in court.
 - <u>Possible</u> exception for "slam dunk" defenses, e.g., the two-year statute of limitations for misdemeanors, self-defense in certain domestic violence cases?

Probable Cause: Types of Witnesses

Citizen witnesses.

- May presume that they are truthful. United States v. DeQuasie, 373 F.3d 509, 523 & n.21 (4th Cir. 2004); Easton v. City of Boulder, 776 F.2d 1441, 1449 (10th Cir. 1985) ("[W]hen examining informant evidence used to support a claim of probable cause for a warrant . . . the skepticism and careful scrutiny usually found in cases involving informants, sometimes anonymous, from the criminal milieu, is appropriately relaxed if the informant is an identified victim or ordinary citizen witness.").
- Therefore, if they have first-hand information that is sufficiently detailed, it will normally amount to probable cause.

Confidential informants.

- May <u>not</u> presume that they are truthful.
- If they have first-hand information that is sufficiently detailed, it may amount to probable cause if
 - An officer has corroborated enough of their information, or
 - o They have a track record of reliability. State v. Arrington, 311 N.C. 633 (1984).
 - An officer's naked assertion that an informant is reliable, without supporting detail, is inadequate to establish the informant's reliability. *State v. Hughes*, 353 N.C. 200 (2000); *State v. Roark*, 83 N.C. App. 425 (1986).
 - A single instance of previous reliability may not be sufficient to establish the informant's reliability. *State v. Wallace*, 111 N.C. App. 581 (1993).

Anonymous tipsters.

- Generally viewed as even less reliable than known informants. Florida v. J.L., 529 U.S. 266 (2000).
- If they have first-hand information that is sufficiently detailed, it may amount to probable cause <u>if</u>
 - An officer has corroborated enough of their information. *State v. Bone*, 354 N.C. 1 (2001).
 - They provide information about a crime "contemporaneous[ly]," using the 911 system or other means that "allow for identifying and tracing callers." *Cf. Navarette v. California*, U.S. __, 134 S.Ct. 1683 (2013) (finding reasonable suspicion based on such a report).
- A witness who has placed his or her anonymity at risk should normally be considered a citizen witness, not an anonymous tipster. *State v. Maready*, 362 N.C. 614 (2008).

EXCEPTIONS TO PRETRIAL RELEASE PROCEDURES: A GUIDE FOR MAGISTRATES

THE GENERAL RULE: Upon arrest, the defendant must be taken without unnecessary delay before a magistrate, who **MUST** hold an initial appearance and set pretrial release (PTR) conditions. G.S. 15A-511; G.S. 15A-533(b) (right to pretrial release determination). There are **LIMITED** exceptions to this rule.

Category	Specific Situation	Response	Statutory Basis	Form to Use
Delay initial appearance altogether	Person is unable to understand rights (ex., person is unconscious, grossly intoxicated, does not understand English)	Delay initial appearance for reasonable time without setting PTR conditions. If you commit person to jail until able to understand rights, set reasonable outer time limit and check regularly with jail. To avoid delay of initial appearance if person does not speak English, use telephone interpreting service when possible.	15A-511(a)(3)	AOC-CR-200 Fill out commitment portion of form only. Check the box to hold person "for the following purpose" and write purpose. Do not set PTR conditions in upper portion of form.
Conduct initial appearance, BUT delay setting pretrial release conditions	Person is charged with domestic violence offense under "48-hour" law	Conduct initial appearance, but do not set PTR conditions. Order that person be returned to magistrate if judge does not set PTR conditions within 48 hours. After 48 hours, magistrate has authority to delay setting of PTR conditions for reasonable time if person continues to pose danger	15A-534.1	AOC-CR-200 Fill out commitment portion of form only. Check the domestic violence box and indicate when defendant should be returned to magistrate if judge has not acted.
	Felony by person on probation if insufficient information about danger to public	Conduct initial appearance, but do not set PTR conditions. Order that person be brought for first appearance before judge no later than 96 hours. If sufficient information before then, set PTR conditions.	15A-534(d2)	AOC-CR-200, AOC-CR-272 (side one) Check the appropriate box in AOC-CR-200 and fill out AOC-CR-272 (side one)
	Violation of probation by person who has pending felony charge or who is subject to sex offender registration if insufficient information about danger to public	Conduct initial appearance, but do not set PTR conditions. If defendant has been held for 7 days without PTR conditions, defendant must be brought before any judicial official to set PTR conditions. If sufficient information before then that not a danger, set PTR conditions.	15A-1345(b1)	AOC-CR-200, AOC-CR-272 (side two) Check the appropriate box in AOC-CR-200 and fill out AOC-CR-272 (side two)
	Violation of 14-277.6 or 14-277.7 (threat of mass violence on educational property or place of worship)	Conduct initial appearance, but do not set PTR conditions. Order that person be returned to magistrate if judge does not set PTR conditions within 48 hours. After 48 hours, magistrate may retain defendant for reasonable time while determining PTR conditions if immediate release poses danger of injury and appearance bond will not prevent injury	15A-534.7	AOC-CR-200

Category	Specific Situation	Response	Statutory Basis	Form to Use
Conduct initial appearance, set pretrial release conditions, BUT delay release	Probable cause of impaired driving offense and clear and convincing evidence that person is so impaired as to present danger to self or others if released	Set pretrial release conditions <u>and</u> order defendant into custody, up to 24 hours, until he or she is no longer impaired to dangerous extent or sober responsible adult agrees to take custody.	15A-534.2	AOC-CR-200, AOC-CR-270 Make special findings in AOC-CR-270 (side one). Use AOC-CR-200 for PTR conditions; check the box that release is subject to AOC-CR-270.
	Probable cause that individual was exposed to defendant in a nonsexual manner that poses significant risk of transmission of AIDS or Hepatitis B	Contact public health official to determine risk of transmission. If risk exists, order defendant detained for up to 24 hours for testing. Set PTR conditions, to go into effect once testing is completed.	15A-534.3	AOC-CR-200, AOC-CR-270 (side two) See above.
Conduct initial appearance, BUT deny any pretrial release conditions if criteria met	 Capital offense Fugitive from another state charged with offense punishable by life in prison or death, or fugitive charged with any offense after arrest on Governor's warrant Out-of-state probationer arrested for violation of probation if subject to Interstate Compact for Adult Supervision Offense while person was involuntarily committed or on escape from involuntary commitment if person is still subject to commitment Certain drug trafficking offenses Certain offenses with firearm Violation of certain health control measures if person poses health and safety threat Certain methamphetamine offenses Military deserter Violation of probation by person who has pending felony charge or is subject to sex offender registration if danger to public¹ 	In all of these situations, deny release if criteria are met. Make findings if required. If offense is while person was involuntarily committed or on escape from involuntary commitment, and person is still subject to commitment, person should be returned to treatment facility. If offense is violation of health control measure (under 130A-145 or 130A-475), pretrial confinement terminates when judicial official finds, based on recommendation of state or local health director, that person no longer poses health and safety threat.	 15A-533(c) 15A-736 Ch. 148, Art. 4B (Interstate Compact) 15A-533(a) 15A-533(a) 15A-533(b) 15A-533(c) 15A-533(c) 15A-533(c) 15A-533(c) 15A-534(c) 15A-1345(c) 15A-1345(c) 	AOC-CR-200 In upper portion of form, check the box that states "Your release is not authorized." In additional information section, write any findings or instructions. If a violation of probation by a person who has a pending felony charge or is subject to sex offender registration, also check appropriate box in AOC- CR-200 and fill out AOC- CR-272 (side two)

1. Also applies if probationer would be subject to sex offender registration but for the effective date of NC's sex offender registration program.

Category	Specific Situation	Response	Statutory Basis	Form to Use
Conduct initial appearance, BUT set certain pretrial release conditions	Arrested on order for arrest (OFA) after failure to appear (FTA)	If OFA requires certain PTR conditions, set those conditions. If OFA does not require PTR conditions, set secured bond in at least twice the amount of previous bond. If OFA does not require conditions and there was no previous bond, set secured bond of at least \$1,000. If defendant was already surrendered by surety for this FTA and made new bond, release defendant without setting new bond.	15A-534(d1)	AOC-CR-200 Set pretrial release conditions. Check the box in upper portion of form that defendant was arrested or surrendered for FTA. Also check the box if this is defendant's second or subsequent FTA.
	Surrendered by surety following FTA	Require secured bond in at least twice the amount of previous bond. If defendant was already arrested for this FTA and made new bond, release defendant without setting new bond. If defendant has not been arrested for this FTA, attempt to get OFA recalled.	15A-534(d1)	AOC-CR-200 See immediately above. See also AOC-CR-214 (surrender of defendant by surety)
	New offense while on pretrial release for prior offense	May require (was, shall require) secured bond in at least twice the amount of previous bond for the charges. If no previous bond for the charges, may require (was, shall require) secured bond of at least \$1,000.	15A-534(d3)	AOC-CR-200 Set pretrial release conditions with required bond amount.
	Felony by person on probation if danger to public	Set secured bond, with or without electronic house arrest.	15A-534(d2)	AOC-CR-200, AOC-CR-272 (side one) Check the appropriate box in AOC-CR-200 and fill out AOC-CR-272 (side one)
	Electronic house arrest	If you require house arrest with electronic monitoring, set secured bond.	15A-534(a)	AOC-CR-200 Check appropriate box.
	Order of judge	Follow judge's order.		AOC-CR-200
	Domestic violence offense	If authorized to set PTR conditions, magistrate may impose conditions that defendant stay away from victim, not assault victim, not damage specified property, and may visit defendant's children at times specified in court order	15A-534.1(a)(2)	AOC-CR-200, AOC-CR-630 In space for restrictions in AOC-CR-200, refer to AOC- CR-630 if additional conditions included there.

Category	Specific Situation	Response	Statutory Basis	Form to Use
Set certain pretrial release conditions (cont'd)	Sex offenses and crimes of violence against a minor	In addition to any other PTR conditions, require that defendant stay away from, not communicate with, and not assault, threaten, or harm alleged victim; stay away and non-communication conditions may be waived on proper findings.	15A-534.4	AOC-CR-200, AOC-CR-631 In space for restrictions in AOC-CR-200, refer to AOC- CR-631 if additional conditions included there.
	Threats of mass violence	If authorized to set PTR conditions, magistrate may impose conditions that defendant stay away from threatened educational property or place of worship and, unless granted permission by person in control of property, other such properties.	15A-534.7	AOC-CR-660
	When fingerprints or DNA sample have not been collected as required by certain statutes	In addition to any other PTR conditions, require the collection of fingerprints or DNA sample as condition of release.	15A-534(a)	AOC-CR-200 In space for restrictions, write condition.
Reasons that initial appearance and/or pretrial release conditions may NOT be delayed or denied	Noncitizens	No authority to delay or deny PTR conditions. If ICE has filed detainer, defendant may be detained by jail for additional 48 hours (excluding weekends and holidays) after defendant makes PTR conditions.	8 C.F.R. 287.7 (ICE detainer)	AOC-CR-200 Fill out release order as in other cases.
	Out-of-county offenses or violations	No authority to delay or deny PTR conditions.		AOC-CR-200, AOC-CR-241 (out-of-county process verification recall and transmission)
	Arrest without paperwork	No authority to delay or deny PTR conditions.	15A-401(a)(2) (arrest authority when warrant not in possession of officer)	AOC-CR-200
	DCI hit states "no bond"	No authority to delay or deny PTR conditions.		AOC-CR-200
	Probation violation by in-state probationer or "absconder"	No authority to delay or deny PTR conditions except in the circumstances in 15A- 1345(b1), described above.	15A-1345(b) (bail following arrest for probation violation)	AOC-CR-200

The North Carolina Court Appearance Project

Promoting Better Case Management, Backlog Reduction & Fewer Missed Appearances

In North Carolina, 1 in 6 criminal cases has a missed court appearance. Missed appearances contribute to system-wide inefficiencies and case backlogs, use additional law enforcement resources, inconvenience victims and witnesses, and can result in collateral consequences for the person charged. However, data and experience suggest that most missed appearances are for low-level offenses and may be due to systemic barriers, such as lack of transportation or inability to take off time from work. Deliberate policies can address these barriers, ensure public safety, and improve efficiency.

Phase I: Policy Development

In August 2021, diverse stakeholder teams from New Hanover, Orange, and Robeson counties began exploring policy solutions to promote court appearances and develop better responses to non-appearances. Using local court and jail data, teams reflected on court procedures and identified key areas for improvement. The strategies they crafted are summarized in the table below. Additional details are in the Phase I report, online at https://cjil.sog.unc.edu/court-appearance-project/.

	Help people understand and remember the need to appear	Text message reminders; palm cards to accompany citations; forms that are easier to read and understand
~~	Address barriers to appearance	Transportation assistance; virtual appearance options
血	Make court more user- friendly	Hearings scheduled in smaller time blocks; walk-in hours; services for high-need groups; shorter disposition times
mini	Build community trust	More diverse court personnel; regular community engagement
රීර්	Reduce collateral harms	Fewer unnecessary orders for arrest; license restoration services; updating state laws

Phase II: Implementation & Engagement

Phase II is underway and has three goals. First, the project teams are working to execute priority Phase I policy initiatives. This work will generate tools to inform implementation efforts in other jurisdictions. Second, through conferences, webinars, and other events, the project teams will share their work with stakeholders across North Carolina and the country. Third, we'll launch an online court appearance toolbox, allowing stakeholders everywhere to access "off the shelf" model tools and templates to promote court appearance and improve responses to non-appearances.

Want to be added to our email list to learn about upcoming events? Scan the QR code to provide your contact information.



Learn More

The NC Court Appearance Project is supported by the UNC School of Government Criminal Justice Innovation Lab (The Lab) and The Pew Charitable Trusts. For more information contact Ethan Rex at rex@sog.unc.edu, or Hannah Turner at <u>hturner@sog.unc.edu</u>. You can also use your cell phone camera to scan the QR code and a Lab team member will reach out directly regarding your inquiry.

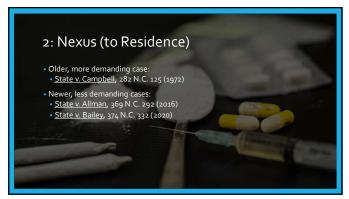
SEARCH WARRANTS: BEYOND THE BASICS

Jeff Welty UNC School of Government December 2022



1: Staleness

- Staleness is when PC dissipates over time
- Two months is "a general rule," <u>State v.</u> <u>Lindsey</u>, 58 N.C. App. 564 (1982), but how long depends on the facts
- What if the affidavit doesn't specify recency? <u>See State v. Kochetkov</u>, 280 N.C. App. 351 (2021)



3: Nexus (to Cell Phone)



 Is there an "automatic nexus" to a suspect's phone?

• <u>Compare United States v. Lyles</u>, 910 F.3d 787 (4th Cir. 2018) (heck no), <u>with State v.</u> <u>Moats</u>, 168 A.3d 952 (Md. Ct. App. 2017) (pretty much yes)

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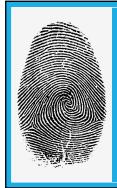
4: Digital Devices + Later Forensic Analysis 9. The application may address this but it is likely OK even if it doesn't. 9. The 48-hour limit on execution doesn't apply but many months of delay could be coblematic. 9. The return and inventory should be done after the initial physical search. 10. The return and inventory should be done after the initial physical search. 10. The return and inventory should be done after the initial physical search.

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5. Digital Devices: Scope of the Search

- Should a warrant for a digital device
- Limit a search to certain kinds of content?Limit a search to content created during
- a certain period of time?Allow access to connected cloud services?





6: Biometric Unlocking

- Some search warrant applications ask specifically for permission to do this
- What if they don't do th
- "The law in this area is emerging and entirely unsettled." In re Search Warrant No. 5165, 470 F.Supp.3d 715 (E.D. Ky. 2020).

7



7: Catchalls

- "All evidence of the crime under investigation"
- "Any items illegal to possess"
- "All persons on the premises"

8



8: What's Included?

OutbuildingsVehicles on or near the premises

• People on or near the premises

9: Execution + Records

- Who may assist officers in executing a search warrant?
- May an entity search itself with no involvement by officers?

FIRST BANK OF WIKI 1425 JAMES ST, PO BOX 4000 VICTORIA BC V8X 3X4 1-800-555-5555			CHEQUING ACCOUNT		
. 3	OHN JONES 643 DUNDAS ST W APT 27 ORONTO ON M6K 1V2	-	Statement 2003-10-09 to		
Date	Description	Ref. 1	Vithdrawals	Deposits	
03-10-08	Previous balance				
03-10-14				694.81	
03-10-14		9685	200.00		
03-10-16	ATM Withdrawal - INTERAC	3990	21.25		
03-10-16	Fees - Interac		1.50		
03-10-20	Interac Purchase - ELECTRONICS	1975	2.99		
03-10-21	Web Bill Payment - AMEX	3314	300.00		
03-10-22		0054	100.00		
03-10-23	Interac Purchase - SUPERMARKET	1559	29.08		
03-10-24	Interac Refund - ELECTRONICS	1975		2.99	
03-10-27	Telephone Bill Payment - VISA	2475	6.77		
03-10-28	Payrol Deposit - HOTEL			694.81	
03-10-30	Web Funds Transfer - From SAVINGS	2620		50.00	
03-11-03			33.55		
03-11-03	Cheque No 409		100.00		
03-11-06	Mongage Payment		710.49		
03-11-07	Fees - Overdraft		5.00		
03-11-08	Fees - Monthly		5.00		
	*** Totals ***		1.515.63	1.442.61	

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SEARCH WARRANTS: BEYOND THE BASICS

Jeff Welty UNC School of Government December 2022



Errata and Updates for Criminal Proceedings before North Carolina Magistrates (UNC SOG 2014) Appendix ("Outline of Procedures for Taking Bail Bonds") Advanced Criminal Procedure for Magistrates – December 13, 2022

This errata sheet provides corrections and updates to the Appendix on taking bail bonds to account for legislative and other changes since the book's last publication in 2014. Additional edits and corrections may appear in subsequent editions, but those other potential corrections have no substantive impact on magistrates' functions in overseeing the execution of bonds, so they are not addressed here, *e.g.*, cosmetic corrections to reflect current content of form AOC-CR-201, Rev.2/21, for which the jurat on Side One now is captioned with "Sworn/Affirmed and Subscribed to Before Me," rather than "Sworn and Subscribed to Before Me" as it appeared in 2014.

I. Page 63, Introduction

The citation to the corresponding chapter of the Clerks' manual should appear as:

Joan G. Brannon & Ann M. Anderson, CRIMINAL ch. 3, "Criminal Appearance Bonds: Taking Secured Bonds," North Carolina Clerk of Superior Court Manual Series, edited by Meredith Smith and Jan S. Simmons, UNC School of Government, 2022, <u>https://sog.unc.edu/clerksmanual</u>.

II. Page 65

- A. Under paragraph b.i.(2)'s bullet for **Completing the AOC-CR-201: Cash Bond by Surety**," in the 3rd hollow bullet, the checkbox option for " **Cash Deposited by Surety**" no longer appears on the AOC-CR-201. The option for **Surety Appearance Bond** now includes contingent phrasing about cash bonds that replaced the former checkbox option.
- B. Under paragraph 4. (cash bonds greater than \$10,000), the current citation to the relevant text in the NCAOC's Financial Procedures Manual (cited in the appendix as the "Clerk of Superior Court Financial Policies and Procedures") should appear as follows. Note that the Financial Procedures Manual is hosted on the NCAOC's Juno intranet site, so the link below is accessible only within the NCAOC's intranet.

Note: See also, N.C. Administrative Office of the Courts, "Q. Cash Receipting - Form 8300: Report of Cash Payments Over \$10,000 - Financial Procedures Manual," FINANCIAL PROCEDURES MANUAL, Chapter 3, https://juno.nccourts.org/resources/manuals/q-cash-receipting-form-8300-report-cash-payments-over-10000-financial-procedures

III. Page 67

In paragraph iii. (Suspicious Transactions), the current version of IRS Publication 1544 is dated September 2014, not 2012.

IV. Page 68

In paragraph e.ii.(2) (at the top of the page) and paragraph iii.(2) (center of the page, third bullet), the current version of IRS Publication 1544 is dated September 2014, not 2012.

V. Page 70

A. In paragraph 4.c.iii., in addition to the prohibition on a licensed "surety" (meaning a professional bondsman or insurance company) from executing new bonds in a county in which that surety has an unsatisfied final judgment of forfeiture, any professional bondsman, bail agent (surety bondsman), or runner is now prohibited from executing any new bonds <u>statewide</u> while there is an unsatisfied judgment of forfeiture for a bond on which that licensee's name appears in their licensed capacity.

For more information on the statewide licensee prohibition, see the memo of Nov. 17, 2016, "2016 Legislation - Bail Bonds and Bond Forfeitures - S.L. 2016-107," available to Judicial Branch users on Juno under the Legal Memos category for Criminal Memos (direct link at: <u>https://juno.nccourts.org/sites/default/files/media/memo - 2016 legislation -</u> <u>bail_bonds_and_bond_forfeitures - s | 2016-107_0.pdf</u>).</u>

Note that the link above is on the NCAOC's Juno intranet site, so it is accessible only within the NCAOC's intranet.

- B. In paragraph 4.c.iv.(bottom of the page):
 - As counties implement the Odyssey suite of products from Tyler Technologies, Odyssey will
 produce a report of licensed sureties currently authorized to execute bonds for each county
 in which it has been implemented, in the same manner as VCAP produces its *Surety Report*.
 Therefore references to the *Surety Report* in the Appendix should be read to refer to either
 the VCAP or Odyssey report for the county in question.
 - The current link to the bondsman list on nccourts.gov is <u>https://www.nccourts.gov/services/find-a-bail-bondsman</u>. The direct navigation to reach that page from the nccourts.gov home page is via the "Services" dropdown menu, under the option for "See All Services." The link for "Find a Bail Bondsman" appears on the main "Services" page, under "Additional Services and Requests."

VI. Page 71

In paragraph (3) (center of page), unlike NC AWARE, Odyssey does not have access to the surety list in VCAP and therefore does not function exactly as AWARE did when dealing with prohibited bondsmen.

- A. If a licensed entity has been suspended by the Department of Insurance (DOI, hence the "DOI Prohibit" in VCAP), Odyssey will not display the entity in the "Active" list when selecting the parties to a bond. DOI-prohibited licensees will be listed in the "All" or "Inactive" views but should not be attached to new bonds.
- B. Because it has no interface with VCAP, Odyssey cannot warn users if a proposed surety associated with a bond in progress currently is prohibited from executing new bonds due to an unsatisfied judgment in VCAP. Therefore in order to verify whether or not a licensed surety or agent currently is authorized to execute bonds for a county <u>not</u> fully implemented on Odyssey (which is all 100 counties, as of the publication of these errata), judicial officials must consult the current *Surety Report* on nccourts.gov for the charging county.
- C. Once a county is fully implemented on Odyssey, the application will warn the official preparing an appearance bond for that county if a licensee attached to that bond currently is subject to one of the judgment-based prohibitions. This warning will appear as a pop-up message when the Odyssey user tries to save the bond as complete. Like AWARE, the warning will allow the user to continue with execution of the bond, if the licensee can demonstrate to the official that the prohibiting judgment(s) has been satisfied.

VII. Page 72

In paragraph ii. (solvency of a professional bondsman), in sub-paragraph (1) (first bullet) and subparagraph (2), the limitation that a professional bondsman's securities on deposit with the Commissioner of Insurance must be equal to at least "one-eighth" of the bondsman's total outstanding bonds was amended to "one-twelfth" by S.L. 2018-38, effective June 22, 2018. *I.e.*, a bondsman may not have outstanding as of the first of any month total bond obligations amounting to more than twelve times his or her current securities on deposit with DOI.

VIII. Page 74

In paragraph (5) (bottom of page), like NC AWARE, the Odyssey application does not include motor clubs in its lists of licensed sureties. Therefore motor club bonds should continue to be prepared as "Accommodation Bondsman" bonds.

IX. Page 79

The content of the second hollow bullet (middle of the page) should be replaced with the following:

- Judicial officials should be cautious about accepting a deed of trust to rented residential property.
 - Since 2009, a series of State and federal laws have protected the interests of a tenant in rented residential property when the property is sold via foreclosure. The initial legislation protecting tenants' interests has expired or been repealed, but the U.S. Congress re-enacted those protections in 2018 with no sunset date.
 - The federal Protecting Tenants and Foreclosure Act of 2009, Pub. L. 111-22, Title VII (hereafter "PTFA"), provided that buyers at foreclosure must honor certain existing leases of the foreclosed property. The 2009 act contained a sunset provision that would have ended its protections on December 31, 2012, but the act was extended until

December 31, 2014, by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203. The PTFA was not extended further and therefore expired at the end of 2014.

- In light of the expiration of the federal protections, the North Carolina General Assembly in 2015 enacted G.S. 45-21.33A, setting forth similar protections for tenants in foreclosed properties. S.L. 2015-178, effective October 1, 2015. However, in response to the permanent federal act discussed next, G.S. 45-21.33A was repealed, effective October 1, 2019. S.L. 2019-53.
- In 2018, Congress re-enacted the PTFA, Pub. L. 115-174, Title III, sec. 304. The PTFA was
 re-enacted as it existed prior to its original expiration in December 2014 with no sunset
 date. Its protections therefore came back into effect in June 2018.
- The PTFA provides that a tenant under a "bona fide lease or tenancy" of "a dwelling or residential real property" enjoys certain protections if the residential property is foreclosed upon. A tenant is "bona fide" under the PTFA if:
 - the tenant is not the mortgagor (on a deed of trust, the "grantor") or a child, spouse, or parent of the mortgagor;
 - the lease or tenancy was the result of an arms-length transaction; and
 - the lease or tenancy requires the receipt of rent that is not substantially less than the fair market rent for the property, or the rent is reduced or subsidized due to a federal, State, or local subsidy.
- The exact protections afforded to an individual tenant under the PTFA will vary based on the
 nature of the tenancy and the purchaser's intent for the property, but in general, most
 tenants cannot be removed from the property before the end of any lease or, at a
 minimum, before the expiration of a 90-day notice provided by the purchaser at foreclosure.
- Because of the protections afforded under the PTFA, a judicial official asked to accept a bond secured by a deed of trust to rented residential property with a "bona fide" tenant should consider the effect that the lease might have on the property's "marketability" – one of the factors a judicial official must consider when evaluating property as proof of an accommodation bondsman's solvency. G.S. 15A-531(1).
- For more information on the legislative history of the PTFA and State-level protections and the current protections afforded to tenants, see:
 - Meredith Smith, Where are We Now: The Protecting Tenants at Foreclosure Act, On the Civil Side, UNC Sch. of Gov't Blog (Nov. 20, 2019, 5:45 p.m.), https://civil.sog.unc.edu/where-are-we-now-the-protecting-tenants-at-foreclosure-act/.
 - Memorandum from Nicole Brinkley, Assistant Counsel (NCAOC), "Federal Protecting Tenants at Foreclosure Act restored Pub. L. 115-174, title III, 304, May 24, 2018, 132 Stat. 1339" (Aug. 17, 2018), available to Judicial Branch users on Juno under the Legal Memos category for Foreclosures Memos (direct link at: <u>https://juno.nccourts.org/sites/default/files/files/2018%20federal%20PTFA%20restored</u>.pdf).

Page 80

In the last bullet on the page, the pinpoint citation to the Clerks' manual should appear as:

Joan G. Brannon & Ann M. Anderson, CRIMINAL ch. 3, "Criminal Appearance Bonds: Taking Secured Bonds," at p. 3.13, North Carolina Clerk of Superior Court Manual Series, edited by Meredith Smith and Jan S. Simmons, UNC School of Government, 2022, <u>https://sog.unc.edu/clerksmanual</u>.

STATE OF NORTH CAROLINA

Name Of Defendant

File No.

In The General Court Of Justice

District Superior Court Division

STATE VERSUS

_ County

DETENTION OF PROBATIONER ARRESTED FOR FELONY

	G.S. 15A-534(d2)
NOTE: Use this form in conjunction with form AOC-CR-200, Condu	tions Of Release And Release Order.
FINDINGS AND D	ETENTION ORDER
The undersigned, having found on the attached AOC-CR-200, inco with a felony offense while on probation for a prior offense, hereby	rporated herein by reference, that the defendant has been charged finds in addition that (check only one)
1. the defendant poses a danger to the public, and therefore a required if release is otherwise authorized.	secured bond or electronic house arrest with secured bond is
2. the defendant does not pose a danger to the public, and the otherwise provided in G.S. Chapter 15A, Article 26.	efore conditions of release are set on the attached AOC-CR-200 as
3. there is insufficient information to determine whether the definition of the following additional findings and orders below. (NOTE: Nos. 3)	
a. The undersigned finds the following basis for the decision defendant poses a danger to the public:	that additional information is needed to determine whether the
b. The undersigned further finds that the following additional	information is necessary to make that determination:
G.S. 15A-534(d2)(3). The custodian is further ORDERED location, date and time specified on the attached AOC-CR	ned AOC-CR-200 is ORDERED to detain the defendant pursuant to to bring the defendant before a judge for first appearance at the -200, but if the information identified in No. 3.b. becomes available defendant immediately before any judicial official to set conditions of
Date	Signature Of Judicial Official
Magistrate Deputy CSC Assistant CSC Clerk Ol	Superior Court District Court Judge Superior Court Judge
	ETENTION ORDER
NOTE: This order is required only if the defendant was detained pursuant	to No. 3, above.
The undersigned judicial official ORDERS that the defendant be rel	eased from the Detention Order entered above, because (check one)
1. upon receipt and consideration of the additional information of	
2. upon review of the defendant's eligibility for release at his/hei	
of release accordingly on the attached AOC-CR-200.	pose a danger to the public, and therefore sets or denies conditions
Date	Signature Of Judicial Official
Magistrate Deputy CSC Assistant CSC Clerk Of	Superior Court District Court Judge Superior Court Judge
72 hours of arrest, or 96 hours if the courthouse is closed for transactions for determine whether the defendant poses a danger to the public does not per No. 3 above, then upon receipt of information identified in No. 3.b., any judi	mit a delay of the first appearance. If the defendant was detained pursuant to

County

File No.

In The General Court Of Justice District Superior Court Division

STATE VERSUS Name Of Defendant

DETENTION OF DEFENDANT ARRESTED FOR PROBATION VIOLATION WITH PENDING FELONY **OR PRIOR SEX OFFENSE**

				G.S. 15A-1345(b1)
NOTE: Use this form in conjunction with	form AOC-CR-200, Condit	ions Of Release And Re	lease Order.	
	FINDINGS AND DE	TENTION ORDER		
The undersigned, having found on the at for a violation of probation with a pending finds in addition that (check only one)				
1. the defendant poses a danger to the as ordered on the attached AOC-C			ne defendant's p	robation revocation hearing
2. the defendant does not pose a dar otherwise provided in G.S. Chapte	÷ -	fore conditions of releas	e are set on the	attached AOC-CR-200 as
3. there is insufficient information to c following Detention Order. (NOTE:				
 a. The undersigned ORDERS that defendant pursuant to G.S. 15A defendant poses a danger to the 	-1345(b1)(3), in order for th			
 b. It is further ORDERED that, if control (date date)) at a	m pm (no later than 1	7 days from arrest)	ditional information by , the custodian shall bring
Date		Signature Of Judicial Official		
		orginalare or outrolar omelar		
Magistrate Deputy CSC A	ssistant CSC	Superior Court Dist	rict Court Judge	Superior Court Judge
网络海豚 机油油等增强的 计正式计算机	RELEASE FROM DI	ETENTION ORDER	· · ·	n a gelegene sogen at som a
NOTE: This order is required only if the defe	ndant was detained pursuant to	o No. 3, above.		
The undersigned judicial official ORDER	S that the defendant be rele	ased from the Detention	Order entered	above, because (check one)
1. upon receipt and consideration of a				
2. upon review of the defendant's elig No. 3.b. above,		ntion without bail pursua	nt to G.S. 15A-1	345(b1) as specified in
the undersigned finds that the defendant of release accordingly on the attached A		pose a danger to the pu	olic and therefor	e sets or denies conditions
Date		Signature Of Judicial Official		
Magistrate Deputy CSC A	ssistant CSC	Superior Court Dist	rict Court Judge	Superior Court Judge
NOTE TO JUDICIAL OFFICIAL: If the defi- determination of conditions of release, the defe- held for 7 days and impose conditions of releas upon receipt of additional information or after 7	ndant must be brought before a se as otherwise províded in G.S	any judicial official, who mu 1. 15A-1345. If the defendat	st record in writing nt is found to be a	g that the defendant has been danger to the public, whether
© 2021 Administrative Office of the Courts				



Roy Cooper, Governor Eddie M. Buffaloe Jr., Secretary Timothy Moose, Chief Deputy Secretary Tracy K. Lee, Director

AUTHORITY TO DETAIN AND HOLD

TO ANY OFFICER AUTHORIZED BY LAW TO DETAIN AND HOLD:

___ is an out-of-state offender from the State of ___

(Name) (State) (State) who is presently being supervised by the North Carolina Department of Public Safety, Community Corrections.

Based on facts presented to this Office, there is reasonable suspicion to believe that said out-of-state offender has violated the terms or conditions of supervision and must therefore be detained and held pending a probable cause hearing on the issue.

Pursuant to section 148-65.8 of the General Statutes of North Carolina and the rules of the Interstate Compact Agreement for the Supervision of Adult Offenders granted by Congress, (48 Stat.909, 4 U.S.C. Section 112), you are hereby authorized and directed to detain and hold:

(Name)

(Address)

The out-of-state offender is to be held at any suitable institution other than a North Carolina Adult Correction Prison Facility.

ATTENTION MAGISTRATE: THIS OUT-OF-STATE OFFENDER IS NOT SUBJECT TO BOND.

If the offender is eligible for a probable cause hearing, a probable cause hearing will be held within 15 days from the date placed in custody unless such hearing is waived by the offender. Upon conclusion of the probable cause hearing, the offender is not entitled to any judicial proceedings in North Carolina in this matter. All legal requirements to obtain extradition of fugitives from justice are expressly waived.

Immediately call this Office at (984) 960-5042 when said offender is taken into custody.

This the _____ day of _____, 20____.

Betty Payton, Deputy Compact Administrator NC Department of Public Safety, Community Corrections Office: 984-960-5042 Fax: 919-324-6248

NOTICE

DO NOT RELEASE THIS OFFENDER BEFORE CONTACTING THE DEPUTY COMPACT ADMINISTRATOR

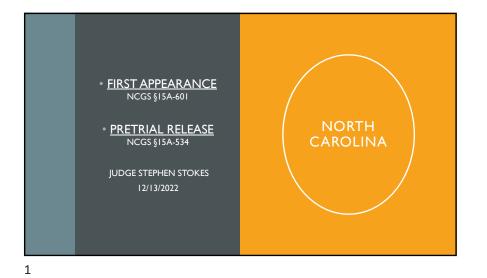
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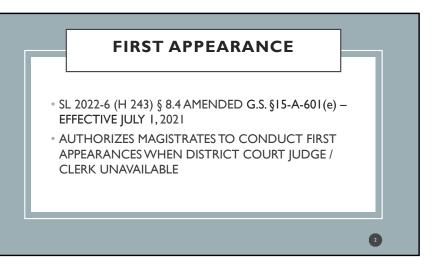
> MAILING ADDRESS: 4250 Mail Service Center Raleigh, NC 27699-4250 www.ncdps.gov



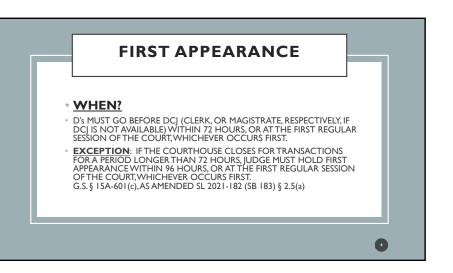
-An Equal Opportunity employer

OFFICE LOCATION: 2020 Yonkers Rd. Raleigh, NC 27699-4250 Telephone: (984) 960-5042 Fax: (919) 324-6248









RIGHT TO COUNSEL AT "CRITICAL STAGES"

6TH AMENDMENT RIGHT TO COUNSEL AT TRIAL & AT ANY "CRITICAL STAGE"

- BAIL HEARINGS G.S. § 7A-451(b)(3)
- EXTRADITION HEARINGS G.S. § 7A-451 (a)(5)
- PROBABLE CAUSE HEARINGS G.S. § 15A-606(a)
- ARRAIGNMENTS G.S. § 15A-942
- PROBATION REVOCATION HEARING --G.S. § 15A-1345(e)

NON-CRITICAL STAGES

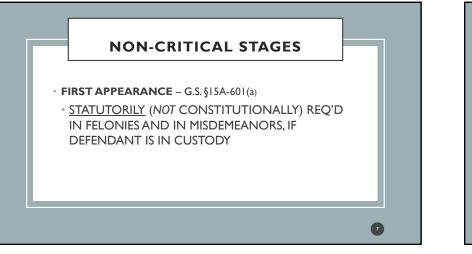
• INITIAL APPEARANCE – G.S. § 15A-511

RIGHT TO COUNSEL ATTACHES, AND MUST BE APPOINTED
 <u>WITHIN A REASONABLE TIME</u> AFTER THE RIGHT ATTACHES,
 TO ASSIST DEFENDANT AT ANY FUTURE CRITICAL STAGE

6

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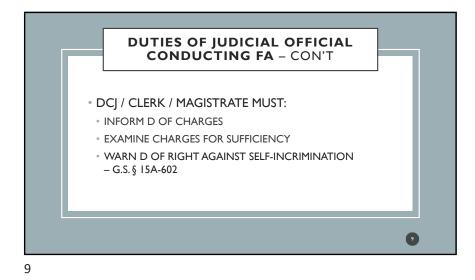


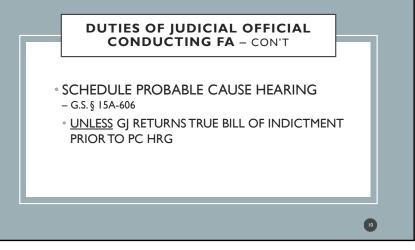
DUTIES OF JUDICIAL OFFICIAL CONDUCTING FIRST APPEARANCE DCJ / CLERK / MAGISTRATE STILL MUST: DETERMINE WHETHER D HAS A LAWYER INFORM D OF RIGHT TO COUNSEL, AND TO APPOINTED COUNSEL IF INDIGENT - G.S. § 15A-603 APPOINT COUNSEL, IF NECESSARY

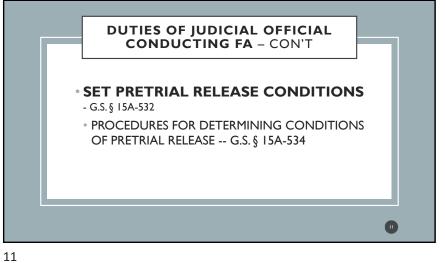
 OBTAIN WRITTEN WAIVER (AOC-CR-227) IF D ELECTS TO REPRESENT HIMSELF

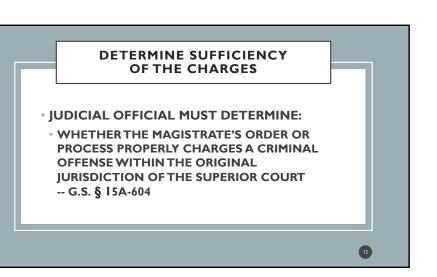
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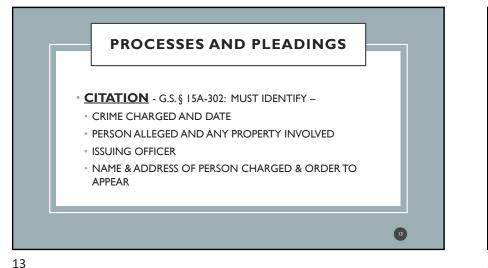
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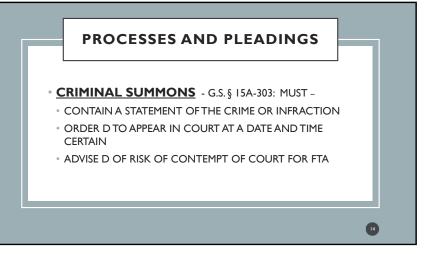


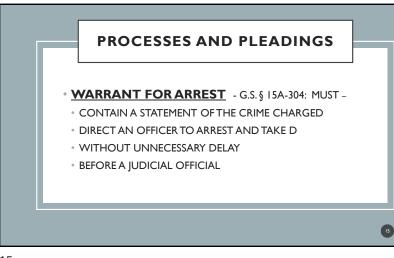


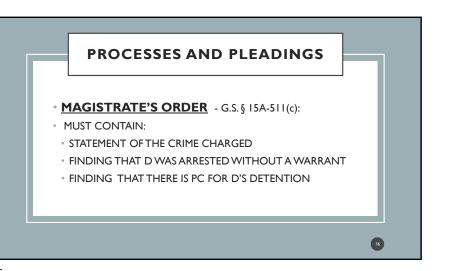


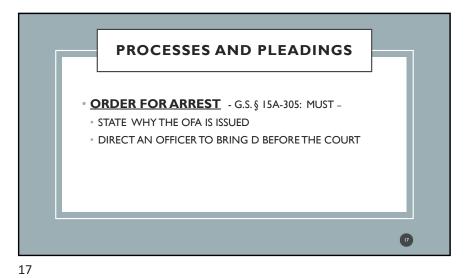


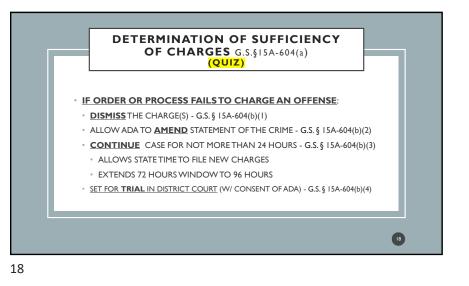


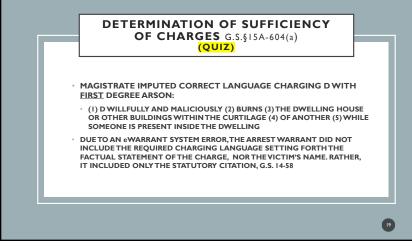


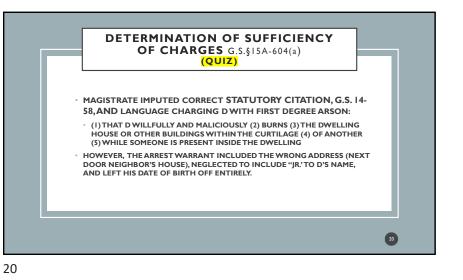


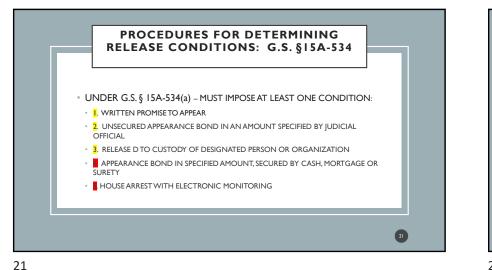




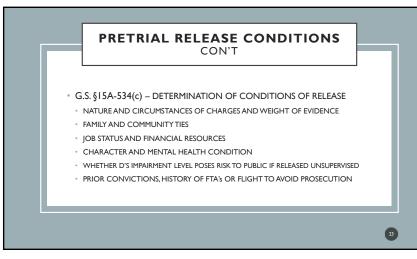




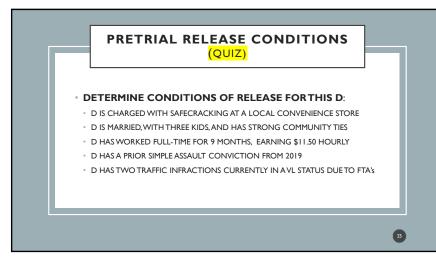


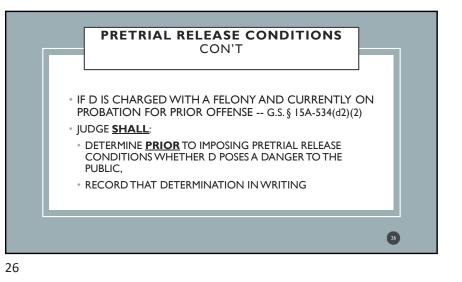


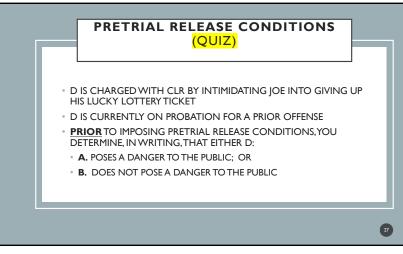
PRETRIAL RELEASE CONDITIONS CONT S. § 15A-534(b) - EXPRESSES A PREFERENCE FOR NONFINANCIAL CONDITIONS: WRITTEN PROMISE; UNSECURED BOND; CUSTODY RELEASE UNLESS SUCH RELEASE WILL: NOT ASSURE DEFENDANT'S PRESENCE IN COURT POSE A DANGER OF INJURY TO PERSON OR PROPERTY BLAD TO SUBORNATION OF PERJURY, OR INTIMIDATION OF WITNESSES

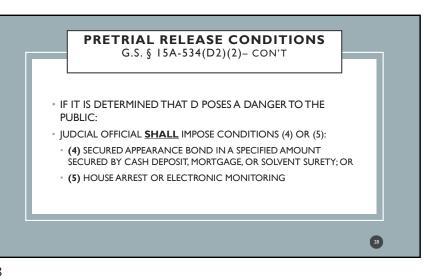


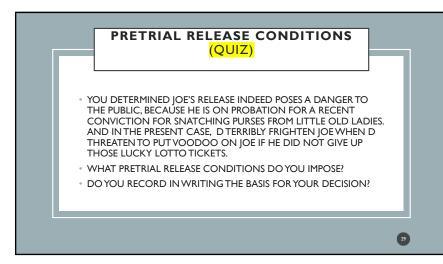


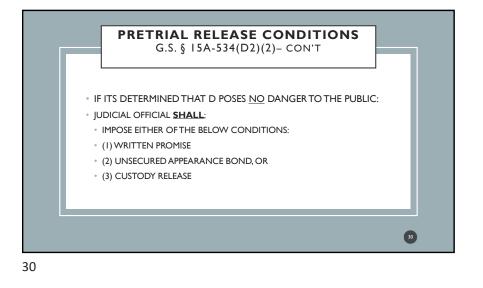




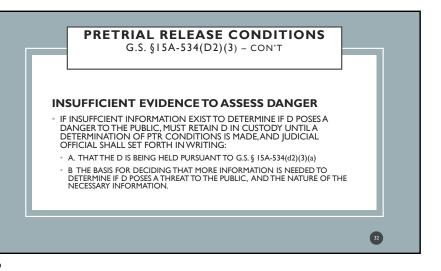


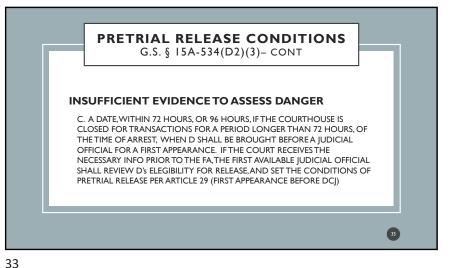


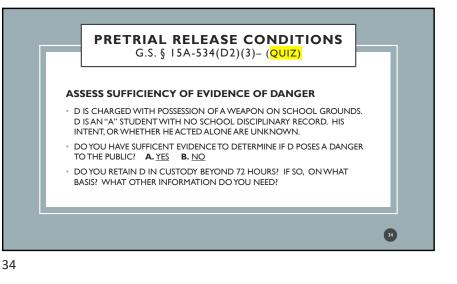




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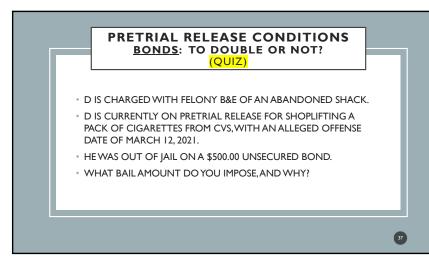


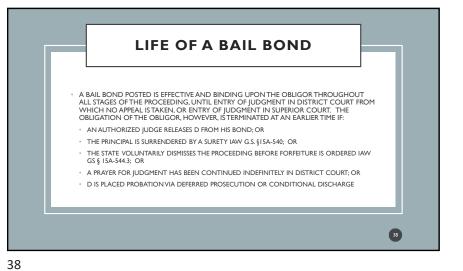
PRETRIAL RELEASE CONDITIONS G.S. § 15A-534(D2)(3)- CON'T

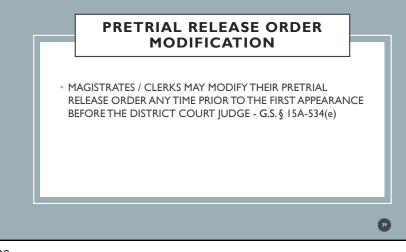
INSUFFICIENT EVIDENCE TO ASSESS DANGER

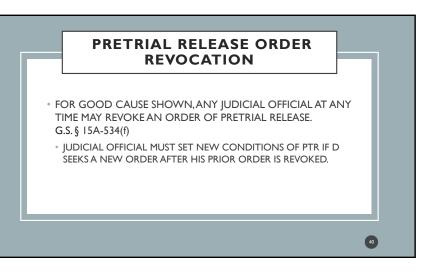
IF THE COURT RECEIVES THE NEEDED INFORMATION PRIOR TO THE FIRST APPEARANCE, THE FIRST AVAILABLE JUDICIAL OFFICIAL SHALL SET PRETRIAL RELEASE CONDITIONS. -- G.S. § 15A-534(d2)(3)

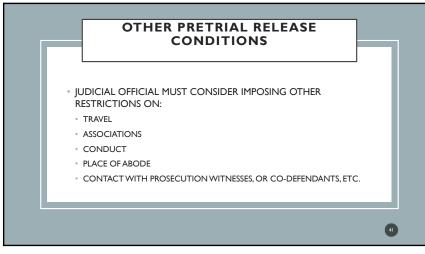
PRETRIAL RELEASE CONDITIONS CON'T DEDUCIÓN DE DEUCIÓN DE A SECURED APPEARANCE BOND IN AN AMOUNT <u>AT LEAST</u> DOUBLE THAT OF THE MOST RECENT SECURED OR UNSECURED BOND; OR <u>AT LEAST</u> \$1000 IF NO CURRENT BOND EXIST

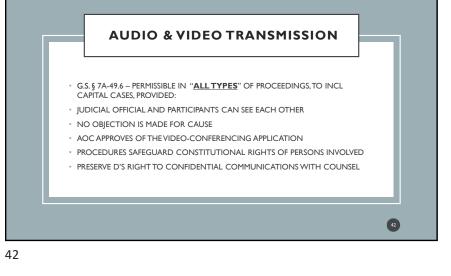














1980 N.C. AG LEXIS 23

Office of the Attorney General of the State of North Carolina

50 Op. Atty Gen. N.C. 40

Reporter

1980 N.C. AG LEXIS 23; 50 Op. Atty Gen. N.C. 40

October 27, 1980

Core Terms

fugitive, bail, extradite, arrest, waive, extradition proceeding, custody, requisite, issuance, arrival, agents, await, fleed

Syllabus

[*1]

Subject:

Criminal Law and Procedure; Bail bond for fugitive who has waived extradition.

Request By: Requested by: Onslow County Sheriff's Department

Question

Question: When a fugitive waives extradition must he be confined to await the arrival of officers from the demanding state or may he post a bond?

Opinion By: Rufus L. Edmisten, Attorney General Lisa ShepherdAssociate Attorney

Opinion

Conclusion:

He may not post a bond.

Chapter 15A, Article 37 of the General Statutes -- the Uniform Criminal Extradiction Act -- sets out procedures for returning a fugitive found in North Carolina to a state from which he has fled. The demanding state may seek his return in writing, <u>G.S. 15A-723</u>, and the Governor may then issue a <u>warrant</u> for his arrest. <u>G.S. 15A-727</u>. In the alternative, the person arrested as a fugitive may waive the issuance of a <u>Governor's warrant</u> and all other extradition proceedings and consent to return to the demanding state. <u>G.S. 15A-746</u>.

The Act specifically addresses the question of bail in extradition proceedings in only one instance. A person may be arrested prior to a requisition from a demanding state upon reasonable information that he is a fugitive from justice in another state. <u>G.S. 15A-733</u> [*2] and 734. If he is found to be a fugitive, he may be allowed to post bail for the period during which he is awaiting the issuance of a <u>Governor's warrant</u> based on a requisition from the state from which he fled. <u>G.S. 15A-735</u> and 736.

The Uniform Criminal Extradition Act is silent on the question of fugitive's right to bail after his arrest on a *Governor's warrant* or after he has waived extradition. No North Carolina case has addressed either situation, but other jurisdictions where the Uniform Act is in effect have held that once a fugitive has been arrested on a *Governor's warrant* he may no longer be released on bail. See *State v. Jacobson, 22 Ariz. App. 260, 526 P.2d 784* (1974) and cases cited therein. The rationales which appear consistently in these cases are that the general bail provisions which may appear in a state's constitution or statutes are inapplicable to extradition, applying only to offenses against the asylum state itself, see *Waller v. Jordan, 58 Ariz. 169, 118 P.2d 450 (1941);* that there is no common law right to bail in an extradition proceeding, because extradition is a creature of constitution and statute, not of the common law, see *State ex rel.* [*3] *Stringer v. Quigg, 91 Fla. 197, 107 So. 409 (1926);* that because the Uniform Act specifies that bail may be allowed at one stage of the proceedings, it is fair to infer that the omission of a provision for bail after arrest on a *Governor's warrant* was intentional, see *Allen v. Wild, 249 Iowa 255, 86 N.W.2d 839 (1957);* and that if bail is to be set it should be set by the demanding state after the fugitive has been returned to it. See *Re Lucas, 136 N.J. Super. 24, 343 A.2d 845,* aff'd. *136 N.J. Super. 460, 346 A.2d 624 (1975).*

These rationales seem equally applicable to the situation where a fugitive has waived extradition. No policy reason appears why a fugitive who has demanded that statutory extradition procedures be followed to show that he should be returned to the demanding state should be less entitled to be free on bail than a fugitive who admits that the demanding state is entitled to his return. In either case the fact is that the person in question is already a fugitive, and his release on bail would make it possible for him to flee from justice once again.

The question remains whether the language of <u>G.S. 15A-746</u>, which allows for waiver of extradition, **[*4]** requires the inference that bail may be allowed. The second paragraph of that section directs that once a waiver is executed and filed in the <u>Governor's</u> Office, the officer having the person "in custody" shall be directed to surrender him to agents of the demanding state. This language supports an inference that the person is to remain in custody rather than free on bail. The further language of this paragraph that "nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state" may not reasonably be interpreted to mean that bail should be allowed, since the waiver of extradition procedure itself entails a number of formalities, and since the fugitive's return even in this situation is less than voluntary, following as it does arrest on a fugitive <u>warrant</u> and court proceedings.

In summary, a fugitive who has waived extradition should not be released on bail pending the arrival of agents from the demanding state to take him into custody.

Load Date: 2014-10-29



State of North Carolina

Department of Justice P. O. Box 629 RALEIGH 27602-0629

Special Prosecutions Section (919) 716-6500

MICHAEL F. EASLEY ATTORNEY GENERAL

September 19, 1997

Ms. Deborah Koenig Legal Advisor Cumberland County Sheriff's Department 131 Dick Street Fayetteville, North Carolina 28301-5793

Re: Pre-Signed Waivers of Extradition

Dear Ms. Koenig:

In your letter of July 15, 1997, you have requested on behalf of the Sheriff of Cumberland County an opinion of the North Carolina Attorney General regarding the validity of advance agreements to return, or pre-signed waivers of extradition, under the Uniform Criminal Extradition Act (N.C.G.S. §§ 15A-721 through 750). Specifically, you inquire whether a waiver of extradition executed by a probationer/parolee as a condition precedent to his release from another state, in which the probationer/parolee waives any right to extradition proceedings if found in any other state without permission during the term of his probation/parole, constitutes a valid waiver of the statutory extradition procedures under the Uniform Criminal Extradition Act. For reasons relating to both the Uniform Criminal Extradition Act and the Interstate Compact for the Supervision of Parolees and Probationers, such pre-signed waivers of extradition are fully valid and may be given effect in accordance with their terms.

Interstate Compact for the Supervision of Parolees and Probationers

The Interstate Compact for the Supervision of Parolees and Probationers provides the sole statutory authority for regulating the transfer of adult parole and probationer supervision across state boundaries. This interstate compact provides that

> duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to

> obtain extradition of fugitives from justice are expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

N.C.G.S. § 148-65.1(a)(3).

No transfer shall occur under the Interstate Compact for the Supervision of Parolees and Probationers without a duly executed waiver of extradition signed by the probationer/parolee. You have attached to your letter one such "Agreement to Return" in which the probationer/parolee waives any right to extradition proceedings in return for the privilege of interstate supervision:

I, [parolee], in consideration of being granted parole by the state of New York and especially being granted the privilege to leave the state of New York to go to North Carolina hereby agree:

1. That I will make my home with [addressee] until a change of residence is duly authorized by the proper authorities of North Carolina;

2. That I will comply with the conditions of parole as fixed by both the states of New York and North Carolina;

3. That I will, when duly instructed by the state of New York return at any time to the state of New York;

4. That I hereby do waive extradition to the state of New York from any jurisdiction in or outside the United States where I may be found and also agree that I will not contest any effort by any jurisdiction to return me to the state of New York;

5. Failure to comply with the above will be deemed to be a violation of the terms and conditions of parole for which I may be returned to the state of New York.

By entering into such an agreement, the individual probationers/parolees have agreed in advance and as a specific condition of their release to waive their right to contest the effort of any state to return them to the sending state. Therefore, no probationer/parolee within this State pursuant to the Interstate Compact for the Supervision of Parolees and Probationers has either a constitutional or statutory right to insist on the utilization of the extradition procedures of the Uniform Criminal Extradition Act.

Even though return of the probationer/parolee to the sending state is effectuated without resort to extradition under the Uniform Criminal Extradition Act, N.C.G.S. § 148.65.1A(a) does provide for a probable cause determination of whether the probationer/parolee has committed acts which would constitute a violation of probation/parole conditions. If the sending state has made such a judicial determination that there is probable cause to believe a probationer/parolee has violated conditions of probation/parole and issued a warrant for arrest for violation of probation/parole, there is no need for a hearing to be held in this State. Duly accredited officers of the sending state may enter this State and retake the probationer/parolee pursuant to N.C.G.S. § 148-65.1(a)(3). If, however, there has been no judicial determination of probable cause by the sending state, and the probationer/parolee has allegedly committed a probable cause by the sending state, a hearing shall be held in this State pursuant to N.C.G.S. § 148.65.1A(a) to determine whether there is probable cause to believe that the probationer/parolee has violated probation/parole conditions, unless such probable cause determination hearing is waived by the probationer/parolee. Following termination of any such hearing, report is made to the sending state and appropriate action taken pursuant to N.C.G.S. § 148.65.1A(a).

Accordingly, regardless of which state initiates procedures for return of the probationer/parolee for violations of probation/parole, formal extradition procedures are not required to effectuate the return where the probationer/parolee has signed a prior waiver of extradition as a condition of release under the Interstate Compact for the Supervision of Parolees and Probationers. Nor does the Uniform Criminal Extradition Act require formal extradition when a pre-signed waiver of extradition has been executed.

Uniform Criminal Extradition Act

The Uniform Criminal Extradition Act creates specific executive and judicial procedures relating to the extradition of fugitives both to and from this State. The uniform act provides for the issuance and execution of a Governor's warrant of arrest, N.C.G.S. §§ 15A-727 and 728, and further provides that no person arrested under a Governor's warrant may be released to the authorities of the demanding state unless he is first afforded a hearing and an opportunity to apply

for a writ of habeas corpus. N.C.G.S. § 15A-730. However, the uniform act also provides that a fugitive may waive any right to extradition proceedings by executing a written waiver before a judge or clerk of court and specifically states that "nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state." N.C.G.S. § 15A-746.

No North Carolina appellate court has directly addressed the validity of pre-signed waivers of extradition under the terms of the Uniform Criminal Extradition Act. It is generally recognized, however, that parole is "an act of grace," and the requirement that a parolee execute a waiver of extradition is a reasonable condition in connection therewith. Forester v. California Adult Authority, 510 F.2d 58, 61 (8th Cir. 1975). The weight of authority favors the recognition, validity, and enforcement of pre-signed waivers of extradition as a condition of probation/parole. See, e.g., Pierson v. Grant, 527 F.2d 161 (8th Cir. 1975); Cook v. Kern, 330 F.2d 1003 (5th Cir. 1964); U.S. ex rel, Simmons on Behalf of Gray v. Lohman, 228 F.2d 824 (7th Cir. 1955).

In <u>Pierson v. Grant</u>, 527 F.2d 161 (8th Cir. 1975), the court addressed the identical issue at hand: the validity and enforcement of a pre-signed waiver of extradition under the Uniform Criminal Extradition Act. The court analyzed the issue and held as follows:

Appellant argues that in order for a waiver of extradition to be valid there must be compliance with the procedures set forth in Section 25-A of the UCEA [Uniform Criminal Extradition Act]. That section provides that a person may waive the extradition procedures provided for in the UCEA if such waiver is made in the presence of a judge and if the judge has informed the person of his rights under the Act. Appellant contends that, absent other statutory provisions on waiver, this section provides the exclusive method of waiver; and thus, since there was admittedly no compliance with the UCEA procedures, the waiver was invalid as a matter of law.

However, Section 25-A contains the following proviso:

[P]rovided, however, that nothing in this Section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, <u>nor shall this waiver procedure</u> be deemed to be an exclusive procedure or to limit

the powers, rights or duties of the officers of the demanding state or of this state.

Advance waivers of extradition in circumstances similar to those of this case have been upheld in a number of cases. [Citations omitted.] We find no basis for concluding that a pre-release waiver of extradition executed as a condition of parole must conform to a procedure which by its own terms is non-exclusive.

<u>Id.</u> at 164 (original emphasis). The identical language of the Uniform Criminal Extradition Act relied upon by the court in its holding is contained in N.C.G.S. § 15A-746.

Furthermore, any assertion by a probationer/parolee of the deprivation of a constitutional right if enforcement is given to pre-signed waivers would be without merit. In Cook v. Kern, 330 F.2d 1003 (5th Cir. 1964), a parolee sought the issuance of a writ of habeas corpus, contending that by honoring a pre-signed waiver of extradition the state of Texas would deprive him of his fundamental constitutional rights. In affirming the denial of the writ, the appellate court held:

Whatever the benefits appellant might have enjoyed under the Texas Extradition Statute, he has not been deprived of a federally protected right; therefore, the writ was properly denied. [Citations omitted.] <u>Moreover, even assuming that a constitutional</u> right were involved, appellant's parole agreement constitutes a <u>sufficient waiver</u>. In United States ex rel. Simmons on Behalf of Gray v. Lohman, [228 F.2d 824 (7th Cir. 1955)], the Court of Appeals said:

> "... [h]aving entered into such [parole] agreement, it is not discernible how or in what manner his constitutional rights are violated when it is sought, upon a violation, to obtain his return. Assuming, however, contrary to what we think, that any constitutional right is involved, it is waived by the agreement which the parolee makes with the State." 228 F.2d at 826.

Id. at 1004 (emphasis added).

The leading legal entity with respect to extradition, The National Association of Extradition Officials, addressed this issue in May, 1986. By Resolution #36, the Association recognized that the Uniform Criminal Extradition Act should be construed liberally so as to

effectuate its purpose of making uniform the laws of those states which have adopted it, and stated that "pre-signed waivers of extradition are valid and should be recognized" and that states should uniformly "enforce such pre-signed waivers of extradition." At least 29 states have enacted statutes, Attorney General's opinions, or policies which provide that pre-signed waivers of extradition are valid and enforceable.

Based upon review of the provisions of the Uniform Criminal Extradition Act and the Interstate Compact for the Supervision of Parolees and Probationers, and the reasoning and weight of the precedent cited above, pre-signed waivers of extradition executed as a condition of probation/parole in another state are valid and effective under the Uniform Criminal Extradition Act, and specifically under N.C.G.S. § 15A-746, to waive any and all rights to statutory extradition proceedings otherwise provided by this State, and may be given effect in accordance with their terms. Thus, formal extradition proceedings are not necessary in order to return probation/parole violators who have signed waivers of extradition as a condition of their release. Once the request of the demanding jurisdiction is made and the probationer/parole has been arrested, the arresting law enforcement agency should (1) make prompt inquiry of the demanding jurisdiction to determine whether a waiver was signed; and (2) obtain a certified copy of the presigned waiver, properly establishing both identity of the probationer/parolee and authority of the officer of the demanding jurisdiction. Upon receipt of this information, the law enforcement agency should make the fugitive available to the other state.

We trust this provides clarification for you on the validity of pre-signed waivers of extradition in this State.

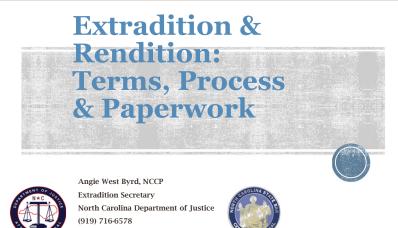
Sincerely,

MICHAEL F. EASLEY ATTORNEY GENERAL

David F. Hoke Assistant Attorney General

mie R. Eason

Connie R. Eason Extradition Secretary



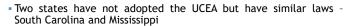
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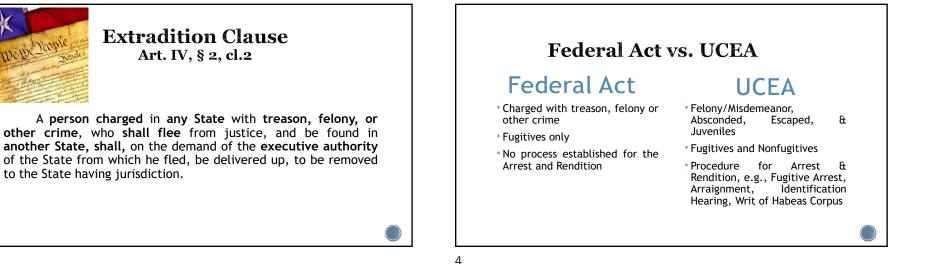
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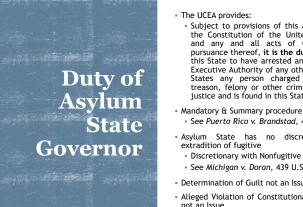
Primary Sources of Extradition Law

- Extradition Clause of the U.S. Constitution
 Art. IV, § 2, cl. 2
- The Federal Extradition Act of 1793
 18 U.S.C. §§ 3181-3195
- Uniform Criminal Extradition Act of 1936
 UCEA
- N.C. Gen. Stat. §§ 15A-721 thru 750



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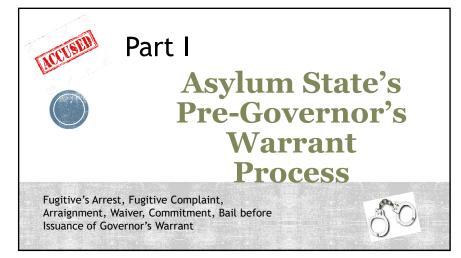
The UCEA provides:

- Subject to provisions of this act, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this State to have arrested and delivered up to the Executive Authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this State.
- Mandatory & Summary procedure in Asylum State See Puerto Rico v. Brandstad, 483 U.S. 219 (1987)
- Asylum State has no discretionary power re: extradition of fugitive
- See Michigan v. Doran, 439 U.S. 282 (1978)
- Determination of Guilt not an Issue
- Alleged Violation of Constitutional Rights if Extradited not an Issue

Basic Principles & Terms of Extradition

- Extradition Mandatory & Summary Procedure; Part of the Arrest Process
- Intent Return those charged with a crime to the Demanding State as swiftly as possible for prosecution
- · Purpose To preclude any State from becoming a sanctuary for fugitives/nonfugitives
- Application for Requisition Demanding State DA's formal request for extradition to Demanding State's Governor
- Governor's Requisition The Demanding State's Governor's formal request for extradition to the Asylum State's Governor to extradite fugitive/nonfugitive
- Governor's Warrant of Arrest and Rendition Arrest warrant issued by Asylum State's Governor upon receipt of Demanding State's Governor's Requisition for the arrest and rendition of fugitive/nonfugitive
- Waiver Consent to extradition without Governor's Warrant

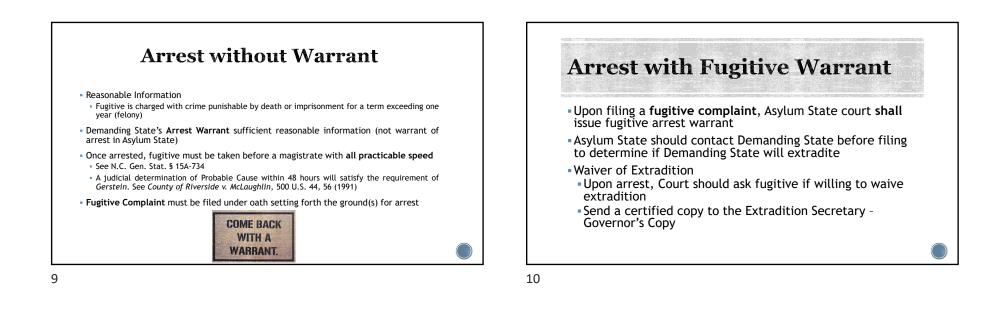
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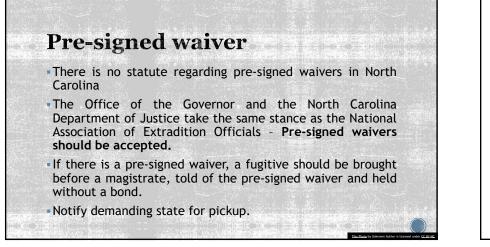


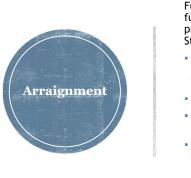
When a fugitive is found, Asylum State authorities may:

- Arrest fugitive without warrant
- Arrest fugitive with warrant
- Conduct surveillance and arrest fugitive upon issuance of Governor's Warrant
- Do nothing at all because Demanding State will not Extradite

Initial Decision by Asylum State







Fugitive must be arraigned on fugitive complaint with "all practicable speed" - N.C. Gen. Stat. § 15A-734

- Reason for Arrest criminal matter pending in Demanding State
- Statutory right to counsel
- Right to have Governor's Warrant issued
- Right to Waive issuance of Governor's Warrant
- Fugitive should be asked if willing to waive extradition

Commitment Order N.C. Gen. Stat. §§ 15A-735 & 737

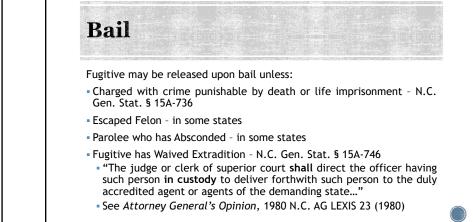
Asylum State court typically orders:

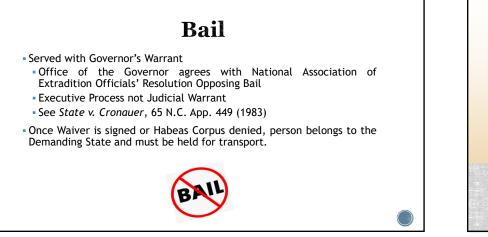
 Fugitive placed in custody for 30 days for issuance of Governor's Warrant



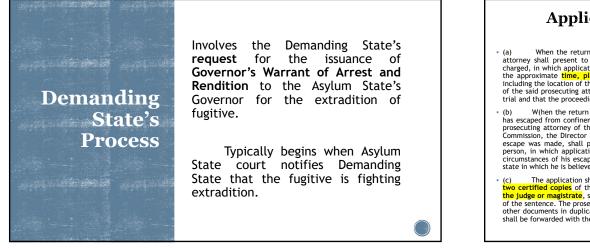
- Additional 60 days if needed
- End of 90 days, Asylum Court may dismiss the matter unless Governor's Warrant has been issued

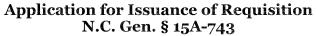
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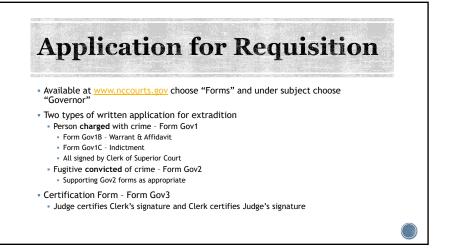


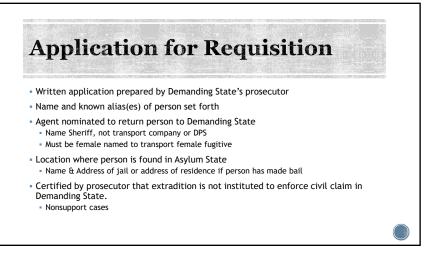
(a) When the return to this State of a person charged with crime in this State is required, the prosecuting attorney shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the said prosecuting attorney, the ends of justice require the arrest and return of the accused to this State for trial and that the proceeding is not instituted to enforce a private claim.

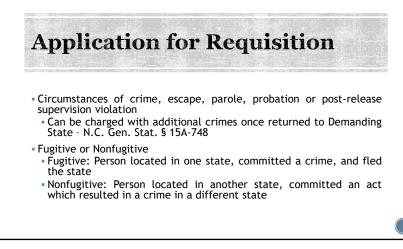
(b) When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, probation, post-release supervision, or parole, the prosecuting attorney of the county in which the offense was committed, the Post-Release Supervision and Parole Commission, the Director of Prisons, the Director of Community Corrections, or sheriff of the county from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person there in at the time application is made.

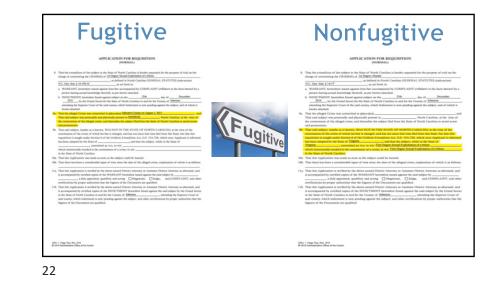
(c) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgement of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. A copy of all papers shall be forwarded with the Governor's requisition.

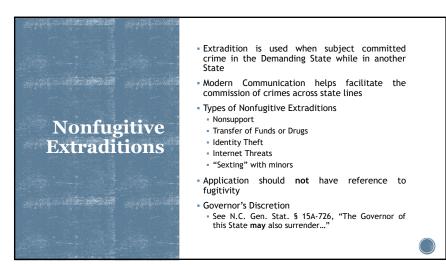
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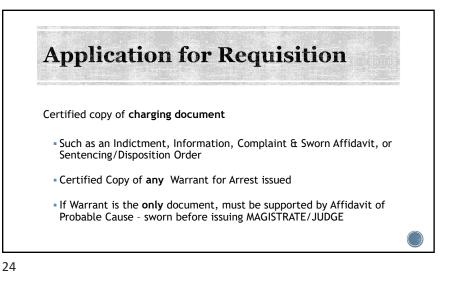


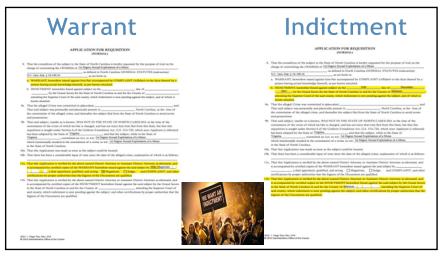


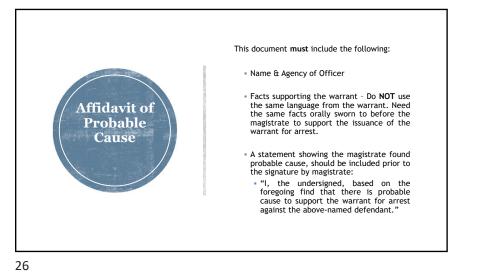


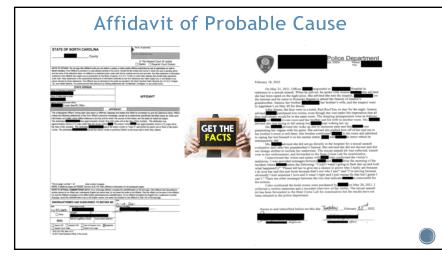


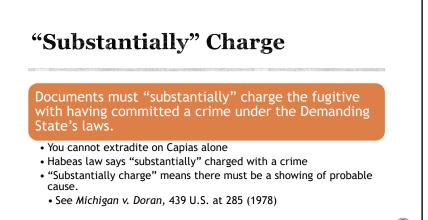


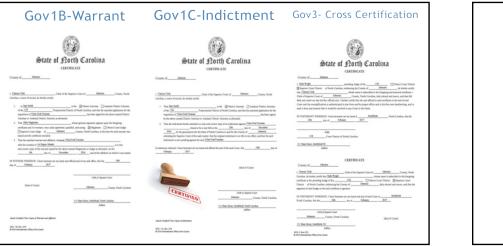


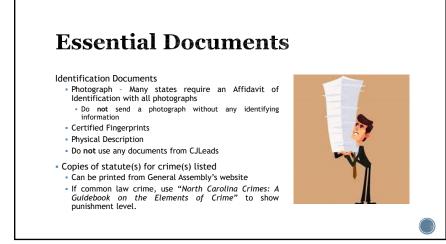


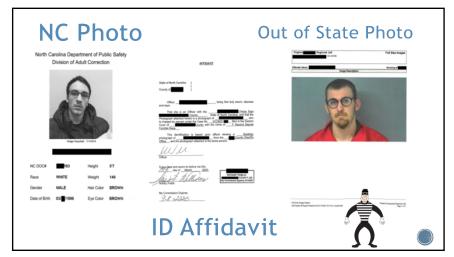


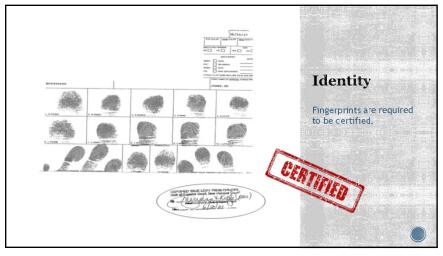


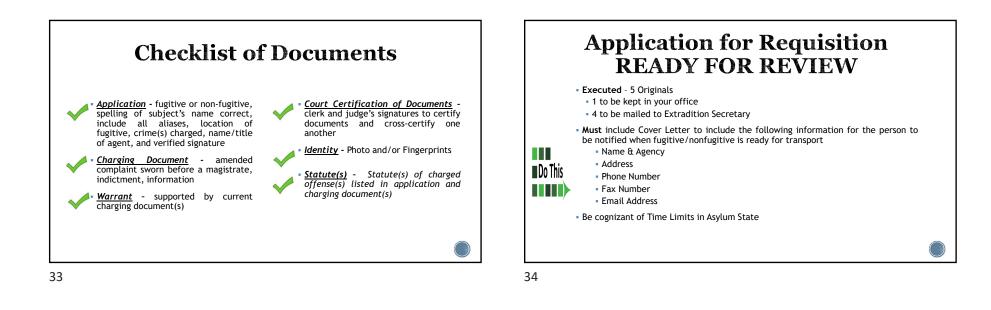






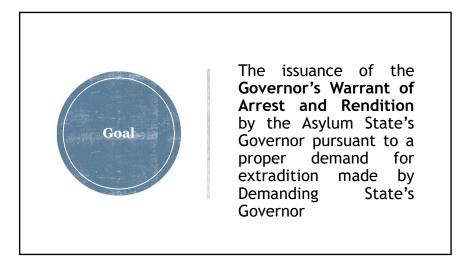












Upon receipt of formal requisition, Asylum State's Governor:

- **Reviews** requisition, application for requisition, and supporting documents for sufficiency and accuracy
- Requests additions or changes if necessary from Demanding State
- Forwards requisition, application for requisition and supporting documents to Attorney General for review

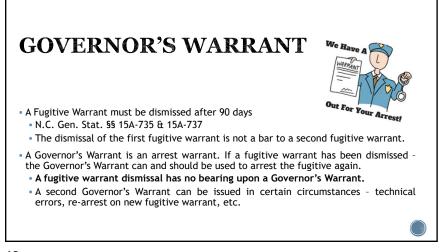


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Issuance of Governor's Warrant N.C. Gen. Stat. § 15A-727

If Demanding State's requisition, application and supporting documents are in order:

- Asylum State's Governor issues Governor's Warrant
- Sent to local law enforcement
- Local charges pending Governor's Warrant may be held in abeyance
 See N.C. Gen. Stat. § 15A-739
- Fugitive cannot avoid local charges with Waiver
- If they receive an active DAC sentence from local charges:
- Send Certified Copy of Waiver with them to DAC
- Notify Extradition Secretary of DAC sentence
- Send entire Governor's Warrant packet back to Extradition Secretary



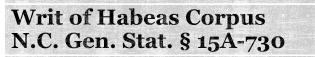
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Arraignment on Governor's Warrant

Upon service & arrest:

- Fugitive must be arraigned forthwith
- Fugitive must be advised
- Demand has been made for extradition
- Statutory right to counsel
- Right to challenge warrant Writ of Habeas Corpus
- Failure to bring them before a Judge to be Advised is a Class 2 misdemeanor
 See N.C. Gen. Stat. § 15A-731
- Competence to assist counsel in extradition proceedings may be raised

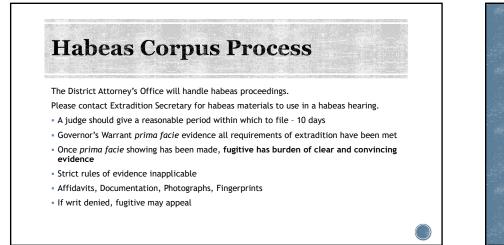
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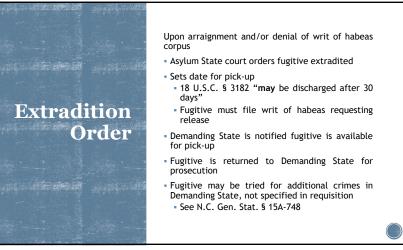


Fugitive may only challenge legality of Governor's Warrant on four issues:

- Extradition documents not legally sufficient
- Identity Not the person wanted in Demanding State
- Not substantially charged with a crime in the Demanding State
- Not a "fugitive"
- See Michigan v. Doran, 439 U.S. at 289 (1978)

Please notify Extradition Secretary if a Writ of Habeas Corpus is filed.

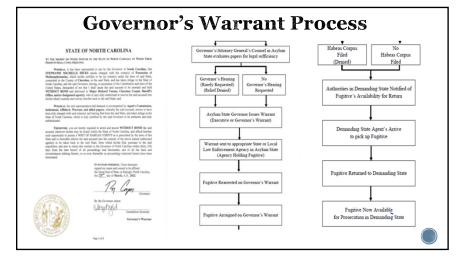




Governor's Warrant Recall N.C. Gen. Stat. § 15A-741

- A Governor's Warrant may **only** be recalled by the Extradition Secretary upon information received from the Extradition Coordinator in the Demanding State
- Executive Process -
- Not Judicial
- Cannot be recalled by a prosecutor
- Comity amongst Governors
- If you have requested a Governor's Requisition and subsequently decide not to prosecute or you no longer need a Governor's Warrant - Notify the Extradition Secretary immediately to effectively Withdraw the Governor's Requisition and Recall the Governor's Warrant

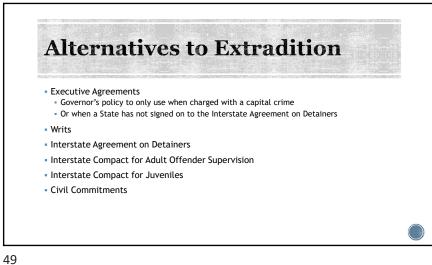
45

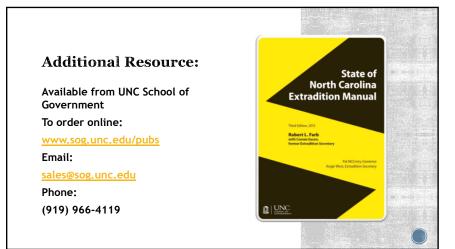


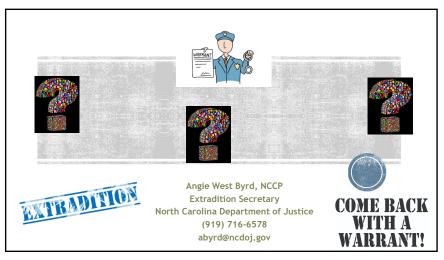




- Receipt by Agent Once ordered back to Demanding State, agents from Demanding State must fill out bottom portion on the back of Governor's Warrant
- Return Original Governor's Warrant with ALL Supporting Documents - Clerks may maintain a copy of Governor's Warrant and all supporting documentation, all originals must be returned to Extradition Secretary
- Fugitive Received by NC Email Extradition Secretary to notify of fugitive's arrival in North Carolina.







Advanced Criminal Procedure for Magistrates School of Government, UNC Chapel Hill December 13, 2022

Ethics Code and Magistrates' Criminal Duties Scenarios with Analysis Tom Thornburg

Scenario 1

- Magistrate M was previously an officer with a municipal police department in her judicial district. Can she hear criminal matters, like search warrant applications, from officers with that agency?
- What rules of the code apply?
- Does it matter whether she is maintaining her law enforcement certification? Should she maintain certification with the agency who employed her?

Scenario 1 Analysis

- It depends.
- Rule 2C: "should not allow the magistrate's family, social, or other relationships to influence" conduct or judgment. Rule 3E on recusal.
- Same rule/ analysis for certification issue. AOC advice is to maintain certification as far from where you are working as a magistrate as possible.

Scenario 2

A magistrate is married to a police officer. Can the magistrate handle matters in which the officer spouse appears before the magistrate with criminal process requests? What if, instead of spouses, they are best friends who do everything together?

Scenario 2 Analysis

- Answer: Probably not on 1st question.
- Rule 2C on both questions. Rule 3E(1)(e)? Probably not Rule 3E(1)(a)—not "a party."
- Similar analysis for friend, but Rule mentions family explicitly.

Scenario 3

- What should Magistrate F do if a sheriff's deputy brings the magistrate's nephew into the magistrate's office, having arrested the nephew without a warrant for a felony?
- What rules of the code apply?

• Would anything change if the person arrested was F's cousin?

Scenario 3 Analysis

- On 1st bullet, magistrate should recuse. A relative covered by rule.
- Rule 2C. Rule 3E. Consider 3E(1)(e) specifically.
- On last bullet, relationship not prohibited by rule, but still ask question about impartiality.

Scenario 4

- What specifically happens in your office when a magistrate identifies that they have a conflict of interest in a criminal matter before them?
- What rules of the code apply?
- Does your office have a process by which people appearing before a magistrate in a criminal matter can acknowledge that disqualification is not required?

Scenario 4 Analysis

- What are your practices?
- Rule 2C. Rule 3E(1) and (4).

Scenario 5

A sheriff's deputy who appears regularly in the magistrate's office with arrestees learns that his friend Magistrate Z is newly engaged and sends him a celebratory bottle of bourbon. Should Magistrate Z accept the gift?

Scenario 5 Analysis

Answer: Depends on your position on gifts pursuant to Rule 5C(4)(b). Acceptable because from a friend? Is it "ordinary social hospitality?" For a special occasion permitted by the rule? Does Rule 2C also apply?

Bonus: Scenario 6

A bail bondsman throws a holiday party at a local bar every December and invites magistrates among other judicial actors to attend. Should you go?

Scenario 6 Analysis

Answer: Depends on your interpretation of Rule 5C(4)(b). Is the party "ordinary social hospitality"?