



UNC
SCHOOL OF GOVERNMENT

North Carolina Judicial College

Basic School of Magistrates: Criminal Week

August 20-24, 2018

UNC School of Government, Chapel Hill, NC

Monday, August 20

- 8:30 a.m.** **Elements of Crimes (Assaults)** (60m)
John Rubin, School of Government
Room 2401
- 9:30 a.m.** **Break**
- 9:45 a.m.** **Elements of Crimes (Assaults) , cont'd** (60m)
- 10:45 a.m.** **Break**
- 11:00 a.m.** **Elements (Drunk, Weapons, Resisting)** (60 min)
Chris Tyner, School of Government
- 12:00 p.m.** **Lunch**
- 12:45 p.m.** **Elements (Drugs)** (60m)
Jessie Smith, School of Government
- 1:45 p.m.** **Break**
- 2:00 p.m.** **Elements (Drugs)** (60m)
Jessie Smith, School of Government
- 3:00 p.m.** **Break**
- 3:15 p.m.** **Elements (Trespass)** (60m)
Jamie Markham, School of Government
- 4:15 p.m.** **Break**
- 4:30 p.m.** **Inchoate Crimes and Lesser Offenses** (30m)
John Rubin, School of Government
- 5:00 p.m.** **Adjourn**

Tuesday, August 21

9:00 a.m.	Initial Appearance (60m) John Rubin, School of Government Joe Privette, Administrative Office of the Courts
10:00 a.m.	Break
10:15 a.m.	Initial Appearance, cont'd (60m)
11:15 a.m.	Break
11:30 a.m.	Initial Appearance, cont'd (60m)
12:30 p.m.	Lunch
1:30 p.m.	Initial Appearance, cont'd (60m)
2:30 p.m.	Break
2:45 p.m.	Elements (Motor Vehicle Law) (60m) Shea Denning, School of Government
3:45 p.m.	Break
4:00 p.m.	Contempt (45m) Ann Anderson, School of Government
4:45 p.m.	Adjourn

WEDNESDAY, August 22

8:00 a.m.	Elements (Larceny & Robbery) (75m) Jeff Welty, School of Government
9:15 a.m.	Break
9:30 a.m.	Selecting Process (75m) Jessie Smith, School of Government
10:45 a.m.	Break
11:00 a.m.	Selecting Process, cont'd (90m)
12:30 p.m.	Lunch
1:30 p.m.	Selecting Process, cont'd (30m)
2:15 p.m.	Impaired Driving Holds (60m) Shea Denning, School of Government

3:15 p.m.	Break
3:30 p.m.	Implied Consent Procedures (90m) Shea Denning, School of Government Joe Privette, Administrative Office of the Courts
5:00 p.m.	Adjourn

Thursday, August 23

8:45 a.m.	Search Warrants (60m) Jeff Welty, School of Government
9:45 a.m.	Break
10:00 a.m.	Search Warrants, cont'd (60m)
11:00 a.m.	Break
11:15 a.m.	Search Warrants, cont'd (60m)
12:15 p.m.	Lunch
1:00 p.m.	Elements (Burglary) (75m) Phil Dixon, School of Government
2:30 p.m.	Break
2:45 p.m.	Elements (Sexual Assaults) (60m) Jamie Markham, School of Government
3:45 p.m.	Break
4:00 p.m.	Elements (Sexual Assaults), cont'd (60m)
5:00 p.m.	Adjourn

Friday, August 24

8:30 a.m.	Domestic Violence Procedures (60m) Dona Lewandowski, School of Government
9:30 a.m.	Break
9:45 a.m.	Judicial Independence (60m) Jeff Welty, School of Government
10:45 a.m.	Break

11:00 a.m. Capstone Exercise: Applying What You've Learned (90m)
Jeff Welty, School of Government

12:30 p.m. Lunch (outside of 2401)

1:30 p.m. Test on Week II Material

Totals for both weeks: 3540m = 59 CLE Hours

Week I---105m = 1.75 Ethics Hours and 1780m = 30 General Hours

Week II---1740m = 29 General Hours

SOG will cover the cost of 12 CLE credit hours (including the 1.75 Ethics Hours)

Sponsored by

North Carolina Administrative Office of the Courts
North Carolina Judicial College

SOG FACULTY BIOGRAPHIES

Mark Botts
(919) 962-8204

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Mark Botts joined the School of Government in 1992. Prior to that, he served judicial clerkships with the US Court of Appeals for the Sixth Circuit and the US District Court for the Western District of Michigan. Botts' publications include *A Legal Manual for Area Mental Health, Developmental Disabilities, and Substance Abuse Boards in North Carolina*. Mark holds a B.A. from Albion College and a J.D. from the University of Michigan, School of Law.

Areas of Interest: Mental health law, including involuntary commitment procedures; legal responsibilities of area boards; client rights (especially confidentiality)

Shea Riggsbee Denning
(919) 843-5120

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Shea Denning joined the School of Government in 2003. Prior to that, she was an assistant federal public defender for the Eastern District of North Carolina and practiced law with the firm of King and Spalding in Atlanta, Georgia. Denning began her career as a law clerk to the Honorable Malcolm J. Howard, US District Judge for the Eastern District of North Carolina. She is a member of the North Carolina State Bar. Denning earned an AB with distinction in journalism and mass communication and a JD with high honors, order of the coif, from the University of North Carolina at Chapel Hill. Shea specializes in motor vehicle law and the criminal laws and procedures associated with this subject area, including the law of search and seizure and the rules of evidence. She teaches and consults with judges, prosecutors, public defenders, magistrates and others. In 2011, she was awarded the Albert and Gladys Coates Term Professorship for Faculty Excellence.

Areas of interest: Motor vehicle law; district court judge education

Phil Dixon Jr.
(919) 966-4248

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Phil Dixon joined the School of Government in 2017. Previously he worked for eight years as an attorney in Pitt and surrounding eastern North Carolina counties, focusing primarily on criminal defense and related matters. Dixon served as assigned counsel to indigent clients throughout his career, and represented adult and juvenile clients charged with all types of crimes at the trial level. He earned a BA from the University of North Carolina at Chapel Hill and a JD with highest honors from North Carolina Central University. He works with the indigent education group at the School to provide training and consultation to public defenders and defense lawyers, as well as to research and write about criminal law issues.

Areas of interest: Criminal Law and Procedure, Evidence, Indigent Defense Education and Public Defender Training

Dona Lewandowski
(919) 966-7288

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Dona Lewandowski joined the faculty of the Institute of Government in 1985 and spent the next five year writing, teaching, and consulting with district court judges in the area of family law. In 1990, following the birth of her son, she left the Institute to devote full time to her family. She rejoined the School of Government in 2006. Lewandowski holds a B.S. and an M.A. from Middle Tennessee State University and a J.D. with honors, Order of the Coif, from the University of North Carolina at Chapel Hill. After law school, she worked as a research assistant to Chief Judge R.A. Hedrick of the NC Court of Appeals.

Areas of Interest: Magistrates' issues (non-criminal law), including small claims law and procedure, ethics, marriage, and magistrate personnel matters, including appointment and removal.

Jamie Markham
(919) 843-3914

markham@sog.unc.edu

Jamie Markham joined the School of Government faculty in 2007. His area of interest is criminal law and procedure, with a focus on the law of sentencing, corrections, and the conditions of confinement. Markham earned a bachelor's degree with honors from Harvard College and a law degree with high honors, Order of the Coif, from Duke University, where he was editor-in-chief of the *Duke Law Journal*. He is a member of the North Carolina Bar. Prior to law school, Markham served five years in the United States Air Force as an intelligence officer and foreign area officer. He was also a travel writer for Let's Go Inc., contributing to the Russia and Ukraine chapters of *Let's Go: Eastern Europe*.

Areas of Interest: Criminal law and procedure, especially community corrections and sentencing law

John Rubin
(919) 962-2498

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John Rubin joined the School of Government in 1991. Prior to that, he practiced law in Washington, D.C., and Los Angeles. At the School he specializes in criminal law and indigent defense education. He has written several articles and books on criminal law, including the *North Carolina Defender Manual*, and he designs and teaches in numerous training programs each year for indigent defenders. He is a frequent consultant to the Office of Indigent Services, which is responsible for overseeing and enhancing legal representation for indigent defendants and others entitled to counsel under North Carolina law. He is the 2008 recipient of the Albert and Gladys Coates Term Professorship for Faculty Achievement. Rubin earned a B.A. from the University of California at Berkeley and a J.D. from the University of North Carolina at Chapel Hill.

Areas of Interest: Criminal law and procedure; public defender training; evidence; indigent defense; domestic violence; subpoenas.

Jessica Smith
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Jessica Smith joined the Institute of Government in 2000. Prior to that, she practiced law at Covington & Burling in Washington, D.C. She also clerked for U.S. District Judge W. Earl Britt in the U.S. District Court for the Eastern District of North Carolina and for Senior U.S. Circuit Judge J. Dickson Phillips Jr. in the U.S. Court of Appeals for the Fourth Circuit. At the School of Government, Smith teaches and consults with judges and other public employees involved in the criminal justice system. In 2006, she received the Albert and Gladys Hall Coates Term Professorship for Teaching Excellence. In 2013, she was named by the Chancellor as a W. R. Kenan, Jr. Distinguished Professor, one of the University's highest academic honors. Smith earned a BA, cum laude, from the University of Pennsylvania and a JD, magna cum laude, Order of the Coif, from the University of Pennsylvania Law School, where she was managing editor of the *Law Review*.

Areas of Interest: Criminal law and procedure; evidence

Christopher Tyner

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Christopher Tyner joined the School of Government in 2012. He is a member of the North Carolina State Bar and provides research support to faculty members in the areas of criminal and local government law. Tyner earned a BA and a JD from the University of North Carolina at Chapel Hill.

Jeff Welty
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Jeff Welty specializes in criminal law and procedure, including search and seizure issues and prosecutor assistance. Prior to joining the School of Government, he practiced law in Durham and was a Lecturing Fellow at Duke Law School. He earned his JD, with highest honors, at Duke, where he served as executive editor of the *Duke Law Journal*.

Areas of Interest: Criminal law and procedure; evidence; prosecutor training; police attorneys

Tab:

Criminal Procedure

CRIMINAL PROCEDURE (AUGUST, 2018)

2018 Legislation Affecting Criminal Law and Procedure Criminal Procedure-Page 1

2018 Legislation Affecting Criminal Law and Procedure

John Rubin

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August 2018

Below are summaries of 2018 legislation affecting criminal law and procedure. To obtain the text of the legislation, click on the link provided below or go to the North Carolina General Assembly's website, www.ncleg.net. Once there, click on "Session Laws" on the right side of the page and then "2017–2018 Session" under Browse Session Laws; scroll down to the 2018 session laws. Be careful to note the effective date of each piece of legislation.

1. **S.L. 2018-5 (S 99): Appropriations Act (as amended by S.L. 2018-97 (S 335) and S.L. 2018-114 (H 374))**. The act enacts various provisions related to criminal law and procedure, effective July 1, 2018 unless otherwise indicated.

Criminal record checks. Under new G.S. 143B-935.1, the Department of Public Safety may provide a criminal record check to the Division of Social Services or Division of Medical Assistance of the Department of Health and Human Services or a county agency for applicants for employment, current employees, contractual employees or applicants, and employees of contractors who are permitted to access federal tax information. Under new G.S. 143B-968, the Department of Public Safety may provide a criminal record check to the Office of State Human Resources for any prospective temporary employee of a State agency or department if a criminal record check is a requirement for employment by the agency or department with which the individual would be temporarily assigned.

Criminal Justice Fellows Program. New Article 2 of G.S. Chapter 17C establishes the North Carolina Criminal Justice Fellows Program providing forgivable loans for applied associate degrees in criminal justice and related fields of study as preparation for a criminal justice profession. The Division of Criminal Justice Education and Training Standards of the Department of Justice must report to the General Assembly by April 1, 2019, regarding implementation of the program.

Office of Indigent Defense Services (IDS). Section 18A of the Appropriations Act requires IDS to report on a workload formula for public defender offices by December 1, 2018; establishes a new public defender office in District 29A (McDowell and Rutherford counties) and expands the public defender office in District 3B to include Craven and Pamlico counties in addition to Carteret County; allows the chief district court judge of a county selected to participate in the flat-fee pilot project to request to withdraw the county from the project; and requires IDS to report on indigency standards by October 1, 2018.

Judicial Department. Section 18B of the Appropriations Act amends G.S. 7A-304 to require the Administrative Office of the Courts (AOC) to report by October 1, 2018, and annually thereafter, on the implementation of the notice of waiver of costs to directly affected government entities; requires the North Carolina Sentencing and Policy Advisory Commission (Sentencing Commission) to study the most effective setting to house and provide treatment services for driving while impaired aggravated level one and level one

offenders and report by February 1, 2019; requires the Sentencing Commission to develop projections of available bed space in the Statewide Misdemeanant Confinement Program and report by February 15, 2019 and annually thereafter and requires the Sentencing Commission to study the feasibility of developing a five-year population projection, with the report due by February 15, 2019; and transfers the North Carolina Human Trafficking Commission from the Department of Justice to the AOC. The Appropriations Act also makes changes to the allocation of superior court judges and assistant district attorneys, effective January 1, 2019. ([S.L. 2018-121](#) (H 717), not summarized in this paper, modifies superior court, district court, and prosecutorial districts, effective on the dates indicated in that act.)

2. [S.L. 2018-13](#) (S 486): **Criminal record checks for state and county boards of elections; unlawful retention of information.** Effective June 20, 2018, the act adds G.S. 163A-7 and G.S. 163A-778 to require a criminal history record check of current and prospective employees of the State Board of Elections and Ethics Enforcement and county boards of elections, current and prospective county directors of elections, and employees and agents of current and prospective contractors. The statutes state that a single conviction constitutes just cause for not selecting the person for employment or dismissing the person from employment but a conviction does not automatically bar employment.

Effective December 1, 2018, the act adds G.S. 163A-1388(a)(16) to make it a Class 2 misdemeanor for any person who is not an elections official or who is not otherwise authorized by law “to retain a registrant’s signature, full or partial Social Security number, date of birth, or the identity of the public agency at which the registrant registered under G.S. 163A-884, any electronic mail address submitted under Part 2 of Article 17 of this Chapter, or drivers license number from any form described in G.S. 163-862 after submission of the form to the county board of elections or elections official.”

3. [S.L. 2018-31](#) (H 325): **Arson laws.** Effective for offenses committed on or after December 1, 2018, the act adds G.S. 14-67.2 to make it a Class D felony, unless the conduct is covered under another provision of law providing greater punishment, for a person to:
- during the commission of a felony
 - knowingly damage any dwelling, structure, building, or conveyance referenced in Article 15 (Arson and Other Burnings) of G.S. Chapter 14
 - by means of fire or explosive
 - that results in damages of \$10,000 or more.

The statute states that aiding and abetting the offense is likewise a Class D felony.

The act also amends G.S. 14-69.3, which has made it a Class E felony to commit a felony under Article 15 of G.S. Chapter 14 causing serious bodily injury to a firefighter or emergency medical technician. The amended statute adds law enforcement officers and fire investigators to the coverage of the statute. The act also amends the caption of the statute

to clarify that it applies to offenses resulting in serious bodily injury, not serious injury (the statute itself has required serious bodily injury).

4. **S.L. 2018-33 (S 630): Involuntary commitment.** As part of a larger act making several changes to North Carolina involuntary commitment laws, the act adds G.S. 122C-55(c1), effective October 1, 2019. The new subsection allows a mental health facility (as defined in G.S. 122C-3(14)) to provide confidential information to a sheriff on request about a client of the facility who is confined in the county's jail if the county jail medical unit has determined that the inmate needs to be treated for mental illness, developmental disabilities, or substance abuse. The new provision likewise allows a sheriff to provide confidential information to a facility if the inmate is seeking treatment from the requesting facility or has been involuntarily committed. The client's consent is not required in either instance.
5. **S.L. 2018-36 (S 124): Disposal of hemp oil.** Effective December 1, 2018, the act adds G.S. 90-94.1(d) to require anyone who possesses or uses hemp extract to dispose of residual oil at a secure collection box managed by a law enforcement agency. The subsection states that no criminal penalty attaches to a violation.
6. **S.L. 2018-40 (S 168): Miscellaneous court system changes.** The act amends several statutes related to the courts, including the following related to criminal courts.

G.S. 7A-498.3, which describes the responsibilities of the Office of Indigent Defense Services (IDS), is amended to require IDS to develop a model appointment plan, with minimum qualification standards for appointed counsel, by July 1, 2019. Judicial districts may request modifications to the model plan; however, if a judicial district has not adopted a plan with IDS's approved qualification standards by January 2, 2021, the IDS model plan becomes effective in that district.

Effective for arrest warrants issued on or after October 1, 2018, the act modifies G.S. 7A-304(b)(3), which describes the process for issuing an arrest warrant. That subdivision was modified in 2017 to require citizens seeking criminal process to put the facts supporting probable cause in a written affidavit. The act removes the written affidavit requirement; however, the amended subsection states that if the finding of probable cause is based solely on evidence provided by a person who is not a law enforcement officer, the issuing judicial official must issue a criminal summons instead of an arrest warrant except in specified circumstances. For a further discussion of this change, see Jeff Welty, [*Easy Come, Easy Go: Legislature Removes Affidavit Requirement for Citizen-Initiated Criminal Process*](#), N.C. Crim. L. Blog (July 9, 2018). The act also repeals subdivision G.S. 15A-304(b)(2), added in 2017 to specify circumstances in which the issuing official must issue a criminal summons instead of an arrest warrant, and restores the language previously in effect directing the issuing official to consider certain circumstances in deciding whether to issue a warrant or summons. The repealed subdivision included, among other provisions, that the fact that the offense charged is a felony is not itself grounds for issuance of an arrest warrant.

7. **S.L. 2018-44 (S 616): Controlled substance changes.** As part of a larger act dealing with heroin and opioids, the act makes the following changes, effective for offenses committed on or after December 1, 2018, unless otherwise indicated.
- Sections 2, 3, and 6 correct the names of certain substances in the controlled substance schedules. Section 4 amends G.S. 90-90(2) to add fentanyl immediate precursor chemical, 4-anilino-N-phenethyl-4-piperidine (ANPP), and section 5 amends G.S. 90-95(d2) to add N-phenethyl-4-piperidinone (NPP). Section 7 amends the trafficking statutes by revising G.S. 90-95(h)(3d) to delete MDPV and add substituted cathinones, repealing G.S. 90-95(h)(3e) on mephedrone, and amending G.S. 90-95(h)(4) to cover opioids as well as opium and opiates.
 - Section 9 amends G.S. 90-108(a)(14), which makes it an offense for an employee of a registrant or practitioner to unlawfully divert a controlled substance, to add registrants and participants; and adds G.S. 90-108(a)(15) to make it a Class G felony under G.S. 90-108(b)(2) for a person who is not a registrant or practitioner or an employee of a registrant or practitioner to divert a controlled substance. New G.S. 90-108(b)(3) makes it a Class E felony if a person violates subdivision (14) or (15) and intentionally diverts any controlled substance by means of dilution or substitution as those terms are defined in the new provision.
 - Section 11 adds 90-113.74(k) creating three new offenses involving individuals authorized to access data in the controlled substances reporting system. A person who is convicted of any of the new offenses is permanently barred from accessing the controlled substances reporting system.
 - A person who knowingly and intentionally accesses prescription information in the controlled substances reporting system for an unauthorized purpose is guilty of a Class I felony.
 - A person who knowingly and intentionally discloses or disseminates prescription information from the system for an unauthorized purpose is guilty of a Class I felony.
 - A person who willfully and maliciously obtains, discloses, or disseminates prescription information for an unauthorized purpose and with the intent to use the information for commercial advantage or personal gain or maliciously harm any person is guilty of a Class H felony.
 - Several sections of the act address certified diversion investigators and certified diversion supervisors, new law enforcement positions addressing the diversion of controlled substances from legitimate channels. Effective July 1, 2019, new G.S. 90-107.1 authorizes such investigators to obtain pharmacy records in connection with an active investigation and establishes procedures for such requests; and new G.S. 90-113.74(i) authorizes the Department of Health and Human Services to release data in the controlled substance reporting system to such investigators under the conditions in that subsection. Effective June 22, 2018, new G.S. 90-113.74E requires the North

Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission to develop standards and training for diversion investigators and supervisors. Amended G.S. 17C-6(a) and G.S. 17E-4(a) elaborates on the standards and training.

8. **S.L. 2018-47 (S 768): People first language; changes to definition of mental incapacity for sexual assaults.** The act amends numerous statutes in two basic respects: (1) by eliminating outdated terminology describing people with a disability, for example by substituting intellectual disability for mental retardation and disability for handicap and (2) by referring to a person with a disability, mental illness, or other condition as a person with such a condition instead of defining the person by that condition, for example, as a disabled or mentally ill person. For the statutes related to criminal cases, the changes are effective for hearings or trials commenced on or after December 1, 2018, or offenses committed on or after December 1, 2018, depending on the particular statute amended.

Section 4(a) of the act also amends the definition of "mentally incapacitated" in G.S. 14-27.20, the definitions section for rape and other sexual offenses, to specify that a poisonous or controlled substance provided to a victim without his or her knowledge or consent may render the victim mentally incapacitated. This change applies to offenses committed on or after December 1, 2018.

9. **S.L. 2018-49 (H 156): Medicaid.** Effective June 22, 2018, the act adds Article 93, Prepaid Health Plan Licensing Act, in G.S. Chapter 58 regarding prepaid health plans, defined as a commercial plan or provider-led entity holding a license under the article for the purposes of operating a capitated contract for the delivery of services under the North Carolina Medicaid and NC Health Choice programs. A violation of the article and other provisions of Chapter 58 is a Class 1 misdemeanor under G.S. 58-93-80(b).
10. **S.L. 2018-61 (H 1076): Alamance/Guilford boundary.** Effective July 1, 2018, the act recognizes the revised boundary line between Alamance and Guilford counties as described in a 2008 survey by the North Carolina Geodetic Survey. The act states that no cause of action pending on July 1, 2018, including criminal actions, in areas affected by the 2008 survey are abated, that such actions shall continue in the appropriate adjoining county, and that lack of jurisdiction is not a defense.
11. **S.L. 2018-66 (H 744): Trespass on lands of Eastern Band of Cherokee Indians.** Effective for offenses committed on or after December 1, 2018, the act amends G.S. 14-159.12(a) to add to the places covered by first-degree trespass lands of the Eastern Band of Cherokee Indians after the person has been excluded by a resolution passed by the Eastern Band of Cherokee Indian Tribal Council. The act amends G.S. 14-159.12(f) to provide that a second or subsequent violation on such lands is a Class I felony, with a mandatory fine of \$1,000 per violation.

12. [S.L. 2018-67](#) (H 969): Prisoner offenses. Effective for offenses committed on or after December 1, 2018, the act adds a new definitions section, G.S. 14-254.5, in Article 33 (Prison Breach and Prisoners) in G.S. Chapter 14. An employee is defined as any person hired or contracted to work for the State or a local government. A prisoner is defined as any person in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, any law enforcement officer, or any local confinement facility as defined in G.S. 153A-217 or G.S. 153A-230.1, whether pending trial, appellate review, or presentence diagnostic evaluation.

The act broadens G.S. 14-258.4, which has made it a Class F felony for a prisoner to throw, emit, or cause to be used as a projectile bodily fluids at an employee, to cover that conduct with an unknown substance. The amended statute also adds a new offense of a prisoner knowingly and willfully exposing genitalia to an employee while the employee is in the performance of the employee's duties, a Class I felony. The revised statute also provides that "[s]entences imposed under this Article shall run consecutively to and shall commence at the expiration of any sentence being served by the person sentenced under this section." As written, this language appears to mean that if a person is currently serving a sentence for a violation of G.S. 14-258.4, the court must impose a consecutive sentence for any new violation of Article 33 of G.S. Chapter 14; it does not require a consecutive sentence for a violation of G.S. 14-258.4 unless the person is already serving a sentence for violating that statute. Also, under cases construing similar statutory language, if a person is sentenced at in the same proceeding for more than one violation, the court is not required to impose a consecutive sentence. *See, e.g., State v. Walston*, 193 N.C. App. 134, 141 (2008).

The act rewrites G.S. 14-258, which dealt with conveying messages and weapons to or trading with prisoners. Under the revised statute, it is a Class H felony for a person to sell, trade, convey, or provide to a prisoner (1) an article forbidden by prison rules or (2) a letter, oral message, weapon, tool, good, clothing, device, or instrument to effect an escape, or aid in an assault or insurrection. A violation involving the items in (2) is a Class F felony if an escape, assault, or insurrection occurs. The revised statute also makes it a Class H felony for a prisoner who possesses a letter, weapon, tool, good, article of clothing, device, or instrument to effect an effect an escape or aid in an assault or insurrection. This part of the statute does not require that the items be unlawfully provided to the prisoner, but such a requirement may be implied.

Effective June 25, 2018, new G.S. 14-258.7 requires by March 15 of each year a report by the Department of Public Safety to the General Assembly regarding assaults on officers in violation of Article 33, G.S. 14-34.5, and G.S. 14-34.7 by a prisoner against an employee or contractor. It also requires reports by that date by the Conference of District Attorneys and Administrative Office of the Courts regarding violations of those provisions.

Also effective June 25, 2018, amended G.S. 143B-929 authorizes the Information Sharing and Analysis Center of the State Bureau of Investigation to analyze information and, if credible, notify local law enforcement agencies about any threat of violence to the safety

of any individual associated with educational property as defined in G.S. 14-269.2 or a place of worship as defined in G.S. 14-54.1.

13. **[S.L. 2018-68](#) (H 776): Human trafficking and juveniles.** Effective October 1, 2018, the act adds G.S. 14-43.15 to require that a minor victim of a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or 14-43.13 (sexual servitude) be alleged to be abused and neglected under G.S. Chapter 7B.
14. **[S.L. 2018-69](#) (H 379): Recodification of criminal law.** To assist the criminal law recodification working group, the act directs every state agency, board, and commission that has the power to define conduct as a crime to submit a list of crimes it has created to the General Assembly by December 1, 2018. The act likewise directs every county, city, town, and metropolitan sewage district that has enacted an ordinance for which a violation is punishable as a crime under G.S. 14-4(a) to submit such a list. The Administrative Office of the Courts must create and submit a list by February 1, 2019, of all criminal statutes that are duplicative; inconsistent with other statutes, rarely charged, fail to state a mens rea, or contain undefined terms; obsolete; or held to be unconstitutional by an appellate court.
15. **[S.L. 2018-70](#) (H 945): Tracking of sexual assault evidence collection kits.** Effective June 25, 2018, the act adds G.S. 114-65 to establish the Statewide Sexual Assault Evidence Collection Kit Tracking System in the State Crime Lab, with the following requirements. All sexual assault evidence collection kits purchased or distributed on or after October 1, 2018, must be trackable and comply with the requirements of the system. (Amended G.S. 143B-1201 imposes the same requirement.) All medical providers, law enforcement agencies, forensic laboratories, and others having custody or use of any such kit must participate in and comply with the new system. Victims should be able to track the location of the kit and determine whether testing of the kit has been completed. Previously untested kits should be entered into the system in compliance with system protocols. Beginning October 1, 2019, the Director of the State Crime Lab must report to the General Assembly on, among other things, the number of tracking-enabled kits shipped, used, submitted for tests, and tested and efforts to track and test previously untested kits. The Secretary of the Department of Public Safety must convene a working group to make recommendations on, among other things, the testing of untested kits and testing of kits in the future; findings and recommendations of the working group are due to the General Assembly by December 1, 2018.
16. **[S.L. 2018-72](#) (H 670): Threat of mass violence at school and religious place of worship.** Effective for offenses committed on or after December 1, 2018, the act creates two new offenses. New G.S. 14-277.6 makes it a Class H felony for a person to:
 - by any means of communication
 - to any person or group of people
 - threaten to commit an act of mass violence as defined in G.S. 14-277.5

- on educational property or at a curricular or extracurricular activity sponsored by a school as defined in G.S. 14-277.5.

New G.S. 14-277.7 makes it a Class H felony for a person to:

- by any means of communication
- to any person or group of people
- threaten to commit an act of mass violence as defined in G.S. 14-277.5
- at a place of worship as defined in the new statute.

New G.S. 14-277.8 creates a discharge and dismissal procedure for a person who violates G.S. 14-277.5 or the two new statutes if the person was under 20 at the time of the offense and has not prior convictions other than for a traffic violation; and new G.S. 15A-145.7 creates a procedure for expunging the discharge and dismissal. For a discussion of these procedures, see Jamie Markham, [*Another New Conditional Discharge: Threats and False Reports of Mass Violence*](#), N.C. Crim. L. Blog (July 12, 2018).

New G.S. 15A-534.7 requires that pretrial release conditions be determined by a judge in the first 48 hours after arrest of a person for a violation of either of the two new statutes. If the judge determines that immediate release of the person will pose a danger of injury to people and that the execution of an appearance bond will not reasonably assure that injury will not occur, the judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release. The statute recognizes that the judge may impose stay-away conditions in addition to a secured bond. If a judge has not acted within 48 hours, a magistrate has the authority to set conditions as provided in G.S. 15A-534.7.

17. [S.L. 2018-75 \(S 162\): Human trafficking.](#) The act makes several changes to statutes related to human trafficking, with effective dates as indicated below.

- Amended G.S. 14-43.10 defines “victim” for purposes of Article 10A (Human Trafficking) of G.S. Ch. 14 as a person subjected to the practices set forth in G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13. Effective June 15, 2018.
- New G.S. 14-43.15 makes it an affirmative defense to a prosecution under Article 10A that the person charged with the offense was a victim at the time of the offense and was coerced or deceived into committing the offense as a direct result of the person’s status as a victim. Effective December 1, 2018.
- New G.S. 14-43.16 makes confidential the name, address, and other information that reasonably could be expected to lead directly to the identity of any victim, alleged victim, or immediate family member (as defined in the statute) of a victim. The statute provides some exceptions, such as use in a law enforcement investigation or criminal prosecution. Presumably, the term “criminal prosecution” includes providing

information to the defense in discovery. A knowing violation of the confidentiality requirement is a Class 3 misdemeanor. Effective December 1, 2018.

- Amended G.S. 14-43.20 allows the judge to order as part of restitution any costs reasonably certain to be incurred by or on behalf of the victim for medical care, psychological treatment, temporary housing, transportation, funeral services, and any other services designed to assist a victim recover from any injuries or loss resulting from an offense committed under G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13. This change is effective for offenses committed on or after December 1, 2018. The amended statute also provides that if a judge finds that the victim to whom restitution is due is unavailable to claim the restitution award, the judge is to order that the restitution be paid to the clerk of superior court in the county in which the conviction for the offense occurred. If the victim does not claim the restitution award within two years, the clerk is to remit the restitution proceeds to the Crime Victims Compensation Fund under G.S. 15B-23. Effective for restitution orders entered on or after December 1, 2018.
- Amended G.S. 7B-101 includes in the definition of “abused juvenile” any juvenile less than 18 years of age who is a victim of an offense under G.S. 14-43.11, G.S. 14-43.12, or G.S. 14-43.13, regardless of the relationship between the victim and the perpetrator. Effective December 1, 2018.
- Amended Rule 412 of the North Carolina Rules of Evidence applies the “rape shield” provisions of the rule to trials involving charges of sexual servitude under G.S. 14-43.13 in addition to the previously-listed offenses. Effective for trials held on or after December 1, 2018.
- Amended G.S. 114-70 adds three ex-officio members to the North Carolina Human Trafficking Commission, appointed by the Director of the Administrative Office of the Courts, President of the Conference of Superior Court Judges, and President of the District Court Judges. The act directs the Commission, in consultation with the Conference of District Attorneys, to study the appropriate level of sentencing for offenses under Article 10A and the effects of expanding eligibility for post-conviction relief to human trafficking victims. The report is due to the General Assembly by February 1, 2019. Effective June 25, 2018.

- 18. [S.L. 2018-78 \(H 529\): Funeral laws.](#)** Effective October 1, 2018, the act adds G.S. 90-210.25(c)(14) to authorize the North Carolina Board of Funeral Service to suspend, revoke, or refuse to issue or renew a permit to transport or remove a dead human body, place the permittee on a term of probation, or impose a civil penalty up to \$5,000 if, among other reasons, the permittee has been convicted of a felony or of a crime involving fraud or moral turpitude. Effective December 1, 2018, the act adds G.S. 90-210.25(f)(2) to make it a Class 2 misdemeanor to knowingly and willfully abuse or mutilate a dead human body in the person’s custody.

19. **S.L. 2018-79 (H 774): Certificates of relief.** Effective for petitions filed on or after December 1, 2018, the act modifies the eligibility criteria in G.S. 15A-173.2 for obtaining a certificate of relief . It expands eligibility by allowing a person to obtain a certificate of relief if he or she has three or fewer prior Class H or I felony convictions as well as any prior misdemeanor convictions. If the felony convictions occurred during the same session of court, the convictions count as a single conviction. The act contracts eligibility by making a person ineligible if convicted of a Class G (or higher class) felony. Amended G.S. 15A-173.2 requires a \$50 filing fee unless the person is indigent, directs the District Attorney to provide the person’s criminal history to the court, provides that a certificate of relief is automatically revoked if the person is subsequently convicted of a felony or misdemeanor other than a traffic violation (also reflected in amended G.S. 15A-173.4), and requires the person to notify any employer, landlord, or other party who has relied on a certificate of relief of any conviction, modification, or revocation within ten days. For a further discussion, see John Rubin, [*Expanded Forgiveness of a Criminal Conviction*](#), N.C. Crim. L. Blog (July 3, 2018).
20. **S.L. 2018-84 (H 977): Forfeiture of retirement benefits.** G.S. 135-18.10 prohibits the Teachers’ and State Employees’ Retirement System from paying any retirement benefits or allowances, except for a return of member contributions plus interest, to any member convicted of a felony specified in that section if the offense was committed while the person was serving as an elected government official and the conduct was directly related to the person’s service as an elected official. G.S. 128-38.4 imposes the same prohibition for retirement benefits and allowances from the North Carolina Local Governmental Employees’ Retirement System. Effective for offenses committed on or after June 25, 2018, the act amends both statutes to specify additional felonies resulting in forfeiture. The act also amends G.S. 161-50.4 and G.S. 161-50.5 to terminate the pension benefits of a county register of deeds on forfeiture of retirement benefits under G.S. 128-38.4 or G.S. 128-38.4A (forfeiture of retirement benefits for certain felonies related to employment or holding office), effective for any forfeiture occurring on or after June 25, 2018.
21. **S.L. 2018-87 (H 388): Mutual assistance between law-enforcement agencies and to State law-enforcement agencies.** Effective June 25, 2018, the act amends G.S. 160A-288 and G.S. 160A-288.2 to allow the head of a law-enforcement agency to provide assistance on request to another law-enforcement agency or a State law-enforcement agency unless prohibited or limited by a city or county ordinance (was, rules, policies, or guidelines adopted by city or county).
22. **S.L. 2018-91 (H 357): Dietetics/Nutrition Practice Act.** The act adds G.S. 90-357.6 to require applicants for a license as a licensed dietitian/nutritionist to consent to a criminal history check. The new statute states that one or more convictions does not automatically bar issuance of a license; the licensing board, the North Carolina Board of Dietetics/Nutrition, must consider several factors listed in the statute. The licensing board also may request a criminal history record check of applicants returning to active status. The act adds G.S.

143B-966 authorizing the Department of Public Safety to provide a criminal history check to the board.

23. **[S.L. 2018-98](#) (S 561): Authority to prosecute tax violations.** Effective for offenses committed on or after December 1, 2018, the act amends G.S. 105-236(b) to provide that for a criminal violation of a tax law the District Attorney of the county where the charged offense occurred has sole jurisdiction to prosecute; however, the Attorney General has concurrent jurisdiction if the District Attorney requests in writing that the Attorney General prosecute.
24. **[S.L. 2018-100](#) (H 500): Raffles.** Effective October 1, 2018, the act amends G.S. 14-309.6, a section within the part on bingo and raffles, to define nonprofit organization as an organization recognized as tax-exempt by the North Carolina Department of Revenue and as any bona fide branch, chapter, or affiliate. Amended G.S. 14-309.15 allows any regional or county chapter of a nonprofit organization to conduct a raffle independently of its parent organization, increases the number of raffles that a nonprofit organization may hold from two to four per year, and increases the prize that a nonprofit organization may offer from \$125,000 to \$250,000. Amended G.S. 18B-308 allows the sale and consumption of alcohol at a raffle; the prohibition remains in effect for bingo. Effective December 1, 2018, new G.S. 18B-903A authorizes the reissuance of a limited special occasion permit or a special one-time permit to a nonprofit organization as provided in that section and, effective for offenses on or after that date, makes it a Class 1 misdemeanor to knowingly make a false statement in an application for reissuance of the permit.
25. **[S.L. 2018-105](#) (H 1080): Release of police disciplinary information.** G.S. 160A-168 makes a city employee's personnel record confidential except in specified circumstances. To facilitate citizen review, the statute has authorized the city manager and chief of police to release disciplinary charges against a police officer to the Human Relations Commission Complaint Subcommittee in the City of Greensboro and to the person aggrieved by an officer's actions or the person's survivor. Effective June 26, 2018, the act amends the statute to authorize release to the Criminal Justice Advisory Commission and its subcommittee, the Police Community Review Board, and to authorize those entities as well as the city manager and police chief to release the information to the aggrieved person or survivor. The act applies to the City of Greensboro only.
26. **[S.L. 2018-110](#) (H 551): Victims rights constitutional amendment.** The act directs placement on the November 2018 ballot in North Carolina the following question, which voters may vote for or against: "Constitutional amendment to strengthen protections for victims of crime; to establish certain absolute basic rights for victims; and to ensure the enforcement of these rights." The act provides additional detail about the changes to the current section on victims rights in the state constitution, Art. I, Sec. 37. If approved, the amended section would apply to victims of acts of delinquency by juveniles as well as victims of crimes by

adults and would require that victims be treated with dignity and respect by the criminal justice system. If the crime or act of delinquency is against a person or is a felony property crime, the amended section would revise the rights previously enumerated in the section. The revised rights include the right to reasonable, accurate, and timely notice of court proceedings (was, informed); the right on request to be present at court proceedings; the right to be reasonably heard at any court proceeding involving the plea, conviction, adjudication, sentencing, or release of the accused (was, sentencing); and the right to received restitution in a reasonably timely manner when ordered by the court. The amended section includes a section on enforcement of these rights. It requires the General Assembly to adopt laws establishing procedures for victims to exercise these rights, including the right to make a motion to the court to enforce the rights, to be represented by counsel but not have counsel provided by the State, and the right of a family member, guardian, or custodian to exercise the rights on behalf of a victim who is a minor, incapacitated, or deceased. As under the current section, a defendant has no ground for relief for a violation of these rights. The revised section provides further that a victim has no right to “(i) to appeal any decision made in a criminal or juvenile proceeding; (ii) to challenge any verdict, sentence, or adjudication; (iii) to participate as a party in any proceeding; or (iv) to obtain confidential juvenile records.” For a further discussion of the act, see Shea Denning, [Marsy’s Law Is on the Ballot; Voters Will Decide Whether it Goes on the Books](#), N.C. Crim. L. Blog (July 25, 2018).

27. **[S.L. 2018-113 \(S 711\): Mutual assistance for international equestrian event.](#)** As part of a larger agricultural bill, the act adds G.S. 153A-212.5 to authorize law enforcement agencies to enter into intergovernmental law enforcement mutual aid agreements with out-of-state law enforcement agencies and officers to aid in enforcing the laws of North Carolina within the jurisdiction of the requesting law enforcement agency for maintaining security and safety for an international equestrian event. This part of act became effective June 27, 2018, and expires October 1, 2018.
28. **[S.L. 2018-116 \(S 808\): Domestic violence fatality review team.](#)** Effective June 28, 2018, the act amends previous session laws by adding Buncombe County to the counties previously authorized to establish a domestic fatality review team (Alamance, Mecklenburg, Pitt, and Wake).
29. **[S.L. 2018-120 \(H 382\): Set aside of bail bond forfeiture; surplus lines insurance.](#)** As part of a larger act recommended by the North Carolina Department of Insurance, amended G.S. 15A-544.5(b)(7) requires that the forfeiture of a bail bond be set aside if the defendant was incarcerated in a local, state, or federal detention center, jail, or prison anywhere with the United States at the time of the failure to appear “or any time between the failure to appear and the final judgment date.” The quoted language is new and applies to hearings on or after October 1, 2018. The other requirements for a set aside under this subdivision remain the same, including that notice be given to the district attorney for the county in

which the charges are pending within the time frames described in the subdivision.

Effective for offenses committed on or after June 28, 2018, the act amends 58-21-105(a) to make it a Class 1 misdemeanor for any surplus lines licensee in this State to represent or aid a nonadmitted domestic surplus lines insurer in violation of Article 21 of G.S. Chapter 58.

30. **H 131**: **Additional grounds for set aside of bail bond forfeiture.** This bill was passed by the General Assembly but did not become law because the Governor vetoed the bill and the General Assembly did not override the veto. The bill would have amended G.S. 15A-544.8 to allow the court to grant relief from a final judgment of forfeiture if circumstances, rather than extraordinary circumstances, existed that warrant relief. As part of the change, the bill would have deleted language expressly limiting relief to the grounds specified in that statute. The bill also would have amended G.S. 15A-544.5 to add as an additional ground for setting aside a bond forfeiture that the defendant was in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety or the Federal Bureau of Prisons within the borders of North Carolina at any time between the failure to appear and the final judgment of forfeiture.

Tab:

Selecting
Process

SELECTING PROCESS (AUGUST, 2018)

Criminal Process in Class Materials.....	Selecting Process-Page 1
Problems in selecting the proper charge and issuing process.....	Selecting Process-Page 5

Criminal Process—In Class Materials
Jessica Smith

Session Objectives:

After this session you will be able to:

1. Identify the process/pleadings used by magistrates
2. Apply the probable cause standard
3. Draft charging language
4. Properly issue pleadings/process

Problem 1: I take victim's car from victim's driveway at 11 pm. I use it to go to the liquor store. I return it to victim's driveway at 11:30 pm. Victim wants Defendant charged with felony larceny. Is there probable cause to charge that crime? Why or why not?

Problem 2: Defendant agrees to fix victim's roof. Defendant takes a deposit, shows up for 2 days but never finishes the work. Victim wants Defendant charged with obtaining property by false pretenses. Is there probable cause to charge that crime? Why or why not?

Problem 3: Victim, who is clearly impaired, comes in and states under oath that Jim Jones assaulted him. You know Victim. Victim and Jones have been feuding for months. Victim previously has made charges against Jones, which turned out to be false. Is there probable cause to charge assault? Why or why not?

Problem 4: Victim comes in and states under oath that Jim Jones assaulted him. You know Victim. Victim lives on Pine Street and owns a sporting goods store in town. You know of no reason why Victim would lie. Is there probable cause to charge assault? Why or why not?

Problem 5: Jessie Smith went into the Quick Mart, pointed a handgun at Dona Lewandowski, the clerk, & demanded all of the cash from the register. Dona complied and Jessie made off with \$100 of the store's cash. Draft charging language for this crime.

Problem 6: Deputy Lewandowski, of the ABC Sheriff Dept., pulled Jessie Smith over for speeding. While Deputy Lewandowski was writing the citation, Jessie grabbed the citation and tore it up.

Problem 7: There is probable cause that that Jessie stole a picnic basket from a picnic table at the county park. Jessie has no priors. Jessie is married, lives in the community, and works as a clerk at the local Piggly Wiggly. Should you issue a summons or a warrant?

Problem 8: There is probable cause that a local businessman committed assault on a child. The defendant has lived in town his whole life, is married, and owns a local business. The defendant has no priors. Should you issue a summons or a warrant?

Problem 9: There is probable cause that a local businessman committed statutory rape. The defendant has lived in town his whole life, is married, and owns a local business. The defendant has no priors. Should you issue a summons or a warrant?

Problem 10: Defendant, who is from California, is stopped in your county while driving a vehicle and is found to be in possession of drugs. The quantity is enough for possession with intent but not trafficking. Defendant has no connections to your county or N.C. Defendant has 3 prior drug charges, all in California. Should you issue a summons or a warrant?

Pop Quiz

1. What are the 5 types of process/pleadings encountered by magistrates?
2. If you find that a victim is not credible, you can decline to find probable cause.

TrueFalse
3. What are the best places to look for charging language?
4. When can you issue a citation?
5. A magistrate never has to worry about whether an officer completed a citation correctly.

TrueFalse
6. You can use the AOC criminal summons form to charge a felony.

TrueFalse
7. When deciding whether to issue a summons or a warrant, what should you consult?
8. Officer arrests D, brings D to you, swears out facts supporting probable cause, and asks for a warrant for arrest. What should you do?
9. What is the difference between an arrest warrant and a magistrate's order?
10. Mr. Jones comes to you, with a black eye and scratches on his face. He swears to facts supporting PC that Mrs. Jones attacked him with a kitchen knife. You issue a warrant for arrest for Mrs. Jones. The next day, after being released from the hospital, Mrs. Jones, who has extensive injuries, comes to you. She says Mr. Jones attacked her & that she just defended herself. If you believe her version, can you issue a warrant for Mr. Jones?

PROBLEMS IN SELECTING THE PROPER CHARGE AND ISSUING PROCESS

Instructions: For each of the following sets of facts, assume that what is written is reliable information, then decide whether a criminal offense has been committed. If there is a crime, decide what kind of process should be issued. Each magistrate should select the proper AOC form and complete the form for one of the problems. In some of the situations you may be required simply to give advice to another person rather than issue process. If that is the case, be prepared to state in class exactly what you would say to that other person. For this set of problems, do not set conditions of pretrial release.

1. Mrs. Lorean Warren comes in with her 11 year-old son, Tommy. Tommy went to the Running Brook Golf Club yesterday morning to make some money caddying. When he approached Raymond G. Mallory and asked if Mallory wanted a caddy, Mallory said, "Get out of here, you damn little beggar" and pushed Warren to the ground with his arm. Warren fell on gravel and scraped his right arm. Mallory is a 45 year-old real estate broker who lives at 1011 Whitworth Street.
2. Patrolman Robert Lucas of the Franklin Police Department comes in and says that when he stopped Francis Smith about half an hour ago to give him a ticket for speeding 55 mph in a 45 mph zone, Smith called Lucas "a stupid flat-footed pig bastard." Smith's license indicated he was 24 years old and lives at 300 Oakwood Street.
3. Officer Thomas Burgess comes in and says that while Abraham Waverly was driving his 1991 Ford Taurus on Highway 73 near Andrews, N.C., yesterday, Charles T. Lloyd, 34, Apt. 3B, 2100 Brookside Drive, Franklin, drove alongside Waverly and fired a shotgun towards him. The shot shattered the back window and caused Waverly to drive off the side of the road, but no other damage or injury was sustained.
4. Lawrence T. Russell, a local merchant, appears saying that at 11:00 o'clock this morning he saw a 1990 red Chevrolet, N.C. license TRT442, driven by Thomas Sudland, run a red light at the corner of 8th Street and Mud Avenue.
5. Detective Roland Garland comes in with Lewis Wells who says that last night at 11:30 p.m. Bobby Hanners jumped on him, Wells, in Joe's Roadside Bar on Hopewell Boulevard. Hanners pulled a hunting knife with an 8" blade and cut Wells several times. Only one of the cuts required stitches, 5 stitches on the left hand. Wells doesn't know Hanners but got his name from the bartender, who thinks Hanners, a 6'3", 200 lb., white male, 25 years old, lives at Good-View Trailer Park.
6. About 20 minutes ago officer Robert Lucas of the Franklin Police Department stopped Alice Lodge to give her a ticket for running a stop sign. Lodge's boyfriend, Fred Chambers, jumped out of the passenger's seat, ran around the car, called Lucas a "fat ignorant jerk" and shoved him to the ground while Lucas was trying to complete the citation. Lucas has placed Chambers under arrest for obstructing an officer and has now brought him before you. Chambers is white, 27 years old, and lives at 1414 Lockwood Circle.

7. Louise Day Hill, a sales clerk at Ivey's in Downtown Mall, Franklin, caught Ira Davis with a Wilson's Originals blouse, size 9, in her shopping bag while she was in the store. The blouse still had the Ivey's tag on it, indicating a price of \$17.99. Davis is 19, white, lives at Apt. 13C, Old Towne Apartments, Kensington Drive. She is a local college student. Hill wants you to issue an arrest warrant.
8. Douglas Feldon, a security guard at Downtown Mall, Franklin, appears and explains that earlier today he caught Rita Davis in the parking lot of the mall with a pair of Brobeggio women's shoes, size 8 narrow. Feldon chased Davis after being told by Louise Day Hill, a sales clerk at Ivey's, that Davis had taken the shoes without paying. The shoes were in a box held in Davis's hand and the price tag had been torn off. Hill said the shoes sell for \$28.95. Feldon checked Davis' driver's license which said that she lives at Apt. 13C, Old Towne Apartments, Kensington Drive, and is 26 years old. She is white. Feldon took the shoes back and let Davis go; he wants a warrant against her for shoplifting.
9. Detective Albert Simmons appears and says that John "The Breadman" Harding broke the kitchen window and entered Diana Stallings' house at 451 Mason Court at 1 a.m. last night. A house guest, Levine Kelley, caught Harding while he was in the living room and before anything had been disturbed by Harding. Harding has no known local address presently. He is about 30, black, about 6', 180 pounds.
10. Detective Ross Davidson appears and says that Eddie Fern entered Ross and Casey's Fine Appliances, 5660 Stanley Drive, through the unlocked back door at some time between 9 p.m., last Friday and 8 a.m., Saturday. Fern took a 13" Sony color television, serial #ART890034, and a Mr. Coffee coffee maker, DiMaggio special, model 53B. The television set is valued at \$359.95 and the coffee maker at \$27.50. Fern is 29, white, lives at 452 Jefferson Court.
11. Patrolman Robert Evans arrests Gilbert Sullivan and takes him to the magistrate's office. At 10:00 p.m. tonight Sullivan walked into Ken's Quickie Mart, Highway 430, about two miles out of town, pulled a pistol, pointed it at the manager, Kenneth Evans, and said, "Give me all your cash or I'll blow your damn head off." Evans complied, handing Sullivan about \$450 in cash. The only customer in the store at the time was Rayline Corley, a 50-year-old housewife buying some bread and eggs.
12. Tom Martin and Mumford Ford have been feuding about a girl for about three months. Ford comes in and tells you that this morning Martin broke into Ford's apartment, #45B Old Towne Apartments, and painted "pig," "queer," and "toad" on the living room and bedroom walls in letters about two feet high. Martin is white, 24, and lives at #237 Village East, Westwood.
13. Detective Mason Gruder appears and says that last Saturday morning Haywood Goodman went into Larry Oldman's unlocked 1994 Pontiac while it was parked in the parking lot of Lynwood's Funeral Home, 1220 Patton Avenue, and took a tan sports coat worth about \$45. He also tore out and took Aldham's Motorola KZR12 cassette tape recorder worth about \$180. Goodman is 32, black, and works at Franklin Auto Repair, 1200 Fuquay Road; Gruder does not know his home address.

14. Manning Brandon and Susan Stewart come in and say that about 11 p.m. tonight that John Black was in the Frog's Kiss bar and had been drinking several beers. He walked up to a table at which Stewart and Brandon were sitting and said to Stewart, "Hey, you're quite some honey. Why don't you drop this queer turkey and come with me. I'd really like to give it to you in bed." Stewart was quite embarrassed and Brandon became angry. Brandon told Black to leave, to which Black replied, "Buzz off, you stringy pimp fairy." At that, Brandon leaped to his feet ready to strike Black, but several people intervened and no blows were actually inflicted by either party. Lloyd Crane, the bartender at the time, has come in also and says the story is true. Crane knows that Black, about 25, 6', 175 pounds, lives at the Hot Springs Trailer Park on Old Canton Road. Brandon and Stewart ask for a warrant for verbal assault.
15. Janice Monroe appears and says Charlie Davis was dating her until they had a violent argument last week. Monroe told Davis she never wanted to see him again. Saturday morning Davis went to Monroe's house at 213 Corbin Lane. Monroe ordered him to leave, but he refused and then picked up a lawn chair from the front yard and threw it through her front window. It will cost about \$25 to have the window replaced; the lawn chair, worth about \$6, was broken. Davis is 37, white, and lives at 340 Greenwich Road.
16. Tom Martin and Mumford Ford have been feuding over a girl for several months. Ford comes in and says that yesterday, Martin came up to him on the street, shook his fist at him, and said, "I've lost my patience with you. You keep away from Tricia from now on or I'll beat the hell out of you." Ford is afraid of Martin because Martin is about six inches taller and weighs 50 pounds more than him. Martin's age, address, etc. is given in #13 above.

STATE OF NORTH CAROLINA

File No. (if applicable)

Scan No. (Official Use Only)

_____ County

In The General Court Of Justice

☐ District

☐ Superior Court Division

NOTE TO AFFIANT: Do not sign this Affidavit until you are before a notary or other public official authorized by law to administer an oath in North Carolina. If this Affidavit is provided in a case already pending in the courts, include the file number and county in which the case is pending above and the name of the defendant below. An affidavit is a statement given under oath that its contents are true and accurate. Any false statement or information contained in this affidavit may subject you to prosecution for the felony of perjury, N.C.G.S. 14-209, or under other statutes that prohibit false statements under oath. False statements or the unauthorized disclosure of information protected by law from disclosure also might subject you to civil liability to any person harmed by those statements. This Affidavit may be disclosed to the public as provided in the North Carolina Public Records Act, N.C.G.S. Chapter 132, and related statutes. You cannot prevent that disclosure by marking statements with "confidential," "privileged," or any similar terms.

STATE VERSUS

Name Of Defendant (if applicable)

Name Of Affiant (type or print)

Agency (if law enforcement officer)

AFFIDAVIT

AFFIDAVIT

The undersigned Affiant, having been duly sworn or affirmed, deposes and states that Affiant is competent to give the testimony below. Affiant makes the following statements of fact from Affiant's personal knowledge, except as to statements specifically identified below as made upon information and belief, which Affiant believes to be true and for which the source of information and the basis for belief are stated.

This is page number 1 of _____ (total number of pages).

NOTE: If additional pages are needed, use form AOC-CR-158A (Affidavit Continuation) for all subsequent pages.

NOTE TO OFFICIAL ADMINISTERING OATH: For a multi-page affidavit, complete the oath/affirmation on the last page. If the Affidavit was transcribed by another person for an Affiant who understands English but cannot read, do not swear the scribe to the Affidavit. Only the Affiant is to be sworn to the Affidavit, but read the Affidavit completely to the Affiant before administering the oath/affirmation. For an Affidavit translated into English from a statement in another language, record the oath/affirmation only on the English version, and swear the translator to the Affidavit on Side Two of the last page.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Date

Name (type or print)

Signature Of Affiant

☐ Notary

Signature

SEAL

Date My Commission Expires

County Where Notarized

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

☐ Superior Court Judge ☐ District Court Judge

AOC-CR-158, New 12/17

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TRANSLATOR'S AFFIDAVIT

Name Of Translator (type or print)

I, the translator named above, having been duly sworn or affirmed, depose and say the following:

I have translated into English the Affidavit on the reverse and all additional pages of this Affidavit from _____,
(identify original language)

and I hereby certify that the translation is a true, complete, and accurate translation to the best of my knowledge and ability based upon (check one)

☐ the Affiant's verbal relation to me, for which this Affidavit also is a complete and accurate transcription of the verbal statements as related to me, without material omission or substantive alteration.

☐ the Affiant's written statement in its original language, which is attached to this Affidavit and incorporated herein by reference.

I further certify that I'm qualified to render such a translation by:

☐ federal certification by the Administrative Office of the United States Courts (AOUSC) as a court interpreter;

☐ certification by the North Carolina Administrative Office of the Courts (NCAOC) as a court interpreter;

☐ ATA certification in the requested language combination; and/or

☐ _____
(state other basis for qualification to translate)

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Date

Name (type or print)

Signature Of Translator

☐ Notary

Signature

SEAL

Date My Commission Expires

County Where Notarized

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

Tab:

Initial
Appearance

Initial Appearance

John Rubin
UNC School of Government

Friday, August 17, 2018

1

Basic Requirements

1. Defendant must be present

Friday, August 17, 2018

2

Basic Requirements (cont'd)

2. Determine probable cause if warrantless arrest
 - Why?
 - What type of process?
 - What if arrest is with warrant?
 - Is citation warrantless?
 - Is "paperless" arrest warrantless?
 - What should you do about unserved process?

Friday, August 17, 2018

3

Basic Requirements (cont'd)

3. Inform defendant of charges and rights
 - Appoint counsel?
4. Set pretrial release conditions in accordance with rules and exceptions

Friday, August 17, 2018

4

Basic Requirements (cont'd)

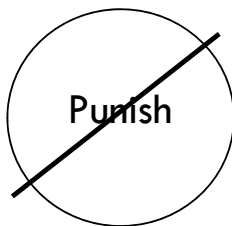
5. Set court date
 - Misdemeanor first appearances?
 - Out-of-county charges?
6. Fingerprint when required
 - Is arrest required when fingerprints are required?

Friday, August 17, 2018

5

Types of Pretrial Release

- Purpose of pretrial release



Friday, August 17, 2018

6

Types of Pretrial Release (cont'd)

- Forms of pretrial release
 - Written promise, unsecured bond, custody release, secured bond, and electronic house arrest (EHA) with secured bond
- Can you combine more than one form?

Friday, August 17, 2018

7

Types of Pretrial Release (cont'd)

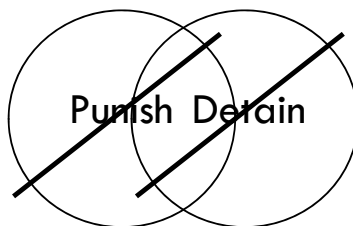
- What type is preferred?
 - "The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless he determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses." G.S. 15A-534(b).

Friday, August 17, 2018

8

Types of Pretrial Release

- Purpose of pretrial release



Friday, August 17, 2018

9

Types of Pretrial Release (cont'd)

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

Friday, August 17, 2018

10

Secured Bonds

- Types of security
 - Cash, property bond (accommodation bond), commercial bond
- Can you designate type?

Friday, August 17, 2018

11

Exceptions and Restrictions

- Delay initial appearance

Friday, August 17, 2018

12

Exceptions and Restrictions (cont'd)

- Hold initial appearance, but delay setting PTR conditions (DV offenses)
 - What are covered offenses?
 - What does 48-hour requirement mean?
 - What is "a spouse or former spouse or a person with whom the defendant lives or has lived as if married"? G.S. 15A-534.1(a).
 - What is "dating relationship" as defined in G.S. 50B-1(b)(6)?
 - What are permissible conditions?
 - Can you delay release beyond 48 hours?

Friday, August 17, 2018

13

Exceptions and Restrictions (cont'd)

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

Friday, August 17, 2018

14

Exceptions and Restrictions (cont'd)

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

Friday, August 17, 2018

15

Exceptions and Restrictions: Firearms

- Rebuttable presumption that no condition of pretrial release will assure appearance or safety of community if
 - felony or Class A1 misdemeanor with firearm and one of following circumstances exist
 - defendant is on pretrial release for such an offense, or
 - less than 5 years have passed since prior conviction or release for such an offense, whichever is later

Friday, August 17, 2018

16

Exceptions and Restrictions (cont'd)

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

Friday, August 17, 2018

17

Exceptions and Restrictions: Probation

Felony by person on probation

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

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

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

18

Exceptions and Restrictions (cont'd)

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

Friday, August 17, 2018

19

Appearance Bonds

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

Friday, August 17, 2018

20

Appearance Bonds (cont'd)

- Commercial bonds
 - Are they as good as cash? (Hint: We already talked about this)
- Split bonds

Friday, August 17, 2018

21

INITIAL APPEARANCE (AUGUST, 2018)

Exceptions to Pretrial Release Procedures:

A Guide for Magistrates Initial Appearance-Page 1

Domestic Violence Crimes Chart..... Initial Appearance-Page 5

Problems in Determining the

Conditions of Pretrial Release (Revised Aug 2016)..... Initial Appearance-Page 9

Problems in Setting Pretrial Release Conditions (Revised Aug 2016).... Initial Appearance-Page 13

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. There are **LIMITED** exceptions to this rule.

Category	Specific Situation	Response	Statutory Basis	Form to Use
<i>Delay initial appearance altogether</i>	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.
<i>Conduct initial appearance, BUT delay setting pretrial release conditions</i>	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), eff. for offenses on or after Dec. 1, 2018	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	No form yet

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 (ex., unsecured or secured bond) and 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 immediately above.
Conduct initial appearance, BUT deny any pretrial release conditions if criteria met	<ul style="list-style-type: none"> 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 gang offenses Certain offenses with firearm Violation of certain health control measures if person poses health and safety threat Certain methamphetamine offenses if certain findings Military deserter Violation of post-release supervision or parole Violation of probation by person who has pending felony charge or is subject to sex offender registration if danger to public¹ 	<p>In all of these situations, deny release if criteria are met. Make findings if required.</p> <p>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.</p> <p>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.</p>	<ul style="list-style-type: none"> 15A-533(c) 15A-736 Ch. 148, Art. 4B (Interstate Compact) 15A-533(a) 15A-533(d) 15A-533(e) 15A-533(f) 15A-534.5 15A-534.6 Case law 15A-1368.6, 15A-1376 15A-1345(b1) 	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 ²	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.

2. Effective for pretrial release conditions set on or after Oct. 1, 2015.

Category	Specific Situation	Response	Statutory Basis	Form to Use
Set certain pretrial release conditions (cont'd)	Certain offenses 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.
	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

Domestic Violence Crimes and the 48-Hour Rule¹

Jeff Welty
UNC School of Government
December 2015

Crime Charged	Relationship between the Parties	Does the 48-Hour Rule Apply?	Is the Case Covered by the Crime Victims' Rights Act?
<ul style="list-style-type: none"> Simple assault, G.S. 14-33(a) Assault with a deadly weapon, G.S. 14-33(c)(1) Assault inflicting serious injury, G.S. 14-33(c)(1) Assault by pointing a gun, G.S. 14-34 Misdemeanor stalking, G.S. 14-277.3A 	<ul style="list-style-type: none"> Current or former spouses (same sex or opposite sex) Currently live or formerly lived together as if married (same sex or opposite sex)² Currently or formerly in a dating relationship³ (opposite sex) 	Yes	Yes
	<ul style="list-style-type: none"> Currently or formerly in a dating relationship (same sex)⁴ 	Yes	No
	<ul style="list-style-type: none"> Child in common Parent (or person in a parental role)/child Grandparent/grandchild Current or former members of the same household 	No	Yes

¹ The so-called 48-hour rule of G.S. 15A-534.1 provides that, for certain domestic violence crimes, only a judge may set conditions of release in the first 48 hours after the defendant's arrest. The rule does not require or permit the defendant to be held if a judge is available to set conditions of release. Effective December 1, 2015, the rule applies "[i]n all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse or spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes." S.L. 2015-62. This chart indicates whether several common offenses are, or are not, covered by the rule. This chart is not comprehensive. For the listed offenses, the chart also indicates whether they are covered by the Crime Victims' Rights Act, G.S. 15A-830 et seq. When creating criminal processes in NCAWARE, magistrates are required to indicate whether an offense is a "domestic violence case" and whether it is a "victim rights" case. This chart is intended to assist magistrates in making those determinations.

² The Crime Victims' Rights Act applies to certain misdemeanor offenses "when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b)." G.S. 15A-830(7)(g). The portion of the definition of "personal relationship" in G.S. 50B-1(b) that concerns "persons . . . who live together or have lived together" applies only to people "of opposite sex." However, another portion of the definition includes all "current or former household members" regardless of sex. Thus, same-sex individuals who live together or have lived together as if married share a "personal relationship" as "current or former household members" and the Crime Victims' Rights Act applies when one such individual is charged with committing a covered misdemeanor against another.

³ Effective December 1, 2015, G.S. 15A-534.1(a) makes the 48-hour rule applicable to covered offenses committed against "a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6)." G.S. 50B-1(b)(6) provides in pertinent part that "a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship."

⁴ Effective December 1, 2015, G.S. 15A-534.1(a) makes the 48-hour rule applicable to covered offenses committed against "a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6)." G.S. 50B-1 contains definitions pertinent to the issuance of domestic violence protective orders. G.S. 50B-1(b) defines the term "personal relationship." G.S. 50B-1(b)(6) states that a "personal relationship" includes "persons of the opposite sex who are in a dating relationship or have been in a dating relationship. A dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship." Nothing in the definition of "dating relationship" requires the parties to be of different sexes. Under the statute, a "dating relationship" is a "personal relationship" only if the parties are of different sexes, but the applicability of the 48-hour rule turns on the existence of a "dating relationship," not the existence of a "personal relationship." By contrast, the Crime Victims' Rights Act applies to certain misdemeanor offenses "when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b)." Thus, the existence of a same-sex dating relationship does not trigger the misdemeanor provisions of the Crime Victims' Rights Act, though the existence of an opposite-sex dating relationship does. Whether it is constitutional to distinguish between same-sex and opposite-sex couples in this way is beyond the scope of this document but might be questioned under *Obergefell v. Hodges*, 576 U.S. ___ (2015) (holding that laws limiting marriage to same-sex couples are unconstitutional, in part on equal protection grounds).

Crime Charged	Relationship between the Parties	Does the 48-Hour Rule Apply?	Is the Case Covered by the Crime Victims' Rights Act?
<ul style="list-style-type: none"> Assault on a female, G.S. 14-33(c)(2) (note that this offense requires a male defendant and a female victim, so issues concerning same-sex couples do not arise) 	<ul style="list-style-type: none"> Current or former spouses Currently live or formerly lived together as if married Currently or formerly in a dating relationship 	Yes	Yes
	<ul style="list-style-type: none"> Child in common Parent (or person in a parental role)/child Grandparent/grandchild Current or former members of the same household 	No	
<ul style="list-style-type: none"> Assault with a deadly weapon with intent to kill, G.S. 14-32(c) Assault with a deadly weapon inflicting serious injury, G.S. 14-32(b) Assault with a deadly weapon with intent to kill inflicting serious injury, G.S. 14-32(a) Assault inflicting serious bodily injury, G.S. 14-32.4(a) Habitual misdemeanor assault, G.S. 14-33.2 Felony stalking, G.S. 14-277.3A 	<ul style="list-style-type: none"> Current or former spouses (same sex or opposite sex) Currently live or formerly lived together as if married (same sex or opposite sex) Currently or formerly in a dating relationship (same sex or opposite sex) 	Yes	Yes
	<ul style="list-style-type: none"> Child in common Parent (or person in a parental role)/child Grandparent/grandchild Current or former members of the same household 	No	
<ul style="list-style-type: none"> Assault by strangulation, G.S. 14-32.4(b) Communicating a threat, G.S. 14-277.1 	<ul style="list-style-type: none"> Current or former spouses (same sex or opposite sex) Currently live or formerly lived together as if married (same sex or opposite sex) Currently or formerly in a dating relationship (same sex or opposite sex) 	Yes	No
	<ul style="list-style-type: none"> Child in common Parent (or person in a parental role)/child Grandparent/grandchild Current or former members of the same household 	No	
<ul style="list-style-type: none"> Harassing telephone calls, G.S. 14-196 Cyberstalking, G.S. 14-196.3 	Any	No	No
Domestic criminal trespass, G.S. 14-134.3	<ul style="list-style-type: none"> Current or former spouses (same sex or opposite sex) Currently live or formerly lived together as if married (same sex or opposite sex) <p>(Note that having one of the above relationships is an element of the offense)</p>	Yes	Yes ⁵

⁵ Domestic criminal trespass normally is a Class 1 misdemeanor, but is a Class G felony if the defendant trespasses “upon property operated as a safe house or haven for victims of domestic violence and . . . is armed with a deadly weapon.” G.S. 14-134.3(b). The felony offense is not listed in G.S. 15A-830(7), so the Crime Victims’ Rights Act does not appear to apply to the felony.

Crime Charged	Relationship between the Parties	Does the 48-Hour Rule Apply?	Is the Case Covered by the Crime Victims' Rights Act?
Violating a domestic violence protective order, G.S. 50B-4.1	Any (Such orders may be issued only when a "personal relationship" exists, as defined in G.S. 50B-1(b), but a magistrate considering a violation of a DVPO should not second-guess the determination of the judicial official who issued the order that such a relationship existed)	Yes	Yes
<ul style="list-style-type: none"> Rape (any kind/degree), G.S. 14-27.21, 14-27.22, 14-27.23, 14-27.24, 14-27.25 Sex offense (any kind/degree), G.S. 14-27.26, 14-27.27, 14-27.28, 14-27.29, 14-27.30⁶ 	<ul style="list-style-type: none"> Current or former spouses (same sex or opposite sex) Currently live or formerly lived together as if married (same sex or opposite sex) Currently or formerly in a dating relationship (same sex or opposite sex) 	Yes	Yes
	<ul style="list-style-type: none"> Child in common Parent (or person in a parental role)/child Grandparent/grandchild Current or former members of the same household 	No	
<ul style="list-style-type: none"> Kidnapping, G.S. 14-39 Felonious restraint, G.S. 14-43.3 	<ul style="list-style-type: none"> Current or former spouses (same sex or opposite sex) Currently live or formerly lived together as if married (same sex or opposite sex) Currently or formerly in a dating relationship (same sex or opposite sex) 	Yes	Yes
	<ul style="list-style-type: none"> Child in common Parent (or person in a parental role)/child Grandparent/grandchild Current or former members of the same household 	No	
Arson, G.S. 14-58	<ul style="list-style-type: none"> Current or former spouses (same sex or opposite sex) Currently live or formerly lived together as if married (same sex or opposite sex) Currently or formerly in a dating relationship (same sex or opposite sex) 	Yes	Yes
	<ul style="list-style-type: none"> Child in common Parent (or person in a parental role)/child Grandparent/grandchild Current or former members of the same household 	No	

⁶ As of this writing, G.S. 15A-534.1 refers in pertinent part to felonies "provided in Article[] 7A . . . of Chapter 14 of the General Statutes." However, S.L. 2015-181 gutted Article 7A and moved the rape and sex offense crimes to new Article 7B. The General Assembly certainly did not intend to remove these crimes from the scope of the 48-hour rule, and the Revisor of Statutes is expected to correct G.S. 15A-534.1 to refer to Article 7B under the authority in section 47 of S.L. 2015-181. Crimes committed before December 1, 2015, will be prosecuted under the former statutes set forth in Article 7A, and the 48-hour rule should apply to those cases as well.

PROBLEMS IN DETERMINING THE CONDITIONS OF PRETRIAL RELEASE

[Choose best answer(s) for each problem]

1. Frank Furrillo is arrested and brought before you for communicating threats to Joyce Davenport. Furrillo has been living as if married with Davenport for the past 18 months. Furrillo appears to be very upset at being arrested, but he cooperates with you and makes no threats. What action should you take?
 - a. Set release conditions as usual.
 - b. Set release conditions and commit him to jail for a reasonable time.
 - c. Do not set release conditions and commit him to jail for a reasonable time.
 - d. Place him in a holding cell for about 30 minutes.
 - e. Commit him to jail because only a judge may set release conditions for the period of 48 hours from Furrillo's arrest.
2. Charles Manson was arrested and was charged with being drunk and disruptive. After you have found probable cause he starts screaming obscenities in a loud voice. You ask him to be quiet and he yells louder. This continues for several minutes and then he quiets down. Every few minutes he continues to mumble obscenities. What action should you take?
 - a. Place him in a holding cell for about 30 minutes.
 - b. Set release conditions as usual.
 - c. Set release conditions and commit him to jail for a reasonable time.
 - d. Do not set release conditions and commit him to jail for a reasonable time.
3. Amy Ames, a local prostitute, is arrested and charged with assault on a government officer. She walked up to his patrol car, leaned in the open window, yelled "buzz off," and slapped him in the face. You have placed her under a \$500 secured bond. May you specify that the bond is to be satisfied with "cash only"?
 - a. Yes
 - b. No, unless authorized by a judge in local pretrial release policy
4. It is near the end of your shift and you have just conducted an initial appearance for Wilson Snipes. You have placed him under a \$2,000 secured bond. Snipes is resting uncomfortably in the jail because he cannot make bond. On the next shift (you are asleep at home) another magistrate, without consulting you, modifies Mr. Snipes' bond and places him under an unsecured bond. Snipes is released. Was the second magistrate's modification legally authorized based on these facts?
 - a. Yes
 - b. No
5. Willis Souse has been charged with disorderly conduct. He is grossly intoxicated and you have decided to delay the initial appearance pursuant to G.S. 15A-511(a)(3). You have checked the box to "hold him for the following purpose" on the commitment order. What is the best choice for completing that part of the order?
 - a. "Hold until sober."
 - b. "Hold a maximum of 8 hours."
 - c. "Hold until sober or a maximum of 24 hours."
 - d. "Hold until sober or a maximum of 8 hours."

6. Ruby Jones tells you that her husband, Will Jones, beat her and she asks you to issue an assault warrant against him. Ruby is badly bruised and her husband has a history of hitting her. You issue a warrant for his arrest. When Will Jones is brought before you he mumbles “that bitch will pay for this when I hit the street tonight.” What action should you take?
- Set release conditions as usual.
 - Set release conditions and commit him to jail for a reasonable time.
 - Do not set release conditions and commit him to jail for a specified reasonable period of time.
 - Commit him to jail for 12 hours.
 - Commit him to jail because only a judge may set release conditions for the period of 48 hours from Will Jones' arrest.
7. Pierre “Happy Feet” Jones has been arrested and charged with criminal trespass. This is the fifth time that he has been arrested for trespass after being forbidden. On each occasion he has trespassed on the property of Joan Arke. You have placed him under a \$500 secured bond and have attached a condition that he refrain from going on her property. Is that a legally authorized condition?
- Yes
 - No
8. Otis, the town drunk, is arrested and charged with misdemeanor breaking and entering. He has a bottle of Thunderbird stuffed into his coat pocket and he reeks of alcohol. Otis falls asleep on the floor while you are talking with the officer. He wakes up when prodded, but each time he goes back to sleep. Otis does not appear to recognize you, though you have known him for years. What action should you take?
- Set release conditions as usual.
 - Set release conditions and commit him to jail for a reasonable time until he is sufficiently sober to appear before you for an initial appearance.
 - Do not set release conditions and commit him to jail for a reasonable time until he is sufficiently sober to appear before you for an initial appearance.
9. Peter “The Rabbit” Martin has been arrested and charged with misdemeanor breaking and entering. You have known Peter for years and believe that basically he is a good kid. He does not have a criminal record. Recently you have heard that he is being influenced by a group of thugs (who have been charged with break-ins) who hang out at the local pool hall, the Corner Pocket. You release Peter on his written promise to appear and attach a condition that he stay away from the Corner Pocket. Is this condition legally authorized?
- Yes
 - No

Are you required to change his pretrial release conditions if Peter gets mad and demands a secured bond without conditions?

- Yes
 - No
10. L. Winston Vanderbilt has been arrested and charged with second-degree forcible rape. You have placed him under a \$10,000 secured bond. Vanderbilt has lived in the community all his life and certainly will appear for trial. However, he has no friends, is not married, and has no relatives in North Carolina. He is a millionaire, but his assets are frozen in numerous investments. May Vanderbilt be released if he agrees to sign his own secured bond by posting his own cash?
- Yes
 - No

11. Walt Crowell has been arrested and charged with assaulting his wife, Wanda Crowell. Walt Crowell is brought before you after 48 hours have elapsed because a judge was not available to set conditions of pretrial release. You place him under a \$500 secured bond. You also have attached a condition that Walt stay away from Wanda at home and at work. In addition, you have attached a condition that he not harass or assault her. Are these conditions legally authorized?

a. Yes

b. No

12. Defendant was arrested by law enforcement officers on a DCI hit on a warrant from another county. The officers do not have the warrant when they bring the defendant to you. What should you do?

PROBLEMS IN SETTING PRETRIAL RELEASE CONDITIONS

Instructions: For the following problems set the conditions of pretrial release as you would do so in your county.

To assist in doing these problems, the following is a list of each class of felonies and the minimum and maximum punishment for each, with the minimum based on a mitigated sentence in Prior Record Level 1 and the maximum based on an aggravated sentence in Prior Record Level VI:

Class A.....	life without parole or death	Class E.....	15 to 85 months
Class B1.....	144 months to life without parole	Class F.....	10 to 50 months
Class B2.....	94 to 481 months	Class G.....	8 to 38 months
Class C.....	44 to 228 months	Class H.....	4 to 30 months
Class D.....	38 to 201 months	Class I.....	3 to 15 months

1. Detective Steve Roman arrests without a warrant and brings in Allen Watts Ewing, age 26, of 1150 Brookside Drive. Earlier this evening—in the course of a search of Ewing’s home with a search warrant—ten pounds of marijuana were found in his bedroom. He also had a .38 caliber pistol under his jacket in his belt. Ewing has two previous arrests and convictions for misdemeanor assault and has been employed as a cook at the same place for the past two years.

The charges are maintaining a dwelling and possession with intent to sell or deliver (Class I felony)

2. Officer Kerry Davis arrests without a warrant Jerry Dennis Lawrence, age 17, of 1407 Roosevelt Drive, and brings him to you. Early this afternoon, Lawrence saw the keys in the ignition of Marsha Williams’ 1982 Volkswagen, license TRG 887, when the car was parked on Kennedy Street. Lawrence got in the car, drove it to Frame Street on the other side of town, and abandoned it, just before being apprehended by Davis. Lawrence lives with his parents and is a high school student. He has a previous conviction for reckless driving.

The charge is unauthorized use of conveyance (Class 1 misdemeanor)

3. SBI agent Felix Katz brings in Troy K. Cake, age 24, arrested under an arrest warrant for selling heroin and possessing heroin with intent to sell and deliver. The arrest warrant was issued in a county located 200 miles from your county. Cake has no prior arrests. Cake has \$1,500 cash and says he would be willing to post a cash bond.

The charges are sale of heroin (Class G felony) and possession with intent (Class H felony)

4. A new .45 caliber Smith & Wesson revolver, serial #RR456J77, fair market value of \$345, was stolen from Smithville Gun and Hobby Shop during a nighttime break-in two days ago. An undercover officer bought it this morning for \$30 from Fred Lloyd, age 30, and then arrested him without a warrant and brings him to you. Lloyd is a resident of the county and has one prior conviction for felonious breaking and entering.

The charges are felony breaking and entering and felony larceny (Class H felonies) and possession of firearm by a felon (Class G felony)

5. Detective Nancy Stone arrests Wayne Buchanan without a warrant and brings him to you and explains: Last night Wayne Buchanan poured gasoline inside and set fire to Donald Bell's 1991 Ford Mustang. The entire back seat was burned before the fire was extinguished. Buchanan is 16 years old and lives with his parents in town. He refuses to be released to the custody of his parents and he has previously failed to appear in court for a reckless driving charge.

The charges are burning personal property (Class H felony) and malicious use of an incendiary device (Class G felony)

6. Deputy Sheriff Samuel Burden arrests Steve Wiles, age 18, with an order for arrest for Wiles for failing to appear in court for the charge of accessory after the fact of armed robbery. The order for arrest was issued by a district court judge in your county and bears the notation "\$25,000 secured bond."

No new charge

7. Officer Jesse Wilson appears at your office with Ron Z. Bloat, age 31. The officer has arrested Bloat based on an outstanding arrest warrant for a \$55 worthless check. It is Saturday night. Bloat has a long history of mental trouble. Shortly after his appearance a worker from the Franklin Mental Health Clinic appears and says the Clinic would be happy to see to it that Bloat appears in court.

No new charge

Tab:

Search
Warrants

SEARCH WARRANTS (AUGUST, 2018)

Self-Instructional Materials for Magistrates & Law Enforcement Officers

in Applying the Law of Search Warrants	Search Warrants-Page 1
Statements of Probable Cause for Search Warrants	Search Warrants-Page 21
Search Warrant (AOC-CR-119) and copy.....	Search Warrants-Page 27
Form for Evaluation of Real Applications	Search Warrants-Page 31
Bartlett.....	Search Warrants-Page 33
Taylor	Search Warrants-Page 35
Edwards.....	Search Warrants-Page 41

A Short Introduction to Search Warrants

Jeff Welty

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July 2018

Overview and history. The founders of the United States of America valued individual liberty. They abhorred the absolute power of the English king and believed in limiting the power of the government. The first ten amendments to the Constitution – commonly known as the Bill of Rights – reflect the founders’ shared commitment to freedom from government oppression.

Different amendments protect different rights. For example, the First Amendment protects free speech and the free exercise of religion, while the Second Amendment protects the right to bear arms. The Fourth Amendment to the Constitution is the amendment that is pertinent to search warrants. It protects citizens’ rights to be free from unreasonable searches and seizures. The Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

In this context, the reference to “Warrants” means search warrants. A search warrant is simply “a court order . . . directing a law-enforcement officer to search designated premises, vehicles, or persons for the purpose of seizing designated items.”¹ The Fourth Amendment requires that a search warrant be supported by *probable cause* and that it be limited in scope to a *particular place* to be searched and *particular things* to be seized. These requirements were reactions to the English concept of a general warrant, which gave the king’s officers unlimited authority to enter and search people’s homes for evidence of wrongdoing. The founders believed that officers should be able to invade people’s homes only to the extent necessary to collect evidence of a specific offense, and only after a judicial official had determined that it was likely that evidence of wrongdoing would be found. The North Carolina Constitution contains similar provisions protecting citizens from unreasonable searches.²

¹ G.S. 15A-241.

² Art. I sec. 20 of the North Carolina Constitution provides: “General warrants, whereby any officer or other person may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.” Court decisions have interpreted this language to be virtually coextensive with the protections of the Fourth Amendment.

The Fourth Amendment is the cornerstone of the law concerning search and seizure.³ Courts have interpreted the Amendment as stating or implying the following precepts:

- Searches and seizures must be reasonable.
- Searches conducted pursuant to a valid warrant are reasonable.
- A valid warrant requires (1) probable cause, (2) a specific description of the place to be searched, and (3) a specific description of the property to be seized.
- Searches conducted without a valid warrant are unreasonable unless an exception to the warrant requirement applies. (There are quite a few exceptions, including consent and exigent circumstances, but the exceptions are beyond the scope of this paper.)

Because the Fourth Amendment often requires officers to obtain search warrants before conducting searches, and because applications for search warrants are often directed to magistrates, it is important for magistrates to understand the legal limits on search warrants, including the requirements of probable cause and particularity. Those topics are discussed in greater detail below.

Applying for a search warrant. Normally, the person seeking a search warrant will be a law enforcement officer. The officer may use form AOC-CR-119, which is available on the NCAOC website, or may use a form or format created by his or her agency. It is common, but not required, for officers to attach supplementary pages to the form rather than trying to cram all of the necessary information into the blanks on the form.

Whatever form is used, the application will contain a sworn statement, or affidavit, from the applicant. The statement must set forth factual information that establishes probable cause to believe that items subject to seizure – generally, evidence of a crime – will be found in a particular place.⁴

The application may be submitted to any magistrate or judge. If the issuing official is a superior court judge or an appellate judge, the search warrant is valid statewide, while a search warrant issued by a district court judge is valid throughout the judge's district, and one issued by a magistrate is valid in

³ Although the Fourth Amendment is the foundation of the law in this area, statutory and case law are also pertinent. For example, Article 11 of Chapter 15A of the North Carolina General Statutes establishes a number of important procedural requirements governing search warrants.

⁴ G.S. 15A-244.

the magistrate's county.⁵ Because judges are often busy with court during the day and are not formally "on duty" at night, most search warrant applications are presented to magistrates.

Determining probable cause. The magistrate must determine whether the application does, in fact, establish probable cause. Probable cause is meant to be a practical and common sense standard. It is a lower hurdle than proof beyond a reasonable doubt, or even proof by a preponderance of the evidence. On the other hand, it must be more than a hunch or a suspicion. There is a considerable body of case law regarding whether certain facts amount to probable cause. Many of those cases are collected and summarized in Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (5th ed. 2015).

Often, the application will provide information that the applicant received from another source, as opposed to his or her own observations. That is perfectly acceptable, but it is important to consider the reliability of the source when determining whether probable cause exists. The other source may be another officer; a crime victim; a witness; a confidential informant; or an anonymous tipster. Generally, information from other officers, victims, and ordinary witnesses may be treated as credible unless there is a reason to do otherwise. By contrast, information from confidential informants and anonymous tipsters should be viewed with a healthy skepticism. Such information normally isn't reliable enough to provide probable cause on its own – it must be corroborated, at least in part, unless it comes from an informant with a proven track record of reliability.

Sometimes the information in an application will provide probable cause that evidence of a crime was present at a particular location at one time, but that time is long past. For example, an officer may develop evidence that a suspect sold drugs from his house six months ago. Such information is said to be "stale" and will not provide probable cause to support a search warrant. Courts have suggested that information older than two months is at a greater risk of being stale, but staleness depends on many factors other than how old the information is, including what kind of evidence is at issue and whether the crime in question was a one-time incident or an ongoing business activity.

Determining particularity. In addition to determining probable cause, a judicial official must determine whether a search warrant application describes the place to be searched and the property to be seized with sufficient particularity. The purpose of the particularity requirement is to ensure that officers search for the right items in the right places and do not go on general rummaging expeditions.

⁵ G.S. 15A-243.

As to the place to be searched, it is generally sufficient to describe real property, such as a home or an apartment, by its address. However, providing additional information, such as a description of the premises, its longitude and latitude, or driving directions to reach it, is a common practice and may be helpful if the address turns out to be inaccurate. Vehicles likewise may be identified by plate number or VIN number but also may be described by make, model, color, and the like.

As to the object of the search, the description should be sufficiently precise that an officer not involved in the investigation could read the description of the items to be seized and know what property to seize and what to leave in place. The more common an item is, and the more likely that it may be possessed legally, the more specific the description should be. For example, in a case involving a stolen bicycle, it might not be sufficient to describe the property to be seized simply as “a bicycle” – bicycles are very common and are legal to possess, and an officer executing the warrant could easily come across multiple bicycles on the premises and be unsure which one to seize. “A blue girls’ Trek bicycle with a white wicker basket on the handlebars” would be a much better description. By contrast, courts are more forgiving when the property in question is contraband that it would never be wrong to seize. So, “a quantity of cocaine” might be a perfectly adequate description.

Issuance, execution, and return. If the application establishes probable cause, satisfies the particularity requirement, and is otherwise in order, a magistrate should issue the warrant. An officer must execute the warrant – that is, must conduct the search – within 48 hours.⁶ Once the warrant has been executed, the officer must provide a list of items seized to the person from whom they were taken,⁷ and must return the warrant to the clerk along with a copy of the list.⁸

⁶ G.S. 15A-248.

⁷ G.S. 15A-254.

⁸ G.S. 15A-257.

Test Yourself

Answer the following questions, then check the answers on the back side of this sheet.

1. Which amendment to the United States Constitution concerns search and seizure?
 - a. The First Amendment
 - b. The Second Amendment
 - c. The Fourth Amendment
 - d. The Fourteenth Amendment

2. What is the legal standard for issuance of a search warrant?
 - a. Probable cause
 - b. Reasonable suspicion
 - c. Preponderance of the evidence
 - d. Beyond a reasonable doubt

3. Which of the following may not issue a search warrant?
 - a. Magistrate
 - b. Sheriff
 - c. District court judge
 - d. Chief Justice of the Supreme Court of North Carolina

4. May probable cause be based on information provided by a confidential informant?
 - a. No
 - b. Yes, if the informant has a track record of reliability
 - c. Yes, if the information has been corroborated by a law enforcement officer
 - d. Both (b) and (c)

5. What period of time have courts said increases the risk that information will be stale?
 - a. 24 hours
 - b. 48 hours
 - c. Two weeks
 - d. Two months

Answers: c, a, b, d, d

Self-instructional Materials for Magistrates and Law Enforcement Officers in Applying the Law of Search Warrants

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APPLYING THE LAW OF SEARCH WARRANTS

PREFACE

These materials are intended to help you learn how to apply the law of search warrants in making decisions that a magistrate might be required to make when dealing with search warrants. Although they are directed toward teaching a magistrate how to determine probable cause and how to fill-out a search warrant, they also are applicable to teaching these duties to a law enforcement officer. These materials are intended to guide you toward learning skills in applying the law of search and seizure. When you have successfully learned a skill, you should be able to make a correct decision in a situation that calls for the skill. Following is a list of the skills that you should learn from these materials.

- A. To determine whether a given set of facts justifies the issuance of a search warrant.
- B. To draw out from a law enforcement officer the information that is necessary to establish probable cause.
- C. To write an adequate description of the property to be searched for.
- D. To write an adequate description of the place to be searched.
- E. To follow the proper procedure in issuing a search warrant.

The materials are divided into an introduction and five sections. Each section is directed toward one of the skills listed above. The material in these sections is largely presented in the form of "programmed" instruction. This means that you will be asked to fill in blanks and supply the answers to questions using information that has appeared in the material. When you come to one of these blanks or questions, you may certainly read back over the material to find the answer. The answer itself appears below the question, in single-spaced type enclosed between two lines. You should keep that answer covered, however, until you have answered the question yourself. Proceeding in this way helps you to master the material more easily. *Read each answer all the way through.* Take your time and reread any preceding material if you do not understand an answer. If you still have questions you will be provided an opportunity to ask them later. Remember, you are *teaching yourself* a subject basic to the proper performance of your duties.

INTRODUCTION

Americans traditionally have resented the invasion of individual privacy by government officials for the purpose of search. Yet they have recognized the necessity of invading individual privacy in order to detect and to prevent crime. The law of search and seizure has grown in response to the need to balance these two interests.

The Fourth Amendment to the Constitution of the United States responds to this conflict by prohibiting "unreasonable" searches and seizures. This command is directed to both federal and state governments. In addition, the Constitution of North Carolina, which prohibits the general warrant (authorizing arbitrary searches) as "dangerous to liberty," has been expanded by judicial interpretation to encompass a general prohibition against unreasonable searches and seizures.

Origin of the Law of Search and Seizure

The Fourth Amendment to the Constitution of the United States provides: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

The laws of search and seizure has developed largely in response to the _____ Amendment to the United States _____. This amendment requires that searches be _____ and sets out requirements for search warrants.

The law of search and seizure has developed largely in response to the Fourth Amendment to the Constitution of the United States and requires that searches be reasonable.

Article I, Section 20 of the Constitution of North Carolina provides: "General warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted."

The North Carolina Constitution prohibits _____ warrants.

The North Carolina Constitution prohibits general warrants and encompasses a general prohibition against unreasonable searches and seizures.

In recent years, court cases and a fairly small number of statutes have put additional flesh on the bones of these _____ requirements to protect people's privacy.

The constitutional requirements have been clarified in recent years.

The law of search and seizure are aimed at protecting for everyone a basic American right--the right to be left alone. The law helps to p_____ this r_____ by restricting government officials' power to interfere with people's _____.

The law of search and seizure helps to protect this right to be left alone by restricting official action in interfering with people's privacy.

If an officer wants to search an individual's person or property, the officer may do so as long as the officer does not illegally _____ with the individual's privacy.

An officer may not illegally interfere with a person's privacy.

The law of search and seizure attempt to balance the need to enforce laws against the need to _____ people's _____ to be _____ alone.

To protect people's right to be left alone is a major purpose of the laws of search and seizure.

One of the traditional means of protecting the right to privacy has been to require law enforcement officers to obtain a search warrant from a neutral judicial officer. Decisions of both the United States Supreme Court and the North Carolina Supreme Court make clear the importance of the role of the magistrate as a check on the power of the state to interfere with a person's privacy. These decisions have required that the judicial officer be neutral, that the person applying for the warrant demonstrate probable cause to make a search, and that the warrant and its supporting affidavit specify the justification for the search.

Your principal function as a magistrate then is to exercise your independent judgment in evaluating facts presented to you by a law enforcement officer to see if they establish p_____ c_____ and therefore _____ the issuance of a search warrant.

In issuing search warrants, the magistrate's primary function is to use neutral and independent judgment to determine if the facts described by the officer establish probable cause to justify the issuance of the warrant.

Failure to comply with the constitutional requirements can result in adverse effects on both the state and the officer executing the search warrant. The courts refuse to admit into evidence information and objects obtained from a search based on an invalid search warrant. The result is that the state is unable to convict some offenders because the constitutional requirements for a valid search were not satisfied. The warrant may in some cases be so defective as to subject the officer executing it to civil and criminal penalties and disciplinary action by the officer's employing agency.

Two practical consequences of an invalid search warrant are the real possibilities that the state may find that information critical to a conviction is in _____ in evidence or that the officer executing the invalid warrant faces _____ and _____ sanctions for doing so.

The invalid search warrant presents real problems for the prosecution because essential evidence may be inadmissible and may subject the law enforcement officer to criminal and civil sanctions.

Of course the most serious result is a weakness in our system of criminal justice that comes from the failure of the judicial officer to exercise independent judgment as a _____ on the power of the state to invade the _____ of its citizens.

The most serious consequence of the magistrate's failure to observe constitutional requirements in issuing a search warrant is the harm that is done to our system of criminal justice because the magistrate does not act as a check on the state's power to interfere with a person's privacy.

Section A

The purpose of this section is to develop the skill to determine whether a given set of facts justifies the issuance of a search warrant.

As discussed in the introduction, a basic constitutional requirement for any search is probable cause. One of the judicial officer's most difficult problems is determining whether the facts related by an officer establish probable cause to support the issuance of a valid search warrant. This determination, however, is one of the most valuable contributions that a magistrate makes. An independent evaluation of

the facts when an officer applies for a search warrant can prevent an illegal search, the results of which may be excluded from evidence at trial. Probable cause for a search requires enough knowledge to lead a reasonable person to believe that there is a fair probability that the object of the search is in the place to be searched. Probable cause, then, is based on the use of judgment by a _____ person. It is (more/less) than reasonable suspicion but (more/less) than proof beyond a reasonable doubt.

Probable cause is based on the judgment of a reasonable person. It must be more than reasonable suspicion but less than proof beyond a reasonable doubt.

CASE: Several residents living near a bank which had just been robbed described to police a car (including license number) which had been at the bank before the robbery and left immediately after the robbery occurred. They saw a man with a satchel run from the bank into the car at the time of robbery. Is this information sufficient to establish probable cause that the fruits of the robbery are in the suspect's car?

The evidence provided by the residents was sufficient to show probable cause for a warrant. A reasonable man would believe that it was likely that the stolen money would be in the car, even though it is not certain.

CASE: A woman called the police that The Cove, a local night club, was selling crack cocaine. Her son had come home apparently having just used cocaine , and she said that it was common knowledge that The Cove was the only place her son could obtain cocaine in her small rural community. Does probable cause exist to indicate that cocaine is present at The Cove?

Probable cause does not exist. The only indication that cocaine were there was the woman's vague belief that her son obtained cocaine at The Cove. She did not see anyone sell cocaine to her son, nor did she claim that her son had ever told her that he purchased cocaine from The Cove. This information would not convince a reasonable person of the likelihood of finding cocaine for sale at The Cove.

CASE: A city law enforcement officer comes into your office and says that the officer has just received an anonymous telephone call which said that a noted drug dealer had heroin in his house. The officer wants you to issue a warrant to search the house for heroin. What should you do?

The facts given by the officer, based solely on an anonymous telephone call, are no more than speculation about what is in the house. You should refuse to issue the warrant unless the officer can swear to specific facts that would lead a reasonable person to believe there is a fair probability that heroin is in the house. The next section contains instruction about obtaining those specific facts.

One of the most difficult situations in which you will have to determine if probable cause exists is the case when an officer wants a search warrant based on a confidential informant's report. The officer naturally wishes to protect the informant's identity as much as possible, but must show enough facts to indicate probable cause for the search. Specific information must be included in the search warrant application when an informant's report is being used. The officer should state specifically why the informant is probably telling the truth and give enough information to convince a reasonable person that the informant is indeed telling the truth. In other words, the informant should be shown to be reliable (or the informant's information should be shown to be reliable). However, the informant's name does not have to be revealed to the magistrate or appear in the application.

An informant's _____ or the _____ of the informant's information should be established when a search warrant is based on an informant's report.

It is important to establish an informant's reliability or the reliability of the informant's information when an informant's report is used in a search warrant application.

Just exactly what information will be sufficient to establish an informant's reliability in any given case is unclear. But it helps if the officer can state how often the officer has relied on the informant's information and how often this information has led to an arrest and/or conviction.

Determine whether the following statement is adequate to establish the informant's reliability: "A reliable and confidential informant who has in the past given me, Detective Don Smith, information that has resulted in arrests and convictions in court on drug charges six times."

This is a fairly common way of stating an informant's record of reliability and is sufficient. But the statement can be strengthened considerably if the officer states how often the informant has volunteered information and that the information has generally been accurate.

The informant's good track record is not the only factor to be considered. Especially when the informant is used for the first time, you should consider the informant's relationship to the suspect, the likelihood of that informant having the particular information, and any other factor the officer would know that would increase the likelihood that the informant was not an irresponsible person giving false information.

Another way to show that the informant's report is reliable is for the officer requesting the warrant to offer evidence of independent personal information about the suspect that supports or corroborates the informant's report. This knowledge must be shown in the affidavit by specific facts and not by the mere assertion that the officer has such information. Determine whether the following statement is adequate: "This officer has personal knowledge that the person named in the warrant is a user of narcotics."

The officer may indeed have such information, but has not said what it is. This statement establishes no more than a mere assertion that such information exists. The court will want to know (and so should you) just exactly what the officer knows to support a belief that the suspect is a narcotics user.

The informant should be able to supply enough information to convince a reasonable person that the suspect is indeed engaging in an illegal activity and that the informant is not merely passing on a rumor. Consider the following statement: "The informant states that his roommate told him that a man, whose name he thinks is John Doe, was on Main Street last night selling amphetamine pills." Is this informant's report sufficient probable cause to issue a warrant?

It is evident from the statement that the informant has no firsthand knowledge of the alleged offense. Further, assuming as a court will, that the statement contains all the information that the informant has, the informant is unable to accurately identify the suspect or give enough facts about the alleged offense to be sure that a violation of law actually took place. A warrant based on this information would be invalid, and evidence obtained in a search in executing the warrant would be inadmissible in court.

In other words, even though the informant is reliable, there should be an indication of the basis of the informant's conclusion and not just the conclusion itself.

In short, an application for a search warrant based on an informant's report should contain enough facts to indicate the source of the informant's conclusion and that the information is not a mere rumor. And it should establish the informant's reliability, including, when possible, the officer's personal knowledge that supports the informant's report.

Before an informant's information may be used as a basis for a valid warrant, the application should indicate enough to establish that the information is not a mere rumor. The informant's reliability should also be shown, and it's especially helpful if the officer's personal knowledge corroborates the informant's report.

Is the following affidavit adequate under the guidelines discussed above?

"A reliable informant, who has in the past volunteered information on three occasions that resulted in an arrest and conviction each time, within the past 24 hours told me, Detective Jane Miller, that Henry Smith has in his house located at 24 Main St., Dunn, N.C., a quantity of the controlled substance, amphetamine. The informant told me he saw the a large quantity of amphetamines in the house within the past 72 hours, and at that time he received several amphetamine pills that came from Henry Smith while he was in the kitchen. I have suspected Henry Smith of possessing amphetamines since three months ago when I arrested him during a raid at a party at which amphetamines and other narcotics were being used. I have seen Henry Smith since that time in the company of other confirmed users of narcotic drugs on several occasions."

This is a good example of the type of information that an affidavit should contain when based on an informant's report. The basis of his conclusion is stated (he saw the drugs) and his reliability is shown by his track record and by the officer's information which corroborates the informant's report. In addition, the report gives the time when the informant saw the drugs in the house as well as the time the informant gave his information to Detective Jane Miller.

Sometimes information is supplied by informants who are not merely confidential—they are anonymous. Even the officer does not know the identity of the person who has given the information. Anonymous information by itself is insufficient to establish probable cause. In some cases, however, anonymous information may help to establish probable cause if the officer provides other corroborating and reliable information so that the totality of circumstances establish a fair probability that the object of the search is in the place to be searched.

Anonymous information by itself is _____ to establish probable cause. However, anonymous information along with other corroborating and reliable information may establish probable cause when the t _____ of the circumstances establish a f _____ p _____ that the object of the search is in the place to be searched.

Anonymous information by itself is insufficient to establish probable cause. However, when the totality of circumstances presented, including the anonymous information, establishes a fair probability that the object of the search can be found in the place to be searched, then probable cause exists to issue a search warrant.

Section B

The purpose of this section is to develop the ability to draw out information from an officer which will support probable cause.

In the previous section we took a look at what facts constitute probable cause. As you have probably guessed, probable cause is a fairly ambiguous concept. Often an officer will actually have good reason to believe that contraband may be found in a certain place but fail to articulate reasons adequately to establish probable cause for issuance of the warrant. In these situations you will need to be able to spot weaknesses in the officer's statement of facts and then question the officer to see if the information is sufficient to justify the issuance of a warrant. In this section you will practice picking out the weak spots in various statements of facts.

As we have seen before, probable cause is information which would lead a _____ person to believe that the object of the search is in the place to be searched.

The information should be sufficient to cause a reasonable person to believe that the object of the search is really in the place to be searched.

From the list that follows, choose the items which would lead a reasonable person to believe that contraband could be found in a certain house:

- A. A detailed report from a confidential informant whose previous reports had been accurate and which showed that he had seen a suspect selling drugs in his house, confirming what the police already had suspected.

- B. A tip from a Department of Social Services caseworker who during a house call had seen marijuana growing behind the house.
- C. A complaint from an irate woman that her neighbors were car thieves because they had several cars in their yard which they were apparently "stripping."
- D. A report by an officer that she saw and smelled what appeared to be several gallon jugs of whiskey partially covered by a sheet in the kitchen of a house when called to the house concerning a possible domestic dispute.

Answers "A" and "D" are fairly clearly facts that would cause a reasonable person to believe that contraband could indeed be found at the location described by the officer or informant. Answer "B" could be very strong evidence that marijuana could be found behind the house, but what additional information would you want to know? Wouldn't it be reasonable to first satisfy yourself that the caseworker was capable of identify growing marijuana? Answer "C" pretty clearly could not stand by itself. A reasonable person could think of several explanations for the presence of the automobiles which would be at least as reasonable as the possibility that they were stolen. If an officer had come to you with the woman's complaint and asked for a warrant, what additional information would you want? At the very least the officer should drive by the house to see if any of the cars resemble those reported stolen, and to make other inquiries regarding the activities of the occupants of the house.

Consider the case situations which follow and write in the space provided the kind of additional information that would be required to establish probable cause.

CASE: An officer comes to you and says that the officer has been watching a suspect who previously has been convicted of possessing stolen goods. This man has been meeting another man who has also been convicted of possessing stolen goods in the latter's house at regular intervals. The officer states that the officer has personally seen the suspect enter the house several times with VCR's, stereo equipment, and television sets, and that the suspect's wife has also been seen at the house.

The facts that the officer gave simply do not establish illegal activity any more than legal activity. The facts that will constitute probable cause are (1) facts that are inconsistent with lawful activity (or if the facts by themselves are consistent with lawful activity, what makes those facts collectively appear to be indicators of illegal activity, based on the officer's training or experience), or (2) the presence of evidence of illegal activity. The facts in the stolen goods case described above can be explained just as easily by legal as illegal conduct, so there is not yet probable cause. You might try to find out whether the officer has evidence of whether the goods being brought to the house are stolen, whether there have been recent break-ins in the community which these kind of goods have been stolen, whether a reliable informant had passed on information indicating that the suspect is currently dealing in these kind of stolen goods, etc.

CASE: An officer comes to you and says that the officer has a report from an informant that there is going to be a drug party at a certain house tonight in which marijuana, LSD, and possibly cocaine will be distributed to the guests. The officer has a list of names, including the occupant of the house and several of the guests. The officer knows what time it is going to be held and how much of each drug will be available. The officer knows that several of the persons listed have been convicted of possessing drugs and that almost all have been suspected of being drug users.

The officer has information indicating that there will indeed be contraband at the place to be searched, but the officer has neglected to give any information concerning the reliability of the informant and how the informant knew that the party is going to be held there (that is, the informant's basis of knowledge). You will want to know what the officer's experience has been with this informant and any other information that would tend to show that the informant knew what he was talking about.

CASE: An officer asks for a warrant to search a house based on an informant's report. This informant has cooperated with the department several times. Most of the informant's reports have resulted in convictions and all have resulted in arrests. The informant states that yesterday he was playing poker in a regularly held game out in a house in the country when one of the players, who lived in the house, put a quart of nontaxpaid whiskey on the table. When the other players questioned him about where he had gotten it, he jokingly said that he was "picking up a little extra money between Asheville and Morganton on Friday nights." The informant also stated that he had seen in the kitchen two

cardboard cartons of quart jars identical to the one on the table that looked like they had white liquor in them. He also said that the man's name was Harry James and provided the exact location of the house. The officer said that the officer has had Harry James under surveillance off and on for several months.

Although this information might be sufficient to establish probable cause (especially if something was said about the informant's ability to recognize nontaxpaid liquor), it would be helped by providing more specific information about the officer's own personal knowledge of Harry James's involvement with nontaxpaid liquor that would support the informant's report. A statement that the officer "suspected" or had "been watching" the suspect for some time is not particularly useful. What had the officer seen while having James under surveillance?

CASE: An officer requests a warrant to search a house based on an informant's report. The informant has volunteered information about drug cases on six separate occasions, and all have resulted in convictions. The informant stated that the informant thinks that the occupant of a house (giving its address) is selling crack cocaine. The basis of his conclusion is the fact that he has seen several young people stop briefly at the house, talk to the occupant, and then leave. The informant knows one of the young people to be a user of cocaine. This person is also known to the officer as having been convicted of possession of cocaine and is now on probation.

The facts given by the informant do not establish probable cause. There are just as many legitimate reasons for the people to be going to the house as illegal, and there is no specific information about selling cocaine. Don't be fooled by the proven reliability of the informant. The facts given in each case must be considered independently. In this case the officer will have to get more specific information, if possible, from the informant or from other sources to support a belief that cocaine is being sold from the house. You probably noticed that the officer's personal corroboration of the informant's report concerned only one of the people going to the house.

Section C

The purpose of this section is to develop the skill to write an adequate description of the property to be searched for.

The search warrant must describe as accurately as possible what the officer is to look for, so that it will not appear to authorize the officer to grab everything in the place and so that the officer can identify the property to be seized. The warrant must describe _____ the officer is looking for and the description must be detailed enough that the officer can _____ the property if the officer finds it.

The officer must know as accurately as possible what to be looking for and to be able to recognize/identify the property if the officer sees it.

If the officer is searching for a stolen refrigerator, the officer needs a clear idea of what this stolen refrigerator looks like (identifying marks, model number, serial number, etc.) so that the officer will be unlikely to take one that is legally owned.

Below are three descriptions of property to be searched for. In each case indicate whether you think the description was precise enough to be considered valid.

Description 1: ". . . certain evidence of the crime (possession of stolen goods) was to be found on the defendant's person and his residence . . ." (valid/invalid) Why?

Invalid. Not specific in any way.

Description 2: The warrant directed the officers to seize any property ". . . being used and/or possessed in violation of . . ." the obscenity statute. (valid/invalid) Why?

Invalid. The court ruled that the warrant was too general in that it gave no guidelines to the officers as to what is obscene and what is not.

Description 3: The warrant described ". . . a set of Wilson Staff golf clubs with rubber grips, in fairly worn condition . . ." to be searched for in the defendant's house. (valid/invalid) Why?

Valid. The description indicates the item which should be seized with enough precision so that it would be unlikely that legally owned property would be taken by mistake.

When the kind of property the officer is searching for can never be possessed legally, the description need not be as detailed as when the property the officer is searching for can be confused with something that can be legally possessed.

If the warrant says only to seize "heroin" then it (can/cannot) be interpreted to permit the officer to take something that the owner is entitled to have. This is because the owner can (sometimes/never/always) have heroin.

Describing "heroin" as the property to be seized cannot be interpreted as permitting the officer to take away something the owner is entitled to have, because the owner can never legally possess heroin.

Section D

The purpose of this section is to develop the skill to write an adequate description of the place to be searched.

The search warrant must accurately describe the place to be searched so that the officer may reasonably be expected to find the place to be searched; otherwise it would not be clear that the warrant authorized the search actually made by the officer. The description of the place must be complete enough so that the officer _____ reasonably make a mistake and search the _____ place.

An officer cannot reasonably make a mistake and search the wrong place if the description of the place to be searched is detailed enough.

This rule ensures that the search covers only the place for which _____ to search has been shown. It is also a good idea, whenever possible, to state in the warrant the name of the person who possesses the place to be searched.

A full description of the place to be searched ensures that the search covers only the place for which probable cause to search has been demonstrated.

CASE: The affidavit reads "to search an apartment located at Colonial Arms Apts. located at 714 W. Henderson Street, Monroe, N.C." Is this description is adequate?

The affidavit is inadequate since there is more than one apartment at the given address. An adequate description would include the apartment number and the tenant's name, if available.

CASE: The affidavit reads, "to search apartments occupied by John Doe at 413 W. Franklin Street (Apt. 22B), Chapel Hill, N.C. and at 117 Canal Street (Apt. 6), Chapel Hill, N.C. for appliances stolen from Hill Office Supply: two IBM computers model 118, serial numbers 473-Z11368 and 356-X4629." Is this affidavit is adequate?

This affidavit is adequate. There's not much chance of using the warrant at the wrong place. Although not discussed before, it is better to issue a separate warrant for each of two separate places to be searched, even if they belong to the same person.

Section E

The purpose of this section is to develop the ability to follow the proper steps in issuing a search warrant.

In the preceding sections you have learned that p_____ c_____ consists of facts that would lead a _____ person to believe that the object of a search can be found in the place to be searched; that an adequate description of the _____ to be searched is one that would not lead the officer to make a _____ and to search the wrong place; that an adequate description of the _____ of the search is one that would prevent an officer from making a _____ and from taking property which should not be taken.

Probable cause is a factual situation that would lead a reasonable person to believe that the object of the search can be found in the place to be searched. An adequate description of the place to be searched is one that would prevent an officer from making a mistake about the place to be searched, and an adequate description of the object of the search is one that would prevent the officer from making a mistake about what to take.

If you can do what has been taught so far, you have the most important aspects of the law's requirements. Meeting these requirements is part of the general warrant-issuing procedure, which must be followed to make sure that the validity of the warrant cannot be successfully attacked.

The steps you as a magistrate must be sure to follow in issuing a search warrant are these:

1. Make sure there is a completed application for a search warrant. Either the applicant or you may complete the application (other than where signatures are required).
2. Place the applicant under oath or affirmation and swear the applicant to the truth of facts stated in application.

3. Examine the officer about the facts stated in the application.
4. If applicant tells you facts that are not stated in application, they must be added in writing to the application OR you may tape-record the testimony OR reduce it to writing on separate paper, provided you file the tape-recording or separate paper with clerk when you file the copy of the search warrant and application.
5. You may take affidavits from persons other than applicant, provided you attach them to application.
6. Determine whether descriptions of the premises and property are adequate.
7. Make sure the applicant has signed the application. Sign and date the application.
8. If a tape-recording or separate paper writing of oral testimony has been made or additional affidavits have been attached, indicate that at bottom of application and sign your name.
9. Complete the search warrant, including date and hour, signature, names of applicant and others giving information.
10. Give original (white copy) and one copy (pink copy) of warrant and application to officer.
11. File a copy (green copy) of warrant and application and tape-recording or separate writing or oral testimony, if any, with clerk.

Using these steps means, for example, that immediately after getting a completed search warrant application, you would _____ the applicant to the truth of facts in the application, and _____ the applicant about those facts.

You would swear the applicant to the truth of facts stated in the application, and examine the applicant concerning those facts.

If the applicant tells you facts that are not stated in the _____, they must be _____ to the application OR _____ or _____ AND you must file them with the clerk when you file the _____.

If the applicant testifies about facts not stated in the application, they must be added in writing to the application OR tape-recorded or reduced in writing on a separate paper AND you must file them with the clerk when you file the application and warrant.

It is important to tape-record or reduce oral testimony to writing in the application or on separate paper because the failure to do so will mean that the testimony cannot be considered in court when the validity of the search warrant is challenged.

In summary, carefully see that all the information provided for in the application and search warrant form is filled in. Remember to:

- place the applicant under oath or affirmation;
- examine the applicant about the facts stated in the application;
- if the applicant gives oral testimony about facts not stated in the application, either add facts in writing to the application or tape-record or write on a separate paper and file with the clerk;
- determine probable cause;
- check to make sure the application and the search warrant are properly signed and completed;
- file a copy (green copy) of the search warrant and application with clerk;
- give the original (white copy) and a copy (pink copy) to the officer.

Briefly these seven requirements are:

- (1) _____.
- (2) _____.
- (3) _____.
- (4) _____.
- (5) _____.
- (6) _____.
- (7) _____.

Briefly these seven requirements are:

- (1) swear the applicant.**
 - (2) examine the applicant.**
 - (3) write or record oral testimony about facts not in application.**
 - (4) determine probable cause.**
 - (5) make sure application and warrant complete.**
 - (6) file copy (green copy) of warrant and application with clerk.**
 - (7) give original (white copy) and copy (pink copy) to officer.**
-

These are the steps that make up the whole search warrant procedure. Follow these steps, make sure probable cause has been shown, see that the descriptions are adequate . . . and you have done your job.

STATEMENTS OF PROBABLE CAUSE FOR SEARCH WARRANTS

1. The applicant states that yesterday , he purchased two ounces of cocaine. The cocaine was delivered to the applicant by Gene Orendorff, Jeff Manning, and Kenny Woods, who were arrested when they delivered the cocaine. The applicant further states that he paid \$1650.00 in marked U.S. currency (listed above) for the cocaine. During the time spent on the purchase of cocaine, the applicant and the suspects were under surveillance by other officers. The applicant states that from the movement of the suspects during and before the purchase and information received from two confidential sources of information after the purchase, the applicant has reason to believe the U.S. currency (listed above) and other controlled substances are at this time located in the above described location.

Good/Bad

Why?

See *State v. Hyleman*, 324 N.C. 506 (1989).

2. The information contained in this application is based upon my personal knowledge and upon factual information I have received from others. A reliable informant who had provided information in the past and whose information in the past had led to arrest and conviction under the N.C. Controlled Substances Act has told the undersigned that approximately one week ago the informant saw Lilly Ann Beam with approximately one pound of marijuana at her home on Ridge Road. Another informant told the undersigned that Lilly Ann Beam sold marijuana to them today. Lilly Ann Beam is on probation for a violation of the Controlled Substances Act.

Good/Bad

Why?

See *State v. Beam*, 325 N.C. 217 (1989).

3. We have been informed by a reliable confidential informant that he has been inside the above address within the past 48 hours and has seen cocaine inside the residence and cocaine is being sold at this time by the above occupants. The informant is familiar with how cocaine is packaged and sold on the streets, and he has used cocaine in the past. We have known this informant for three weeks and information provided by this informant has resulted in the seizure of controlled substances included in the N.C. Controlled Substances Act and led to the arrest of at least six individuals for violations of the N.C. Controlled Substances Act.

Good/Bad

Why?

See *State v. Graham*, 90 N.C. App. 564 (1988).

4. I, the undersigned applicant, have been a law enforcement officer for more than three years with the Smith County Sheriff's Department. During this time I have received extensive training including Basic Law Enforcement Officer's Certification and Advanced Criminal Investigation courses presented through the North Carolina Justice Academy. During the last year I have been involved in several investigations concerning drug offenses in Smith County. Within the past five days, the person who I will refer to as "He," regardless of the person's sex, contacted me. This person offered his assistance to the city/county vice unit in the investigation of drug sales in the city and county. This person told me that he had been inside the residence described above where he observed a room filled with marijuana plants. He stated that the suspect Charles Wayne Newcomb was maintaining the plants. This applicant confirmed the identity of the suspect to be Charles Wayne Newcomb. This information was obtained through D.M.V. records through vehicle registration. This applicant further checked with Duke Power Company and found this residence to have Charles Wayne Newcomb listed as the current occupant.

Good/Bad

Why?

See *State v. Newcomb*, 84 N.C. App. 92 (1987).

5. Sometime between one and five days ago, the Fairchild Christian School in the City of Livingston was broken into and two microscopes (described above) were stolen. That sometime before the date of this application a reliable and confidential informant personally contacted the applicant with the information that the stolen microscopes are in the above described residence of Mark Timothy Roark.

Good/Bad

Why?

See *State v. Roark*, 83 N.C. App. 425 (1986).

6. I and other officers have received information from a confidential and reliable informant that the Bo King is residing at 1509 Luther Street and is possessing cocaine for the purpose of sale at 1509 Luther Street. This informant has been to 1509 Luther Street within the past 48 hours and has observed Bo King possessing cocaine. This informant is familiar with cocaine and how it is packaged for street use. We officers have known this informant for approximately one year and during this time this informant's information has led to the arrests and convictions of many people for violations of the North Carolina Controlled Substances Act.

Good/Bad

Why?

See *State v. King*, 92 N.C. App. 75 (1988).

7. I have received information from a confidential and reliable informant that occupants of the dwelling described above have in their possession and are selling a large quantity of cocaine. I have known this informant only one week, but during that time he has given me information that I know from police intelligence files is true. He has also introduced me to two individuals (while I was in an undercover capacity) from whom I have bought controlled substances. He has also given me information that has allowed me to buy cocaine from two other individuals. Based upon the proven reliability of this informant, I request a warrant to search the above described premises for cocaine.

Good/Bad

Why?

8. A confidential and reliable informant has given me information that occupants of the above described premises are selling large quantities of cocaine. This informant has been inside the dwelling within the past 48 hours and has seen large quantities of cocaine. Within the past 48 hours, this informant has, at my direction and while under my control, purchased a small quantity of cocaine from the dwelling occupants. The informant was searched prior to entering the dwelling. At that time he had no cocaine in his possession. I then gave the informant \$200 in Department funds. I maintained constant observation while the informant entered the dwelling and until he exited the building. All other exits were observed by other officers. After the informant exited, he was again searched. A small quantity of cocaine and \$75 was found on his person.

Good/Bad

Why:

9. Three days ago, an armed robbery occurred at the 7/11 Store on Main Street. Cash in the amount of \$78 and a derringer pistol (pearl handles; owner applied number of 237-72-8451 on barrel) were stolen by the robber. A customer who identified himself as David Kiser stated to this affiant that he recognized the robber. He states that robber sells newspapers (the Daily Gazette) on the corner of Main Street and Elm Street. I have personally observed the subject described above selling newspapers on this corner. Employees of the Gazette confirm that this is the only subject that has sold papers on the corner of Main and Elm for the past year. The city telephone directory indicates that the suspect resides in the above described dwelling, and I have observed an automobile registered to the suspect in the driveway of the dwelling. I met my informant, Mr. Kiser, only as a result of investigating this crime. I have never before received information from Mr. Kiser. Based on this information, I request a search warrant for the above described dwelling to search for the above described derringer pistol.

Good/Bad

Why?

10. A search warrant issued on the basis of information supplied by a person named in an affidavit is usually valid if there is no reason to believe the named person's information is unreliable.

True/False

11. A search warrant issued on the basis of information supplied by a person whose identity must remain confidential is usually valid even if no other basis for reliability appears in the affidavit.

True/False

12. A magistrate may not issue a search warrant based upon hearsay.

True/False

13. Which of the following are adequate descriptions of things to be seized?
- a. “quantity of marijuana”
 - b. “quantity of stolen TV's”
 - c. “cocaine”
 - d. “stolen property”
 - e. “evidence of any crime”
 - f. “obscene magazines”
 - g. “RCA XL 100 Color TV set with a broken antenna”
 - h. “journals, registers, ledgers, canceled checks, and similar records and documents that constitute evidence of the embezzlement described in the affidavit”
 - i. “Smith & Wesson .38 Cal. revolver (4 inch barrel)”
14. Which of the following describe the place to be searched adequately?
- a. single family dwelling at 1132 Yale Place, Durham, N.C.
 - b. an apartment in the building at 198 West Cameron Avenue, Chapel Hill, N.C.
 - c. single family dwelling at 1818 Jameston Drive, Greensboro, N.C. and a 1990 Oldsmobile Delta 88, N.C. license number SFL 298, located in the driveway there
 - d. John Smith's apartment at the Oaks Apartments, Chapel Hill, N.C.
 - e. yellow 2 story stucco, Dutch colonial dwelling, located on Arrow Wood Drive (street number unknown), exactly 1 mile north of the intersection of US 15, on the east side of the road, Bahama, N.C. The dwelling has a green roof, green shutters, and a driveway with an oak tree on either side.
15. If you have a street address, there is no reason to include a physical description of the building.

True/False

16. Failure to include a physical description of the building will render a search warrant invalid even if the address (street and number) is given and is correct.

True/False

17. If the officer who applies for a search warrant gives the magistrate information other than that in the affidavit, the magistrate
- a. may not consider this information under any circumstances.
 - b. may always consider this information.
 - c. may consider this information only if the affidavit is amended or a new affidavit is submitted.
 - d. may consider this information only if the affidavit is amended or a new affidavit is submitted or if magistrate reduces the information to writing and files it with clerk, or if magistrate prepares a tape recording of the oral testimony.

(Circle letter for the best answer)

SEARCH WARRANT

In The General Court Of Justice
District/Superior Court Division

IN THE MATTER OF

Date Issued		Time Issued	
Name Of Applicant		AM	PM

<i>Name Of Additional Affiant</i>
<i>Name Of Additional Affiant</i>

RETURN OF SERVICE

I certify that this Search Warrant was received and executed as follows:

<i>Date Received</i>	<i>Time Received</i>
	<div> <input type="checkbox"/> AM <input type="checkbox"/> PM </div>
<i>Date Executed</i>	<i>Time Executed</i>
	<div> <input type="checkbox"/> AM <input type="checkbox"/> PM </div>

☐ I made a search of _____

as commanded.

☐ I seized the items listed on the attached inventory.

☐ I did not seize any items.

☐ This Warrant WAS NOT executed within forty-eight (48) hours of the date of issuance and I hereby return it not executed.

Name Of Officer Making Return (type or print)

Signature Of Officer Making Return

Department Or Agency Of Officer	Incident Number
---------------------------------	-----------------

Original - File Copy - For Search of a Person, to Person from Whom Items Taken

Copy - For Search of Vehicle/Premises, to Owner or Person in Apparent Control; if No Such Person Present, Leave Copy Affixed Thereon

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(Over)

APPLICATION FOR SEARCH WARRANT

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

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

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

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

(and)

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

(and)

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

(and)

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

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

Date

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Name Of Applicant (type or print)

Signature

Signature Of Applicant

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

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

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

This testimony has been (check appropriate box) ☐ reduced to writing

☐ tape recorded and I have filed each with the clerk.

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

SEARCH WARRANT

In The General Court Of Justice
District/Superior Court Division

IN THE MATTER OF

Date Issued		Time Issued	
Name Of Applicant		AM	PM

<i>Name Of Additional Affiant</i>
<i>Name Of Additional Affiant</i>

RETURN OF SERVICE

I certify that this Search Warrant was received and executed as follows:

<i>Date Received</i>	<i>Time Received</i>
	<input type="checkbox"/> AM <input type="checkbox"/> PM

<i>Date Executed</i>	<i>Time Executed</i>
	<input type="checkbox"/> AM <input type="checkbox"/> PM

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☐ I did not seize any items.

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Signature Of Officer Making Return

Department Or Agency Of Officer	Incident Number
---------------------------------	-----------------

Original - File **Copy -** For Search of a Person, to Person from Whom Items Taken
Copy - For Search of Vehicle/Premises, to Owner or Person in Apparent Control; if No Such Person Present, Leave Copy Affixed Thereon
 (Over)

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APPLICATION FOR SEARCH WARRANT

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

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

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

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

(and)

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

(and)

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

(and)

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

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

Date

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Name Of Applicant (type or print)

Signature

Signature Of Applicant

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

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

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

This testimony has been (check appropriate box) ☐ reduced to writing

☐ tape recorded and I have filed each with the clerk.

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

Evaluation of Search Warrant Applications

Application 1

Would you issue a search warrant based on this application? _____

If not, why not? Be specific. _____

If so, do you have any reservations or concerns about it? Be specific. _____

Application 2

Would you issue a search warrant based on this application? _____

If not, why not? Be specific. _____

If so, do you have any reservations or concerns about it? Be specific. _____

Application 3

Would you issue a search warrant based on this application? _____

If not, why not? Be specific. _____

If so, do you have any reservations or concerns about it? Be specific. _____

IN THE MATTER: TIMOTHY WEAVER 1/26/1960 AND KENNETH WAYNE
BARTLETT 12/27/1961 507 PARK AVENUE DURHAM NC

Description of Premises to be Searched

In the following premises: 507 PARK AVENUE. 507 PARK AVENUE IS A WHITE FRAME HOUSE WITH THE NUMBERS 507 DISPLAYED ON THE FRONT OF THE HOUSE. THERE ARE BRICK PILLARS ON THE FRONT OF THE HOUSE AND THERE IS ALSO A PORCH THAT EXTENDS THE LENGTH OF THE FRONT OF THE HOUSE. THERE IS A WHITE SHED IN THE BACK OF THE HOUSE USED AS A RESIDENCE BY KENNETH WAYNE BARTLETT AND KIMBERLY GRAY.

In the following vehicles: A BLUE PINTO STATION WAGON POSSESSED BY MR. TIMOTHY WEAVER AND MR. KENNETH WAYNE BARTLETT. A WHITE VOLVO POSSESSED BY MR. TIMOTHY WEAVER AND MR. KENNETH WAYNE BARTLETT. ANY OTHER VEHICLE THAT IS POSSESSED OR OCCUPIED BY TIMOTHY WEAVER, KENNETH WAYNE BARTLETT, OR ANY OTHER PERSONS INVOLVED IN ILLEGAL ACTIVITY AT 507 PARK AVENUE DURHAM NC.

Directions from Police Station 1, 2400 Holloway Street Durham N.C. -- TURN LEFT ONTO HOLLOWAY STREET. TRAVEL WEST ON HOLLOWAY STREET FOR APPROXIMATELY 1 MILE UNTIL YOU GET TO NORTH GUTHRIE AVENUE. TURN LEFT ONTO NORTH GUTHRIE AVENUE. MAKE A RIGHT ONTO SOUTHGATE STREET AND THEN ANOTHER RIGHT ONTO PARK AVENUE, ENDING AT 507 PARK AVENUE.

Probable Cause Affidavit

The applicant swears to the following facts to establish probable cause for the issuance of a search warrant: I BEING THE AFFIANT, INVESTIGATOR A.M. CRISTALDI, AM CURRENTLY EMPLOYED AS A POLICE OFFICER WITH THE DURHAM POLICE DEPARTMENT. MY JOB DUTIES INCLUDE INVESTIGATING AND ENFORCING THE CRIMINAL LAWS ENACTED BY THE STATE OF NORTH CAROLINA. I HAVE RECEIVED OVER 900 HOURS OF FORMAL TRAINING FROM THE DURHAM POLICE DEPARTMENT IN VARIOUS TOPICAL AREAS INCLUDING POLICE LAW INSTITUTE, CRIMINAL INVESTIGATIONS, AND INTERVIEW & INTERROGATION. I HAVE BEEN EMPLOYED BY THE DURHAM POLICE DEPARTMENT FOR OVER 6 YEARS AND HAVE CONDUCTED OR BEEN INVOLVED IN EXCESS OF 100 INVESTIGATIONS AND AM CURRENTLY ASSIGNED TO THE DISTRICT 1 INVESTIGATIONS DIVISION WHERE I INVESTIGATE PROPERTY AND VIOLENT CRIMES TO INCLUDE ROBBERIES, RAPES, KIDNAPPINGS, ASSAULTS, AND BURLGARIES.

ON 3/25/07 I SPOKE WITH TWO INDEPENDENT WITNESSES THAT TOLD ME TIMOTHY WEAVER HAS BEEN PAYING KENNETH WAYNE BARTLETT AND

Affiant: AM Cristaldi

Magistrate: [Signature]

Date: 4/26/07

APPLICATION 1: BARTLETT

IN THE MATTER: TIMOTHY WEAVER 1/26/1960 AND KENNETH WAYNE
BARTLETT 12/27/1961 507 PARK AVENUE DURHAM NC

OTHERS CASH MONEY FOR PIPES AND COIL. MR. BARTLETT GOES OUT TO NEW HOUSING DEVELOPMENTS, APARTMENT COMPLEXES AND ANYWHERE ELSE HE CAN FIND PIPES AND COILS AND STEALS IT FROM THESE LOCATIONS. MR. BARTLETT USES ONE OF MR. WEAVERS VEHICLES TO TRANSPORT THIS STOLEN PIPE AND COIL BACK TO MR. WEAVER. MR. WEAVER THEN SELLS THE COPPER WIRE TO A SCRAP YARD AND SPLITS THE PROFITS WITH MR. BARTLETT. MY INDEPENDENT WITNESSES TOLD ME THAT ON 3/24/07 MR. BARTLETT WENT INTO CARY DRIVING A VEHICLE THAT MR. WEAVER GAVE TO HIM TO USE. MR. BARTLETT THEN WENT WITH HIS GIRLFRIEND (KIMBERLY GRAY) TO CARY WHERE THEY MADE FOUR TRIPS BACK AND FORTH FROM CARY TO DURHAM WITH COPPER WIRE MR. BARTLETT HAD STOLEN FROM THE HOUSES. THE COPPER WIRE INCLUDED THE LARGE COPPER PIPE THAT HAD THE PLACEMENT LOCATION INSIDE THE HOUSE WRITTEN ON IT. MR. WEAVER THEN WENT TO AMERICAN METALS IN GARNER NORTH CAROLINA ON THE MORNING OF 3/25/07 AND SOLD IT. I KNOW FROM DEALING WITH AMERICAN METALS THAT THEY ONLY BUY COPPER ON WEDNESDAYS AND FRIDAYS.

MY TWO INDEPENDENT WITNESSES ALSO TOLD ME THAT MR. WEAVER IS IN POSSESSION OF A SHOTGUN. MR. WEAVER KEEPS THE SHOTGUN HIDDEN INSIDE 507 PARK AVENUE. MR. WEAVER IS ALSO A CONVICTED FELON AND DOES NOT HAVE THE RIGHT TO POSSESS A FIREARM.

ON 4/26/07 I SPOKE WITH A REPRESENTATIVE FROM AMERICAN METALS WHO TOLD ME THAT TIMOTHY WEAVER WAS AT THAT LOCATION THE MORNING OF 4/25/07 SELLING WIRE AND COIL. THE REPRESENTATIVE SAID MR. WEAVER WAS THERE AROUND 0900 HOURS.

Description of Evidence to be Seized

There is probable cause to believe that the following property will be contained in the residence.

- 1- STOLEN COPPER WIRE TO INCLUDE PIPE AND COIL.
- 2- FIREARMS AND AMMUNITION
- 3- TOOLS USED FOR BUGLARIES INCLUDING BUT NOT LIMITED TO WIRE CUTTERS, SAWS, SCREW DRIVERS, PLIERS AND WRENCHES.
- 4- U.S. CURRENCY THAT IS THE FRUIT OF ILLEGAL SALES OF COPPER WIRE
- 5- TIMOTHY WEAVER WHITE MALE D/O/B 1/26/1960

Affiant: AM Cristaldi

Magistrate: AKC

Date: 4/26/07

Application For Search Warrant

I, Corporal Kevin Perry, Special Investigations Division, Sampson County Sheriff's Office, being duly sworn, request that the court issue a warrant to search the person, place, vehicle, and other items described in this application and to find and seize the property and person described in this application. There is probable cause to believe that:

- (1) Books, records, receipts, notes, ledgers, and other papers relating to the transportation, ordering, purchasing, in particular, Cocaine, a scheduled controlled substance included in the North Carolina Controlled Substance Act;
- (2) Books, records, receipts, bank statements and records, money drafts, letters of credit, money orders, cashier's check receipts, passbooks, bank checks, safe deposit boxes, safe deposit box keys, and other items evidencing the obtaining, secreting, transfer, and / or concealment of assets and the obtaining, secreting, transfer, concealment, and / or expenditure of money;
- (3) United States currency, precious metals, jewelry, and financial instruments, and other items indicative of the proceeds of illegal narcotics trafficking;
- (4) Photographs, including still photos, negatives, videotapes, undeveloped film and the contents therein, slides, in particular photograph of co-conspirators, of assets, and / or controlled substances;
- (5) Address and / or telephone books, rolodex entries and any papers reflecting the names, addresses, telephone numbers, pager numbers, fax numbers, cellular phone numbers of any co- conspirators, sources of supply, customers, financial institutions, and other individual or business with whom a financial relationship exist;
- (6) Papers and documents that would establish occupancy, residency, rental and / or ownership of the premises described herein, including, but not limited to utility and telephone bills, canceled envelopes, rental, purchase or lease agreements, and keys;
- (7) Firearms and ammunition, including, but not limited to handguns, pistols, revolvers, rifles, shotguns, machine-guns, and other weapons, and any records or receipts pertaining to firearms;

SWORN AND SUBSCRIBED BEFORE ME:

Signature: _____

Date: September 27, 2006

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court
☒ Magistrate ☐ District Court Judge ☐ Superior Court Judge

Signature of Applicant: _____

Date: September 27, 2006

APPLICATION 2: TAYLOR

Application For Search Warrant

- (8) Electronic equipment, such as computers, cellular phones, pagers, facsimile machines, currency counting machines, tape recording devices, video recording devices, cameras and other items and related manuals used to generate, transfer, count, and / or to store information described in items 1, 2, 3, 4, 5, and 6 of this affidavit. Additionally, computer software tapes and discs, audiotapes, and the contents there in, containing the information generated by the aforementioned electronic equipment;
- (9) Controlled substances, in particular Cocaine, which is included in Schedule II of the North Carolina Controlled Substance Act and would be illegal to possess; in violation of North Carolina General Statute 90-95;
- (10) Paraphernalia, used to weigh, manufacture, sell, distribute, package, re-package, store, secret, ingest, inhale, inject, or otherwise introduce into the body a controlled substance, in particular Cocaine, which would be illegal to possess; in violation of North Carolina General Statute 90-113.22;

Would constitute evidence of a crime and the identity of a crime and the identity of a person participating in a crime, namely **Illegal Distribution of a Controlled Substance in Violation of North Carolina General Statute 90-95** and is located;

[X] on the following premises: **which is described as a tan single wide mobile home located at 3095 Brewer Rd Faison, NC 28341 and the single story wood frame house that is located directly behind the mobile home. Directions to the residence are as follows: Travel Hwy 403 North from Clinton towards Faison. After crossing I-40 stay to the right and continue on Hwy 403 towards Faison. Turn right on to Brewer Rd. The house is located on the right side of the road just after a curve to the right approximately 100 feet off the roadway.**

(and)

[X] on the following person(s): **Any person or persons as may be on the premises of the residence to be searched at the time of the execution of this Search Warrant, should it please the Court for its issuance.**

(and)

[X] in the following vehicle(s): **Any vehicle as may be located within the curtilage of the residence to be searched or as may be determined to be under the dominion and control of any of the persons located within the residence to be searched at the time of the execution of this Search Warrant, should it please the Court for its issuance.**

(and)

[X] **Any outbuildings or other such appurtenances as may be affixed to the residence to be searched or situated within its curtilage at the time of the execution of this Search Warrant, should it please the Court for its issuance.**

Application For Search Warrant

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

I, Corporal Kevin Perry, am a sworn law enforcement officer for the Sampson County Sheriff's Office and assigned as a Narcotic/Alcohol Enforcement Special Agent in the Special Investigation Division Previously I was a sworn law enforcement officer with the Goldsboro Police Department. I have been a sworn law enforcement officer for 02 years. I have served 10 years as a United States Marine where I was promoted to the rank of Sergeant and was awarded the Navy Achievement Medal, along with two Meritorious Mass commendations. As a law enforcement officer, I have received 500 hours training in the area of investigations and have been involved in over 100 Narcotic/Alcohol investigations. I have been awarded the Patriot award; meritorious award and I hold certificates for, The United States Department of Justice, Drug Enforcement Administration Basic Narcotic's Investigator School, Interview and Interrogations, and Methamphetamines awareness and recognition. I am familiar with the methods of operations of people involved in Narcotic/Alcohol and the evidence associated with these crimes. I will be known as Applicant from this point on.

—Based upon the Affiant's training, knowledge, experience and participation in other investigations involving the illegal distribution of controlled substances, He knows that:

—That persons involved in the illegal drug trade must maintain, on hand, U. S. currency in order to maintain and finance their on-going narcotics business. That this U. S. currency is maintained in the residence, businesses or other locations in which these persons maintain control over;

—That it is common for persons involved in the illegal drug trade to maintain books, tally sheets, records, notes, ledgers, airline tickets, receipts relating to the purchase of financial instruments and / or the transfer of funds, and other papers relating to the transportation, ordering, sale and distribution of controlled substances. That the aforementioned books, records, receipts, notes, ledgers, etc., are maintained within their residences, businesses, or other locations in which they have dominion and control over;

—That it is common for persons involved in the illegal drug trade to secret contraband, proceeds of drug sales, and records of drug transactions in secure locations within their residences, their businesses and / or other locations which they maintain dominion and control over, for the ready access and to conceal these items from law enforcement authorities.

SWORN AND SUBSCRIBED BEFORE ME:

Signature: [Signature] Date: September 27, 2006

☐ Deputy CSC ☒ Assistant CSC ☐ Clerk of Superior Court

☒ Magistrate ☐ District Court Judge ☐ Superior Court Judge

Signature of Applicant: [Signature] Date: September 27, 2006

Application For Search Warrant

-That it is common for persons involved in the illegal drug trade to maintain evidence pertaining to their obtaining, secreting, transfer, concealment and / or expenditure of narcotics proceeds such as: currency, financial instruments, precious metals and gemstones, jewelry, books, records, invoices, receipts, records of real estate transactions, bank statements and related records, passbooks, money drafts, letters of credit, money orders, bank drafts, cashiers checks, bank checks, safe deposit boxes, safe deposit box keys, and money wrappers. These items are maintained by these persons within their residences, businesses, or other locations in which they have dominion and control over;

-That it is common for persons involved in the illegal drug trade to maintain address and / or telephone numbers in books or on papers, in rolodex entries and reflect the names, addresses, telephone numbers, pager numbers, fax numbers of their associates in the illegal drug trade. That these items are maintained by these persons within their residences, businesses, or other locations in which they have dominion and control over;

-That it is common for persons involved in the illegal drug trade to have in their possession photographs / videotapes of themselves, their associates, their property and their product. That these items are maintained by these persons within their residences, businesses, or other locations in which they have dominion and control over;

-That it is common for persons involved in the illegal drug trade to commonly have in their possession, that is on their person, at their residences, and / or other locations in which they have dominion and control over, firearms and other weapons. Said firearms and other weapons are used to protect and secure property. Such property may include, but not limited to: narcotics, jewelry, narcotics paraphernalia, books, records, and U. S. currency;

-That it is common for persons involved in the illegal drug trade to utilize electronic equipment, such as computers, cellular phones, pagers, facsimile machines, currency counting machines, tape recording devices, video recording devices, cameras and other items and related manuals used to generate, transfer, count, and / or to store information described in items 1, 2, 3, 4, 5, and 6 above;

-That it is common for persons involved in the illegal drug trade to keep on hand, that is on their person, in their residences, and / or other locations in which they have dominion and control over, controlled substances, in particular Cocaine. That this Cocaine would be used for the illegal sale, distribution and use of this controlled substance;

SWORN AND SUBSCRIBED BEFORE ME

Signature: _____

Date: September 27, 2006

[] Deputy CSC [] Assistant CSC [] Clerk of Superior Court
[X] Magistrate [] District Court Judge [] Superior Court Judge

Signature of Applicant: _____

Date: September 27, 2006

Application For Search Warrant

-That it is common for persons involved in the illegal drug trade to keep on hand, that is on their person, in their residences, and / or other locations in which they have dominion and control over, paraphernalia. That this Paraphernalia would be used to weigh, manufacture, sell, distribute, package, re-package, store, secret, ingest, inhale, inject, or otherwise introduce into the body a controlled substance which would be illegal to possess;

-In addition, the Affiant is aware that: during the past several months the Special Investigations Division of the Sampson County Sheriff's Office has received several complaints in reference to the sale of the controlled substance Cocaine, a controlled substance that is included in Schedule II of the North Carolina Controlled Substance Act, at the above location.

Due to these complaints, this applicant began an investigation that included surveillance and the use of a Confidential Informant.

Within the past seventy-two, (72) hours, a Confidential Informant had visited the described location at the direction and surveillance of this Applicant and while at the location the Confidential Informant made a purchase of the controlled substance. Immediately after leaving the location, the Confidential Informant met with the applicant and turned over the controlled substance.

The Confidential Informant has proven reliable by making numerous controlled buys of controlled substances at the direction of the Applicant. This was accomplished by insuring the Confidential Informant has no controlled substances in his / her possession, then furnishing the informant with Special Funds, then directing the Confidential Informant to a predetermined location known as an illegal outlet for the sale of controlled substances. The Confidential Informant was observed entering the location and after only a few minutes leaving, then meeting with the applicant and turning over the substance purchased.

-Based on the above-mentioned facts, the Applicant prays to the Court for the issuance of this Search Warrant.

SWORN AND SUBSCRIBED BEFORE ME:

Signature: [Signature] Date: September 27, 2006

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court
☒ Magistrate ☐ District Court Judge ☐ Superior Court Judge

Signature of Applicant: [Signature] Date: September 27, 2006

Continuation page attached to the SEARCH WARRANT application, dated Thursday, July 14, 2005

CONTINUATION OF "PROPERTY / EVIDENCE TO BE SEIZED"

Hydrocodone (Schedule III), devices used to introduce controlled substances into the body which are illegal to possess, and evidence of ownership access, possession and control; also beepers, firearms, cellular phones, and US currency.

CONTINUATION OF "PREMISES, PERSON, VEHICLE, OR OTHER ITEM (S) TO BE SEARCHED"

A single story, single family dwelling, constructed of white vinyl siding with brick underpinning and black shutters, located at 5228 Statesville Road, Charlotte, Mecklenburg County, N.C., USA.

CONTINUATION OF "PROBABLE CAUSE AFFIDAVIT"

This applicant swears to the following facts to establish probable cause for a search warrant:
Officer M.F. Warren #353 has received information from a confidential and reliable informant who has been in 5228 Statesville Road and has seen a large quantity of the Schedule III drug Hydrocodone in the residence without a prescription. This informant states that they have been in the above described location within the past 48 hours and have seen various forms of Hydrocodone throughout the house. This officer has known this informant for approximately 9 years. During this time, this officer has used information provided by this confidential and reliable informant to be true through independent investigations. This informant is familiar with various forms of Hydrocodone and the uses of various forms of Schedule III drugs.

Officer M.F. Warren #353 has been a Charlotte-Mecklenburg Police officer for 24 years and 6 months, including 7 years of Street level Drug Interdiction. I have been to various drug schools at the federal, state and local level. I have been directly or indirectly involved with over 1,900 drug arrests and have assisted with the execution of approximately 560 search warrants. Based on this affiant's training and experience, I have knowledge that firearms, beepers, cellular phones, and U.S. Currency are commonly used in the furtherance of drug distribution.

Based on the information contained in this application, I have knowledge that firearms, beepers, cellular phones, and US currency are commonly used in the furtherance of drug distribution. Based on the information contained in this application and the proven reliability of this informant, I request that a search warrant be issued for a single story, single family dwelling, constructed of white vinyl siding with brick underpinning and black shutters, located at 5228 Statesville Road, Charlotte, Mecklenburg County, N.C., USA.

SWORN AND SUBSCRIBED TO BEFORE ME:

Judge / Magistrate

Date

Applicant(s)

Date

SEP 01 2005

EDWARDS

3:

APPLICATION

Self-instructional Materials for Magistrates and Law Enforcement Officers in Applying the Law of Search Warrants

Robert L. Farb
Institute of Government
The University of North Carolina at Chapel Hill
Revised July 1993

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APPLYING THE LAW OF SEARCH WARRANTS

PREFACE

These materials are intended to help you learn how to apply the law of search warrants in making decisions that a magistrate might be required to make when dealing with search warrants. Although they are directed toward teaching a magistrate how to determine probable cause and how to fill-out a search warrant, they also are applicable to teaching these duties to a law enforcement officer. These materials are intended to guide you toward learning skills in applying the law of search and seizure. When you have successfully learned a skill, you should be able to make a correct decision in a situation that calls for the skill. Following is a list of the skills that you should learn from these materials.

- A. To determine whether a given set of facts justifies the issuance of a search warrant.
- B. To draw out from a law enforcement officer the information that is necessary to establish probable cause.
- C. To write an adequate description of the property to be searched for.
- D. To write an adequate description of the place to be searched.
- E. To follow the proper procedure in issuing a search warrant.

The materials are divided into an introduction and five sections. Each section is directed toward one of the skills listed above. The material in these sections is largely presented in the form of "programmed" instruction. This means that you will be asked to fill in blanks and supply the answers to questions using information that has appeared in the material. When you come to one of these blanks or questions, you may certainly read back over the material to find the answer. The answer itself appears below the question, in single-spaced type enclosed between two lines. You should keep that answer covered, however, until you have answered the question yourself. Proceeding in this way helps you to master the material more easily. *Read each answer all the way through.* Take your time and reread any preceding material if you do not understand an answer. If you still have questions you will be provided an opportunity to ask them later. Remember, you are *teaching yourself* a subject basic to the proper performance of your duties.

INTRODUCTION

Americans traditionally have resented the invasion of individual privacy by government officials for the purpose of search. Yet they have recognized the necessity of invading individual privacy in order to detect and to prevent crime. The law of search and seizure has grown in response to the need to balance these two interests.

The Fourth Amendment to the Constitution of the United States responds to this conflict by prohibiting "unreasonable" searches and seizures. This command is directed to both federal and state governments. In addition, the Constitution of North Carolina, which prohibits the general warrant (authorizing arbitrary searches) as "dangerous to liberty," has been expanded by judicial interpretation to encompass a general prohibition against unreasonable searches and seizures.

Origin of the Law of Search and Seizure

The Fourth Amendment to the Constitution of the United States provides: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

The laws of search and seizure has developed largely in response to the _____ Amendment to the United States _____. This amendment requires that searches be _____ and sets out requirements for search warrants.

The law of search and seizure has developed largely in response to the Fourth Amendment to the Constitution of the United States and requires that searches be reasonable.

Article I, Section 20 of the Constitution of North Carolina provides: "General warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted."

The North Carolina Constitution prohibits _____ warrants.

The North Carolina Constitution prohibits general warrants and encompasses a general prohibition against unreasonable searches and seizures.

In recent years, court cases and a fairly small number of statutes have put additional flesh on the bones of these _____ requirements to protect people's privacy.

The constitutional requirements have been clarified in recent years.

The law of search and seizure are aimed at protecting for everyone a basic American right--the right to be left alone. The law helps to p_____ this r_____ by restricting government officials' power to interfere with people's _____.

The law of search and seizure helps to protect this right to be left alone by restricting official action in interfering with people's privacy.

If an officer wants to search an individual's person or property, the officer may do so as long as the officer does not illegally _____ with the individual's privacy.

An officer may not illegally interfere with a person's privacy.

The law of search and seizure attempt to balance the need to enforce laws against the need to _____ people's _____ to be _____ alone.

To protect people's right to be left alone is a major purpose of the laws of search and seizure.

One of the traditional means of protecting the right to privacy has been to require law enforcement officers to obtain a search warrant from a neutral judicial officer. Decisions of both the United States Supreme Court and the North Carolina Supreme Court make clear the importance of the role of the magistrate as a check on the power of the state to interfere with a person's privacy. These decisions have required that the judicial officer be neutral, that the person applying for the warrant demonstrate probable cause to make a search, and that the warrant and its supporting affidavit specify the justification for the search.

Your principal function as a magistrate then is to exercise your independent judgment in evaluating facts presented to you by a law enforcement officer to see if they establish p_____ c_____ and therefore _____ the issuance of a search warrant.

In issuing search warrants, the magistrate's primary function is to use neutral and independent judgment to determine if the facts described by the officer establish probable cause to justify the issuance of the warrant.

Failure to comply with the constitutional requirements can result in adverse effects on both the state and the officer executing the search warrant. The courts refuse to admit into evidence information and objects obtained from a search based on an invalid search warrant. The result is that the state is unable to convict some offenders because the constitutional requirements for a valid search were not satisfied. The warrant may in some cases be so defective as to subject the officer executing it to civil and criminal penalties and disciplinary action by the officer's employing agency.

Two practical consequences of an invalid search warrant are the real possibilities that the state may find that information critical to a conviction is in _____ in evidence or that the officer executing the invalid warrant faces _____ and _____ sanctions for doing so.

The invalid search warrant presents real problems for the prosecution because essential evidence may be inadmissible and may subject the law enforcement officer to criminal and civil sanctions.

Of course the most serious result is a weakness in our system of criminal justice that comes from the failure of the judicial officer to exercise independent judgment as a _____ on the power of the state to invade the _____ of its citizens.

The most serious consequence of the magistrate's failure to observe constitutional requirements in issuing a search warrant is the harm that is done to our system of criminal justice because the magistrate does not act as a check on the state's power to interfere with a person's privacy.

Section A

The purpose of this section is to develop the skill to determine whether a given set of facts justifies the issuance of a search warrant.

As discussed in the introduction, a basic constitutional requirement for any search is probable cause. One of the judicial officer's most difficult problems is determining whether the facts related by an officer establish probable cause to support the issuance of a valid search warrant. This determination, however, is one of the most valuable contributions that a magistrate makes. An independent evaluation of

the facts when an officer applies for a search warrant can prevent an illegal search, the results of which may be excluded from evidence at trial. Probable cause for a search requires enough knowledge to lead a reasonable person to believe that there is a fair probability that the object of the search is in the place to be searched. Probable cause, then, is based on the use of judgment by a _____ person. It is (more/less) than reasonable suspicion but (more/less) than proof beyond a reasonable doubt.

Probable cause is based on the judgment of a reasonable person. It must be more than reasonable suspicion but less than proof beyond a reasonable doubt.

CASE: Several residents living near a bank which had just been robbed described to police a car (including license number) which had been at the bank before the robbery and left immediately after the robbery occurred. They saw a man with a satchel run from the bank into the car at the time of robbery. Is this information sufficient to establish probable cause that the fruits of the robbery are in the suspect's car?

The evidence provided by the residents was sufficient to show probable cause for a warrant. A reasonable man would believe that it was likely that the stolen money would be in the car, even though it is not certain.

CASE: A woman called the police that The Cove, a local night club, was selling crack cocaine. Her son had come home apparently having just used cocaine , and she said that it was common knowledge that The Cove was the only place her son could obtain cocaine in her small rural community. Does probable cause exist to indicate that cocaine is present at The Cove?

Probable cause does not exist. The only indication that cocaine were there was the woman's vague belief that her son obtained cocaine at The Cove. She did not see anyone sell cocaine to her son, nor did she claim that her son had ever told her that he purchased cocaine from The Cove. This information would not convince a reasonable person of the likelihood of finding cocaine for sale at The Cove.

CASE: A city law enforcement officer comes into your office and says that the officer has just received an anonymous telephone call which said that a noted drug dealer had heroin in his house. The officer wants you to issue a warrant to search the house for heroin. What should you do?

The facts given by the officer, based solely on an anonymous telephone call, are no more than speculation about what is in the house. You should refuse to issue the warrant unless the officer can swear to specific facts that would lead a reasonable person to believe there is a fair probability that heroin is in the house. The next section contains instruction about obtaining those specific facts.

One of the most difficult situations in which you will have to determine if probable cause exists is the case when an officer wants a search warrant based on a confidential informant's report. The officer naturally wishes to protect the informant's identity as much as possible, but must show enough facts to indicate probable cause for the search. Specific information must be included in the search warrant application when an informant's report is being used. The officer should state specifically why the informant is probably telling the truth and give enough information to convince a reasonable person that the informant is indeed telling the truth. In other words, the informant should be shown to be reliable (or the informant's information should be shown to be reliable). However, the informant's name does not have to be revealed to the magistrate or appear in the application.

An informant's _____ or the _____ of the informant's information should be established when a search warrant is based on an informant's report.

It is important to establish an informant's reliability or the reliability of the informant's information when an informant's report is used in a search warrant application.

Just exactly what information will be sufficient to establish an informant's reliability in any given case is unclear. But it helps if the officer can state how often the officer has relied on the informant's information and how often this information has led to an arrest and/or conviction.

Determine whether the following statement is adequate to establish the informant's reliability: "A reliable and confidential informant who has in the past given me, Detective Don Smith, information that has resulted in arrests and convictions in court on drug charges six times."

This is a fairly common way of stating an informant's record of reliability and is sufficient. But the statement can be strengthened considerably if the officer states how often the informant has volunteered information and that the information has generally been accurate.

The informant's good track record is not the only factor to be considered. Especially when the informant is used for the first time, you should consider the informant's relationship to the suspect, the likelihood of that informant having the particular information, and any other factor the officer would know that would increase the likelihood that the informant was not an irresponsible person giving false information.

Another way to show that the informant's report is reliable is for the officer requesting the warrant to offer evidence of independent personal information about the suspect that supports or corroborates the informant's report. This knowledge must be shown in the affidavit by specific facts and not by the mere assertion that the officer has such information. Determine whether the following statement is adequate: "This officer has personal knowledge that the person named in the warrant is a user of narcotics."

The officer may indeed have such information, but has not said what it is. This statement establishes no more than a mere assertion that such information exists. The court will want to know (and so should you) just exactly what the officer knows to support a belief that the suspect is a narcotics user.

The informant should be able to supply enough information to convince a reasonable person that the suspect is indeed engaging in an illegal activity and that the informant is not merely passing on a rumor. Consider the following statement: "The informant states that his roommate told him that a man, whose name he thinks is John Doe, was on Main Street last night selling amphetamine pills." Is this informant's report sufficient probable cause to issue a warrant?

It is evident from the statement that the informant has no firsthand knowledge of the alleged offense. Further, assuming as a court will, that the statement contains all the information that the informant has, the informant is unable to accurately identify the suspect or give enough facts about the alleged offense to be sure that a violation of law actually took place. A warrant based on this information would be invalid, and evidence obtained in a search in executing the warrant would be inadmissible in court.

In other words, even though the informant is reliable, there should be an indication of the basis of the informant's conclusion and not just the conclusion itself.

In short, an application for a search warrant based on an informant's report should contain enough facts to indicate the source of the informant's conclusion and that the information is not a mere rumor. And it should establish the informant's reliability, including, when possible, the officer's personal knowledge that supports the informant's report.

Before an informant's information may be used as a basis for a valid warrant, the application should indicate enough to establish that the information is not a mere rumor. The informant's reliability should also be shown, and it's especially helpful if the officer's personal knowledge corroborates the informant's report.

Is the following affidavit adequate under the guidelines discussed above?

"A reliable informant, who has in the past volunteered information on three occasions that resulted in an arrest and conviction each time, within the past 24 hours told me, Detective Jane Miller, that Henry Smith has in his house located at 24 Main St., Dunn, N.C., a quantity of the controlled substance, amphetamine. The informant told me he saw the a large quantity of amphetamines in the house within the past 72 hours, and at that time he received several amphetamine pills that came from Henry Smith while he was in the kitchen. I have suspected Henry Smith of possessing amphetamines since three months ago when I arrested him during a raid at a party at which amphetamines and other narcotics were being used. I have seen Henry Smith since that time in the company of other confirmed users of narcotic drugs on several occasions."

This is a good example of the type of information that an affidavit should contain when based on an informant's report. The basis of his conclusion is stated (he saw the drugs) and his reliability is shown by his track record and by the officer's information which corroborates the informant's report. In addition, the report gives the time when the informant saw the drugs in the house as well as the time the informant gave his information to Detective Jane Miller.

Sometimes information is supplied by informants who are not merely confidential—they are anonymous. Even the officer does not know the identity of the person who has given the information. Anonymous information by itself is insufficient to establish probable cause. In some cases, however, anonymous information may help to establish probable cause if the officer provides other corroborating and reliable information so that the totality of circumstances establish a fair probability that the object of the search is in the place to be searched.

Anonymous information by itself is _____ to establish probable cause. However, anonymous information along with other corroborating and reliable information may establish probable cause when the t _____ of the circumstances establish a f _____ p _____ that the object of the search is in the place to be searched.

Anonymous information by itself is insufficient to establish probable cause. However, when the totality of circumstances presented, including the anonymous information, establishes a fair probability that the object of the search can be found in the place to be searched, then probable cause exists to issue a search warrant.

Section B

The purpose of this section is to develop the ability to draw out information from an officer which will support probable cause.

In the previous section we took a look at what facts constitute probable cause. As you have probably guessed, probable cause is a fairly ambiguous concept. Often an officer will actually have good reason to believe that contraband may be found in a certain place but fail to articulate reasons adequately to establish probable cause for issuance of the warrant. In these situations you will need to be able to spot weaknesses in the officer's statement of facts and then question the officer to see if the information is sufficient to justify the issuance of a warrant. In this section you will practice picking out the weak spots in various statements of facts.

As we have seen before, probable cause is information which would lead a _____ person to believe that the object of the search is in the place to be searched.

The information should be sufficient to cause a reasonable person to believe that the object of the search is really in the place to be searched.

From the list that follows, choose the items which would lead a reasonable person to believe that contraband could be found in a certain house:

- A. A detailed report from a confidential informant whose previous reports had been accurate and which showed that he had seen a suspect selling drugs in his house, confirming what the police already had suspected.

- B. A tip from a Department of Social Services caseworker who during a house call had seen marijuana growing behind the house.
- C. A complaint from an irate woman that her neighbors were car thieves because they had several cars in their yard which they were apparently "stripping."
- D. A report by an officer that she saw and smelled what appeared to be several gallon jugs of whiskey partially covered by a sheet in the kitchen of a house when called to the house concerning a possible domestic dispute.

Answers "A" and "D" are fairly clearly facts that would cause a reasonable person to believe that contraband could indeed be found at the location described by the officer or informant. Answer "B" could be very strong evidence that marijuana could be found behind the house, but what additional information would you want to know? Wouldn't it be reasonable to first satisfy yourself that the caseworker was capable of identify growing marijuana? Answer "C" pretty clearly could not stand by itself. A reasonable person could think of several explanations for the presence of the automobiles which would be at least as reasonable as the possibility that they were stolen. If an officer had come to you with the woman's complaint and asked for a warrant, what additional information would you want? At the very least the officer should drive by the house to see if any of the cars resemble those reported stolen, and to make other inquiries regarding the activities of the occupants of the house.

Consider the case situations which follow and write in the space provided the kind of additional information that would be required to establish probable cause.

CASE: An officer comes to you and says that the officer has been watching a suspect who previously has been convicted of possessing stolen goods. This man has been meeting another man who has also been convicted of possessing stolen goods in the latter's house at regular intervals. The officer states that the officer has personally seen the suspect enter the house several times with VCR's, stereo equipment, and television sets, and that the suspect's wife has also been seen at the house.

The facts that the officer gave simply do not establish illegal activity any more than legal activity. The facts that will constitute probable cause are (1) facts that are inconsistent with lawful activity (or if the facts by themselves are consistent with lawful activity, what makes those facts collectively appear to be indicators of illegal activity, based on the officer's training or experience), or (2) the presence of evidence of illegal activity. The facts in the stolen goods case described above can be explained just as easily by legal as illegal conduct, so there is not yet probable cause. You might try to find out whether the officer has evidence of whether the goods being brought to the house are stolen, whether there have been recent break-ins in the community which these kind of goods have been stolen, whether a reliable informant had passed on information indicating that the suspect is currently dealing in these kind of stolen goods, etc.

CASE: An officer comes to you and says that the officer has a report from an informant that there is going to be a drug party at a certain house tonight in which marijuana, LSD, and possibly cocaine will be distributed to the guests. The officer has a list of names, including the occupant of the house and several of the guests. The officer knows what time it is going to be held and how much of each drug will be available. The officer knows that several of the persons listed have been convicted of possessing drugs and that almost all have been suspected of being drug users.

The officer has information indicating that there will indeed be contraband at the place to be searched, but the officer has neglected to give any information concerning the reliability of the informant and how the informant knew that the party is going to be held there (that is, the informant's basis of knowledge). You will want to know what the officer's experience has been with this informant and any other information that would tend to show that the informant knew what he was talking about.

CASE: An officer asks for a warrant to search a house based on an informant's report. This informant has cooperated with the department several times. Most of the informant's reports have resulted in convictions and all have resulted in arrests. The informant states that yesterday he was playing poker in a regularly held game out in a house in the country when one of the players, who lived in the house, put a quart of nontaxpaid whiskey on the table. When the other players questioned him about where he had gotten it, he jokingly said that he was "picking up a little extra money between Asheville and Morganton on Friday nights." The informant also stated that he had seen in the kitchen two

cardboard cartons of quart jars identical to the one on the table that looked like they had white liquor in them. He also said that the man's name was Harry James and provided the exact location of the house. The officer said that the officer has had Harry James under surveillance off and on for several months.

Although this information might be sufficient to establish probable cause (especially if something was said about the informant's ability to recognize nontaxpaid liquor), it would be helped by providing more specific information about the officer's own personal knowledge of Harry James's involvement with nontaxpaid liquor that would support the informant's report. A statement that the officer "suspected" or had "been watching" the suspect for some time is not particularly useful. What had the officer seen while having James under surveillance?

CASE: An officer requests a warrant to search a house based on an informant's report. The informant has volunteered information about drug cases on six separate occasions, and all have resulted in convictions. The informant stated that the informant thinks that the occupant of a house (giving its address) is selling crack cocaine. The basis of his conclusion is the fact that he has seen several young people stop briefly at the house, talk to the occupant, and then leave. The informant knows one of the young people to be a user of cocaine. This person is also known to the officer as having been convicted of possession of cocaine and is now on probation.

The facts given by the informant do not establish probable cause. There are just as many legitimate reasons for the people to be going to the house as illegal, and there is no specific information about selling cocaine. Don't be fooled by the proven reliability of the informant. The facts given in each case must be considered independently. In this case the officer will have to get more specific information, if possible, from the informant or from other sources to support a belief that cocaine is being sold from the house. You probably noticed that the officer's personal corroboration of the informant's report concerned only one of the people going to the house.

Section C

The purpose of this section is to develop the skill to write an adequate description of the property to be searched for.

The search warrant must describe as accurately as possible what the officer is to look for, so that it will not appear to authorize the officer to grab everything in the place and so that the officer can identify the property to be seized. The warrant must describe _____ the officer is looking for and the description must be detailed enough that the officer can _____ the property if the officer finds it.

The officer must know as accurately as possible what to be looking for and to be able to recognize/identify the property if the officer sees it.

If the officer is searching for a stolen refrigerator, the officer needs a clear idea of what this stolen refrigerator looks like (identifying marks, model number, serial number, etc.) so that the officer will be unlikely to take one that is legally owned.

Below are three descriptions of property to be searched for. In each case indicate whether you think the description was precise enough to be considered valid.

Description 1: ". . . certain evidence of the crime (possession of stolen goods) was to be found on the defendant's person and his residence . . ." (valid/invalid) Why?

Invalid. Not specific in any way.

Description 2: The warrant directed the officers to seize any property ". . . being used and/or possessed in violation of . . ." the obscenity statute. (valid/invalid) Why?

Invalid. The court ruled that the warrant was too general in that it gave no guidelines to the officers as to what is obscene and what is not.

Description 3: The warrant described ". . . a set of Wilson Staff golf clubs with rubber grips, in fairly worn condition . . ." to be searched for in the defendant's house. (valid/invalid) Why?

Valid. The description indicates the item which should be seized with enough precision so that it would be unlikely that legally owned property would be taken by mistake.

When the kind of property the officer is searching for can never be possessed legally, the description need not be as detailed as when the property the officer is searching for can be confused with something that can be legally possessed.

If the warrant says only to seize "heroin" then it (can/cannot) be interpreted to permit the officer to take something that the owner is entitled to have. This is because the owner can (sometimes/never/always) have heroin.

Describing "heroin" as the property to be seized cannot be interpreted as permitting the officer to take away something the owner is entitled to have, because the owner can never legally possess heroin.

Section D

The purpose of this section is to develop the skill to write an adequate description of the place to be searched.

The search warrant must accurately describe the place to be searched so that the officer may reasonably be expected to find the place to be searched; otherwise it would not be clear that the warrant authorized the search actually made by the officer. The description of the place must be complete enough so that the officer _____ reasonably make a mistake and search the _____ place.

An officer cannot reasonably make a mistake and search the wrong place if the description of the place to be searched is detailed enough.

This rule ensures that the search covers only the place for which _____ to search has been shown. It is also a good idea, whenever possible, to state in the warrant the name of the person who possesses the place to be searched.

A full description of the place to be searched ensures that the search covers only the place for which probable cause to search has been demonstrated.

CASE: The affidavit reads "to search an apartment located at Colonial Arms Apts. located at 714 W. Henderson Street, Monroe, N.C." Is this description is adequate?

The affidavit is inadequate since there is more than one apartment at the given address. An adequate description would include the apartment number and the tenant's name, if available.

CASE: The affidavit reads, "to search apartments occupied by John Doe at 413 W. Franklin Street (Apt. 22B), Chapel Hill, N.C. and at 117 Canal Street (Apt. 6), Chapel Hill, N.C. for appliances stolen from Hill Office Supply: two IBM computers model 118, serial numbers 473-Z11368 and 356-X4629." Is this affidavit is adequate?

This affidavit is adequate. There's not much chance of using the warrant at the wrong place. Although not discussed before, it is better to issue a separate warrant for each of two separate places to be searched, even if they belong to the same person.

Section E

The purpose of this section is to develop the ability to follow the proper steps in issuing a search warrant.

In the preceding sections you have learned that p_____ c_____ consists of facts that would lead a _____ person to believe that the object of a search can be found in the place to be searched; that an adequate description of the _____ to be searched is one that would not lead the officer to make a _____ and to search the wrong place; that an adequate description of the _____ of the search is one that would prevent an officer from making a _____ and from taking property which should not be taken.

Probable cause is a factual situation that would lead a reasonable person to believe that the object of the search can be found in the place to be searched. An adequate description of the place to be searched is one that would prevent an officer from making a mistake about the place to be searched, and an adequate description of the object of the search is one that would prevent the officer from making a mistake about what to take.

If you can do what has been taught so far, you have the most important aspects of the law's requirements. Meeting these requirements is part of the general warrant-issuing procedure, which must be followed to make sure that the validity of the warrant cannot be successfully attacked.

The steps you as a magistrate must be sure to follow in issuing a search warrant are these:

1. Make sure there is a completed application for a search warrant. Either the applicant or you may complete the application (other than where signatures are required).
2. Place the applicant under oath or affirmation and swear the applicant to the truth of facts stated in application.

3. Examine the officer about the facts stated in the application.
4. If applicant tells you facts that are not stated in application, they must be added in writing to the application OR you may tape-record the testimony OR reduce it to writing on separate paper, provided you file the tape-recording or separate paper with clerk when you file the copy of the search warrant and application.
5. You may take affidavits from persons other than applicant, provided you attach them to application.
6. Determine whether descriptions of the premises and property are adequate.
7. Make sure the applicant has signed the application. Sign and date the application.
8. If a tape-recording or separate paper writing of oral testimony has been made or additional affidavits have been attached, indicate that at bottom of application and sign your name.
9. Complete the search warrant, including date and hour, signature, names of applicant and others giving information.
10. Give original (white copy) and one copy (pink copy) of warrant and application to officer.
11. File a copy (green copy) of warrant and application and tape-recording or separate writing or oral testimony, if any, with clerk.

Using these steps means, for example, that immediately after getting a completed search warrant application, you would _____ the applicant to the truth of facts in the application, and _____ the applicant about those facts.

You would swear the applicant to the truth of facts stated in the application, and examine the applicant concerning those facts.

If the applicant tells you facts that are not stated in the _____, they must be _____ to the application OR _____ or _____ AND you must file them with the clerk when you file the _____.

If the applicant testifies about facts not stated in the application, they must be added in writing to the application OR tape-recorded or reduced in writing on a separate paper AND you must file them with the clerk when you file the application and warrant.

It is important to tape-record or reduce oral testimony to writing in the application or on separate paper because the failure to do so will mean that the testimony cannot be considered in court when the validity of the search warrant is challenged.

In summary, carefully see that all the information provided for in the application and search warrant form is filled in. Remember to:

- place the applicant under oath or affirmation;
- examine the applicant about the facts stated in the application;
- if the applicant gives oral testimony about facts not stated in the application, either add facts in writing to the application or tape-record or write on a separate paper and file with the clerk;
- determine probable cause;
- check to make sure the application and the search warrant are properly signed and completed;
- file a copy (green copy) of the search warrant and application with clerk;
- give the original (white copy) and a copy (pink copy) to the officer.

Briefly these seven requirements are:

- (1) _____.
- (2) _____.
- (3) _____.
- (4) _____.
- (5) _____.
- (6) _____.
- (7) _____.

Briefly these seven requirements are:

- (1) swear the applicant.**
 - (2) examine the applicant.**
 - (3) write or record oral testimony about facts not in application.**
 - (4) determine probable cause.**
 - (5) make sure application and warrant complete.**
 - (6) file copy (green copy) of warrant and application with clerk.**
 - (7) give original (white copy) and copy (pink copy) to officer.**
-

These are the steps that make up the whole search warrant procedure. Follow these steps, make sure probable cause has been shown, see that the descriptions are adequate . . . and you have done your job.

STATEMENTS OF PROBABLE CAUSE FOR SEARCH WARRANTS

1. The applicant states that yesterday , he purchased two ounces of cocaine. The cocaine was delivered to the applicant by Gene Orendorff, Jeff Manning, and Kenny Woods, who were arrested when they delivered the cocaine. The applicant further states that he paid \$1650.00 in marked U.S. currency (listed above) for the cocaine. During the time spent on the purchase of cocaine, the applicant and the suspects were under surveillance by other officers. The applicant states that from the movement of the suspects during and before the purchase and information received from two confidential sources of information after the purchase, the applicant has reason to believe the U.S. currency (listed above) and other controlled substances are at this time located in the above described location.

Good/Bad

Why?

See *State v. Hyleman*, 324 N.C. 506 (1989).

2. The information contained in this application is based upon my personal knowledge and upon factual information I have received from others. A reliable informant who had provided information in the past and whose information in the past had led to arrest and conviction under the N.C. Controlled Substances Act has told the undersigned that approximately one week ago the informant saw Lilly Ann Beam with approximately one pound of marijuana at her home on Ridge Road. Another informant told the undersigned that Lilly Ann Beam sold marijuana to them today. Lilly Ann Beam is on probation for a violation of the Controlled Substances Act.

Good/Bad

Why?

See *State v. Beam*, 325 N.C. 217 (1989).

3. We have been informed by a reliable confidential informant that he has been inside the above address within the past 48 hours and has seen cocaine inside the residence and cocaine is being sold at this time by the above occupants. The informant is familiar with how cocaine is packaged and sold on the streets, and he has used cocaine in the past. We have known this informant for three weeks and information provided by this informant has resulted in the seizure of controlled substances included in the N.C. Controlled Substances Act and led to the arrest of at least six individuals for violations of the N.C. Controlled Substances Act.

Good/Bad

Why?

See *State v. Graham*, 90 N.C. App. 564 (1988).

4. I, the undersigned applicant, have been a law enforcement officer for more than three years with the Smith County Sheriff's Department. During this time I have received extensive training including Basic Law Enforcement Officer's Certification and Advanced Criminal Investigation courses presented through the North Carolina Justice Academy. During the last year I have been involved in several investigations concerning drug offenses in Smith County. Within the past five days, the person who I will refer to as "He," regardless of the person's sex, contacted me. This person offered his assistance to the city/county vice unit in the investigation of drug sales in the city and county. This person told me that he had been inside the residence described above where he observed a room filled with marijuana plants. He stated that the suspect Charles Wayne Newcomb was maintaining the plants. This applicant confirmed the identity of the suspect to be Charles Wayne Newcomb. This information was obtained through D.M.V. records through vehicle registration. This applicant further checked with Duke Power Company and found this residence to have Charles Wayne Newcomb listed as the current occupant.

Good/Bad

Why?

See *State v. Newcomb*, 84 N.C. App. 92 (1987).

5. Sometime between one and five days ago, the Fairchild Christian School in the City of Livingston was broken into and two microscopes (described above) were stolen. That sometime before the date of this application a reliable and confidential informant personally contacted the applicant with the information that the stolen microscopes are in the above described residence of Mark Timothy Roark.

Good/Bad

Why?

See *State v. Roark*, 83 N.C. App. 425 (1986).

6. I and other officers have received information from a confidential and reliable informant that the Bo King is residing at 1509 Luther Street and is possessing cocaine for the purpose of sale at 1509 Luther Street. This informant has been to 1509 Luther Street within the past 48 hours and has observed Bo King possessing cocaine. This informant is familiar with cocaine and how it is packaged for street use. We officers have known this informant for approximately one year and during this time this informant's information has led to the arrests and convictions of many people for violations of the North Carolina Controlled Substances Act.

Good/Bad

Why?

See *State v. King*, 92 N.C. App. 75 (1988).

7. I have received information from a confidential and reliable informant that occupants of the dwelling described above have in their possession and are selling a large quantity of cocaine. I have known this informant only one week, but during that time he has given me information that I know from police intelligence files is true. He has also introduced me to two individuals (while I was in an undercover capacity) from whom I have bought controlled substances. He has also given me information that has allowed me to buy cocaine from two other individuals. Based upon the proven reliability of this informant, I request a warrant to search the above described premises for cocaine.

Good/Bad

Why?

8. A confidential and reliable informant has given me information that occupants of the above described premises are selling large quantities of cocaine. This informant has been inside the dwelling within the past 48 hours and has seen large quantities of cocaine. Within the past 48 hours, this informant has, at my direction and while under my control, purchased a small quantity of cocaine from the dwelling occupants. The informant was searched prior to entering the dwelling. At that time he had no cocaine in his possession. I then gave the informant \$200 in Department funds. I maintained constant observation while the informant entered the dwelling and until he exited the building. All other exits were observed by other officers. After the informant exited, he was again searched. A small quantity of cocaine and \$75 was found on his person.

Good/Bad

Why:

9. Three days ago, an armed robbery occurred at the 7/11 Store on Main Street. Cash in the amount of \$78 and a derringer pistol (pearl handles; owner applied number of 237-72-8451 on barrel) were stolen by the robber. A customer who identified himself as David Kiser stated to this affiant that he recognized the robber. He states that robber sells newspapers (the Daily Gazette) on the corner of Main Street and Elm Street. I have personally observed the subject described above selling newspapers on this corner. Employees of the Gazette confirm that this is the only subject that has sold papers on the corner of Main and Elm for the past year. The city telephone directory indicates that the suspect resides in the above described dwelling, and I have observed an automobile registered to the suspect in the driveway of the dwelling. I met my informant, Mr. Kiser, only as a result of investigating this crime. I have never before received information from Mr. Kiser. Based on this information, I request a search warrant for the above described dwelling to search for the above described derringer pistol.

Good/Bad

Why?

10. A search warrant issued on the basis of information supplied by a person named in an affidavit is usually valid if there is no reason to believe the named person's information is unreliable.

True/False

11. A search warrant issued on the basis of information supplied by a person whose identity must remain confidential is usually valid even if no other basis for reliability appears in the affidavit.

True/False

12. A magistrate may not issue a search warrant based upon hearsay.

True/False

13. Which of the following are adequate descriptions of things to be seized?
- a. “quantity of marijuana”
 - b. “quantity of stolen TV's”
 - c. “cocaine”
 - d. “stolen property”
 - e. “evidence of any crime”
 - f. “obscene magazines”
 - g. “RCA XL 100 Color TV set with a broken antenna”
 - h. “journals, registers, ledgers, canceled checks, and similar records and documents that constitute evidence of the embezzlement described in the affidavit”
 - i. “Smith & Wesson .38 Cal. revolver (4 inch barrel)”
14. Which of the following describe the place to be searched adequately?
- a. single family dwelling at 1132 Yale Place, Durham, N.C.
 - b. an apartment in the building at 198 West Cameron Avenue, Chapel Hill, N.C.
 - c. single family dwelling at 1818 Jameston Drive, Greensboro, N.C. and a 1990 Oldsmobile Delta 88, N.C. license number SFL 298, located in the driveway there
 - d. John Smith's apartment at the Oaks Apartments, Chapel Hill, N.C.
 - e. yellow 2 story stucco, Dutch colonial dwelling, located on Arrow Wood Drive (street number unknown), exactly 1 mile north of the intersection of US 15, on the east side of the road, Bahama, N.C. The dwelling has a green roof, green shutters, and a driveway with an oak tree on either side.
15. If you have a street address, there is no reason to include a physical description of the building.

True/False

16. Failure to include a physical description of the building will render a search warrant invalid even if the address (street and number) is given and is correct.

True/False

17. If the officer who applies for a search warrant gives the magistrate information other than that in the affidavit, the magistrate
- a. may not consider this information under any circumstances.
 - b. may always consider this information.
 - c. may consider this information only if the affidavit is amended or a new affidavit is submitted.
 - d. may consider this information only if the affidavit is amended or a new affidavit is submitted or if magistrate reduces the information to writing and files it with clerk, or if magistrate prepares a tape recording of the oral testimony.

(Circle letter for the best answer)

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

_____ as commanded.					
<input type="checkbox"/> I seized the items listed on the attached inventory.					
<input type="checkbox"/> I did not seize any items.					
<input type="checkbox"/> This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed.					
Name Of Officer Making Return (type or print)		Time	<input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Magistrate (type or print)	
Signature Of Officer Making Return				Signature Of Magistrate	
Department Or Agency Of Officer		Incident Number			
Date		Time	<input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Clerk (type or print)	
Signature Of Clerk				Signature Of Clerk	
Dep. CSC		<input type="checkbox"/>		Asst. CSC	
CSC		<input type="checkbox"/>		CSC	

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.

You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.

This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.

Date _____ Name (type or print) _____ Signature _____

☐ Deputy CSC ☐ Assistant CSC ☐ CSC ☐ Magistrate ☐ District Ct. Judge ☐ Superior Ct. Judge

NOTE: When issuing a search warrant, the issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. G.S. 15A-245(b).

This Search Warrant was delivered to me on the date and at the time shown below when the Office of the Clerk of Superior Court is closed for the transaction of business. By signing below, I certify that I will deliver this Search Warrant to the Office of the Clerk of Superior Court as soon as possible on the Clerk's next business day.

Date _____ Time _____ Name Of Magistrate (type or print) _____ Signature Of Magistrate _____

This Search Warrant was returned to the undersigned clerk on the date and time shown below.

Date _____ Time _____ Name Of Clerk (type or print) _____ Signature Of Clerk _____

Dep. CSC ☐ Asst. CSC ☐ CSC ☐

APPLICATION FOR SEARCH WARRANT

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

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

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

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

(and)

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

(and)

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

(and)

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

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

Date

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Name Of Applicant (type or print)

Signature

Signature Of Applicant

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

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

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

This testimony has been (check appropriate box) ☐ reduced to writing

☐ tape recorded and I have filed each with the clerk.

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

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

_____ as commanded.					
<input type="checkbox"/> I seized the items listed on the attached inventory.					
<input type="checkbox"/> I did not seize any items.					
<input type="checkbox"/> This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed.					
Name Of Officer Making Return (type or print)		Time	<input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Magistrate (type or print)	
Signature Of Officer Making Return		Signature Of Magistrate			
Department Or Agency Of Officer		Incident Number	Signature Of Clerk		
			<input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> CSC		

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.

You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.

This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.

Date _____ Name (type or print) _____ Signature _____

☐ Deputy CSC ☐ Assistant CSC ☐ CSC ☐ Magistrate ☐ District Ct. Judge ☐ Superior Ct. Judge

NOTE: When issuing a search warrant, the issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. G.S. 15A-245(b).

This Search Warrant was delivered to me on the date and at the time shown below when the Office of the Clerk of Superior Court is closed for the transaction of business. By signing below, I certify that I will deliver this Search Warrant to the Office of the Clerk of Superior Court as soon as possible on the Clerk's next business day.

Date _____ Time ☐ AM ☐ PM Name Of Magistrate (type or print) _____ Signature Of Magistrate _____

This Search Warrant was returned to the undersigned clerk on the date and time shown below.

Date _____ Time ☐ AM ☐ PM Name Of Clerk (type or print) _____ Signature Of Clerk _____

☐ Dep. CSC ☐ Asst. CSC ☐ CSC

APPLICATION FOR SEARCH WARRANT

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

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

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

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

(and)

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

(and)

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

(and)

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

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

Date

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Name Of Applicant (type or print)

Signature

Signature Of Applicant

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

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

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

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

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

Evaluation of Search Warrant Applications

Application 1

Would you issue a search warrant based on this application? _____

If not, why not? Be specific. _____

If so, do you have any reservations or concerns about it? Be specific. _____

Application 2

Would you issue a search warrant based on this application? _____

If not, why not? Be specific. _____

If so, do you have any reservations or concerns about it? Be specific. _____

Application 3

Would you issue a search warrant based on this application? _____

If not, why not? Be specific. _____

If so, do you have any reservations or concerns about it? Be specific. _____

IN THE MATTER: TIMOTHY WEAVER 1/26/1960 AND KENNETH WAYNE
BARTLETT 12/27/1961 507 PARK AVENUE DURHAM NC

Description of Premises to be Searched

In the following premises: 507 PARK AVENUE. 507 PARK AVENUE IS A WHITE FRAME HOUSE WITH THE NUMBERS 507 DISPLAYED ON THE FRONT OF THE HOUSE. THERE ARE BRICK PILLARS ON THE FRONT OF THE HOUSE AND THERE IS ALSO A PORCH THAT EXTENDS THE LENGTH OF THE FRONT OF THE HOUSE. THERE IS A WHITE SHED IN THE BACK OF THE HOUSE USED AS A RESIDENCE BY KENNETH WAYNE BARTLETT AND KIMBERLY GRAY.

In the following vehicles: A BLUE PINTO STATION WAGON POSSESSED BY MR. TIMOTHY WEAVER AND MR. KENNETH WAYNE BARTLETT. A WHITE VOLVO POSSESSED BY MR. TIMOTHY WEAVER AND MR. KENNETH WAYNE BARTLETT. ANY OTHER VEHICLE THAT IS POSSESSED OR OCCUPIED BY TIMOTHY WEAVER, KENNETH WAYNE BARTLETT, OR ANY OTHER PERSONS INVOLVED IN ILLEGAL ACTIVITY AT 507 PARK AVENUE DURHAM NC.

Directions from Police Station 1, 2400 Holloway Street Durham N.C. -- TURN LEFT ONTO HOLLOWAY STREET. TRAVEL WEST ON HOLLOWAY STREET FOR APPROXIMATELY 1 MILE UNTIL YOU GET TO NORTH GUTHRIE AVENUE. TURN LEFT ONTO NORTH GUTHRIE AVENUE. MAKE A RIGHT ONTO SOUTHGATE STREET AND THEN ANOTHER RIGHT ONTO PARK AVENUE, ENDING AT 507 PARK AVENUE.

Probable Cause Affidavit

The applicant swears to the following facts to establish probable cause for the issuance of a search warrant: I BEING THE AFFIANT, INVESTIGATOR A.M. CRISTALDI, AM CURRENTLY EMPLOYED AS A POLICE OFFICER WITH THE DURHAM POLICE DEPARTMENT. MY JOB DUTIES INCLUDE INVESTIGATING AND ENFORCING THE CRIMINAL LAWS ENACTED BY THE STATE OF NORTH CAROLINA. I HAVE RECEIVED OVER 900 HOURS OF FORMAL TRAINING FROM THE DURHAM POLICE DEPARTMENT IN VARIOUS TOPICAL AREAS INCLUDING POLICE LAW INSTITUTE, CRIMINAL INVESTIGATIONS, AND INTERVIEW & INTERROGATION. I HAVE BEEN EMPLOYED BY THE DURHAM POLICE DEPARTMENT FOR OVER 6 YEARS AND HAVE CONDUCTED OR BEEN INVOLVED IN EXCESS OF 100 INVESTIGATIONS AND AM CURRENTLY ASSIGNED TO THE DISTRICT 1 INVESTIGATIONS DIVISION WHERE I INVESTIGATE PROPERTY AND VIOLENT CRIMES TO INCLUDE ROBBERIES, RAPES, KIDNAPPINGS, ASSAULTS, AND BURLGARIES.

ON 3/25/07 I SPOKE WITH TWO INDEPENDENT WITNESSES THAT TOLD ME TIMOTHY WEAVER HAS BEEN PAYING KENNETH WAYNE BARTLETT AND

Affiant: AM Cristaldi

Magistrate: [Signature]

Date: 4/26/07

APPLICATION 1: BARTLETT

IN THE MATTER: TIMOTHY WEAVER 1/26/1960 AND KENNETH WAYNE
BARTLETT 12/27/1961 507 PARK AVENUE DURHAM NC

OTHERS CASH MONEY FOR PIPES AND COIL. MR. BARTLETT GOES OUT TO NEW HOUSING DEVELOPMENTS, APARTMENT COMPLEXES AND ANYWHERE ELSE HE CAN FIND PIPES AND COILS AND STEALS IT FROM THESE LOCATIONS. MR. BARTLETT USES ONE OF MR. WEAVERS VEHICLES TO TRANSPORT THIS STOLEN PIPE AND COIL BACK TO MR. WEAVER. MR. WEAVER THEN SELLS THE COPPER WIRE TO A SCRAP YARD AND SPLITS THE PROFITS WITH MR. BARTLETT. MY INDEPENDENT WITNESSES TOLD ME THAT ON 3/24/07 MR. BARTLETT WENT INTO CARY DRIVING A VEHICLE THAT MR. WEAVER GAVE TO HIM TO USE. MR. BARTLETT THEN WENT WITH HIS GIRLFRIEND (KIMBERLY GRAY) TO CARY WHERE THEY MADE FOUR TRIPS BACK AND FORTH FROM CARY TO DURHAM WITH COPPER WIRE MR. BARTLETT HAD STOLEN FROM THE HOUSES. THE COPPER WIRE INCLUDED THE LARGE COPPER PIPE THAT HAD THE PLACEMENT LOCATION INSIDE THE HOUSE WRITTEN ON IT. MR. WEAVER THEN WENT TO AMERICAN METALS IN GARNER NORTH CAROLINA ON THE MORNING OF 3/25/07 AND SOLD IT. I KNOW FROM DEALING WITH AMERICAN METALS THAT THEY ONLY BUY COPPER ON WEDNESDAYS AND FRIDAYS.

MY TWO INDEPENDENT WITNESSES ALSO TOLD ME THAT MR. WEAVER IS IN POSSESSION OF A SHOTGUN. MR. WEAVER KEEPS THE SHOTGUN HIDDEN INSIDE 507 PARK AVENUE. MR. WEAVER IS ALSO A CONVICTED FELON AND DOES NOT HAVE THE RIGHT TO POSSESS A FIREARM.

ON 4/26/07 I SPOKE WITH A REPRESENTATIVE FROM AMERICAN METALS WHO TOLD ME THAT TIMOTHY WEAVER WAS AT THAT LOCATION THE MORNING OF 4/25/07 SELLING WIRE AND COIL. THE REPRESENTATIVE SAID MR. WEAVER WAS THERE AROUND 0900 HOURS.

Description of Evidence to be Seized

There is probable cause to believe that the following property will be contained in the residence.

- 1- STOLEN COPPER WIRE TO INCLUDE PIPE AND COIL.
- 2- FIREARMS AND AMMUNITION
- 3- TOOLS USED FOR BUGLARIES INCLUDING BUT NOT LIMITED TO WIRE CUTTERS, SAWS, SCREW DRIVERS, PLIERS AND WRENCHES.
- 4- U.S. CURRENCY THAT IS THE FRUIT OF ILLEGAL SALES OF COPPER WIRE
- 5- TIMOTHY WEAVER WHITE MALE D/O/B 1/26/1960

Affiant: AM Cristaldi

Magistrate: AKC

Date: 4/26/07

Application For Search Warrant

I, Corporal Kevin Perry, Special Investigations Division, Sampson County Sheriff's Office, being duly sworn, request that the court issue a warrant to search the person, place, vehicle, and other items described in this application and to find and seize the property and person described in this application. There is probable cause to believe that:

- (1) Books, records, receipts, notes, ledgers, and other papers relating to the transportation, ordering, purchasing, in particular, Cocaine, a scheduled controlled substance included in the North Carolina Controlled Substance Act;
- (2) Books, records, receipts, bank statements and records, money drafts, letters of credit, money orders, cashier's check receipts, passbooks, bank checks, safe deposit boxes, safe deposit box keys, and other items evidencing the obtaining, secreting, transfer, and / or concealment of assets and the obtaining, secreting, transfer, concealment, and / or expenditure of money;
- (3) United States currency, precious metals, jewelry, and financial instruments, and other items indicative of the proceeds of illegal narcotics trafficking;
- (4) Photographs, including still photos, negatives, videotapes, undeveloped film and the contents therein, slides, in particular photograph of co-conspirators, of assets, and / or controlled substances;
- (5) Address and / or telephone books, rolodex entries and any papers reflecting the names, addresses, telephone numbers, pager numbers, fax numbers, cellular phone numbers of any co- conspirators, sources of supply, customers, financial institutions, and other individual or business with whom a financial relationship exist;
- (6) Papers and documents that would establish occupancy, residency, rental and / or ownership of the premises described herein, including, but not limited to utility and telephone bills, canceled envelopes, rental, purchase or lease agreements, and keys;
- (7) Firearms and ammunition, including, but not limited to handguns, pistols, revolvers, rifles, shotguns, machine-guns, and other weapons, and any records or receipts pertaining to firearms;

SWORN AND SUBSCRIBED BEFORE ME:

Signature: _____

Date: September 27, 2006

☐ Deputy CSC

☐ Assistant CSC

☐ Clerk of Superior Court

☒ Magistrate

☐ District Court Judge

☐ Superior Court Judge

Signature of Applicant: _____

Date: September 27, 2006

APPLICATION 2: TAYLOR

Application For Search Warrant

- (8) Electronic equipment, such as computers, cellular phones, pagers, facsimile machines, currency counting machines, tape recording devices, video recording devices, cameras and other items and related manuals used to generate, transfer, count, and / or to store information described in items 1, 2, 3, 4, 5, and 6 of this affidavit. Additionally, computer software tapes and discs, audiotapes, and the contents there in, containing the information generated by the aforementioned electronic equipment;
- (9) Controlled substances, in particular Cocaine, which is included in Schedule II of the North Carolina Controlled Substance Act and would be illegal to possess; in violation of North Carolina General Statute 90-95;
- (10) Paraphernalia, used to weigh, manufacture, sell, distribute, package, re-package, store, secret, ingest, inhale, inject, or otherwise introduce into the body a controlled substance, in particular Cocaine, which would be illegal to possess; in violation of North Carolina General Statute 90-113.22;

Would constitute evidence of a crime and the identity of a crime and the identity of a person participating in a crime, namely **Illegal Distribution of a Controlled Substance in Violation of North Carolina General Statute 90-95** and is located;

[X] on the following premises: **which is described as a tan single wide mobile home located at 3095 Brewer Rd Faison, NC 28341 and the single story wood frame house that is located directly behind the mobile home. Directions to the residence are as follows: Travel Hwy 403 North from Clinton towards Faison. After crossing I-40 stay to the right and continue on Hwy 403 towards Faison. Turn right on to Brewer Rd. The house is located on the right side of the road just after a curve to the right approximately 100 feet off the roadway.**

(and)

[X] on the following person(s): **Any person or persons as may be on the premises of the residence to be searched at the time of the execution of this Search Warrant, should it please the Court for its issuance.**

(and)

[X] in the following vehicle(s): **Any vehicle as may be located within the curtilage of the residence to be searched or as may be determined to be under the dominion and control of any of the persons located within the residence to be searched at the time of the execution of this Search Warrant, should it please the Court for its issuance.**

(and)

[X] **Any outbuildings or other such appurtenances as may be affixed to the residence to be searched or situated within its curtilage at the time of the execution of this Search Warrant, should it please the Court for its issuance.**

Application For Search Warrant

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

I, Corporal Kevin Perry, am a sworn law enforcement officer for the Sampson County Sheriff's Office and assigned as a Narcotic/Alcohol Enforcement Special Agent in the Special Investigation Division Previously I was a sworn law enforcement officer with the Goldsboro Police Department. I have been a sworn law enforcement officer for 02 years. I have served 10 years as a United States Marine where I was promoted to the rank of Sergeant and was awarded the Navy Achievement Medal, along with two Meritorious Mass commendations. As a law enforcement officer, I have received 500 hours training in the area of investigations and have been involved in over 100 Narcotic/Alcohol investigations. I have been awarded the Patriot award; meritorious award and I hold certificates for, The United States Department of Justice, Drug Enforcement Administration Basic Narcotic's Investigator School, Interview and Interrogations, and Methamphetamines awareness and recognition. I am familiar with the methods of operations of people involved in Narcotic/Alcohol and the evidence associated with these crimes. I will be known as Applicant from this point on.

—Based upon the Affiant's training, knowledge, experience and participation in other investigations involving the illegal distribution of controlled substances, He knows that:

—That persons involved in the illegal drug trade must maintain, on hand, U. S. currency in order to maintain and finance their on-going narcotics business. That this U. S. currency is maintained in the residence, businesses or other locations in which these persons maintain control over;

—That it is common for persons involved in the illegal drug trade to maintain books, tally sheets, records, notes, ledgers, airline tickets, receipts relating to the purchase of financial instruments and / or the transfer of funds, and other papers relating to the transportation, ordering, sale and distribution of controlled substances. That the aforementioned books, records, receipts, notes, ledgers, etc., are maintained within their residences, businesses, or other locations in which they have dominion and control over;

—That it is common for persons involved in the illegal drug trade to secret contraband, proceeds of drug sales, and records of drug transactions in secure locations within their residences, their businesses and / or other locations which they maintain dominion and control over, for the ready access and to conceal these items from law enforcement authorities.

SWORN AND SUBSCRIBED BEFORE ME:

Signature: [Signature]

Date: September 27, 2006

☐ Deputy CSC ☒ Assistant CSC ☐ Clerk of Superior Court

☒ Magistrate ☐ District Court Judge ☐ Superior Court Judge

Signature of Applicant: [Signature]

Date: September 27, 2006

Application For Search Warrant

-That it is common for persons involved in the illegal drug trade to maintain evidence pertaining to their obtaining, secreting, transfer, concealment and / or expenditure of narcotics proceeds such as: currency, financial instruments, precious metals and gemstones, jewelry, books, records, invoices, receipts, records of real estate transactions, bank statements and related records, passbooks, money drafts, letters of credit, money orders, bank drafts, cashiers checks, bank checks, safe deposit boxes, safe deposit box keys, and money wrappers. These items are maintained by these persons within their residences, businesses, or other locations in which they have dominion and control over;

-That it is common for persons involved in the illegal drug trade to maintain address and / or telephone numbers in books or on papers, in rolodex entries and reflect the names, addresses, telephone numbers, pager numbers, fax numbers of their associates in the illegal drug trade. That these items are maintained by these persons within their residences, businesses, or other locations in which they have dominion and control over;

-That it is common for persons involved in the illegal drug trade to have in their possession photographs / videotapes of themselves, their associates, their property and their product. That these items are maintained by these persons within their residences, businesses, or other locations in which they have dominion and control over;

-That it is common for persons involved in the illegal drug trade to commonly have in their possession, that is on their person, at their residences, and / or other locations in which they have dominion and control over, firearms and other weapons. Said firearms and other weapons are used to protect and secure property. Such property may include, but not limited to: narcotics, jewelry, narcotics paraphernalia, books, records, and U. S. currency;

-That it is common for persons involved in the illegal drug trade to utilize electronic equipment, such as computers, cellular phones, pagers, facsimile machines, currency counting machines, tape recording devices, video recording devices, cameras and other items and related manuals used to generate, transfer, count, and / or to store information described in items 1, 2, 3, 4, 5, and 6 above;

-That it is common for persons involved in the illegal drug trade to keep on hand, that is on their person, in their residences, and / or other locations in which they have dominion and control over, controlled substances, in particular Cocaine. That this Cocaine would be used for the illegal sale, distribution and use of this controlled substance;

SWORN AND SUBSCRIBED BEFORE ME

Signature: _____

Date: September 27, 2006

[] Deputy CSC [] Assistant CSC [] Clerk of Superior Court
[X] Magistrate [] District Court Judge [] Superior Court Judge

Signature of Applicant: _____

Date: September 27, 2006

Application For Search Warrant

-That it is common for persons involved in the illegal drug trade to keep on hand, that is on their person, in their residences, and / or other locations in which they have dominion and control over, paraphernalia. That this Paraphernalia would be used to weigh, manufacture, sell, distribute, package, re-package, store, secret, ingest, inhale, inject, or otherwise introduce into the body a controlled substance which would be illegal to possess;

-In addition, the Affiant is aware that: during the past several months the Special Investigations Division of the Sampson County Sheriff's Office has received several complaints in reference to the sale of the controlled substance Cocaine, a controlled substance that is included in Schedule II of the North Carolina Controlled Substance Act, at the above location.

Due to these complaints, this applicant began an investigation that included surveillance and the use of a Confidential Informant.

Within the past seventy-two, (72) hours, a Confidential Informant had visited the described location at the direction and surveillance of this Applicant and while at the location the Confidential Informant made a purchase of the controlled substance. Immediately after leaving the location, the Confidential Informant met with the applicant and turned over the controlled substance.

The Confidential Informant has proven reliable by making numerous controlled buys of controlled substances at the direction of the Applicant. This was accomplished by insuring the Confidential Informant has no controlled substances in his / her possession, then furnishing the informant with Special Funds, then directing the Confidential Informant to a predetermined location known as an illegal outlet for the sale of controlled substances. The Confidential Informant was observed entering the location and after only a few minutes leaving, then meeting with the applicant and turning over the substance purchased.

-Based on the above-mentioned facts, the Applicant prays to the Court for the issuance of this Search Warrant.

SWORN AND SUBSCRIBED BEFORE ME:

Signature: _____

Date: September 27, 2006

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court
☒ Magistrate ☐ District Court Judge ☐ Superior Court Judge

Signature of Applicant: _____

Date: September 27, 2006

Continuation page attached to the SEARCH WARRANT application, dated Thursday, July 14, 2005

CONTINUATION OF "PROPERTY / EVIDENCE TO BE SEIZED"

Hydrocodone (Schedule III), devices used to introduce controlled substances into the body which are illegal to possess, and evidence of ownership access, possession and control; also beepers, firearms, cellular phones, and US currency.

CONTINUATION OF "PREMISES, PERSON, VEHICLE, OR OTHER ITEM (S) TO BE SEARCHED"

A single story, single family dwelling, constructed of white vinyl siding with brick underpinning and black shutters, located at 5228 Statesville Road, Charlotte, Mecklenburg County, N.C., USA.

CONTINUATION OF "PROBABLE CAUSE AFFIDAVIT"

This applicant swears to the following facts to establish probable cause for a search warrant:
Officer M.F. Warren #353 has received information from a confidential and reliable informant who has been in 5228 Statesville Road and has seen a large quantity of the Schedule III drug Hydrocodone in the residence without a prescription. This informant states that they have been in the above described location within the past 48 hours and have seen various forms of Hydrocodone throughout the house. This officer has known this informant for approximately 9 years. During this time, this officer has used information provided by this confidential and reliable informant to be true through independent investigations. This informant is familiar with various forms of Hydrocodone and the uses of various forms of Schedule III drugs.

Officer M.F. Warren #353 has been a Charlotte-Mecklenburg Police officer for 24 years and 6 months, including 7 years of Street level Drug Interdiction. I have been to various drug schools at the federal, state and local level. I have been directly or indirectly involved with over 1,900 drug arrests and have assisted with the execution of approximately 560 search warrants. Based on this affiant's training and experience, I have knowledge that firearms, beepers, cellular phones, and U.S. Currency are commonly used in the furtherance of drug distribution.

Based on the information contained in this application, I have knowledge that firearms, beepers, cellular phones, and US currency are commonly used in the furtherance of drug distribution. Based on the information contained in this application and the proven reliability of this informant, I request that a search warrant be issued for a single story, single family dwelling, constructed of white vinyl siding with brick underpinning and black shutters, located at 5228 Statesville Road, Charlotte, Mecklenburg County, N.C., USA.

SWORN AND SUBSCRIBED TO BEFORE ME:

Judge / Magistrate

Date

Applicant(s)

Date

SEP 01 2005

EDWARDS

3:

APPLICATION

Tab:

Elements of Crimes

ELEMENTS (AUGUST, 2018)

Conspiracy, Solicitation, Attempts, and Principals, and Accessories	Elements of Crimes-Page 1
Selected Assault Crimes	Elements of Crimes-Page 3
Selected Sexual Assaults and Offenses	Elements of Crimes-Page 5
Chart: Burglary & Breaking or Entering Offenses	Elements of Crimes-Page 7
Major Categories of Violations of Controlled Substances Act.....	Elements of Crimes-Page 9
Review Questions on Conspiracy, Solicitation, Attempts, Principals, Accessories.....	Elements of Crimes-Page 11
Review Questions on Assaults and Related Offenses	Elements of Crimes-Page 13
Review Questions on Sexual Assaults	Elements of Crimes-Page 17
Review Questions on Larceny & Robbery	Elements of Crimes- age 21
Review Questions on Burglary and Breaking & Entering.....	Elements of Crimes-Page 25
Review Questions on Trespass Law and Damage to Property	Elements of Crimes-Page 29
Review Questions on Drug Offenses	Elements of Crimes-Page 31
Review Questions on Worthless Checks	Elements of Crimes-Page 33
Review Questions on Disorderly Conduct, Obstruction of Justice, and Weapons Offenses	Elements of Crimes-Page 35

Conspiracy, Solicitation, Attempts, and Principals and Accessories

After-the-Fact Crimes	Crimes of Preparation	Responsibility as Principal
Accessory after the fact Compounding a felony	Solicitation Conspiracy Attempt	Accessory before the fact Aiding and abetting Acting in concert

Selected Assault Crimes

Injury	Weapon	Victim Characteristics	Victim's Job
Simple assault [Class 2]	With deadly weapon [A1]	On female [A1]	On court officer: - simple [I]
Inflicting serious injury [A1]	By pointing gun [A1]	On child under 12 [A1]	- on another person as retaliation [I] - with deadly weapon or inflicting serious injury [F]
Inflicting serious bodily injury [F]	With deadly weapon with intent to kill [E]	In presence of minor [A1]	On school personnel [A1]
Inflicting physical injury: strangulation [H]	With deadly weapon inflicting serious injury [E]	On handicapped person: - simple [A1] - aggravated (deadly weapon, serious injury, intent to kill) [F]	On sports official [I] On transit operator [A1]
	With deadly weapon with intent to kill inflicting serious injury [C]	On unborn child : - battery [A1] - inflicting serious bodily injury [F]	On firefighter, EMT, medical responder, or hospital personnel: - inflicting physical injury [I] - inflicting serious bodily injury or with deadly weapon other than firearm inflicting physical injury [H] - with firearm [F]
	Discharge of firearm into occupied: - property [E] - dwelling/conveyance in operation [D] - property causing serious bodily injury [C]	Inflicting physical injury on: - law enforcement officer - probation/parole officer - detention employee - NC National Guard [E]	On emergency personnel in declared emergency/riot: - inflicting physical injury [I] - with dangerous weapon or substance [F]
	Discharge of firearm within property to incite fear [F]	Inflicting serious bodily injury on: - law enforcement officer - probation/parole officer - detention employee - NC National Guard [F]	
	Secret assault [E]	Malicious conduct by prisoner [F]	

Selected Sexual Assaults and Offenses

FIRST DEGREE FORCIBLE RAPE/SEXUAL OFFENSE

Rape	Sexual offense
Vaginal intercourse	1 of 5 sex acts
By force and against the victim's will*	Same
Under specified conditions	Same

*Courts also may find this element met if victim helpless

SECOND DEGREE FORCIBLE RAPE/SEXUAL OFFENSE

Rape	Sexual offense
Vaginal intercourse	1 of 5 sex acts
By force and against the victim's will, or victim helpless	Same

SEXUAL BATTERY

Sexual battery
Sexual contact
For sexual purpose
By force and against the victim's will, or victim helpless

CRIME AGAINST NATURE

Crime against nature
Unnatural sexual act

FIRST DEGREE STATUTORY RAPE/SEXUAL OFFENSE

Rape	Sexual offense
Vaginal intercourse	1 of 5 sex acts
Victim < 13	Same
Defendant ≥ 12	Same
Defendant ≥ 4 years older than victim	Same

RAPE/SEXUAL OFFENSE OF CHILD UNDER 13 BY ADULT

Rape	Sexual offense
Vaginal intercourse	1 of 5 sex acts
Victim < 13	Same
Defendant ≥ 18	Same

STATUTORY RAPE/SEXUAL OFFENSE OF CHILD 13, 14, 15

Rape	Sexual offense
Vaginal intercourse	1 of 5 sex acts
Victim = 13, 14, 15	Same
<i>B1 felony:</i> Defendant ≥ 6 years older than victim	Same
<i>C felony:</i> Defendant > 4 and < 6 years older than victim	Same

INDECENT LIBERTIES WITH MINOR

Indecent liberties with minor
Indecent liberty or lewd or lascivious act
Victim < 16
Defendant ≥ 16
Defendant ≥ 5 years older than victim

Chart: Elements of Burglary & Breaking or Entering Offenses
Alyson Grine, Feb. 2014

1st Degree Burglary	2d Degree Burglary	Felony B or E	Misd. B or E
breaks	breaks	breaks	breaks
and enters	and enters	or enters	or enters
w/o consent	w/o consent	w/o consent	w/o consent
dwelling	dwelling/ curtilage	any building	any building
of another	of another	of another	of another
while occupied	---	---	---
at night	at night	---	---
w/intent	w/intent	w/intent	---

Major Categories of Violations of Controlled Substances Act (90-86 through 90-113.8)*

90-95(a)(3) offenses	90-95(a)(1) offenses	90-95(a)(2) offenses	90-95(d1) offenses	Trafficking (90-95(h))	Common 90-108 offenses
Possess	Manufacture	Create	Possess precursor with intent to mfg.	Sell	Maintain dwelling, etc.
	Sell or deliver	Sell or deliver	Possess or distribute precursor with knowledge of mfg.	Manufacture	Obtain controlled substance by fraud/forgery
	Possess with intent to manufacture, sell, or deliver	Possess with intent to sell or deliver	Possess pseudoephedrine product after conviction of certain methamphetamine and precursor offenses	Deliver	
Enhancements	Enhancements		Enhancements	Transport	
Possess controlled substance in prison or jail (90-95(e)(9))	Sell or deliver to person who is 16/13 or younger by person 18 or older (90-95(e)(5))		Possess precursor with intent/knowledge re mfg. (90-95(d1)(2))	Possess	
Prior conviction under Controlled Substances Act (90-95(e)(3), (e)(4), (e)(7))	Sell or deliver to pregnant female by person 18 or older (90-95(e)(5))				
	Any (a)(1) violation by person 21 or older near school, child care center, or public park (90-95(e)(8), (10))				
	Employ minor/person 13 or younger to commit (a)(1) violation by person who is 18/21 or older (90-95.4)				
	Promote (a)(1) violation by minor (90-95.6)				
	Purchase or receive by person 21 or older from minor 13 or under who sells or delivers or possesses with intent to sell or deliver (90-95.7)				
	Give or sell controlled substance to inmate (14-258.1)				
Reductions	Reductions			Reductions	
No active time for first offender for Class 3 misdemeanor possession of Schedule VI substance (90-95(d)(4)) [‡]	Delivery of less than 5g of marijuana or 2.5g of synthetic cannabinoid for no remuneration is possession only, not delivery (90-95(b)(2))			Substantial assistance (90-95(h)(5)) [‡]	
Discharge and dismissal for first offender (90-96(a), (a1)) [‡]					

* This chart does not include violations of the NC Toxic Vapors Act (90-113.8A through 90-113.14) or NC Drug Paraphernalia Act (90-113.20 through 90-113.24).

[‡] Not a charging decision made by magistrates.

Questions on Conspiracy, Solicitation, Attempts, Principals, and Accessories

1. Tonya Hardnose, world class roller skater, suspects that her husband, Jeff McGillicuddy, and her bodyguard, Bill Moose, are planning to assault Hardnose's chief rollerskating rival, Bambi Carrigan. The plan is to break Bambi's nose with a baseball bat so that potential sponsors will not be interested in using her in commercials even if she wins the upcoming world rollerskating championship. Hardnose says nothing to the authorities, and Bambi is later assaulted. What crimes, if any, has Hardnose committed?
2. Hardnose is concerned that if the World Rollerskating Association (WSA) learns of her prior knowledge of the planned assault on Bambi, the WSA will not let her skate at the world rollerskating championship next month. After the assault takes place, Hardnose agrees with McGillicuddy that she will not report him to the police if he will not say anything to the WSA. What crimes, if any, has Hardnose committed?
3. Assume Bill Moose, Hardnose's bodyguard, goes to John Indifferent and offers him \$10,000 to break Bambi's nose with a baseball bat. Indifferent says he's not interested. What crimes, if any, has Moose committed? What about John Indifferent?
4. Same facts as Question # 3, except Indifferent accepts the money. However, three weeks later he changes his mind and does not commit the assault. What crimes, if any, have Moose and Indifferent committed? What if Indifferent returns the money?
5. Suppose Bill Moose goes to Jim Survivalist and makes the same offer. Survivalist accepts the money and agrees to break Bambi's nose. Two weeks later Survivalist follows through on the plan. At the time of the assault, Moose is home asleep. What crimes, if any, has Moose committed?

NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON ASSAULT AND RELATED OFFENSES

Which assault offense would be the proper charge under these facts?

1. A city law enforcement officer is on the way home, still wearing his uniform, after completing his shift for that day. For no apparent reason, another man comes up behind the officer, shoves him to the ground, and runs.
2. A husband beats his wife about her head and body with his fists, and she suffers a broken arm and lacerations to her face that requires 35 stitches.
3. A man is standing next to his house when his angry neighbor, about 50 yards away, fires a pistol at him—wanting to scare him. The shot misses about five feet to the left of the man.
4. After having a violent argument in a bar, a man is walking through the parking lot when the man he was arguing with comes at him in his car, going about 50 m.p.h. The man jumps out of the way and just avoids being hit.
5. Smith shoots a law enforcement officer who is attempting to execute a search warrant at his house. The officer suffers serious chest injuries but survives.
6. An 18 year-old male kicks a 5 year-old boy one time.

7. While being tried in district court for impaired driving, a man gets angry at the judge, jumps up on the judge's bench, and hits her twice in the shoulder.
8. While on patrol in a residential neighborhood, a city law enforcement officer has the back side window of his car shot out with a rifle.
9. An officer arrests Jones for armed robbery. While taking Jones to the magistrate's office for the initial appearance, he spits in the officer's face.
10. Unhappy with the amount of noise they are making, a theater manager grabs two 10-year old boys, drags them into his office, spansks them both, and sends them out of the theater.
11. At the end of a heated argument in a bar, one man yells at the other, "I'm going to kill you some day, you damn bastard!" He then leaves.
12. After stopping a car for impaired driving, a state trooper is jumped on by the driver. The man has a knife in his hand but the trooper manages to subdue him without being cut.
13. After being called by the neighbors, an officer finds a man standing on his front porch holding a butcher knife in his hand. He is yelling at his wife in the front yard that he will kill her if she tries to come back in the house.

14. Two men have an argument in a bar. One leaves and hides behind a car in the parking lot. When the second man comes out, the first jumps from behind the car with a knife in his hand and makes several superficial cuts before two other men intervene and stop the attack.
15. When two men pull into a parking space at the same time, one driver gets out of his car, pulls the other driver out and hits him with his fist several times, knocking the man unconscious. When he is taken to the hospital, the doctor says he has a mild concussion and will have to stay overnight.
16. Two neighbors get in an argument about the noise made by one of the neighbor's kids. After saying "I'll get even with you for those damn noisy brats of yours; I'm going to cut your damn head off," one man stabs the other in the shoulder with a nine-inch knife. He is about to stab again when stopped by another neighbor.
17. While his wallet is being taken, a man is beaten over the head with a pistol carried by the thief. When the victim raises his arm to protect himself, his arm is broken.
18. Angry that her two-year-old daughter will not stop crying, a mother deliberately places her in a bathtub with extremely hot water. The daughter suffers third-degree burns.
19. John Jones is the former husband of Susan Jones. She is now dating Howard Findley. John Jones follows her to work every day for a week, after having told her over the telephone that if she continues to date Findley, "something serious might happen" to her. Findley calls John Jones and tells him that Susan Jones wants him to stop following her to work. The next day, John Jones follows her to work again.

20. An officer arrests Peter Smith for assault on a female. Smith shoved the female in the back, and she fell down and bruised her elbow. Smith has previously been convicted of simple assault, and assault by pointing a gun. Both convictions have occurred within the past 3 years. Assuming the magistrate finds probable cause for assault on a female, what is the most serious charge that may be brought against Smith?
21. An officer arrests John Jones for assault by pointing a gun. The victim of the assault suffered no injury. He has previously been convicted of simple assault and assault with a deadly weapon inflicting serious injury. Both convictions have occurred within the past 12 years. Assuming the magistrate finds probable cause for assault on a female, what is the most serious charge that may be brought against Jones?

NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON SEXUAL ASSAULTS

Which sexual assault offense would be the proper charge under these facts?

1. A 21 year-old man forces a 19 year-old woman to have sexual intercourse with him by holding a knife to her face and threatening to cut her.
2. A 21 year-old man forces a 19 year-old woman to have sexual intercourse with him by driving her into the woods and threatening to abandon her.
3. A 21 year-old man holds a 19 year-old woman down to make her submit to sexual intercourse. Although he says nothing about it, a large knife strapped to his waist is plainly visible.
4. A 21 year-old man holds a 19 year-old woman down and makes her submit to sexual intercourse. When she fights, he twists her arm and breaks it.
5. A 19 year-old woman is pulled off the street by a 21 year-old man and shoved into a car driven by another man. The 21 year-old holds her down and has sexual intercourse with her on the back seat while the other man drives through a wooded area.
6. A 21 year-old woman holds a 25 year-old woman down while her boyfriend has sexual intercourse with her.

7. A 17 year-old male (whose birthday is on July 15) has sexual intercourse with a 13 year-old female (whose birthday is on August 21) with her consent.
8. On April 22, a 16 year-old male (whose birthday is on January 2) makes a 12 year-old female (whose birthday is on March 15) have sexual intercourse with him by holding a knife to her throat and threatening to kill her.
9. A 17 year-old male holds a 12 year-old female down and has sexual intercourse with her against her will.
10. A 22 year-old man commits fellatio with a 15 year-old female with her consent.
11. A 26 year-old man gives his date, a 25 year-old woman, a great deal to drink during the evening. After she passes out, he has sexual intercourse with her.
12. Same facts as #11 except that he has cunnilingus with her instead of intercourse.
13. A man and woman are husband and wife, but they have been separated for a year and a half without a written agreement. One night the man comes over to his wife's apartment and forces her to have sexual intercourse with him.
14. A 28 year-old woman has consensual sexual intercourse with a 12 year-old male.

15. Three 30 year-old men pick up a 16 year-old woman who is hitchhiking, drive her to a wooded area and make her perform fellatio on each by threatening to beat her and abandon her.
16. A 16 year-old male and a 12 year-old female are dating. His birthday is on July 15; hers is on July 1. On August 1, she voluntarily performs fellatio on him.
17. A 15 year-old male and a 15 year-old female voluntarily have sexual intercourse with each other.
18. Two 30 year-old men hold down a 24 year-old woman and threaten to beat her, making her perform fellatio on one man. After that, the second man forces a soft drink bottle into her vagina.

NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON LARCENY AND ROBBERY

Which offense would be the proper charge under these facts?

1. A man picks a lock and enters a home at 2 p.m., then takes three Playboy magazines and nothing else.
2. A man goes to another man's farm and takes a hunting dog worth about \$300.
3. A woman is trying on dresses at a department store. While the sales clerk is busy elsewhere, the woman puts on one of the store's dresses worth \$500 and walks out without paying for it.
4. At the State Fair a man picks the wallet out of another man's back pocket without being noticed. The wallet has about \$40 in cash and four gasoline credit cards.
5. Two men are working together at the State Fair. While one bumps into a man, starts a scuffle, and pushes the man, the other slips behind the victim and takes his wallet. There is \$25 in the wallet.
6. Two teenage boys see a car with the keys still in it, get in, and drive the car around town for about five hours. They then leave the car parked on the street about two miles from where they took it.

7. A man enters a grocery store and tells the clerk that he will shoot her unless she gives him the cash from her cash register. He has an object in his pocket which he points at her. She hands over the cash. The man is captured as he leaves the store; all that is found in his pocket other than the cash is a carrot. The amount of cash was \$327.
8. Seeing that the clerk at a jewelry store has gone to the back of the store, a man tells a 6-year old kid that he left his ring on the store counter. The child goes in, picks up the ring off the counter, and brings it out to the man. The ring, which belongs to the store, is worth about \$1,750.
9. A man has a television set worth \$450 and a stereo worth \$600 he is holding for a friend. The friend, who is taking a short vacation at the beach, tells him the goods are stolen. The man will be giving the goods back to the friend when he returns in a week.
10. A man puts a watch worth \$50 in his pocket and walks out of the department store without paying for it.
11. A store employee sees a man put a pen worth \$3.00 in his pocket while shopping in the store.
12. Two neighbors have been arguing for several months about which one owns a lawn mower. Each asserts that another neighbor who moved recently gave it to him. One night one of the two men sneaks over to the other's yard and takes the mower. It is worth about \$80.
13. A man hits another man over the head with a blackjack and takes from him a wallet containing \$12.

14. While searching a house for drugs, officers finds iPods which were stolen one week earlier in a housebreaking. The iPods are worth about \$75 each.
15. A man goes into a sporting goods store, puts on a tennis racket a price tag which was on another racket, listing the price at \$25 instead of \$35, then takes the racket to the cashier to pay for it.
16. A man steals two television sets from the beach cottage he is renting. The sets were bought for \$1,500 about a year and a half before. The owner says he recently had someone offer to buy the sets for \$950.

**NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON BURGLARY
AND BREAKING AND ENTERING**

Which burglary or breaking and entering offense would be the proper charge under these facts, and why?

1. A man breaks a window and enters a home at 3 a.m., takes a \$150 television set, and leaves. No one is home at the time.
2. A man breaks a window and enters a home at 3 a.m., takes a \$150 television set, and leaves. The woman who is at home upstairs is too scared to do anything while the man is there.
3. A man breaks a window and enters a home at 1 p.m. He takes a tape recorder worth \$75 and leaves. No one was home at the time.
4. A man breaks a window and enters a store at 3 a.m. He takes jewelry worth \$800 and leaves.
5. At 3 a.m., a man knocks on the door of a house saying “police.” Mrs. Jones opens the door, the man rushes in, steals her pocketbook, and leaves.
6. Because of the hot weather, all the doors and windows of a house are open. A man walks through an open door at 11 a.m., takes a tape recorder worth \$40, and leaves. The man and woman who live in the house are across the street visiting a neighbor at the time.
7. Because of the hot weather, all the doors and windows of a house are open. A man walks through an open door at 11 a.m., takes a television set worth \$90, and leaves. The woman working in the kitchen does not notice the man come and leave.

8. A man lifts open an unlocked store window, goes into the store at 2 a.m., takes six radios worth about \$40 each, and leaves.
9. A man lifts open an unlocked store window at 2 a.m., but before he enters is scared away by a passing patrol car.
10. A man breaks into a closed jewelry store at 1 p.m., takes a dozen watches worth a total of \$1,500, and leaves.
11. A man breaks into Harold Smith's beach cottage at 11 p.m. and takes several pieces of furniture worth a total of about \$300. This happens in January; the cottage has not been used for two months and probably will not be used again for three more months.
12. A man picks the lock and enters a motel room at 1 a.m. He takes an \$80 watch and a wallet with \$150 in cash and several credit cards, without disturbing the man who is sleeping in the room.
13. A man loans his radio to his neighbor; the neighbor tells him he can get his radio back whenever he wants. The neighbor is not home one night when the man wants the radio back to listen to a ball game, so the man lifts open an unlocked window, climbs in, gets his radio, and leaves.

14. A man breaks into a garage about 20 feet from a house and takes a bicycle worth \$150. This takes place at 4:30 in the morning.
15. A man goes into a house under construction at 11:00 p.m. to take shelter from the rain.
16. A man enters an open window of a house at 3 a.m., walks down the hallway, opens a closed bedroom door, and enters and takes a watch worth \$12 and leaves, while Thelma Jones is sleeping in the room.

**NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON TRESPASS LAW AND
DAMAGE TO PROPERTY**

Which trespass or property damage offense would be the proper charge under these facts?

1. Elmo Suggins takes his shotgun and goes hunting for doves on the property of John James without his consent. The property is not posted.
2. Peter Ryder, a college student, has a one-year lease with Paul Jones to rent an apartment; there are no restrictions in the lease about visitors. Jones realizes that Ryder is inviting Sylvia Sweetheart over to Ryder's apartment each night. Jones tells Sweetheart that she cannot come to Ryder's apartment, but she ignores him.
3. John Alston lives in his house at 312 Main Street. His neighbor, Jim Billerman, and he get into an argument in Alston's living room. Alston tells him to leave and never come back. Billerman leaves, but he comes back an hour later into Alston's house and begins to argue with him again.
4. At 4:30 a.m., Howard Garfield climbs over the ten-foot high chain link fence surrounding Powe's Lumber Yard. As he begins to examine the lumber, a law enforcement officer drives by and arrests him.
5. Phil Garner enters the woods surrounding Sally Jeffrey's house where there are posted "NO TRESPASSING" signs every twenty feet. There is no direct evidence that Garner saw the signs.
6. Sam and Alice Simmons, who are married, are living separate and apart by written agreement. Alice tells Sam that she never wants him entering her property. One night Sam (after a few drinks) enters her property and knocks on her door, because he wants to tell her how happy he is that he is no longer living with her.
7. Howard Jones, owner of the Eastowne Shopping Mall, signs an agreement with the West Orange Police Department authorizing its officers to give trespass warnings to anyone who is on Mall property from 12 midnight to 6 a.m. without a reasonable basis for being there. Officer Jones tells three teenagers parked on Mall property at 3 a.m. to leave because they give no reason for being there. The teenagers refuse to leave.

8. A person hired by the owner of a tavern to keep order there tells an unruly person to leave the tavern. He refuses to leave.
9. Fred Smith is using his neighbor's mountain cabin for the weekend. Three deer hunters, carrying deer rifles, appear and tell Smith to get off the property because they want to use the cabin that night. Smith leaves because he is afraid he will get hurt.
10. Husband and wife orally agree to break up, with the wife staying in the house and the husband renting an apartment. A boyfriend moves into the house with the wife. One night the husband, angry about his wife having a boyfriend, enters the house and refuses to leave when asked by the boyfriend.
11. Sam Jones gets into an argument with his neighbor while both are on Jones's front lawn and tells the neighbor to leave. The neighbor refuses to leave.
12. A neighbor deliberately throws one brick through a window of his neighbor's house and another brick through a window of this neighbor's car, causing a total of \$100 damage.
13. Fred Smertz deliberately and maliciously spray paints his brother's car, causing \$750 damage.
14. Peter Jones puts a bomb in the car of his ex-wife, hoping that it will kill her when she turns the ignition switch. Instead it goes off prematurely before she enters the car, destroying the car but not injuring her.
15. Sylvia Kitchens plants a bomb in the local movie theater. It goes off during a movie, damaging the movie screen but not injuring any person.

NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON DRUG OFFENSES

Which drug offense(s) would be the proper charge(s) under these facts?
(Note: 28.34 grams equals 1 ounce)

1. A person arrested for shoplifting has 87 phenobarbital (Schedule IV) tablets in his pocket and no valid prescription for them. He offers no explanation why he has them.
2. When law enforcement officers execute a search warrant at Smith's house, they find an ounce of heroin, a spoon, and a hypodermic needle on the dresser in his bedroom.
3. A college student writes a prescription for Miltown (meprobamate, Schedule IV) on a stolen prescription form, goes to the pharmacist, and obtains 20 tablets.
4. What a dealer sells to an undercover agent as cocaine turns out to be pieces of chalk.
5. A valid search discloses that a farmer has 90 pounds of marijuana stored in his barn.

6. When they enter a man's house to arrest him for receiving stolen goods, officers find approximately 10 ounces of marijuana, some of which is in eight small envelopes but most of which is in one large bag, plus about 30 empty envelopes and a small scale.
7. Officers execute a search warrant to search a house rented by Jack Sterling for cocaine. There is no cocaine there, but the officers find 450 Ritalin (methylphenidate, Schedule II) tablets. On the dresser are some credit cards in the name of Jack Sterling and on the kitchen table are some letters addressed to him at that address. Sterling's name is also on the mailbox.
8. Two college students are sitting on a bench on campus. One puffs on a marijuana cigarette and passes it to the other.
9. When a car is stopped for speeding, the officer smells marijuana and asks for permission to search. The driver-owner gives consent and the driver and three passengers (one in front, two in back) step out. The remains of a marijuana cigarette are found in the ash tray below the radio.
10. A person arrested for an assault in a bar has 30 grams of methamphetamine in his pocket.
11. A 21-year-old man sells five ounces of marijuana to an undercover agent about 150 feet from an elementary school.
12. A search of a boat tied to the dock discloses that 400 grams of cocaine are aboard. The boat owner is present at the time of the search.

NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON WORTHLESS CHECKS

1. On June 15, John Smith writes and delivers a check to ABC Cleaners for \$27.50 for cleaning. He dates the check June 25. ABC deposits the check with its bank, and two weeks later the check is returned stamped "insufficient funds." The owner of ABC Cleaners appears before you seeking a worthless check warrant. What would you do?
2. On June 20, Susie Barnes writes and delivers a check to Best Buy for \$800.00. The check is dated June 20. Susie wrote the check to purchase a TV. When she got the TV home, it didn't work. She called the bank and asked them to stop payment on the check. Today, a Best Buy employee comes before seeking a worthless check warrant. They indicate that Ms. Barnes wrote and delivered the check on June 20. The check is stamped "stop payment." What would you do?
3. An employee of Kroger's appears before you seeking issuance of process for writing a check on a closed account. The employee shows you a check written by Frederick Williams to Kroger, dated June 10. The employee indicates that the check was delivered to the store on June 10. The check is marked "closed account." What would you do?
4. Robert Smith appears before you seeking issuance of process for writing a worthless check. Smith tells you that James Walker came to his business on March 25 and asked him to cash a check for \$2500 written on Walker's account and to hold it and not deposit it for 20 days until Walker's next pay day. Walker wrote the check on March 25, dated it March 25, and delivered it to Smith. Smith waited until April 16 to deposit the check. He shows you the check, which was returned marked "insufficient funds." What would you do?
5. An employee of Wayne's Lumber Yard appears before you seeking issuance of process for writing a worthless check. The employee shows you a check written to Wayne's Lumber Yard on a bank account listed as Weston Contractors, Inc. and signed by Jimmy Weston, President. The employee testifies that the check was written and delivered on May 15, and that is the date on the check. The check is stamped "insufficient funds." Who would you charge? Would it make any difference if the check were signed by Wanda Gooding, office secretary?

6. An employee of your local Food Lion appears before you seeking process. They bring a check written to Wade Brown, signed by William Golding, dated May 30. The check is for \$50. The employee testifies that Wade Brown endorsed the check over to Food Lion on June 2, and that the check was returned for insufficient funds. The employee shows you the check, which is stamped “insufficient funds.” What would you do?

Review Questions

Chapters 19-22

Disorderly Conduct, Bombing & Terrorism, R/D/O, Weapons Offenses

Which offenses, if any, would be a proper charge under these facts?

1. A man walks up to someone standing on a public street, raises his fist, and tells him that he is a cowardly bastard who better get ready to defend himself.
2. Paul Jones gets drunk at a party, he then walks down the sidewalk of Main Street loudly yelling "Go to hell" at each person he sees.
 - a. Suppose Jones walks down the middle of main street yelling "have a nice day" at the cars that are trying to get around him
3. Howard Keller, who is drunk, stands in front of Roses Store for an hour looking in the window at a toy train running around a circular track.
 - a. Suppose Keller asks passersby for money
4. Nervous about taking the test on criminal law at the end of Magistrate's Basic School, Morgan Smith, though she knows it is not true, tweets that everyone should stay away from the School of Government on Friday because the place is going to be "blown to bits."
5. Thinking it will be better suited for home defense, Kat Bogan cuts the barrel of her shotgun down to 14 inches and then stores the shotgun in her gun safe.
6. Officer Jones stops a car for speeding 40 m.p.h in a 35 m.p.h. zone. While Jones is writing the citation, the driver says "Officer, you are an S.O.B. for stopping me."
 - a. Suppose Jones writes a shoplifter a citation for concealing merchandise, the shoplifter crumples up his pink copy of the citation and tosses it in the trash.
 - b. Suppose Jones is properly executing a search warrant at the home of Howard Keller, Keller refuses to let Jones inside because Keller wants to talk to his wife, who is a magistrate, before he lets Jones in.
 - c. Suppose Jones has a hunch that Jack Barker is involved in selling illicit drugs, one day Jones sees Barker walking casually down the sidewalk. Jones says "Hey Jack, have you got a minute to talk?" Barker responds "nope" and continues walking.

- d. Suppose Jones witnesses a person he knows by the nickname “Action Jack” make a hand-to-hand drug transaction. While Jones tries to write a citation, Action Jack refuses to provide Jones with his real name.
- 7. To celebrate his release from prison after being incarcerated for armed robbery, Max Mandell goes deer hunting, in season. He is carrying a shotgun when he is stopped by a wildlife officer.
 - a. Suppose that instead of going hunting, Max celebrates his release from prison by going to town to see a concert with his neighbor Mike. Mike offers to drive to the concert, but on the way they are stopped for speeding. An officer discovers Mike’s handgun in the glove compartment in front of the passenger seat where Max is sitting.
- 8. Lisa is arrested for impaired driving. When searching her pocketbook incident to arrest, an officer finds a pocketknife.
 - a. Suppose that instead of a pocketknife Lisa has a dagger in her purse
 - b. Suppose that Lisa has a pistol in her purse

Burglary and Related Offenses

Basic School for Magistrates
Thursday, February 22, 2018

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First-Degree Burglary

- (1) breaks
- (2) **AND** enters
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

▪ Class D felony (Attempted 1st Degree Burglary is Class E felony)

First-Degree Burglary

- (1) breaks
- (2) **AND** enters
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

▪ Class D felony

Breaks

- Making of some kind of opening, however slight
 - Destructive force ✓ (but not necessary)
 - Opening an unlocked window ✓
 - Opening a partly opened door ✓
 - Go down chimney with open flu ✓
 - Opening an inner door ✓
 - Induce another to open with trickery, force or intimidation ✓
 - Get accomplice or co-conspirator to open ✓
 - Going through an open door or window X

First-Degree Burglary

- (1) breaks
- (2) **AND enters**
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

• Class D felony

Enters

Burglary requires breaks AND enters

- Inserting any part of body ✓
- Inserting tool for purpose of committing felony ✓
 - e.g., put gun in to shoot occupant
- Inserting tool for purpose of breaking X
 - e.g., use gun barrel to smash window

First-Degree Burglary



○

- (1) breaks
- (2) **AND** enters
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

✦ Class D felony

Without Consent

○

- Owner or person entitled to possession consents to entry 
- Owner/possessor/occupant induced to allow entry with trickery, force or intimidation 

First-Degree Burglary

○

- (1) breaks
- (2) **AND** enters
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

✦ Class D felony

Dwelling or Sleeping Apt.



Dwelling or Sleeping Apt.



Dwelling or Sleeping Apt.



Dwelling or Sleeping Apt.



Dwelling or Sleeping Apt.



Dwelling or Sleeping Apt.



Dwelling or Sleeping Apt.

- A dwelling is a structure regularly used by a person for sleeping.
 - Mobile home or house trailer ✓
 - Room in a hotel, motel or rooming house ✓
 - Crude habitation with walls and a roof ✓
 - Commercial space with sleeping apt. ✓
- Regularly used: use occurs in ordinary course of events
 - Abandoned home ✗
 - Sold home where new owner has not moved in ✗
 - Summer cottage if has been used regularly for sleeping and intent to use it again ✓

First-Degree Burglary

- (1) breaks
- (2) **AND** enters
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

• Class D felony

Of Another

- Property must be legally possessed by someone other than D.
- Possession, not ownership, is the key.
 - Landlord enters tenant's room without consent ✓
 - One spouse has legal and exclusive possession of marital home, and other enters without consent ✓

First-Degree Burglary

○



- (1) breaks
- (2) **AND** enters
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

✦ Class D felony

Actually Occupied

○

- Someone must be inside when the B&E occurs.
- D does not need to know someone was there.

First-Degree Burglary

○

- (1) breaks
- (2) **AND** enters
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

✦ Class D felony

At Night

- Time after sunset and before sunrise, when it is so dark that a man's face cannot be identified except by artificial light or moonlight.



First-Degree Burglary

- (1) breaks
- (2) **AND** enters
- (3) without consent
- (4) dwelling house or sleeping apartment
- (5) of another
- (6) while it is actually occupied
- (7) at night
- (8) with the intent to commit any felony or larceny therein

• Class D felony

Intent to Commit Felony or Larceny

- D must have the requisite intent WHEN the breaking and entering occurs.
- D need not succeed in committing larceny or felony.

Proof:

- Committed felony
- Preparation
- Inference of intent to steal
- Doctrine of recent poss.



Burglary

1st Degree	2d Degree
breaks	breaks
and enters	and enters
w/o consent	w/o consent
dwelling	dwelling/curtilage
of another	of another
while occupied	---
at night	at night
w/intent	w/intent

Second-Degree Burglary

- Does not need to be occupied
- Includes buildings within curtilage



* Class G

Felony Breaking or Entering of a Building

- (1) breaks **OR** enters
- (2) without consent
- (3) any building
- (4) with intent to commit any felony/larceny therein

* Class H

1st Degree Burglary	2d Degree Burglary	Felony B or E
breaks	breaks	breaks
and enters	and enters	or enters
w/o consent	w/o consent	w/o consent
dwelling	dwelling/ curtilage	any building
		<ul style="list-style-type: none"> • Store • Trailer used for storage • Warehouse • Bank • Bldg under construction
of another	of another	of another
while occupied	---	---
at night	at night	---
w/intent	w/intent	w/intent

Felony B or E	Misd. B or E
breaks	breaks
or enters	or enters
w/o consent	w/o consent
any building	any building
of another	of another
---	---
---	---
w/intent	---

1st Degree Burglary	2d Degree Burglary	Felony B or E	Misd. B or E
breaks	breaks	breaks	breaks
and enters	and enters	or enters	or enters
w/o consent	w/o consent	w/o consent	w/o consent
dwelling	dwelling/ curtilage	any building	any building
of another	of another	of another	of another
while occupied	---	---	---
at night	at night	---	---
w/intent	w/intent	w/intent	---

Tab 6:

Motor Vehicles

MOTOR VEHICLES (AUGUST, 2018)

Elements of Motor Vehicles OffensesMotor Vehicles-Page 1

Elements of Motor Vehicle Offenses

Shea Denning
School of Government
Basic School for Magistrates
February 2018

IMPLIED CONSENT OFFENSES

Elements: G.S. 20-138.1

- ☐ Drive
- ☐ Vehicle
- ☐ Street, Highway, PVA
- ☐ While Impaired

Elements: G.S. 20-138.1

Drive =
Operate

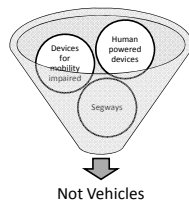
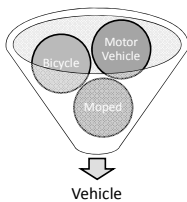
- Actual physical control of vehicle
- That is in motion or has engine running

Elements: G.S. 20-138.1

Vehicle

- Any device that will take people/things down the road
- Other than devices moved by human power
- Exceptions:
 - Segways (**are not** vehicles)
 - Certain devices used by person with mobility impairment (**are not** vehicles)
 - Bicycles (**are** vehicles, even though human-powered)

Vehicle: G.S. 20-4.01(49)



Elements: G.S. 20-138.1

Highway
or PVA

- Highway = street
- PVA is an area used by the public for vehicular traffic at any time
 - Includes subdivision roads
 - Parking lots

Elements: G.S. 20-138.1

While
Impaired

- Under influence
- 0.08
- Schedule I

While
impaired

- Under influence of impairing substance

- Physical/mental faculties appreciably impaired by
 - Alcohol
 - Controlled substance
 - Drug
 - Psychoactive substance



While impaired

- 0.08 at any relevant time after driving



While impaired

- Schedule I controlled substance

- Chapter 90: Heroin, LSD, MDMA . . .



Alcohol Screening Tests

G.S. 20-16.3(d)

Officer may use positive or negative result on an alcohol screening test—**but not the actual alcohol concentration result**—in determining if there are reasonable grounds for believing the driver committed an implied consent offense **other than driving after consuming**



Alcohol Screening Tests

G.S. 20-38.4(a)(2)

In determining PC, magistrate may review all alcohol screening tests



Impaired driving in commercial vehicle

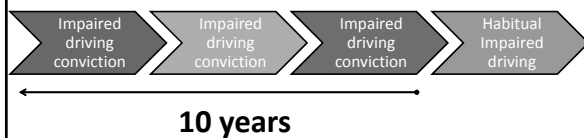
G.S. 20-138.2

- Drives
- Commercial motor vehicle
- Highway or PVA
- While impaired
 - Under influence of impairing substance
 - 0.04 at relevant time after driving
 - Any amount of Schedule I controlled substance in blood or urine



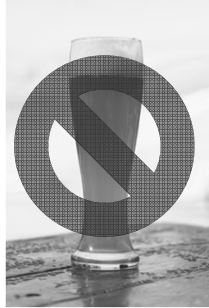
Habitual impaired driving

G.S. 20-138.5



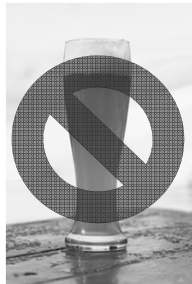
Zero Tolerance Offenses

1. Operating commercial motor vehicle after consuming alcohol
2. Operating school bus/child care/EMS/LEO vehicle after consuming alcohol
3. Driving by person <21 after consuming alcohol or drugs



Operating Commercial Vehicle after Consuming G.S. 20-138.2A

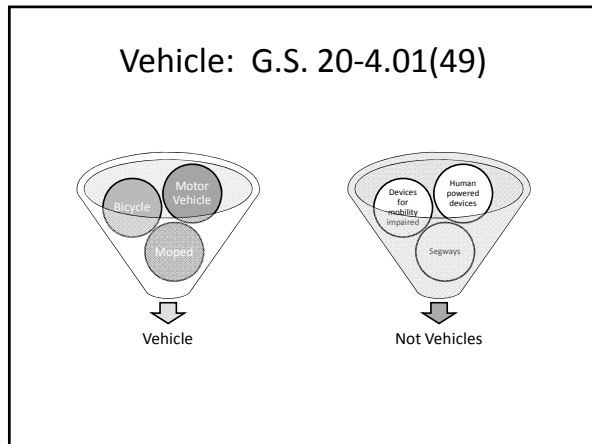
- Lesser included offense of impaired driving in CV
- Alcohol screening tests admissible
- Odor insufficient for conviction unless driver refused roadside test, breath test or blood test
- Class 3 misdemeanor (for first offense -- \$100 fine only)

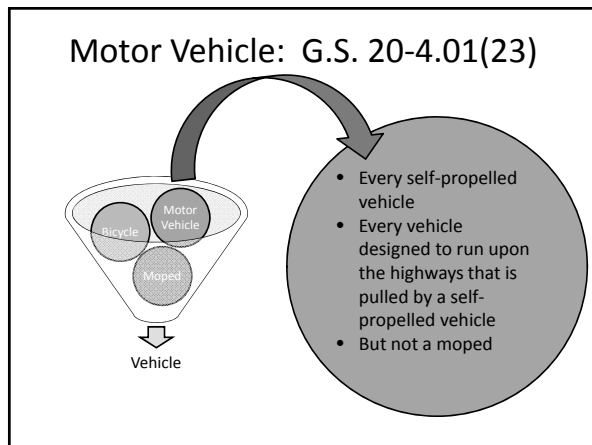


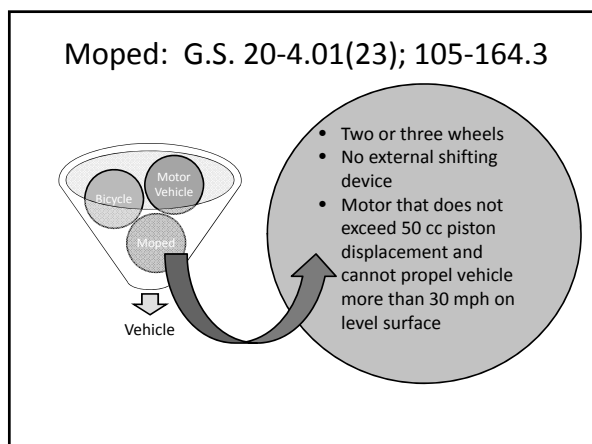
Driving after consuming by person <21 G.S. 20-138.3

- Driving
- By person under 21
- Motor vehicle
- Highway or PVA
- While consuming alcohol or with alcohol or controlled substance previously consumed remaining in body
 - But not a violation if controlled substance in body was lawfully obtained and taken in appropriate amount









DRIVER'S LICENSE OFFENSES

DWLR Changes eff. 12/1/2015

G.S. 20-28(a)	Driving While License Revoked	Class 3 misdemeanor
G.S. 20-28(a1)	Driving While License Revoked for Impaired Driving	Class 1 misdemeanor
G.S. 20-28(a2)	Punishment for Driving Without Reclaiming License	Class 3 misdemeanor
G.S. 20-28(a3)	Driving After Notification or Failure to Appear	Class 1 misdemeanor
*Additional license revocation periods follow convictions for highlighted offenses		

Driving While License Revoked: G.S. 20-28(a)

1. Drives
2. A motor vehicle
3. On a highway
4. While his or her driver's license or privilege to drive in NC is revoked
5. With knowledge of revocation

Class 3 misdemeanor

Mailing of notice by DMV in
accordance with G.S. 20-48
raises a *prima facie*
presumption that a defendant
received the notice

**Driving While License Revoked:
G.S. 20-28(a1)**

1. Drives
2. A motor vehicle
3. On a highway
4. While his or her driver's license or privilege to drive in NC is revoked
5. With knowledge of revocation
6. License is revoked for impaired driving

Class 1 misdemeanor

**When is a person's license revoked for an
impaired driving revocation?**

- If revocation is listed in G.S. 20-28.2

G.S. 20-13.2 - Driving After Consuming Alcohol/Drugs While Less Than 21
G.S. 20-16(a)(8b) - Military Driving While Impaired
G.S. 20-16.2 - Refused Chemical Test
G.S. 20-16.5 - Civil Revocation
G.S. 20-17(a)(2) - Driving While Impaired
Driving While Impaired In Commercial Motor Vehicle
G.S. 20-138.5 - Habitual Driving While Impaired
G.S. 20-17(a)(12) - Transporting Open Container - 2nd Or Subsequent
G.S. 20-16(a)(7) - Out-Of-State Offense Similar To Driving While Impaired Resulting In NC Revocation
G.S. 20-17(a)(1) - Manslaughter Involving Driving While Impaired
G.S. 20-17(a)(3) - Any Felony In The Commission Of Which A Motor Vehicle Is Used, If The Offense Involves Impaired Driving
G.S. 20-17(a)(9) - Any Offense Set Forth Under G.S. 20-141.4 Based On Impaired Driving
G.S. 20-17(a)(11) - Conviction Of Assault With A Motor Vehicle If Offense Involves Impaired Driving

When is a person's license revoked for an impaired driving revocation?

- Or if person violates an ignition interlock restriction
- See G.S. 20-17.8(f)

(f) Effect of Violation of Restriction. – A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked for impaired driving under G.S. 20-28(a1) and is subject to punishment and license revocation as provided in that section.

DWLR Changes eff. 12/1/2015

G.S. 20-28(a)	Driving While License Revoked	Class 3 misdemeanor
G.S. 20-28(a1)	Driving While License Revoked for Impaired Driving	Class 1 misdemeanor
G.S. 20-28(a2)	Punishment for Driving Without Reclaiming License	Class 3 misdemeanor
G.S. 20-28(a3)	Driving After Notification or Failure to Appear	Class 1 misdemeanor
*Additional license revocation periods follow convictions for highlighted offenses		

**Driving After Notification or FTA
G.S. 20-28(a3)**

1. Drive
2. Motor Vehicle
3. On a Highway
4. While Revoked for Impaired Driving Revocation
5. After DMV Has Sent Notice

Class 1 misdemeanor

Punishment for Driving Without Reclaiming License

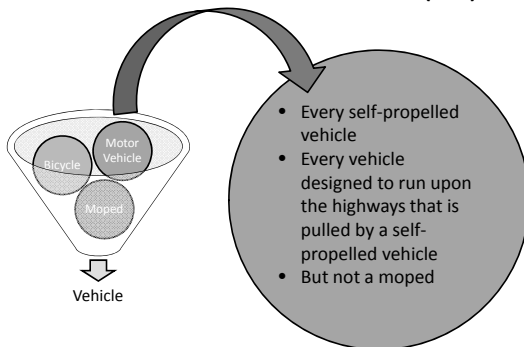
- A person convicted under G.S. 20-28(a) or (a1) is punished as if the person had been convicted of driving without a license under G.S. 20-35 if
 - Minimum CVR period has expired, or
 - Person met requirements of child support statute(s) and was eligible for license reinstatement
- NOL is Class 3 misdemeanor

No Operator's License (G.S. 20-7(a))

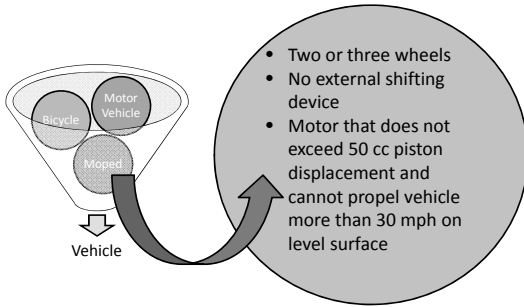
- Drive
- A motor vehicle
- On a highway
- Without a valid license or without carrying a license

Note: Exemption for **non-residents** who are at least 16 years old and have license from home state or country. (G.S. 20-8)

Motor Vehicle: G.S. 20-4.01(23)



Moped: G.S. 20-4.01(27)d1



RECKLESS DRIVING

Reckless Driving: G.S. 20-140(a) *Carelessly and Heedlessly*

- Drive
- Vehicle
- Highway or PVA
- Carelessly and heedlessly and
- In willful or wanton disregard
- Of the rights and safety of others

Reckless Driving: G.S. 20-140(b)
Endangering Persons or Property

- Drive
- Vehicle
- Highway or PVA
- Without due caution and circumspection
- At a speed or in a manner
- That endangers or is likely to endanger any person or property

- State v. Davis, 163 N.C. App. 587 (2004)
 (evidence that defendant drove “well over the posted speed limit,” swerved into the opposing lane of traffic, and subsequently “braked his vehicle sharply and slid for approximately twenty feet near an occupied residence” sufficient to establish reckless driving)

- State v. Smith, 178 N.C. App. 134 (2006)
 (sufficient evidence of reckless driving when during a high speed chase on a rainy day, defendant “came extremely close to hitting an oil tanker at speeds in excess of sixty miles per hour,” and crossed double yellow lines)

- State v. Teel, 180 N.C. App. 446 (2006) (evidence that defendant drove a motorcycle at 90 mph in a 45 mph zone, followed an unmarked police car two to three feet from the rear end of the officer's vehicle, attempted to pass the officer on the left across a double yellow line in a curve (crossing the double yellow line two or three times) and later to pass the officer on the shoulder of the road (touching the white line two or three times) sufficient to establish reckless driving under G.S. 20-140(b)).

- State v. Coffey, 189 N.C. App. 382 (2008) (evidence that defendant drove while impaired and traveled 92 mph in a 45 mph zone sufficient to establish reckless driving to endanger in violation of G.S. 20-140(b))

- State v. Jackson, 212 N.C. App. 167 (2011) (evidence that defendant drove 82 mph in a 55 mph zone, maneuvered from one lane to another to go around slower vehicles and crossed double yellow lines sufficient to establish reckless driving)

HIT AND RUN OFFENSES

Failure to Stop, Remain at Scene When Injury Occurs
G.S. 20-166(a1)

- Drive
- Vehicle
- Involved in crash
- Causing injury
- Knows or reasonably should know vehicle involved in crash causing injury
- Willfully
 - Fails to immediately stop
 - Fails to remain at scene
 - Facilitates removal of vehicle

What's a *crash*?

- Any event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load.
- The terms collision, accident, and crash and their cognates are synonymous.

Failure to Stop, Remain at Scene When
Serious Bodily Injury or Death Occurs:
G.S. 20-166(a)

- Requires **serious bodily injury**, as defined in G.S. 14-32.4
 - Bodily injury that creates a substantial risk of death,
 - or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain,
 - or permanent or protracted loss of impairment of the function of any bodily member or organ,
 - or that results in prolonged hospitalization
- Class F felony

Failure to Give Info or Assistance When Injury, Serious
Bodily Injury, or Death Occurs
G.S. 20-166(b)

- Driver of vehicle who knows or reasonably should know that vehicle was in a crash that resulted in injury, serious, bodily injury or death must:
 1. Give his name, address, driver's license number, and license plate number of the vehicle to the person struck or the driver or occupants of any vehicle collided with, if persons are physically and mentally capable of receiving such information, and
 2. Render to any person injured reasonable assistance, including calling for medical assistance if it is apparent that such assistance is necessary or is requested by the injured person

Failure to Stop, Give Information When Injury Not Apparent
or Only Property Damage Occurs
G.S. 20-166(c), (c1)

- Drive
- Vehicle
- Involved in crash
- Causing
 - property damage or
 - injury that is not apparent
- Knows or reasonably should know vehicle involved in crash
- Willfully
 - Fails to immediately stop
 - Fails to remain at scene of *reportable crash*
 - Facilitates removal of vehicle
 - Fails to give information to driver or occupant of any other vehicle involved in the crash or owner of property damaged in the crash

**Passenger's Failure to Remain at Scene or
Unauthorized Removal of Vehicle When Serious
Bodily Injury or Death Occurs
G.S. 20-166.2**

- Passenger
- In a vehicle that is
- In an accident or collision
- Causing serious bodily injury or death
- Passenger knows or reasonably should know of crash and serious bodily injury or death
- Willfully
 - Leaves scene by driving vehicle that was in accident, or
 - Facilitates removal of vehicle

**Misdemeanor Flee to Elude:
G.S. 20-141.5(a)**

1. Operates
2. Motor vehicle
3. Street, highway, PVA
4. While fleeing or attempting to elude
5. LEO
6. Who is lawfully performing duties

Felony Flee to Elude: G.S. 20-141.5(b)

- If two or more grossly aggravating factors are present, violation is a Class H felony
 1. Speeding more than 15 mph over limit
 2. Gross impairment due to
 - Consumption of an impairing substance
 - BAC of 0.14 or more
 3. Reckless driving under G.S. 20-140
 4. Negligent driving leading to accident causing
 - More than \$1,000 in property damage; or
 - Personal injury
 5. Driving when person's drivers license is revoked
 6. Driving over speed limit in school zone or work zone
 7. Passing a stopped school bus
 8. Child under 12 in vehicle

Felony Flee to Elude: G.S. 20-141(b1)

- If violation of (a) causes death, Class H felony
- If violation of (b) causes death, Class E felony

Vehicle Seizure: G.S. 20-28.3(a1)

- A motor vehicle is subject to seizure if driven by a person charged with felony speeding to elude
- Officer must seize vehicle unless:
 - Motor vehicle has been reported stolen
 - Motor vehicle is a rental vehicle and driver is listed as an authorized driver on the contract

Vehicle Seizure: G.S. 20-28.3(a1)

- Seizing officer must present affidavit of impoundment to magistrate
- Magistrate determines whether requirements for seizure are met
 - Did LEO have probable cause to believe motor vehicle was driven in the commission of felony flee to elude?
 - Is driver charged with felony flee to elude?
 - Was vehicle reported stolen? (if so, no seizure)
 - Is this a rental vehicle? If so, is driver listed on contract? (if not, no seizure)
- If seizure requirements are met, magistrate must order mv held
- If seizure requirements are not met, magistrate must order mv released to mv owner upon payment of towing & storage fees

First Degree Murder

- First Degree Murder
 - Requires intent to kill
 - Or intent to commit specified felony (felony murder)
 - Culpable negligence is insufficient intent for first degree murder
 - So felonies predicated on a DWI that causes death do not establish first degree murder

Second Degree Murder

- Second Degree Murder
 - Killing another human being with malice
 - What is malice in context of a driving offense that causes death?
 - A showing that defendant had the intent to perform the act of driving in such a reckless manner that reflects the knowledge that injury or death would likely result, thus evidencing depravity of mind

For example

- DWI resulting in death and
 - Driving by the defendant with a revoked license and with a previous DWI conviction
 - BAC of .113 three hours after accident; driving into victim's lane of travel; previous DWI and driving after consuming conviction; pending charges of DWI and DWLR
 - Substantially impaired; prior DWI convictions; driving while license revoked; using false license tags and inspection sticker obtained by lying to inspection personnel
 - Driving away after fighting with bar proprietor; passing car in no passing zone, striking a motorcycle; driving through red light into intersection at 60 miles per hour

Involuntary Manslaughter

- Common law offense
- Killing another person by
 - An unlawful act that does not amount to a felony and is not ordinarily dangerous to human life, or
 - By a culpably negligent act or omission

Involuntary Manslaughter

- Intentional, willful or wanton violation of a statute designed for protection of human life is culpable negligence
 - Thus, it is culpable negligence to commit DWI
- Driving while impaired and proximately causing the death of another is involuntary manslaughter
- But, like second degree murder, offense not limited to DWI

Involuntary Manslaughter

- Note: The violation of a traffic law unintentionally or through want of ordinary care **is not** culpable negligence **unless** act is likely to result in death/great bodily harm
- A person acts in a **culpably negligent** manner if he knew the probable consequences but was intentionally, recklessly or wantonly indifferent to results
- Ask: Was this the intentional violation of a statute or a negligent failure to observe its provisions?

Involuntary Manslaughter

- Class F felony
- If convicted of involuntary manslaughter and felony death by vehicle (Class D felony), person may only be **sentenced** for felony death by vehicle
 - (can be tried for both)

Felony Death by Vehicle

- Driving while impaired that proximately causes the unintentional death of another person
- Note that this **is** limited to DWI and commercial DWI
 - Does not include other types of motor vehicle offenses
- Class D felony

Aggravated Felony Death by Vehicle

- Felony death by vehicle committed by a person previously convicted of an offense involving impaired driving
 - Prior conviction must be within 7 years of instant offense
- Class D felony, punished in aggravated range

Repeat Felony Death by Vehicle

- Felony death by vehicle by a person who has a previous conviction for felony death by vehicle, aggravated felony death by vehicle, or murder based on the unintentional death of another person while engaged in impaired driving
- Class B2 felony

Misdemeanor Death by Vehicle

- Violation of a **traffic law or ordinance** (other than DWI) that **proximately but unintentionally** causes the death of another
- Class A1 misdemeanor

Tab 7:


Implied Consent Procedures

IMPLIED CONSENT PROCEDURES (AUGUST, 2018)

Impaired Driving Holds and Implied Consent Offense Notices	Implied Consent - Page 1
Civil License Revocations & Motor Vehicle Seizures	Implied Consent – Page 11


Impaired Driving Holds & Implied Consent Offense Notices

Shea Denning
School of Government
August 2018





Impaired Driving Holds

§ 15A-534.2. Detention of impaired drivers.
(a) A judicial official conducting an initial appearance for an offense involving impaired driving, as defined in G.S. 20-4.01(24a), must follow the procedure in G.S. 15A-511 except as modified by this section. This section may not be interpreted to impede a defendant's right to communicate with counsel and friends.
(b) If at the time of the initial appearance the judicial official finds by clear and convincing evidence that the impairment of the defendant's physical or mental faculties presents a danger, if he is released, of physical injury to himself or others or damage to property, the judicial official must order that the defendant be held in custody and inform the defendant that he will be held in custody until one of the requirements of subsection (c) is met; provided, however, that the judicial official must at this time determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.



Offenses involving impaired driving

- Impaired driving under G.S. 20-138.1
- Habitual impaired driving under G.S. 20-138.5
- Impaired driving in commercial vehicle under G.S. 20-138.2
- Any offense under G.S. 20-141.4 (felony and misdemeanor death by vehicle and serious injury by vehicle) based on impaired driving
- First- or second-degree murder under G.S. 14-17 based on impaired driving
- Involuntary manslaughter under G.S. 14-18 based on impaired driving
- Substantially similar offenses committed in another state or jurisdiction

AOC-CR-200: Conditions of Release

[illegible]

Impaired Driving Holds

Offense involving impaired driving

§ 15A-534.2. Detention of impaired drivers.

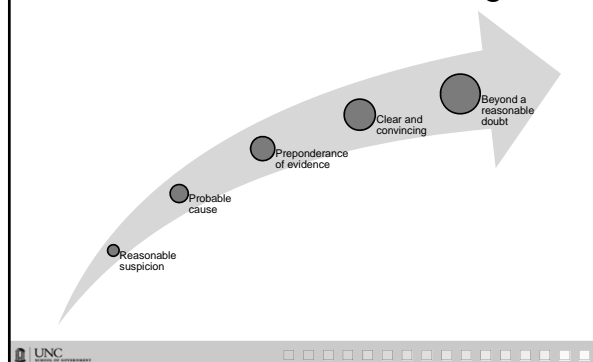
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Clear and convincing evidence that the impairment presents a danger

UNC
SCHOOL OF GOVERNMENT

What is clear and convincing?



When is a defendant
impaired to extent he or
she presents a danger?

State v. Bumgarner,
97 N.C. App. 567 (1990)

- Hold warranted based on
 - Trooper's testimony
 - Magistrate's personal observations
 - 0.14 alcohol concentration

State v. Labinski,
188 N.C. App. 120 (2008)

~~Because I think anyone charged with
DWI who blows 0.08 or more on the
breath test would possibly hurt
himself or someone else, I'm
imposing a hold.~~

G.S. 15A-534.2(c)

(c) A defendant subject to detention under this section has the right to pretrial release under G.S. 15A-534 when the judicial official determines either that:

- (1) The defendant's physical and mental faculties are no longer impaired to the extent that he presents a danger of physical injury to himself or others or of damage to property if he is released; or
- (2) A sober, responsible adult is willing and able to assume responsibility for the defendant until his physical and mental faculties are no longer impaired. If the defendant is released from the custody of another, the judicial official may impose any other condition of pretrial release authorized by G.S. 15A-534, including a requirement that the defendant execute a secured appearance bond.

The defendant may be detained under this section for a period no longer than 24 hours. The defendant may be released only upon meeting the conditions of pretrial release under G.S. 15A-534. If the defendant is detained for more than 24 hours, a judicial official must determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.2(d).

No longer impaired to extent that he presents danger

Sober, responsible adult willing and able to assume responsibility for defendant until no longer impaired

No longer than 24 hours

☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

How does magistrate determine that defendant is no longer impaired to the extent that he/she presents a danger?

☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

G.S. 15A-534.2(d)

(d) In making his determination whether a defendant detained under this section remains impaired, the judicial official may request that the defendant submit to periodic tests to determine his alcohol concentration. Instruments acceptable for making preliminary breath tests under G.S. 20-16.3 may be used for this purpose as well as instruments for making evidentiary chemical analyses. Unless there is evidence that the defendant is still impaired from a combination of alcohol and some other impairing substance or condition, a judicial official must determine that a defendant with an alcohol concentration less than 0.05 is no longer impaired. The results of any periodic test to determine alcohol concentration may not be introduced in evidence:

- (1) Against the defendant by the State in any criminal, civil, or administrative proceeding arising out of an offense involving impaired driving; or
- (2) For any purpose in any proceeding if the test was not performed by a method approved by the Commission for Public Health under G.S. 20-139.1 and by a person licensed to administer the test by the Department of Health and Human Services.

The fact that a defendant refused to comply with a judicial official's request that he submit to a chemical analysis may not be admitted into evidence in any criminal action, administrative proceeding, or a civil action to review a decision reached by an administrative agency in which the defendant is a party. (1983, c. 435, s. 4; 1997-443, s. 11A.118(a); 2007-182, s. 2.)

☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

May request periodic breath tests



- Less than 0.05, no longer impaired
- Unless evidence that defendant still impaired from combination of alcohol and some other impairing substance or condition

Who is a sober,
responsible adult willing
and able to assume
responsibility for the
defendant?

State v. Haas,
131 N.C. App. 113 (1998)

- Magistrate had no duty to release defendant to custody of an adult who was a passenger in the car driven by defendant when officer informed magistrate that the adult was extremely intoxicated 80 minutes earlier

State v. Daniel, 208 N.C. App. 364 (2010)

- No statutory violation when magistrate refused at 11 p.m. to release defendant to adult who earlier in evening had odor of alcohol and who said he had beer with dinner
- Defendant met with friend for 8 minutes during crucial period of time after her arrest, so no prejudice



Implied Consent Offense Notice

§ 20-38.4. Initial appearance.

(a) Appearance Before a Magistrate. -- Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

- (1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.
- (2) In determining whether there is probable cause to believe a person is

(4) The magistrate shall also:

- a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and
- b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article. (2006-253, s. 5.)



Procedures for Access

§ 20-38.5. Facilities.

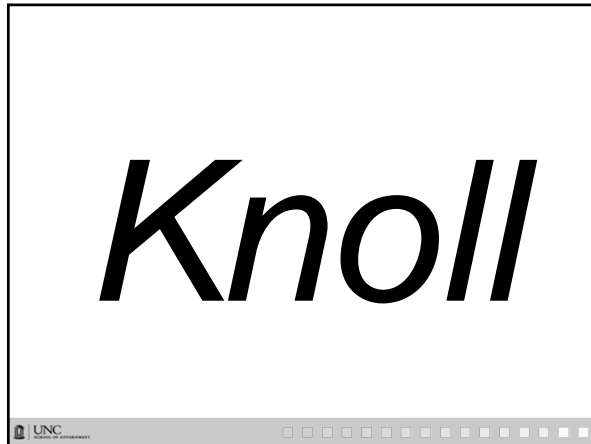
(a) The Chief District Court Judge, the Department of Health and Human Services, the district attorney, and the sheriff shall:

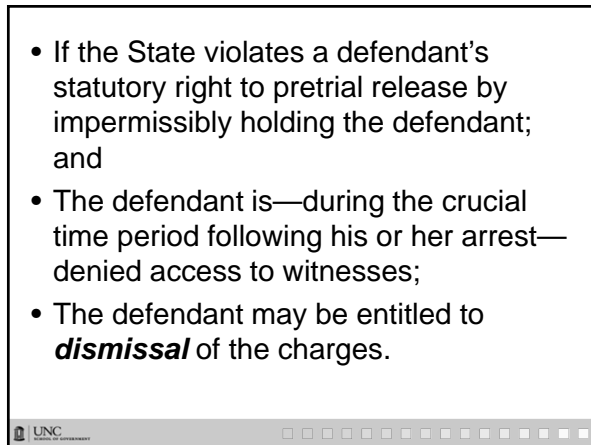
- (1) Establish a written procedure for attorneys and witnesses to have access to the chemical analysis room.
- (2) Approve the location of written notice of implied-consent rights in the chemical analysis room in accordance with G.S. 20-16.2.
- (3) Approve a procedure for access to a person arrested for an implied-consent offense by family and friends or a qualified person contacted by the arrested person to obtain blood or urine when the arrested person is held in custody and unable to obtain pretrial release from jail.

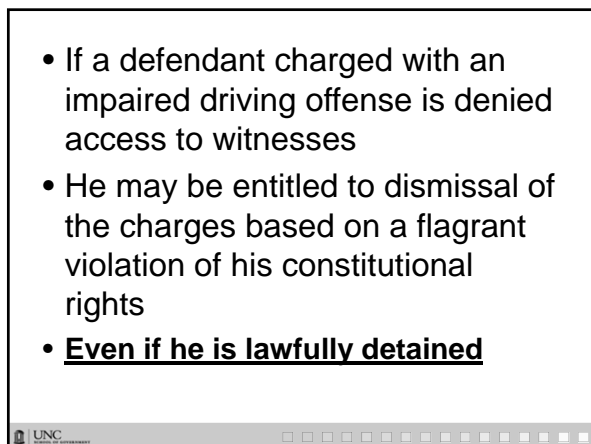
(b) Signs shall be posted explaining to the public the procedure for obtaining access to the room where the chemical analysis of the breath is administered and to any person arrested for an implied-consent offense. The initial signs shall be provided by the Department of Transportation, without costs. The signs shall thereafter be maintained by the county for all county buildings and the county courthouse.

(c) If the instrument for performing a chemical analysis of the breath is located in a State or municipal building, then the head of the highway patrol for the county, the chief of police for the city or that person's designee shall be substituted for the sheriff when determining signs and access to the chemical analysis room. The signs shall be maintained by the owner of the building. When a breath testing instrument is in a motor vehicle or at a temporary location, the Department of Health and Human Services shall alone perform the functions listed in subdivisions (a)(1) and (a)(2) of this section. (2006-253, s. 5.)











Civil License Revocations & Motor Vehicle Seizures

Shea Denning
School of Government
August 2018




What is a CVR?



CVRs in Implied Consent Cases

CVRs “provide for swift and certain penalties for DWI, rather than the lengthy and uncertain outcomes of criminal courts”

(NHTSA 2011 Highway Safety Countermeasure Guide at 1-11)



**Henry v. Edminston,
315 NC 474 (1986)**

Remedial
highway safety
measure – not
punishment



**State v. Oliver,
343 NC 202 (1996)**

“Any deterrent effect”
“merely incidental to
overriding purpose of
protecting the public’s
safety”



Minimum CVR period

10 days 30 days



**State v. Evans,
145 NC App 324 (2001)**

- Purpose still is “remov[ing] from our highways drivers who either cannot or will not operate a motor vehicle safely and soberly”



**State v. Reid,
148 NC App 548 (2002)**

- 30 day civil revocation of commercial driver's license was exercise of reasonable regulatory authority
- Not criminal punishment that prevents subsequent prosecution on underlying DWI



**State v. McKenzie,
367 NC 112 (2013)**

- 1-year commercial driver's license disqualification based on CVR for DWI in noncommercial vehicle car is civil sanction rather than criminal punishment
- CDL disqualification does not bar subsequent criminal prosecution



G.S. 20-16.5

1. LEO has reasonable grounds to believe person committed implied consent offense.

The undersigned being first duly sworn says:
☐ 1. I am a law-enforcement officer. On the _____ day of _____, at _____ (a /p /m), a law enforcement officer had reasonable grounds to believe the above named person, hereinafter referred to as driver, operated a vehicle (☐ commercial motor vehicle) in the above named county upon _____ (Give Street, Highway, Or Public Vehicular Area) while committing an implied-consent offense in that _____ (List Sufficient Facts To Establish Probable Cause)



G.S. 20-16.5

2. Person is charged with that offense

☐ 4. The driver was charged with the implied-consent offense of: ☐ G.S. 20-139.1 ☐ Other: _____



G.S. 20-16.5

3. The law enforcement officer and chemical analyst comply with G.S. 20-16.2 and G.S. 20-139.1 in requiring person's submission to or procuring a chemical analysis.



Compliance with procedures

- ☐ 5. After the driver was charged, I took the driver before _____, a chemical analyst authorized to administer a test of the driver's breath.
- ☐ 6. I am a chemical analyst and possess a current permit issued by the Department of Health and Human Services authorizing me to conduct chemical analyses of the breath utilizing the Intox ECIR II.
- ☐ 7. I informed the driver orally and also gave notice in writing of the rights specified in G.S. 20-16.2(a). I completed informing the driver of the rights as indicated on the attached DHHS 4092.
- ☐ 8. I began observing the driver for the purpose of complying with the observation period requirements for a breath analysis in accordance with the methodologies approved by the Department of Health and Human Services at _____ (a.jp.m. on the _____ day of _____, at _____ (a.jp.m. I requested the driver to submit to a chemical analysis of his/her breath or blood or urine.
- ☐ 9. On the _____ day of _____, at _____ (a.jp.m. I requested the driver to submit to a chemical analysis of his/her breath or blood or urine.
- ☐ 10. The driver was unconscious or otherwise incapable of refusal and therefore the notification of rights and request to submit to a chemical analysis were not made. I directed the taking of a blood sample by a person qualified under G.S. 20-139.1 based on the check over _____ AOC-CR-155 search warrant issued and executed in this case. _____ locality of the circumstances, which demonstrated an exigency that justified the taking of the sample without first obtaining a search warrant.
- ☐ 11. The driver submitted to a chemical analysis of his/her breath. I administered the chemical analysis to the driver in accordance with the methodology/ rules approved by the Department of Health and Human Services using an Intox ECIR II, and it printed the results of the driver's chemical analysis on the attached test record, DHHS 4092, which is made part of this Affidavit. The most recent preventive maintenance was performed on this Intox ECIR II on the _____ day of _____ as shown on the preventive maintenance record. I provided the driver with a copy of the attached test record before any trial or proceeding in which the results of the chemical analysis may be used.



North Carolina Department of Health and Human Services Rights of Person Requested to Submit to a Chemical Analysis to Determine Alcohol Concentration or Presence of an Impairing Substance Under N.C.G.S. 20-16.2(a)

Last First MI

Driver License Number / State Date of Birth Citation Number

☐ Breath ☐ Blood ☐ Subsequent Test

1. You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.
2. The test results, or the fact of your refusal, will be admissible in evidence at trial.
3. Your driving privilege will be revoked immediately for at least 30 days if you refuse any test or the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.
4. After you are released, you may seek your own test in addition to this test.
5. You may call an attorney for advice and select a witness to view the testing procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time you are notified of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

Date _____ Time _____ [] a.m. [] p.m. Signature of Person Charged _____

Did defendant call an attorney and/or witness? [] NO [] YES Time _____ [] a.m. [] p.m.

G.S. 20-139.1

- (b): Chemical analysis of breath admissible if done pursuant to DHHS rules by person with permit
- (b2): preventative maintenance
- (b3): at least duplicate sequential breath samples
 - results may not differ by more than 0.02
 - refusal to give second sample makes first result admissible
- (b5): may be asked for blood or urine too



Duplicate sequential breath samples?

Lot Number: AG011703
Exp Date: 04/27/2012

Test g/210
DIAG Pass
AIR BLK .00
ACCY CHK .08
AIR BLK .00
SUB TEST .10
AIR BLK .00
SUB TEST .**

11:27 p.m.

TEST OK OUT
Signature of Chemical Analyst
Insuff. sample
11:32 p.m.

Lot Number: AG011703
Exp Date: 04/27/2012

Test g/210
DIAG Pass
AIR BLK .00
ACCY CHK .08
AIR BLK .00
SUB TEST .09
AIR BLK .00
SUB TEST .**

11:38 p.m.

NO TEST
Signature of Chemical Analyst
Court CVR

UNC

Observation Period

- A period during which a chemical analyst observes the person . . . to determine that the person . . . has not ingested alcohol or other fluids, regurgitated, vomited, eaten, or smoked in the 15 minutes immediately prior to the collection of a breath specimen. The chemical analyst may observe while conducting the operational procedures in using a breath-testing instrument.

UNC

Intoximeter: Intox EC/IR II

10A NCAC 41B .0322 INTOXIMETERS: MODEL INTOX EC/IR II

The operational procedures to be followed in using the Intoximeters, Model Intox EC/IR II are:

- (1) Insure instrument displays time and date;
- (2) Insure observation period requirements have been met;
- (3) Initiate breath test sequence;
- (4) Enter information as prompted;
- (5) Verify instrument accuracy;
- (6) When "PLEASE BLOW" appears, collect breath sample;
- (7) When "PLEASE BLOW" appears, collect breath sample; and
- (8) Print test record.

If the alcohol concentrations differ by more than 0.02, a third or fourth breath sample shall be collected when "PLEASE BLOW" appears. Subsequent tests shall be administered as soon as feasible by repeating steps (1) through (8), as applicable.

History Note: G.S. 20-139.1(b);
Eff. November 1, 2007.

UNC

Exception: G.S. 20-16.5(n)

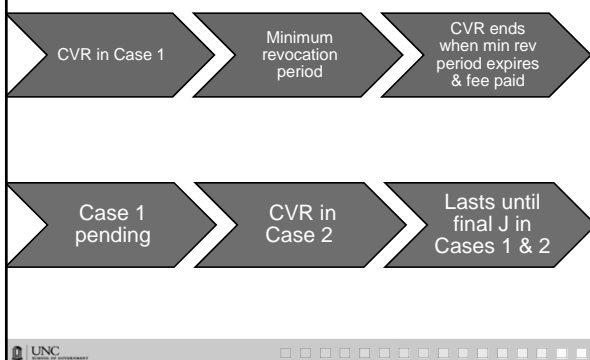
- Currently revoked DL
- No LDP
- Not eligible for restoration during period of CVR
- Then not required to issue CVR
- If exception applies, and no CVR issued, must file copy of documentary evidence and set out in writing other evidence



AOC-CVR-02: Revocation Order

[illegible]

Revocation period if pending offense



<h1 style="margin: 0;">Affidavit - No License</h1> <h2 style="margin: 0;">AOC-CVR-8</h2>		<div style="text-align: center;"> STATE OF NORTH CAROLINA County _____ </div> <div style="text-align: center; margin-top: 20px;"> IN THE MATTER OF Name last, first, middle _____ County of _____ Date of Hearing _____ </div>	<div style="text-align: center;"> In the General Court of Justice District Court Division </div> <div style="text-align: center; margin-top: 20px;"> AFFIDAVIT - NO LICENSE C.S. 20-101 </div>
NORTH CAROLINA RESIDENTS			
<p>I, the undersigned, being first duly sworn, say that I am a resident of the county and state named above, and at the time of the charge:</p> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> I am not currently licensed to drive in the State of North Carolina because: <input type="checkbox"/> my license is revoked <input type="checkbox"/> my license has expired <input type="checkbox"/> I have never had a license <input type="checkbox"/> other _____ </div> <div style="width: 50%;"> <input type="checkbox"/> I am validly licensed to drive in North Carolina but am unable to locate my license card. The circumstances of the loss and the efforts I have made to find the license card are: </div> </div>			
OUT-OF-STATE RESIDENTS			
<p>I, the undersigned, being first duly sworn, say that I am a resident of the county and state named above, and at the time of the charge:</p> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> I am not currently licensed to drive in the State of North Carolina and do not have a valid driver's license from another state because: <input type="checkbox"/> my license is revoked <input type="checkbox"/> my license has expired <input type="checkbox"/> I have never had a license <input type="checkbox"/> other _____ </div> <div style="width: 50%;"> <input type="checkbox"/> I am validly licensed to drive in the State of _____ but am unable to locate my license card. The circumstances of the loss and the efforts I have made to find the license card are: </div> </div>			
<p>SUBORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME Signature of Officiant _____</p> <p>Date: _____ Signature _____</p>			

[illegible]

[illegible]




Review hearing

- Witness may submit evidence via affidavit unless subpoenaed
- Judicial official may question witnesses
- Unless contested, statements in revocation report may be accepted as true
- Judicial official may adjourn to seek additional evidence
 - But hearing still must be completed in 3 or 5 days
 - Unless person contesting revocation contributed to delay

Multiple Offenses

Danielle Driver is charged with driving while impaired (G.S. 20-138.1) and driving after consuming by a person under 21 (G.S. 20-138.3). All of the requirements for civil license revocation under G.S. 20-16.5 are satisfied.

Do you order one revocation or two?



What about Daniel?

- Daniel is 17. He has a full provisional license.
- He is charged with speeding 82 in a 65 mph zone on January 5, 2012.
- Must Daniel be arrested for this offense?
- Is Daniel's license subject to revocation?



UNC
University of North Carolina



What about Lilly?



- Lilly is 16. She has a limited provisional license.
- She is charged with driving after consuming by a person under 21
- The results of her breath test are 0.02
- Is Lilly's license subject to civil revocation?
- Under what provision?

UNC
University of North Carolina



Motor Vehicle Seizure & Impoundment: G.S. 20-28.3



UNC
University of North Carolina



Vehicle Seizure & Impoundment: G.S. 20-28.3

- A motor vehicle driven by a person charged with a *an offense involving impaired driving* is subject to seizure if
 - At the time of the violation, the person's license was revoked as a result of a prior impaired driving license revocation, or
 - At the time of the violation, the person was driving without a valid drivers license and was not covered by an automobile insurance policy



Offenses involving impaired driving

III. OFFENSES INVOLVING IMPAIRED DRIVING

G.S. 20-4.01(24a) defines "offense involving impaired driving" to include the following:

- impaired driving under G.S. 20-138.1;
- any offense set forth under G.S. 20-141.4 based on impaired driving;
- first or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when the charge is based on impaired driving;
- impaired driving in a commercial vehicle under G.S. 20-138.2;
- habitual impaired driving under G.S. 20-138.5.



Prior impaired driving license revocation

IV. IMPAIRED DRIVING LICENSE REVOCATIONS - G.S. 20-28.2(a)

Under G.S. 20-28.2(a), the revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to any of the following statutes:

- | | |
|--------------------|--|
| G.S. 20-13.2 | - Driving After Consuming Alcohol/Drugs While Less Than 21 |
| G.S. 20-16(a)(8b) | - Military Driving While Impaired |
| G.S. 20-16.2 | - Refused Chemical Test |
| G.S. 20-16.5 | - Civil Revocation |
| G.S. 20-17(a)(2) | - Driving While Impaired |
| | - Driving While Impaired In Commercial Motor Vehicle |
| G.S. 20-138.5 | - Habitual Driving While Impaired |
| G.S. 20-17(a)(12) | - Transporting Open Container - 2nd Or Subsequent |
| G.S. 20-16(a)(7) | - Out-Of-State Offense Similar To Driving While Impaired Resulting In NC Revocation |
| G.S. 20-17(a)(1) | - Manslaughter Involving Driving While Impaired |
| G.S. 20-17(a)(3) | - Any Felony In The Commission Of Which A Motor Vehicle Is Used, If The Offense Involves Impaired Driving |
| G.S. 20-17(a)(9) | - Any Offense Set Forth Under G.S. 20-141.4 Based On Impaired Driving |
| G.S. 20-17(a)(11) | - Conviction Of Assault With A Motor Vehicle If Offense Involves Impaired Driving |
| G.S. 20-28.2(a)(3) | - Laws of another state when the offense for which the person's drivers license is revoked prohibits substantially similar conduct that if committed in this state would result in a revocation based on one of the offenses listed above. |



Vehicle Seizure & Impoundment:
G.S. 20-28.3

- A motor vehicle driven by a person charged with a *an offense involving impaired driving* is subject to seizure if
 - At the time of the violation, the person's license was revoked as a result of a prior impaired driving license revocation, or
 - At the time of the violation, the person was driving without a valid drivers license and was not covered by an automobile insurance policy

[illegible]

Driving While Not Covered by an Automobile Liability Policy



Exceptions to Seizure

1. Vehicle reported stolen
2. Rental vehicle and driver not listed in contract



Affidavit for Seizure and Impoundment

AOC-CR-323

[illegible]

Expedited Sales

\$1500 or less, may be sold after 90 days
When towing & storage costs > 85% FMV

Purpose?

“[K]eeping impaired drivers and their cars off the roads”

State v. Chisholm, 135 N.C. App. 578, 584 (1999)

Vehicle impoundment for DWI offenders

“reduces recidivism while the vehicle is in custody and to a lesser extent after the vehicle has been released.”

NHTSA, 2011 Highway Safety Countermeasure Guide at 1-34.

DWI Seizure and Impoundment

- No waiver of towing and storage fees!
- G.S. 20-28.3(c): if requirements for seizure not met, the magistrate must order motor vehicle released to owner “upon payment of towing and storage fees”

[illegible]

Tab: Enforcing DVPOs

SPECIAL PROCEDURES

FOR CASES INVOLVING DOMESTIC VIOLENCE



ENFORCEMENT OF DVPO'S

- By contempt
- By criminal charges

ENFORCEMENT BY CONTEMPT

- Motion by aggrieved party (AOC-CV-307)
- Filed with CSC or – if clerk is not available -- authorized magistrate
- Issue for magistrate: do facts clearly show danger of acts of dv against party or child?
- If so, magistrate must schedule dc hearing at earliest possible date
- Issue & effect service of AOC-CV-308: notice of show cause hearing

STATE OF NORTH CAROLINA		File No. _____
County _____		In The General Court Of Justice District Court Division
Name Of Plaintiff _____	VERSUS	ORDER TO APPEAR AND SHOW CAUSE FOR FAILURE TO COMPLY WITH DOMESTIC VIOLENCE PROTECTIVE ORDER G.S. 20B-4, 5A-15, 23
Name And Address Of Defendant _____		
<p>To The Defendant Named Above:</p> <p>I find that there is probable cause to believe that you are in contempt for willfully violating the Domestic Violence Protective Order issued in this case on (give date of order) _____ as alleged in the attached Motion.</p> <p>You are ORDERED to appear in person at the date, time and place indicated below to show cause why you should not be held in contempt of court for violating the lawful orders of this Court. If the Court finds you in civil contempt, you may be committed to jail for as long as such civil contempt continues. If the Court finds you in criminal contempt, you may be fined up to \$500, imprisoned for up to thirty (30) days, or both.</p>		
Date To Appear _____	Time To Appear <input type="checkbox"/> am <input type="checkbox"/> pm	Date Of Order _____
Place To Appear _____	Signature _____	Signature _____
	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> District Court Judge	<input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Designated Magistrate
RETURN OF SERVICE		
I certify that this Order was received and served as follows:		
Date Served _____	Name Of Defendant _____	

ENFORCEMENT BY CRIMINAL CHARGES: VIOLATION OF DVPO

Essential elements:

- (1) knowing
- (2) violation of
- (3) valid DVPO

VALID DVPO?

- Ex parte? Yes
- Expired? No
- Issued by any state or indian tribe
- No requirement that order be registered to be valid
- Protected party cannot give defendant permission to violate a DVPO

WARRANTLESS ARREST

Mandatory if violation involves

- Entry of victim's home
- Threatening, harassing, or interfering

This is so even if

- Offense committed outside LEO presence, or
- Defendant has left the premises

Warrantless arrest discretionary for any other violation of DVPO

VERNETTA COCKERHAM-ELLERBEE

2002/YADKIN COUNTY



MANDATORY ARREST

- Cockerham-Ellerbee v. Town of Jonesville, 176 NC App 372 (2006)
- SL 2009-389: An act to clarify DV laws . . . despite the 2006 holding by the NC COA in Cockerham-Ellerbee ...

MAGISTRATE'S DUTY FOR DVPO VIOLATION

- (1) Warrantless arrest? Determine PC, issue magistrate's order if appropriate
- (2) Conduct initial appearance
- (3) Do not set conditions of pretrial release
- (4) Deal with additional criminal charges, if any

DELAY IN SETTING CPR MAY APPLY TO OTHER "CRIMES OF DV" AS WELL

// (A) In all cases in which the defendant is charged with [crime listed in statute]* [upon person listed in statute]* the judicial official who determines the conditions of pretrial release shall be a judge.

//

GS 15A-534.1(B)

*SEE *DOMESTIC VIOLENCE CRIMES & THE 48-HOUR RULE* ON PAGE 11 IN INITIAL APPEARANCE SECTION OF NOTEBOOK

48-hour rule applies to certain combinations of crimes & relationships

What crimes?

- Assault
- Stalking
- Communicating threats
- Felony in GS 14, art. 7b, 8, 10, 15
- Domestic criminal trespass
- Violation of DVPO

What relationships?

- Current or former spouse
- Current or former live-in "as-if married"
- Dating relationship
- Sometimes others

CHART PRACTICE

Crime

- FELONY STALKING
- FELONIOUS RESTRAINT
- DVPO VIOLATION
- CYBERSTALKING

Relationship

- FORMER SPOUSE
- CURRENT LIVE-IN/SAME SEX
- CHILD IN COMMON
- SAME SEX DATING RELATIONSHIP

DATING RELATIONSHIPS

GS 50B - 1

DVPO authorized for **persons of the opposite sex** who are in a **dating relationship** . . .

A **dating relationship** is one wherein the parties are

- Romantically involved
- Over time
- And on a continuous basis. . . .

48-HOUR RULE

Conditions set by judge if charge is one of the listed crimes and the victim is "a person with whom the defendant is or has been in a **dating relationship** as defined in G.S. 50b-1(b)(6)"

Note: No requirement that persons be "**of the opposite sex.**"

DATING RELATIONSHIPS? 6 FACTORS

- 1. WAS THERE A MINIMAL SOCIAL INTERPERSONAL BONDING OF THE PARTIES OVER AND ABOVE [THAT OF] MERE CASUAL [ACQUAINTANCES OR ORDINARY] FRATERNIZATION?
- 2. HOW LONG DID THE ALLEGED DATING ACTIVITIES CONTINUE PRIOR TO THE ACTS OF DOMESTIC VIOLENCE ALLEGED?
- 3. WHAT WERE THE NATURE AND FREQUENCY OF THE PARTIES' INTERACTIONS?
- 4. WHAT WERE THE PARTIES' ONGOING EXPECTATIONS WITH RESPECT TO THE RELATIONSHIP, EITHER INDIVIDUALLY OR JOINTLY?
- 5. DID THE PARTIES DEMONSTRATE AN AFFIRMATION OF THEIR RELATIONSHIP BEFORE OTHERS BY STATEMENT OR CONDUCT?
- 6. ARE THERE ANY OTHER REASONS UNIQUE TO THE CASE THAT SUPPORT OR DETRACT FROM A FINDING THAT A "DATING RELATIONSHIP" EXISTS?

THOMAS V. WILLIAMS, NC COA (7/7/2015)

State v. Thompson, NCA (1998)

- 10/21/95 warrant issued for misdemeanor assault inflicting serious injury
- 10/28 (Saturday): D arrested & taken before magistrate at 3:45 PM. Magistrate entered order of commitment that D be brought "before judge or magistrate 10/30/95 3:45 PM"
- 10/30/95: 00 AM: 2 dcs in session
- 10/30/~ 3:45: bond hearing before DCJ results in d's prompt release

State v. Thompson

"The failure to provide defendant with a bond hearing before a judge at the first opportunity on Monday morning, and the continued detention of defendant well into the afternoon was unnecessary, unreasonable, and thus constitutionally impermissible."

THE MAXIMUM 48-HOUR RULE

We want conditions set by a judge, but 48+ hours of pretrial detention w/o bond hearing is just too much.

" If a judge has not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the provisions of this section. "

GS 15A-534.1(B)

SETTING CONDITIONS

- CONSIDER CRIMINAL HISTORY
- AOC-CR-630

STATE OF NORTH CAROLINA		File No.
County		In The General Court Of Justice
		<input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
STATE VERSUS	CONDITIONS OF RELEASE FOR PERSON CHARGED WITH A CRIME OF DOMESTIC VIOLENCE	
Name Of Defendant	#	
G.S. 15A-534.1		
NOTE: Use this form in conjunction with form AOC-CR-200, Conditions Of Release And Release Order.		
FINDINGS		
<p>The undersigned judicial official finds that the defendant named above is charged with assault on, stalking, communicating a threat to, or committing a felony provided in former Article 7A or Articles 7B, §. 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or (for offenses committed on or after December 1, 2015, only) a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(5), with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes.</p> <p>The undersigned judicial official <input type="checkbox"/> has considered the defendant's criminal history as shown on a criminal history report provided by a law enforcement officer or a district attorney. <input type="checkbox"/> has not considered the defendant's criminal history as shown on a criminal history report because no report could be obtained within a reasonable time.</p>		
ORDER		
<p>Based upon the foregoing findings, the undersigned judicial official ORDERS the following conditions of release IN ADDITION TO the conditions of release set out on the attached form AOC-CR-200:</p> <p><input type="checkbox"/> 1. The defendant shall stay away from the home, school, business or place of employment of the alleged victim.</p>		

<p>Based upon the foregoing findings, the undersigned judicial official ORDERS the following conditions of release IN ADDITION TO the conditions of release set out on the attached form AOC-CR-200:</p> <p><input type="checkbox"/> 1. The defendant shall stay away from the home, school, business or place of employment of the alleged victim.</p> <p><input type="checkbox"/> 2. The defendant shall refrain from assaulting, beating, molesting, or wounding the alleged victim.</p> <p><input type="checkbox"/> 3. The defendant shall refrain from removing, damaging or injuring the property listed below:</p>		
<p><input type="checkbox"/> 4. The defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.</p> <p><input type="checkbox"/> 5. For offenses committed on or after December 1, 2012: The defendant shall abstain from alcohol, as verified by a continuous alcohol monitoring system. The monitoring provider shall report any violation of this condition to the district attorney.</p> <p><input type="checkbox"/> 6. Other restrictions:</p> <p>a. The defendant shall have no contact with the alleged victim.</p> <p>b. The defendant shall comply with any valid domestic violence protective order in effect.</p> <p>c. The defendant shall not possess any firearms.</p> <p>d. Other:</p>		
Date	Signature Of Judicial Official	<input type="checkbox"/> Magistrate <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge

Upon a determination by the judge that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim and upon a determination that the execution of an appearance bond as required by G.S. 15A-534 will not reasonably assure that such injury or intimidation will not occur, a judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.

G.S. 15A-534.1(a)(1)

FOR EXTRAORDINARY CIRCUMSTANCES

What if D violates a condition?

- LEO can make warrantless arrest
- No arrest? Magistrate may issue order for arrest & set new conditions **if** first appearance hasn't happened yet.
- Consult with CDJ about procedure post-first appearance
- 48-rule N/A

ENFORCING DVPOS (AUGUST, 2018)

Special Procedures for Cases Involving Domestic Violence DVPOs - Page 1

Special Procedures for Cases Involving Domestic Violence

DVPO Enforcement

Research has demonstrated repeatedly that DVPOs can be a powerful tool in reducing domestic violence when they are consistently enforced. In NC, violation of a DVPO is both a crime, punishable under criminal law statutes, and a violation of a court order, punishable by the contempt power of the court. In the majority of cases, violation of a DVPO is treated as a criminal offense, which may come before a magistrate either before or after an arrest is made.

Enforcement by Contempt (GS 50B-4(a))

Party may file motion (AOC-CV-307) asserting violation of 50B DVPO with clerk or authorized magistrate. Motion must be filed in county in which order was issued.

If authorized magistrate determines that “facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child” at time when clerk is not available, magistrate must “schedule and issue notice of a show cause hearing” (AOC-CV-308) with district court at earliest possible date, and effect service of motion and notice of hearing.

Enforcement by Criminal Charges (GS 50B-4.1)

Violation of DVPO (Class A1 misdemeanor)

Essential Elements:

- 1) Knowingly
- 2) Violates
- 3) A valid protective order entered pursuant to
 - a) N.C. Gen. Stat. Ch. 50B, or
 - b) A court of another state, or
 - c) A court of an Indian tribe.

GS Ch. 50B establishes other criminal offenses as well (see NC Crimes pp. 186-190)

- Repeat Violation of a DVPO
- Violation of a DVPO with a Deadly Weapon
- Entering DV Safe House

Legal issues related to elements of offense typically relate to whether violation was knowing, and whether order was valid.

Validity Issues

- An ex parte order is valid for purposes of this statute.

DGL/SOG/2016

- An expired order is no longer valid. In North Carolina, orders are for a fixed period not to exceed one year, and may be renewed multiple times for up to two years. An order issued outside of North Carolina is valid for the length of time specified in the order, even if it exceeds the time limits applicable to NC orders.
- Statute permits, but does not require, registration of order.
- LEO may rely on copy of out-of-state order and on statement of protected person that order remains in effect.
- A DVPO is an order of the court; the person protected by the order has no authority to give the defendant permission to violate the order.

Special Rules for Law Enforcement

Immediate arrest (i.e., without a warrant) is mandatory if an officer has probable cause to believe that the defendant knowingly has violated a valid protective order

- a) excluding the defendant from the residence or household occupied by a victim of domestic violence or
- b) directing the defendant to refrain from threatening, abusing, or following the plaintiff, harassing the plaintiff, including by telephone, visiting the home or workplace, or other means, or otherwise interfering with plaintiff.

GS 50B – 4.1(b)

Arrest without a warrant is discretionary for any other violation of G.S. 50B-4.1.

The warrantless arrests described above are authorized even though the offenses are committed outside of the officer's presence. If the officer has probable cause, the defendant may be arrested even though the defendant has left the premises by the time the officer arrives. GS 15A-401(b)(2)(e). However, the officer may not enter defendant's home without consent to arrest unless officer gets arrest warrant and may not enter the home of another person to arrest defendant without consent unless the officer gets an arrest warrant for the defendant and a search warrant for the premises.

Magistrate's duty when defendant is arrested for a violation of G.S. 50B-4.1.

- If defendant is arrested by an officer **without** a warrant, the magistrate must determine whether there is probable cause to believe person violated order:
If magistrate does not find probable cause, defendant is released.
If magistrate finds probable cause, issues a magistrate's order.
- If defendant is arrested **with or without a warrant**, conduct initial appearance (i.e., notify defendant of rights and charges against him or her).
- Do not set conditions of pretrial release for defendant. (See discussion below, under **The 48-Hour Rule**.)

- If defendant has been arrested on other crimes in addition to G.S. 50B-4.1, determine whether the additional charges are subject to the special 48-hour pretrial release rules:
If they are, do not set bond for any of the offenses.
If they are not, the magistrate should set bond for those offenses not covered by the special pre-trial release provisions.

GS 15A-534.1: Setting Conditions of Pretrial Release & the 48-Hour Rule

The Rule: Conditions of pretrial release must be determined by a judge, rather than a magistrate, for the crimes listed below if the victim of the crime is

- The defendant's spouse or former spouse
- A person with whom the defendant lives or has lived as if married
- A person with whom the defendant has or has had a dating relationship as defined in GS 50B-1(a)(6)

Covered offenses:

- Assault
- Stalking
- Communicating threats
- Committing a felony identified in GS Ch. 14-
 - Art. 7B (Rape & Other Sex Offenses)
 - Art. 8 (Assaults)
 - Art. 10 (Kidnapping & Abduction)
 - Art. 15 (Arson & Other Burnings)

The 48-hour rule also applies to domestic criminal trespass (GS 14-134.3) and to violation of a DVPO under GS Ch. 50B.

See Domestic Violence Crimes & the 48-Hour Rule in your notebook under the *Setting Conditions of Pretrial Release* tab for a chart setting out this information in detail.

Special Note About Dating Relationships:

GS 50B-1(b)(6) allows issuance of a DVPO for

- persons of the opposite sex
- who are in, or have been in, a dating relationship.
A dating relationship is "one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship."

In *Thomas v. Williams*, filed 7/7/2015, NC App., the Court of Appeals found that whether a relationship falls within the category of “dating relationship” “is necessarily fact sensitive and thus warrants a *factor approach* rather than a *definitional approach*.”

NOTE that GS 15A-534.1 references the definition of a dating relationship contained in GS 50B-1, but does not incorporate that statute’s requirement that the couple be “of the opposite sex.” The result is that a same sex couple involved in a dating relationship fall within the relationships triggering the application of the 48-hour rule.

48 Hours Later. . .

“A defendant may be retained in custody not more than 48 hours from the time of arrest without a determination being made under this section by a judge. If a judge has not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under the provisions of this section.” GS 15A-534.1(b).

If judge hasn’t set bond with 48 hours, defendant must be brought back before magistrate on duty. Cannot wait until next morning or day.¹

In determining conditions of pretrial release, magistrate is required to consider the defendant’s criminal history, unless obtaining such history will unreasonably delay setting conditions. GS 15A-534.1.

In addition to general law related to determining conditions set out in GS 15A-534, court is expressly authorized to impose specific additional conditions set out in GS 15A-534.1(a)(2) [also set out in AOC-CR-630: CONDITIONS OF RELEASE FOR PERSON CHARGED WITH A CRIME OF DOMESTIC VIOLENCE].

In extraordinary circumstances, a magistrate might briefly further delay release pursuant to GS 15A-534.1(a)(1) if the magistrate determines

- “that the immediate release of the defendant will pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation of the alleged victim,” and that
- “execution of an appearance bond will not reasonably insure that such injury or intimidation will not occur”

What If Defendant Violates Conditions of Pretrial Release?

A law enforcement officer is authorized to make an immediate arrest without a warrant if the officer has probable cause to believe that the defendant has violated a pretrial release order. G.S. 15A-401(b)(2).

If a defendant violates a condition of pretrial release for a domestic violence crime, but is not arrested by an officer, the magistrate can issue an order for arrest to bring the

¹ *State v. Thompson*, 349 N.C. 483, 508 S.E.2d 277 (1998) (upheld constitutionality of statute but said unconstitutional as applied to defendant who was not taken before a judge at 9:30 in the morning when court opened but was held until 2:30 that afternoon).

defendant in and modify the release order, provided that the first appearance before a district court judge has not been held. If a first appearance has been held, the magistrate should consult the chief district court judge about what practice the magistrate should follow.

NOTE: Violation of a condition of pretrial release is not a crime and does not trigger the 48-hour rule requiring delay in setting new conditions of release.

Tab:
Criminal
Contempt

CRIMINAL CONTEMPT TABLE OF CONTENTS (AUGUST, 2018)

Essentials of Contempt for Magistrates	Criminal Contempt – Page 1
Show Cause Order, Findings and Judgment - Failure To Pay Fine and/or Costs, To Obey Jury Summons, To Appear Pursuant To Criminal Summons, Or For Contempt	Criminal Contempt – Page 7
Criminal Contempt/Summary Proceedings/ Findings and Order (AOC-CR-390)	Criminal Contempt – Page 9

ESSENTIALS OF CONTEMPT FOR MAGISTRATES

Michael Crowell
UNC School of Government
October 2013

Different kinds of contempt

There are two kinds of contempt: criminal contempt and civil contempt.

Criminal contempt is used to punish for acts that disrupt a court proceeding or show disrespect, and also can be used for violation of court orders. Criminal contempt can be direct or indirect. Direct criminal contempt occurs in the court's presence; indirect does not. Criminal contempt can be punished by imprisonment and/or a fine.

Civil contempt is used to get someone to comply with a court order. There is no distinction between direct and indirect civil contempt; in any event, virtually all civil contempt takes place outside the court's presence. The only means of enforcing civil contempt is to imprison the person until the person complies with the court order.

Magistrate's authority

A magistrate's authority to use contempt is stated in G.S. 7A-292(2). A magistrate may punish only for direct criminal contempt. That is, a magistrate may punish only for criminal contempt that takes place in the magistrate's presence. Any other kind of contempt must be referred to a district court judge.

Meaning of criminal contempt

Criminal contempt is defined in G.S. 5A-11. Only the acts listed in the statute may be punished by criminal contempt.

The contemptuous acts listed in G.S. 5A-11 most likely to be committed directly before a magistrate are:

- "Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings."
- "Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority."

It is also possible, though less likely, that this form of criminal contempt will be committed directly before a magistrate:

- “Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified.”

One can also think of unusual situations in which the following forms of criminal contempt could occur directly before a magistrate, but most often they would not be direct contempt because the magistrate would not have actually observed the violation:

- “Willful disobedience of, resistance to, or interference with a court’s lawful process, order, directive, or instruction or its execution.”
- “Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.”

Meaning of direct contempt

G.S. 5A-13 says that an act is direct criminal contempt only when the act:

- “(1) Is committed within the sight and hearing of a presiding judicial official; and
- (2) Is committed in, or in immediate proximity to, the room where proceedings are being held before the court; and
- (3) Is likely to interrupt or interfere with matters then before the court.”

Summary or plenary proceeding

Contempt may be dealt with in a summary proceeding or a plenary proceeding. A summary proceeding means that the magistrate deals with the contempt right then and there as it occurs. That choice is always available for direct contempt. If for whatever reason the magistrate does not wish to deal with the contempt immediately, the magistrate may issue a show cause order for the defendant to appear before a district judge at a later time for a plenary proceeding. A summary proceeding is an on-the-spot quick determination of contempt; a plenary proceeding is more like a regularly-scheduled trial.

The summary proceeding

At a summary proceeding for direct criminal contempt the magistrate must tell the person that the magistrate is considering holding the person in contempt; describe what the person did that was contemptuous; and give the person a chance to respond why it is not contempt. Even if the conduct which is the basis for contempt is obvious to everyone, and it is clear that the defendant has no good excuse, the magistrate still must explain the basis for the contempt and still must give the defendant an opportunity to respond. The magistrate should also inform the person that contempt can be punished by imprisonment for up to 30 days and a fine of up to \$500.

The summary proceeding must be held “substantially contemporaneously” with the contempt. As a practical matter that means just as soon as the contempt occurs or within a few minutes thereafter. There can be situations in which it is permissible to delay the summary proceeding for a day or so, but a magistrate should not attempt to do that. If the contempt proceeding is not going to be held right away the magistrate should issue a show cause order for the defendant to appear before a district judge at a later time.

G.S. 15A-511(a)(3) says that if a defendant at an initial appearance is so unruly or is unconscious or so intoxicated as to be unable to understand what is going on the magistrate can order the person held for a short time before conducting the initial appearance. If the defendant’s unruliness includes contemptuous behavior, the magistrate may wait on the summary proceeding until the defendant is brought back for the initial appearance. If the defendant acts contemptuously but is too intoxicated for the initial appearance or for an orderly summary proceeding, the defendant probably is not capable of acting willfully (see below) and contempt is not appropriate.

G.S. 5A-16(a) authorizes a magistrate to order a person being charged with direct criminal contempt to be held and restrained “to the extent necessary to assure his presence for summary proceedings” That statute should be used only when necessary to keep the person from fleeing.

A magistrate conducting a summary proceeding should use form AOC-CR-390. The form should describe in detail the behavior that was contemptuous, including direct quotation of words that were spoken.

Show-cause order for a plenary proceeding

Although direct criminal contempt always may be punished summarily, it does not have to be done summarily. The magistrate may choose to issue a show cause order and direct the person to appear before a district court judge in a plenary proceeding. The plenary proceeding should be used when the person is so belligerent or disruptive that it is not possible to conduct a summary proceeding; when the office is too busy to stop for a summary proceeding; or when the magistrate has become too personally involved to decide the contempt.

The form a magistrate should use for a show-cause order for contempt is AOC-CR-219, but the form is not designed for the most common kind of direct criminal contempt. The simplest way to use the form usually will be to check box IV for “Failure To Obey Other Order Of the Court” but strike through that heading and substitute “Interruption of Court Proceeding” or “Disrespect to Court” and then describe the behavior which is contemptuous.

Willfulness and warning

G.S. 5A-12(b) provides that a person may be punished for criminal contempt only if the person’s actions are “willfully contemptuous” or the person was given “a clear warning by the court that the conduct is improper.” Willfulness has been defined by appellate court opinions to mean “more than deliberation or conscious choice; it also imports a bad faith disregard for authority

and the law.” Some acts such as spitting at a magistrate or yelling profanity or kicking a table are willfully contemptuous by their nature and so inherently disruptive and disrespectful that no warning is needed. However, when the defendant is doing something less disrespectful and disruptive, such as talking so much that no one else can speak or refusing to sit down and await one’s turn to be heard, the magistrate must warn the person that the behavior is unacceptable before using contempt.

To avoid later questions about whether the contempt was “willfully contemptuous,” it is better for the magistrate to always give a warning before holding a person in contempt. The willfully contemptuous defendant is not likely to stop just because of the warning.

Right to counsel

If a lawyer is present with a person charged with direct contempt, of course the lawyer may represent the defendant in the summary contempt proceeding. It is not necessary to delay the summary hearing to allow the defendant to get a lawyer, however. And it is not necessary to appoint a lawyer to represent an indigent defendant in a summary contempt proceeding. If the contempt is not addressed summarily by the magistrate and instead proceeds to a plenary hearing before a judge, the indigent defendant is entitled to have counsel appointed.

Recusal

Contemptuous conduct often can be very personal. A defendant may use degrading terms to speak to the magistrate and may be openly hostile in close quarters. In those circumstances the magistrate may feel personally insulted and want to get back at the defendant. If anything about the contemptuous behavior causes a magistrate to feel that way, the magistrate should not conduct a summary proceeding for contempt but instead should issue a show-cause order and allow the contempt charge to be heard by a judge at a later time.

Proof beyond a reasonable doubt

The standard for criminal contempt is the same as for conviction of a crime: A person may not be held in criminal contempt unless the contempt is proved beyond a reasonable doubt. Because direct contempt occurs in the presence of the magistrate, the magistrate’s own view of the defendant’s conduct will establish the proof.

Punishment

G.S. 5A-12 sets out the punishment for criminal contempt. The possible punishments include censure, imprisonment for up to 30 days, a fine of not more than \$500, or any combination of those three options. A magistrate will not use censure, leaving imprisonment and a fine as the choices. Before sentencing a defendant to jail for contempt, or imposing a fine, the magistrate should consider how the penalty will compare with the punishment a defendant likely would

receive for conviction of a crime. If a fine is being imposed, the magistrate needs to consider the person's ability to pay.

Although it will not be appropriate in most instances when a magistrate holds a person in contempt, the sentence for criminal contempt may be suspended with conditions, just as for other criminal offenses.

If a magistrate sentences a defendant to jail for criminal contempt, the magistrate may go back and reduce or terminate the sentence at any time. For example, if a magistrate sentenced a person to jail for two days for contempt, the magistrate could terminate the sentence after one day. Likewise, if a magistrate imposes a fine the magistrate may later reduce or eliminate the fine.

Appeal

Appeal for criminal contempt is from the magistrate to superior court. The appeal is for a hearing *de novo*.

G.S. 5A-17 provides that an appeal from criminal contempt is the same as an appeal in a criminal action. The statute on criminal appeals generally, G.S. 15A-1451, provides that the payment of a fine and costs is stayed upon the defendant's giving notice of appeal, but confinement is stayed only when the defendant is released pursuant to the bail statutes. Thus, if the defendant gives notice of appeal from a sanction of criminal contempt the payment of any fine is stayed automatically but the defendant starts serving the jail time until released on bail. Starting December 1, 2013, G.S. 5A-17 will require that the bail hearing be held by a district judge when a magistrate orders someone to jail for criminal contempt and that the hearing has to be within 24 hours. If a district judge has not held the bail hearing within 24 hours, any other judicial official may do so.

Attorney For State/Moving Party		FINDINGS	
Attorney For Defendant/Contemnor		The defendant/contemnor having <input type="checkbox"/> appeared <input type="checkbox"/> not appeared before the Court, the Court makes the following findings: Contempt. G.S. Chapter 5A. (NOTE: The Court may not find both civil and criminal contempt for the same conduct. G.S. 5A-12(d), 5A-21(c), and 5A-23(g).) <input type="checkbox"/> that the defendant/contemnor is not in criminal or civil contempt. <input type="checkbox"/> that the defendant/contemnor is in <input type="checkbox"/> criminal <input type="checkbox"/> civil contempt of court, based on the Court's findings of fact <input type="checkbox"/> beyond a reasonable doubt and conclusions of law herein: (attach additional pages if necessary)	
<input type="checkbox"/> Def. Not Indigent <input type="checkbox"/> Waived <input type="checkbox"/> Appointed <input type="checkbox"/> Retained			
APPEAL ENTRIES - CRIMINAL CONTEMPT			
NOTE TO COURT: If finding of contempt was made by a judicial official inferior to a Superior Court Judge, the appeal is to Superior Court. G.S. 5A-17. On appeal from criminal contempt imposing confinement, there must be a bail hearing "within a reasonable time period" after confinement is imposed. The contemnor may not be confined more than 24 hours without a bail hearing. See G.S. 5A-17(b) for officials who may conduct the hearing. <input type="checkbox"/> The defendant/contemnor gives notice of appeal from the judgment of the District Court to the Superior Court.		Failure To Obey Jury Summons. G.S. 9-13. <input type="checkbox"/> that the juror was summoned to appear, was served with a jury summons, failed to appear, and <input type="checkbox"/> has <input type="checkbox"/> has not rendered an excuse deemed sufficient for that failure to appear. <input type="checkbox"/> Other: _____ Failure To Pay Fine And/Or Costs. G.S. 15A-1364. <input type="checkbox"/> that the defendant has defaulted in payment of the fine and/or costs imposed in this case, for which defendant had the ability to comply or failed to make a good faith effort to obtain the necessary funds for payment. <input type="checkbox"/> Other: _____	
		JUDGMENT	
<input type="checkbox"/> Dismissal. All proceedings pursuant to this Show Cause Order are dismissed. <input type="checkbox"/> Criminal Contempt. G.S. 5A-12. It is ORDERED that the defendant: (check all that apply) NOTE TO COURT: If suspending a sentence for contempt, impose judgment on form AOC-CR-604. <input type="checkbox"/> 1. is hereby censured for contempt. <input type="checkbox"/> 2. shall pay a fine of \$_____ (max \$500.00). <input type="checkbox"/> 3. shall pay the costs of court. <input type="checkbox"/> 4. be imprisoned for a term of _____ days in the custody of the <input type="checkbox"/> Sheriff <input type="checkbox"/> Other: _____ The defendant shall be given credit for _____ days' pretrial confinement. <input type="checkbox"/> Work release is recommended. <input type="checkbox"/> This sentence shall run at the expiration of the sentence imposed in file number _____. <input type="checkbox"/> Civil Contempt. G.S. 5A-21. It is ORDERED that the contemnor be imprisoned in the custody of the Sheriff until the contemnor purges himself/herself of the contempt by: (describe conduct to purge) _____		The Sheriff shall release the contemnor from custody unconditionally upon finding pursuant to G.S. 5A-22 that the contemnor has satisfied the purge condition(s) above or upon notice from a judicial official of such satisfaction. <input type="checkbox"/> Rehearing Date. If the contemnor is not sooner released, the Sheriff is hereby ORDERED to produce him/her before this Court at the time, date, and location below for a de novo hearing on the issue of contempt. NOTE TO COURT: A person committed for civil contempt for nonpayment of a monetary obligation other than child support may not be imprisoned more than 90 days at one time. Recompitment is allowed only after a de novo hearing for contempt. G.S. 5A-21(b2).	
<input type="checkbox"/> The defendant/contemnor gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appellate entries and any conditions of post-conviction release are set forth on form AOC-CR-350.		Location Of Court _____ Court Date _____ Court Time _____ AM <input type="checkbox"/> PM <input type="checkbox"/>	
Date _____ Name Of Presiding Judge (type or print) _____		Failure To Obey Jury Summons. G.S. 9-13. The juror is ordered to pay a fine of \$_____ (not to exceed \$50.00). If the fine is not paid by (date) _____, the Clerk shall docket a civil judgment for that amount and issue an execution against the juror's estate. <input type="checkbox"/> Failure To Pay Fine And/Or Costs. G.S. 15A-1364. The Court hereby orders that: NOTE TO COURT: To activate a suspended sentence imposed at the time of conviction, use form AOC-CR-343, AOC-CR-607, or AOC-CR-608. <input type="checkbox"/> the defendant be imprisoned for _____ days (not to exceed 30) in the custody of the <input type="checkbox"/> Sheriff. <input type="checkbox"/> N.C. DAC (felony fines, only). <input type="checkbox"/> The Court finds that the defendant <input type="checkbox"/> is <input type="checkbox"/> is not suitable for placement in a county satellite jail/work release unit. <input type="checkbox"/> the defendant's fine and cost obligations are modified as follows: _____ <input type="checkbox"/> upon receipt of notice from a judicial official that the defendant has paid or satisfied the remaining obligation for the fine and costs, the custodian designated above shall release the defendant from custody. <input type="checkbox"/> The Clerk shall docket the fine of \$_____ and costs of \$_____ against the defendant as a civil judgment, G.S. 15A-1365. <input type="checkbox"/> but pursuant to the defendant's election to serve a sentence of imprisonment for the default, no execution may issue thereon.	
CERTIFICATION		ORDER OF COMMITMENT	
I certify that this Judgment and attachment(s) marked below is a true and complete copy of the original which is on file in this case. <input type="checkbox"/> Appellate Entries (AOC-CR-350) <input type="checkbox"/> Other: _____		It is ordered that the Clerk deliver two certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant/contemnor to be delivered with these copies to the custody of the agency named above to serve the sentence imposed or until the defendant/contemnor shall have complied with the conditions for his/her release.	
Date _____ Date Certified Copies Delivered To Sheriff _____		SIGNATURE OF JUDICIAL OFFICIAL	
Signature Of Clerk _____		Signature Of Presiding Judicial Official _____	
SEAL		Name Of Presiding Judicial Official (type or print)	
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court		Date	

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice

☐ Before the Clerk ☐ District ☐ Superior Court Division**IN THE MATTER OF**

Name And Address Of Contemnor

**DIRECT CRIMINAL CONTEMPT/
SUMMARY PROCEEDINGS/
FINDINGS AND ORDER**

G.S. 5A-11, -12, -13, -14

Race	Sex	Date Of Birth	Age
Date		Time	<input type="checkbox"/> AM <input type="checkbox"/> PM

Place

On the date, time and place of hearing as stated above, the undersigned judicial official conducted:

- | | | |
|---|---|---------------------------------------|
| <input type="checkbox"/> an initial appearance | <input type="checkbox"/> a probable cause hearing | <input type="checkbox"/> a trial |
| <input type="checkbox"/> a first appearance | <input type="checkbox"/> an estates proceeding | <input type="checkbox"/> other: _____ |
| <input type="checkbox"/> a pre-trial motion hearing | <input type="checkbox"/> a special proceeding | |

The Court finds beyond a reasonable doubt that during the proceeding the above contemnor willfully behaved in a contemptuous manner, in that the above named contemnor did

The undersigned gave a clear warning that the contemnor's conduct was improper. In addition, the contemnor was given summary notice of the charges and summary opportunity to respond.

(NOTE: The contemnor should be given an opportunity to explain his/her behavior, however the contemnor is not entitled to counsel, if court promptly punishes act of contempt.)

The contemnor's conduct interrupted the proceedings of the court and impaired the respect due its authority.

Therefore, it is adjudged that the above named contemnor is in contempt of court. It is ordered that the contemnor

NOTE TO COURT: If suspending a sentence for contempt, impose judgment on form AOC-CR-604.

- | | | |
|---|--|--|
| <input type="checkbox"/> be censured for contempt. | <input type="checkbox"/> shall pay a fine of \$ _____ (max. \$500.00). | <input type="checkbox"/> shall pay the costs of court. |
| <input type="checkbox"/> be imprisoned for a term of _____ | <input type="checkbox"/> hours <input type="checkbox"/> days | in the custody of the <input type="checkbox"/> Sheriff <input type="checkbox"/> Other: _____ |
| The contemnor shall be given credit for _____ days' pretrial confinement. <input type="checkbox"/> Work release is recommended. | | |
| <input type="checkbox"/> This sentence shall run at the expiration of the sentence imposed in file number _____. | | |

Date	Name Of Judicial Official (type or print)	Signature Of Judicial Official
------	---	--------------------------------

ORDER OF COMMITMENT/APPEAL ENTRIES

- | |
|---|
| <input type="checkbox"/> It is ORDERED that the Clerk deliver two certified copies of this Findings and Order to the sheriff or other qualified officer and that the officer cause the contemnor to be delivered with these copies to the custody of the sheriff of the county named above to serve the sentence imposed or until the contemnor shall have complied with the conditions of release pending appeal. |
| <input type="checkbox"/> The contemnor gives notice of appeal from this Findings and Order to the Superior Court. |
| <input type="checkbox"/> The contemnor gives notice of appeal from this Findings and Order in the Superior Court to the appellate division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350. |

NOTE TO COURT: If finding of contempt was made by a judicial official inferior to a Superior Court Judge, the appeal is to Superior Court. G.S. 5A-17.

On appeal from criminal contempt imposing confinement, there must be a bail hearing "within a reasonable time period" after confinement is imposed. The contemnor may not be confined more than 24 hours without a bail hearing. See G.S. 5A-17(b) for officials who may conduct the hearing.

Date	Name Of Judicial Official (type or print)	Signature Of Judicial Official
------	---	--------------------------------

CERTIFICATION

I certify that this Findings and Order is a true and complete copy of the original which is on file in this case.

Date	Signature	SEAL
Date Certified Copies Delivered To Sheriff	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	

Original - File Copy - Sheriff

Tab:
Forms

FORMS TABLE OF CONTENTS (AUGUST, 2018)

Arrest Warrant (AOC-CR-100) and Copy.....	Forms – Page 1
Misdemeanor Criminal Summons (AOC-CR-113) and Copy.....	Forms – Page 5
Magistrate’s Order (AOC-CR-116) and Copy	Forms – Page 9
Search Warrant (AOC-CR-119) and Copy.....	Forms – Page 13
Conditions of Release and Release Order Form (AOC-CR-200) and Copy.....	Forms – Page 17
Appearance Bond for Pretrial Release (AOC-CR-201).....	Forms – Page 21
Additional Accommodation Bondsmen (AOC-CR-201A).....	Forms – Page 23
Surrender by Surety (AOC-CR-214).....	Forms – Page 25
Order for Arrest (AOC-CR-217) and Copy.....	Forms – Page 27
Order of Assignment or Denial of Counsel (AOC-CR-224)	Forms – Page 31
Affidavit of Indigency (AOC-CR-226)	Forms – Page 33
Transmittal of Out-of-County Process (AOC-CR-236)	Forms – Page 35
Out-Of-County Process Verification Recall and Transmission (AOC-CR-241)	Forms – Page 37
Conditions of Release Abstinence from Alcohol and Continuous Alcohol Monitoring.....	Forms – Page 39
Detention of Impaired Driver (AOC-CR-270)	Forms – Page 41
Detention for Communicable Disease Testing (AOC-CR-270 side 2).....	Forms – Page 42
Implied Consent Offense Notice (AOC-CR-271)	Forms – Page 43
Detention of Probationer Arrested for Felony (AOC-CR-272)	Forms – Page 45
Detention of Defendant Arrested for Probation Violation With Pending Felony or Prior Sex Offense (AOC-CR-272 side 2).....	Forms – Page 46
Direct Criminal Contempt/Summary Proceedings/Findings and Order	Forms – Page 47
Citation (AOC-CR-500)	Forms – Page 49
Conditions of Release for Person Charged With a Crime of Domestic Violence (AOC-CR-630).....	Forms – Page 57
Conditions of Release for Persons Charged With Sex Offense Or Crime of Violence Against Child Victim (AOC-CR-631)	Forms – Page 58
Affidavit and Revocation Report of Law Enforcement Officer or Chemical Analyst (AOC-CVR-1A/DHHS 3907).....	Forms – Page 59
Revocation Order When Person Present (AOC-CVR-2).....	Forms – Page 61
Affidavit – No License (AOC-CVR-8)	Forms – Page 63

All Forms Used by the AOC can be found at

<http://www.nccourts.org/Forms/FormSearch.asp>

File No.		Law Enforcement Case No.		LID No.	SID No.	FBI No.	
WARRANT FOR ARREST		STATE OF NORTH CAROLINA In The General Court Of Justice District Court Division County					
Offense		To any officer with authority and jurisdiction to execute a warrant for arrest for the offense(s) charged below: I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did					
THE STATE OF NORTH CAROLINA VS.							
Name And Address Of Defendant							
Race	Sex	Date Of Birth	Age				
Social Security No./Tax ID No.		Drivers License No. & State					
Name Of Defendant's Employer							
Offense Code(s)		Offense In Violation Of G.S.					
Date Of Offense							
Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)							
Complainant (Name, Address Or Department)							
Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)							
Signature		Location Of Court		Court Date			
<input type="checkbox"/> Magistrate <input type="checkbox"/> Assistant CSC		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk Of Superior Court		Court Time <input type="checkbox"/> AM <input type="checkbox"/> PM			
<input type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued					
AOC-CR-100, Rev. 12/17, © 2017 Administrative Office of the Courts (Over)							

This act(s) was in violation of the law(s) referred to in this Warrant. This Warrant is issued upon information furnished under oath by the complainant listed. You are DIRECTED to arrest the defendant and bring the defendant before a judicial official without unnecessary delay to answer the charge(s) above.

If this Warrant For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon.			
RETURN OF SERVICE			
I certify that this Warrant was received and served as follows:			
Date Received	Date Served	Time Served	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM	
<input type="checkbox"/> By arresting the defendant and bringing the defendant before: Name Of Judicial Official			
<input type="checkbox"/> This Warrant WAS NOT served for the following reason: Signature Of Officer Making Return Name Of Officer (type or print)			
Department Or Agency Of Officer			
REDELIVERY/REISSUANCE			
Date	Signature		
	<input type="checkbox"/> Dep. CSC <input type="checkbox"/> Assist. CSC <input type="checkbox"/> CSC		
RETURN FOLLOWING REDELIVERY/REISSUANCE			
I certify that this Warrant was received and served as follows:			
Date Received	Date Served	Time Served	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM	
<input type="checkbox"/> By arresting the defendant and bringing the defendant before: Name Of Judicial Official			
<input type="checkbox"/> This Warrant WAS NOT served for the following reason: Signature Of Officer Making Return Name Of Officer (type or print)			
Department Or Agency Of Officer			
APPEAL ENTRIES			
<input type="checkbox"/> The defendant, in open court, gives notice of appeal to the <input type="checkbox"/> District <input type="checkbox"/> Superior Court.			
<input type="checkbox"/> The current pretrial release order is modified as follows:			
Date	Signature Of District Court Judge Or Magistrate		
WAIVER OF PROBABLE CAUSE HEARING			
The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.			
Date Waived	Signature Of Defendant		
	Signature Of Attorney		
*NOTE: If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DACJ, use AOC-CR-602. If supervised probation, use AOC-CR-604.			

District Attorney	<input type="checkbox"/> Waived <input type="checkbox"/> Not Indigent <input type="checkbox"/> Denied	Attorney For Defendant	<input type="checkbox"/> Appointed <input type="checkbox"/> Retained	PRIOR CONVICTIONS: No./Level: 0 <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+)
PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> not guilty				
VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> guilty <input type="checkbox"/> guilty <input type="checkbox"/> not guilty				
JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is ORDERED that the defendant: <input type="checkbox"/> pay costs and a fine of \$ _____, <input type="checkbox"/> be imprisoned for a term of _____ days in the custody of the <input type="checkbox"/> sheriff. <input type="checkbox"/> MCP. <input type="checkbox"/> DACJ. * Pretrial credit _____ days served.				
<input type="checkbox"/> Work release <input type="checkbox"/> is recommended. <input type="checkbox"/> is not recommended. [<input type="checkbox"/> is ordered. (use form AOC-CR-602)]				
<input type="checkbox"/> The Court finds that a <input type="checkbox"/> longer <input type="checkbox"/> shorter period of probation than that which is specified in G.S. 15A-1343.2(d) is necessary.				
<input type="checkbox"/> Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court; (5) pay to the Clerk the costs of court and any additional sums shown below.				
Fine	Restitution**	Attorney's Fee	Community Service Fee	Other
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
**Name(s), address(es), and amount(s) for aggrieved party(ies) to receive restitution: (NOTE TO CLERK: Record SSN or Tax ID No. of aggrieved party(ies) on AOC-CR-382, "Certification Of Identity (Victims' Restitution)/Certification Of Identity (Witness Attendance).")				
<input type="checkbox"/> 6. complete _____ hours of community service during the first _____ days of probation, as directed by the judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 within _____ days.				
<input type="checkbox"/> 7. not be found in or on the premises of the complainant or _____				
<input type="checkbox"/> 8. not assault, communicate with or be in the presence of the complainant or _____				
<input type="checkbox"/> 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)				
<input type="checkbox"/> 10. Other: _____				
It is ORDERED that this: <input type="checkbox"/> Judgment is continued upon payment of costs. <input type="checkbox"/> case be consolidated for judgment with _____				
<input type="checkbox"/> sentence is to run at the expiration of the sentence in _____				
<input type="checkbox"/> COMMITMENT: It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.				
PROBABLE CAUSE:				
<input type="checkbox"/> Probable cause is found as to all Counts except _____, and the defendant is bound over to Superior Court for action by the grand jury.				
<input type="checkbox"/> No probable cause is found as to Count(s) _____ of this Warrant and the Count(s) is dismissed.				
Date	Name Of District Court Judge Or Magistrate (type or print)		Signature Of District Court Judge Or Magistrate	
CERTIFICATION				
I certify that this Judgment is a true and complete copy of the original which is on file in this case.				
Date	Date Delivered To Sheriff		Signature	
<input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court				

File No.	Law Enforcement Case No.	LID No.	SID No.	FBI No.	
WARRANT FOR ARREST					
Offense					
STATE OF NORTH CAROLINA In The General Court Of Justice District Court Division County					
To any officer with authority and jurisdiction to execute a warrant for arrest for the offense(s) charged below: I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did					
THE STATE OF NORTH CAROLINA VS. Name And Address Of Defendant					
Race	Sex	Date Of Birth	Age		
Social Security No./Tax ID No.		Drivers License No. & State			
Name Of Defendant's Employer					
Offense Code(s)		Offense In Violation Of G.S.			
Date Of Offense					
Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)					
Complainant (Name, Address Or Department)					
Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)					
<input type="checkbox"/> Misdemeanor Or Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued		Signature	
<input type="checkbox"/> Misdemeanor Or Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued		Location Of Court	
<input type="checkbox"/> Misdemeanor Or Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued		Court Date	
<input type="checkbox"/> Misdemeanor Or Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued		Court Time	
<input type="checkbox"/> Misdemeanor Or Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued		AM	
<input type="checkbox"/> Misdemeanor Or Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued		PM	
This act(s) was in violation of the law(s) referred to in this Warrant. This Warrant is issued upon information furnished under oath by the complainant listed. You are DIRECTED to arrest the defendant and bring the defendant before a judicial official without unnecessary delay to answer the charge(s) above.					
AOC-CR-100, Rev. 12/17, © 2017 Administrative Office of the Courts (Over)					

File No.		Law Enforcement Case No.		LID No.	SID No.	FBI No.	
CRIMINAL SUMMONS		STATE OF NORTH CAROLINA In The General Court Of Justice District Court Division County					
Offense		To the defendant: I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above you unlawfully, willfully and feloniously did					
THE STATE OF NORTH CAROLINA VS.							
Name And Address Of Defendant							
Race		Sex	Date Of Birth	Age			
Social Security No.		Drivers License No. & State					
Name Of Defendant's Employer							
Offense Code(s)		Offense In Violation Of G.S.					
Date Of Offense							
Complainant (Name, Address Or Department)							
Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)							
<input type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued		Signature		Location Of Court	
				<input type="checkbox"/> Magistrate <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk Of Superior Court		Court Date Court Time <input type="checkbox"/> AM <input type="checkbox"/> PM	
This act was in violation of the law referred to in this Criminal Summons. This Summons is issued upon information furnished under oath by the complainant listed. You are ORDERED to appear before the Court at the location, date and time indicated below to answer to the charge. If you fail to appear, an order for your arrest may be issued and you may be held in CONTEMPT OF COURT. Arrest and/or contempt for failure to appear is in addition to any sentence which may be imposed for the crime charged.							
<input type="checkbox"/> The undersigned finds the following cause to set a court date more than one month from the issue of this summons:							
(Over)							
AOC-CR-113, Rev. 12/17, © 2017 Administrative Office of the Courts							

If this Criminal Summons is not served within ninety (90) days or by the date the defendant is directed to appear, whichever is earlier, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon.

RETURN OF SERVICE

I certify that this Criminal Summons was received and served as follows:

Date Received	Date Served	Time Served	AM	PM	Date Returned
---------------	-------------	-------------	----	----	---------------

- ☐ By personally serving this Criminal Summons on the defendant.
- ☐ This Criminal Summons WAS NOT served for the following reason:

Signature Of Officer Making Return	Name Of Officer (type or print)
Department Or Agency Of Officer	

REDELIVERY/REISSUANCE

Date	Signature	<input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> CSC
------	-----------	---

- ☐ The above clerk finds the following cause to set a court date more than one month from reissue:

RETURN FOLLOWING REDELIVERY/REISSUANCE

I certify that this Criminal Summons was received and served as follows:

Date Received	Date Served	Time Served	AM	PM	Date Returned
---------------	-------------	-------------	----	----	---------------

- ☐ By personally serving this Criminal Summons on the defendant.
- ☐ This Criminal Summons WAS NOT served for the following reason:

Signature Of Officer Making Return	Name Of Officer (type or print)
Department Or Agency Of Officer	

APPEAL ENTRIES

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

Date	Signature Of District Court Judge Or Magistrate
------	---

WAIVER OF PROBABLE CAUSE HEARING

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

Date Waived	Signature Of Defendant
	Signature Of Attorney

District Attorney	<input type="checkbox"/> Waived <input type="checkbox"/> Not Indigent <input type="checkbox"/> Denied	Attorney For Defendant	<input type="checkbox"/> Appointed <input type="checkbox"/> Retained	PRIOR CONVICTIONS: No./Level: 0 <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+)
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PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> not guilty	VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> guilty <input type="checkbox"/> guilty <input type="checkbox"/> not guilty	M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3
--	---	---

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is **ORDERED** that the defendant: ☐ pay costs and a fine of \$_____. ☐ be imprisoned for a term of _____ days in the custody of the ☐ sheriff. ☐ MCP. ☐ DACJJ.* Pretrial credit _____ days served.

☐ Work release ☐ is recommended. ☐ is not recommended. [☐ is ordered. (use form AOC-CR-602)]

☐ The Court finds that a ☐ longer ☐ shorter period of probation than that which is specified in G.S. 15A-1343.2(d) is necessary.

☐ Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.

Fine	Restitution**	Attorney's Fee	Community Service Fee	Other
\$	\$	\$	\$	\$

**Name(s), address(es), and amount(s) for aggrieved party(ies) to receive restitution: (NOTE TO CLERK: Record SSN or Tax ID No. of aggrieved party(ies) on AOC-CR-382, "Certification Of Identity (Victims' Restitution)/Certification Of Identity (Witness Attendance).")

- ☐ 6. complete _____ hours of community service during the first _____ days of probation, as directed by the judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 within _____ days.
- ☐ 7. not be found in or on the premises of the complainant or _____
- ☐ 8. not assault, communicate with or be in the presence of the complainant or _____
- ☐ 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)
- ☐ 10. Other: _____

It is **ORDERED** that this: ☐ Judgment is continued upon payment of costs.
☐ case be consolidated for judgment with _____
☐ sentence is to run at the expiration of the sentence in _____

☐ **COMMITMENT:** It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

PROBABLE CAUSE:

☐ Probable cause is found as to all Counts except _____, and the defendant is bound over to Superior Court for action by the grand jury.

☐ No probable cause is found as to Count(s) _____ of this Criminal Summons and the Count(s) is dismissed.

Date	Name Of District Court Judge Or Magistrate (type or print)	Signature Of District Court Judge Or Magistrate
------	--	---

CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

Date	Date Delivered To Sheriff	Signature	<input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court
------	---------------------------	-----------	--

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

File No.	Law Enforcement Case No.		LID No.	SID No.	FBI No.	
CRIMINAL SUMMONS						
Offense						
THE STATE OF NORTH CAROLINA VS.						
Name And Address Of Defendant						
Race	Sex	Date Of Birth	Age			
Social Security No.		Drivers License No. & State				
Name Of Defendant's Employer						
Offense Code(s)		Offense In Violation Of G.S.				
Date Of Offense						
Complainant (Name, Address Or Department)						
Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)						
<input type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan						
Signature				Location Of Court		Court Date
<input type="checkbox"/> Magistrate <input type="checkbox"/> Assistant CSC				<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Clerk Of Superior Court		Court Time <input type="checkbox"/> AM <input type="checkbox"/> PM
AOC-CR-113, Rev. 12/17, © 2017 Administrative Office of the Courts						

STATE OF NORTH CAROLINA
In The General Court Of Justice
District Court Division
County

To the defendant:
I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above you unlawfully, willfully and feloniously did

This act was in violation of the law referred to in this Criminal Summons. This Summons is issued upon information furnished under oath by the complainant listed. You are ORDERED to appear before the Court at the location, date and time indicated below to answer to the charge. If you fail to appear, an order for your arrest may be issued and you may be held in CONTEMPT OF COURT. Arrest and/or contempt for failure to appear is in addition to any sentence which may be imposed for the crime charged.

☐ The undersigned finds the following cause to set a court date more than one month from the issue of this summons:

(Over)

If this Criminal Summons is not served within ninety (90) days or by the date the defendant is directed to appear, whichever is earlier, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon.

RETURN OF SERVICE

I certify that this Criminal Summons was received and served as follows:

Date Received	Date Served	Time Served	AM	PM	Date Returned
---------------	-------------	-------------	----	----	---------------

☐ By personally serving this Criminal Summons on the defendant.
☐ This Criminal Summons WAS NOT served for the following reason:

Signature Of Officer Making Return	Name Of Officer (type or print)
Department Or Agency Of Officer	

REDELIVERY/REISSUANCE

Date	Signature	<input type="checkbox"/> Dep. CSC <input type="checkbox"/> Assist. CSC <input type="checkbox"/> CSC
------	-----------	---

☐ The above clerk finds the following cause to set a court date more than one month from reissue:

RETURN FOLLOWING REDELIVERY/REISSUANCE

I certify that this Criminal Summons was received and served as follows:

Date Received	Date Served	Time Served	AM	PM	Date Returned
---------------	-------------	-------------	----	----	---------------

☐ By personally serving this Criminal Summons on the defendant.
☐ This Criminal Summons WAS NOT served for the following reason:

Signature Of Officer Making Return	Name Of Officer (type or print)
Department Or Agency Of Officer	

APPEAL ENTRIES

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

Date	Signature Of District Court Judge Or Magistrate
------	---

WAIVER OF PROBABLE CAUSE HEARING

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

Date Waived	Signature Of Defendant
	Signature Of Attorney

District Attorney	<input type="checkbox"/> Waived <input type="checkbox"/> Not Indigent <input type="checkbox"/> Denied	Attorney For Defendant	<input type="checkbox"/> Appointed <input type="checkbox"/> Retained	PRIOR CONVICTIONS: No./Level: 0 <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+)
-------------------	---	------------------------	---	---

PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> not guilty	VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> guilty <input type="checkbox"/> guilty <input type="checkbox"/> not guilty	M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3
--	---	---

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is **ORDERED** that the defendant: ☐ pay costs and a fine of \$_____.
☐ be imprisoned for a term of _____ days in the custody of the ☐ sheriff. ☐ MCP. ☐ DACJJ.* Pretrial credit _____ days served.
☐ Work release ☐ is recommended. ☐ is not recommended. [☐ is ordered. (use form AOC-CR-602)]
☐ The Court finds that a ☐ longer ☐ shorter period of probation than that which is specified in G.S. 15A-1343.2(d) is necessary.
☐ Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: (1) commit no criminal offense in any jurisdiction. (2) possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. (3) remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) satisfy child support and family obligations, as required by the Court. (5) pay to the Clerk the costs of court and any additional sums shown below.

Fine	Restitution**	Attorney's Fee	Community Service Fee	Other
\$	\$	\$	\$	\$

**Name(s), address(es), and amount(s) for aggrieved party(ies) to receive restitution: (NOTE TO CLERK: Record SSN or Tax ID No. of aggrieved party(ies) on AOC-CR-382, "Certification Of Identity (Victims' Restitution)/Certification Of Identity (Witness Attendance).")

- ☐ 6. complete _____ hours of community service during the first _____ days of probation, as directed by the judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 within _____ days.
☐ 7. not be found in or on the premises of the complainant or _____
☐ 8. not assault, communicate with or be in the presence of the complainant or _____
☐ 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)
☐ 10. Other: _____

It is **ORDERED** that this: ☐ Judgment is continued upon payment of costs.
☐ case be consolidated for judgment with _____
☐ sentence is to run at the expiration of the sentence in _____
COMMITMENT: It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

PROBABLE CAUSE:
☐ Probable cause is found as to all Counts except _____, and the defendant is bound over to Superior Court for action by the grand jury.
☐ No probable cause is found as to Count(s) _____ of this Criminal Summons and the Count(s) is dismissed.

Date	Name Of District Court Judge Or Magistrate (type or print)	Signature Of District Court Judge Or Magistrate
------	--	---

CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

Date	Date Delivered To Sheriff	Signature	<input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court
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*NOTE: If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DACJJ, use AOC-CR-602. If supervised probation, use AOC-CR-604.

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

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

STATE OF NORTH CAROLINA
In The General Court Of Justice
District Court Division
County

LID No. SID No. FBI No.

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

(Over)

District Attorney <input type="checkbox"/> Waived <input type="checkbox"/> Not Indigent <input type="checkbox"/> Denied	Attorney For Defendant <input type="checkbox"/> Appointed <input type="checkbox"/> Retained	No. Level: 0 <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+)	PRIOR CONVICTIONS:
PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> no contest VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> not guilty			
JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is ORDERED that the defendant: <input type="checkbox"/> pay costs and a fine of \$ _____ days in the custody of the <input type="checkbox"/> sheriff. <input type="checkbox"/> MCP. <input type="checkbox"/> DAC.* Pretrial credit _____ days served. <input type="checkbox"/> Work release <input type="checkbox"/> is recommended. <input type="checkbox"/> is not recommended. <input type="checkbox"/> is ordered. (Use form AOC-CR-602) <input type="checkbox"/> The Court finds that a <input type="checkbox"/> longer <input type="checkbox"/> shorter period of probation, than that which is specified in G.S. 15A-1343.2(d), is necessary. <input type="checkbox"/> Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: 1. commit no criminal offense in any jurisdiction. 2. possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. 3. remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. 4. satisfy child support and family obligations, as required by the Court. 5. pay to the Clerk the costs of court and any additional sums shown below.			
Fine \$ _____		Restitution** \$ _____	
Attorney's Fee \$ _____		Community Service Fee \$ _____	
Other _____		Other _____	
**Name(s), address(es), and amount(s) for aggrieved party(ies) to receive restitution: NOTE TO CLERK: Record SSN or Tax ID No. of aggrieved party(ies) on AOC-CR-382, "Certification Of Identity (Victims' Restitution)/Certification Of Identity (Witness Attendance)."			
6. complete _____ hours of community service during the first _____ days of probation, as directed by the judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 within _____ days. 7. not be found in or on the premises of the complainant or _____ 8. not assault, communicate with or be in the presence of the complainant or _____ 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319) 10. Other: _____			
It is ORDERED that this: <input type="checkbox"/> Judgment is continued upon payment of costs. <input type="checkbox"/> case be consolidated for judgment with _____ <input type="checkbox"/> sentence is to run at the expiration of the sentence in _____			
<input type="checkbox"/> COMMITMENT: It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.			
PROBABLE CAUSE: <input type="checkbox"/> Probable cause is found as to all Counts except _____, and the defendant is bound over to Superior Court for action by the grand jury. <input type="checkbox"/> No probable cause is found as to Count(s) _____ of this Magistrate's Order and the Count(s) is dismissed.			
Date _____		Signature Of District Court Judge Or Magistrate _____	
CERTIFICATION			
I certify that this Judgment is a true and complete copy of the original which is on file in this case.			
Date _____		Signature _____	
Date Delivered To Sheriff _____		Signature _____	
Date _____		Signature _____	
*NOTE: If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DAC, use AOC-CR-602. If supervised probation, use AOC-CR-604.			

File No.		Law Enforcement Case No.		LID No.	SID No.	FBI No.	
MAGISTRATE'S ORDER		STATE OF NORTH CAROLINA In The General Court Of Justice District Court Division _____ County					
Offense		I, the undersigned, find that the defendant named above has been arrested without a warrant and the defendant's detention is justified because there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did					
THE STATE OF NORTH CAROLINA VS.							
Name And Address Of Defendant							
Race	Sex	Date Of Birth	Age				
Social Security No.		Drivers License No. & State					
Name Of Defendant's Employer							
Offense Code(s)		Offense In Violation Of G.S.					
Date Of Offense							
Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)							
Arresting Officer (Name, Address Or Department)							
Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)							
<input type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan		Date Issued		Signature _____ Location Of Court _____ Court Date _____ Court Time _____			
				<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> AM <input type="checkbox"/> PM			

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

(Over)

District Attorney <input type="checkbox"/> Waived <input type="checkbox"/> Not Indigent <input type="checkbox"/> Denied	Attorney For Defendant <input type="checkbox"/> Appointed <input type="checkbox"/> Retained	PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> guilty <input type="checkbox"/> no contest <input type="checkbox"/> not guilty	VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> guilty <input type="checkbox"/> not guilty	M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3	PRIOR CONVICTIONS: No Level: <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+)
JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is ORDERED that the defendant: <input type="checkbox"/> pay costs and a fine of \$ _____ days in the custody of the <input type="checkbox"/> sheriff. <input type="checkbox"/> MCP. <input type="checkbox"/> DAC.* Pretrial credit _____ days served. <input type="checkbox"/> Work release <input type="checkbox"/> is recommended. <input type="checkbox"/> is not recommended. <input type="checkbox"/> is ordered. (Use form AOC-CR-602) <input type="checkbox"/> The Court finds that a <input type="checkbox"/> longer <input type="checkbox"/> shorter period of probation, than that which is specified in G.S. 15A-1343.2(d), is necessary. <input type="checkbox"/> Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: 1. commit no criminal offense in any jurisdiction. 2. possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. 3. remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. 4. satisfy child support and family obligations, as required by the Court. 5. pay to the Clerk the costs of court and any additional sums shown below.					
Fine \$ _____		Restitution** \$ _____		Attorney's Fee \$ _____	
\$ _____		\$ _____		Community Service Fee \$ _____	
**Name(s), address(es), and amount(s) for aggrieved party(ies) to receive restitution: NOTE TO CLERK: Record SSN or Tax ID No. of aggrieved party(ies) on AOC-CR-382, "Certification Of Identity (Victims' Restitution)/Certification Of Identity (Witness Attendance)."					
6. complete _____ hours of community service during the first _____ days of probation, as directed by the judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 within _____ days. 7. not be found in or on the premises of the complainant or _____ 8. not assault, communicate with or be in the presence of the complainant or _____ 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319) 10. Other: _____					
APPEAL ENTRIES <input type="checkbox"/> The defendant, in open court, gives notice of appeal to the District <input type="checkbox"/> Superior Court. <input type="checkbox"/> The current pretrial release order is modified as follows:					
Date _____		Signature Of District Court Judge Or Magistrate _____			
WAIVER OF PROBABLE CAUSE HEARING The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.					
Date Waived _____		Signature Of Defendant _____			
Signature Of Attorney _____		Signature _____			
AOC-CR-116, Side Two, Rev. 4/14 © 2014 Administrative Office of the Courts					

File No.	STATE OF NORTH CAROLINA In The General Court Of Justice District/Superior Court Division	
SEARCH WARRANT _____ County		
IN THE MATTER OF <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">Date Issued</div> <div style="width: 50%;">Time Issued</div> </div> <div style="display: flex; justify-content: space-between;"> <div><input type="checkbox"/> AM</div> <div><input type="checkbox"/> PM</div> </div> </div> <div style="width: 45%;">Name Of Applicant</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">Name Of Additional Affiant</div> <div style="width: 45%;">Name Of Additional Affiant</div> </div>		
RETURN OF SERVICE I certify that this Search Warrant was received and executed as follows: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">Date Received</div> <div style="width: 50%;">Time Received</div> </div> <div style="display: flex; justify-content: space-between;"> <div><input type="checkbox"/> AM</div> <div><input type="checkbox"/> PM</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">Date Executed</div> <div style="width: 50%;">Time Executed</div> </div> <div style="display: flex; justify-content: space-between;"> <div><input type="checkbox"/> AM</div> <div><input type="checkbox"/> PM</div> </div>		
<input type="checkbox"/> I made a search of _____ _____ _____ _____ _____ as commanded.		
<input type="checkbox"/> I seized the items listed on the attached inventory. <input type="checkbox"/> I did not seize any items. <input type="checkbox"/> This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed.		
Name Of Officer Making Return (type or print) _____ Signature Of Officer Making Return _____		
Department Or Agency Of Officer _____ Incident Number _____		

Original - File **Copy -** For Search of a Person, to Person from Whom Items Taken

Copy - For Search of Vehicle/Premises, to Owner or Person in Apparent Control; if No Such Person Present, Leave Copy Affixed Thereon

(Over)

AOC-CR-119, Rev. 3/17

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APPLICATION FOR SEARCH WARRANT

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

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

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

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

(and)

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

(and)

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

(and)

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

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

Date

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Name Of Applicant (type or print)

Signature

Signature Of Applicant

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

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

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

This testimony has been (check appropriate box) ☐ reduced to writing

☐ tape recorded and I have filed each with the clerk.

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

File No. _____	<h1 style="margin: 0;">STATE OF NORTH CAROLINA</h1>		In The General Court Of Justice District/Superior Court Division
<h2 style="margin: 0;">SEARCH WARRANT</h2>		_____ County	
<h3 style="margin: 0;">IN THE MATTER OF</h3>			
Date Issued _____	Time Issued _____	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Name Of Applicant _____			
Name Of Additional Affiant _____			
Name Of Additional Affiant _____			
<h3 style="margin: 0;">RETURN OF SERVICE</h3>			
I certify that this Search Warrant was received and executed as follows:			
Date Received _____	Time Received _____	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Date Executed _____	Time Executed _____	<input type="checkbox"/> AM <input type="checkbox"/> PM	
<input type="checkbox"/> I made a search of _____			

_____ as commanded.			
<input type="checkbox"/> I seized the items listed on the attached inventory.			
<input type="checkbox"/> I did not seize any items.			
<input type="checkbox"/> This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed.			
Name Of Officer Making Return (type or print) _____			
Signature Of Officer Making Return _____			
Department Or Agency Of Officer _____		Incident Number _____	
Date _____		Time _____	<input type="checkbox"/> AM <input type="checkbox"/> PM
Name Of Magistrate (type or print) _____		Signature Of Magistrate _____	<input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> CSC

APPLICATION FOR SEARCH WARRANT

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

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

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

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

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

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

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

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

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME	
Date	Date
Signature	Name Of Applicant (type or print)
	Signature Of Applicant
<input type="checkbox"/> Magistrate <input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Judge	

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

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

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

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

STATE OF NORTH CAROLINA _____ County		File No. _____ In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division	
STATE VERSUS		CONDITIONS OF RELEASE AND RELEASE ORDER	
Name And Address Of Defendant			
Offenses And Additional File Numbers		# _____ G.S. Chapter 15A, Art. 25, 26 Amount Of Bond _____ \$ _____	
<input type="checkbox"/> See Attachment			
Location Of Court _____		<input type="checkbox"/> District <input type="checkbox"/> Superior Date _____ Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM	
<p>To The Defendant Named Above, you are ORDERED to appear before the Court as provided above and at all subsequent continued dates. If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear. You also may be arrested without a warrant if you violate any condition of release in this Order or in any document incorporated by reference.</p> <p>The defendant has been advised of charge(s) against him/her and his/her right to communicate with counsel and friends.</p> <p> <input type="checkbox"/> Your release is authorized upon execution of your: <input type="checkbox"/> WRITTEN PROMISE to appear <input type="checkbox"/> UNSECURED BOND in the amount shown above <input type="checkbox"/> CUSTODY RELEASE <input type="checkbox"/> SECURED BOND in the amount shown above (NOTE: Give a copy of this order to any surety who posts bond.) <input type="checkbox"/> HOUSE ARREST with ELECTRONIC MONITORING administered by (agency) _____ and the SECURED BOND above. You may leave your residence for the purpose(s) of <input type="checkbox"/> employment <input type="checkbox"/> counseling <input type="checkbox"/> course of study <input type="checkbox"/> vocational training </p> <p> <input type="checkbox"/> Your release is not authorized. <input type="checkbox"/> The defendant is required to provide (check all that apply) <input type="checkbox"/> fingerprints under G.S. 15A-502. <input type="checkbox"/> a DNA sample under G.S. 15A-266.3A. Prior to release, the defendant shall provide his/her (check all that apply) <input type="checkbox"/> fingerprints. <input type="checkbox"/> DNA sample. <input type="checkbox"/> The defendant has been <input type="checkbox"/> (i) charged with a felony while on probation (complete AOC-CR-272, Side One). <input type="checkbox"/> (ii) arrested for violation of probation with a pending felony charge or prior conviction requiring registration under G.S. 14, Article 27A (complete AOC-CR-272, Side Two). <input type="checkbox"/> This Order is entered upon defendant's warrantless arrest for violation of conditions of release entered previously for the above-captioned case in the Order dated _____. <input type="checkbox"/> The defendant was arrested or surrendered after failing to appear as required under a prior release order. <input type="checkbox"/> This was the defendant's second or subsequent failure to appear in this case. <input type="checkbox"/> Your release is subject to the conditions as shown on the attached <input type="checkbox"/> AOC-CR-270. <input type="checkbox"/> Other: _____ </p>			
Additional Information			
Date _____		Signature Of Judicial Official _____ <input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge	
ORDER OF COMMITMENT			
<p>To The Custodian Of The Detention Facility Named Below, you are ORDERED to receive in your custody the defendant named above who may be released if authorized above. If the defendant is not sooner released, you are ORDERED to: <input type="checkbox"/> produce him/her in Court as provided above. <input type="checkbox"/> hold him/her <input type="checkbox"/> as provided on the attached AOC-CR-272. <input type="checkbox"/> for the following purpose: _____</p> <p> <input type="checkbox"/> [Check in all domestic violence and stalking cases covered by G.S. 15A-534.1(b)] produce him/her at the first session of District or Superior Court held in this county after the entry of this Order or, if no session is held before (enter date and time 48 hours after time of arrest) _____, _____ <input type="checkbox"/> AM <input type="checkbox"/> PM produce him/her before a magistrate of this county at that time to determine conditions of pretrial release. </p>			
Name Of Detention Facility _____		Date _____ Signature Of Judicial Official _____	
WRITTEN PROMISE TO APPEAR OR CUSTODY RELEASE			
<p>I, the undersigned, promise to appear at all hearings, trials or otherwise as the Court may require and to abide by any restrictions set out above. I understand and agree that this promise is effective until the entry of judgment in the District Court from which no appeal is taken or until the entry of judgment in Superior Court. If I am released to the custody of another person, I agree to be placed in that person's custody, and that person agrees by his/her signature to supervise me.</p>			
Date _____		Signature Of Defendant _____ Signature Of Person Agreeing To Supervise Defendant _____	
Name Of Person Agreeing to Supervise Defendant (type or print) _____		Address Of Person Agreeing To Supervise Defendant _____	
DEFENDANT RELEASED ON BAIL			
Date _____		Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM Signature Of Jailer _____	

	CONDITIONS OF RELEASE MODIFICATIONS	
--	--	--

The Conditions of Release on the reverse are modified as follows:

Modification	Date	Signature Of Judicial Official

	SUPPLEMENTAL ORDERS FOR COMMITMENT	
--	---	--

The defendant is next Ordered produced in Court as follows:

Date	Time	Place	Purpose	Signature Of Judicial Official

	DEFENDANT RECEIVED BY DETENTION FACILITY	
--	---	--

Date	Time	Signature Of Jailer

	DEFENDANT RELEASED FOR COURT APPEARANCE	
--	--	--

Date	Time	Signature Of Jailer

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

AOC-CR-200, Side Two, Rev. 12/16

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STATE OF NORTH CAROLINA _____ County		File No. _____ In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division		
STATE VERSUS Name And Address Of Defendant		CONDITIONS OF RELEASE AND RELEASE ORDER # _____ G.S. Chapter 15A, Art. 25, 26 Amount Of Bond _____ \$ _____		
Offenses And Additional File Numbers				
Location Of Court		<input type="checkbox"/> District <input type="checkbox"/> Superior		Date _____ Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM
<p>To The Defendant Named Above, you are ORDERED to appear before the Court as provided above and at all subsequent continued dates. If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear. You also may be arrested without a warrant if you violate any condition of release in this Order or in any document incorporated by reference.</p> <p>The defendant has been advised of charge(s) against him/her and his/her right to communicate with counsel and friends.</p> <p> <input type="checkbox"/> Your release is authorized upon execution of your: <input type="checkbox"/> WRITTEN PROMISE to appear <input type="checkbox"/> UNSECURED BOND in the amount shown above <input type="checkbox"/> CUSTODY RELEASE <input type="checkbox"/> SECURED BOND in the amount shown above (NOTE: Give a copy of this order to any surety who posts bond.) <input type="checkbox"/> HOUSE ARREST with ELECTRONIC MONITORING administered by (agency) _____ and the SECURED BOND above. You may leave your residence for the purpose(s) of <input type="checkbox"/> employment <input type="checkbox"/> counseling <input type="checkbox"/> course of study <input type="checkbox"/> vocational training </p> <p> <input type="checkbox"/> Your release is not authorized. <input type="checkbox"/> The defendant is required to provide (check all that apply) <input type="checkbox"/> fingerprints under G.S. 15A-502. <input type="checkbox"/> a DNA sample under G.S. 15A-266.3A. Prior to release, the defendant shall provide his/her (check all that apply) <input type="checkbox"/> fingerprints. <input type="checkbox"/> DNA sample. <input type="checkbox"/> The defendant has been <input type="checkbox"/> (i) charged with a felony while on probation (complete AOC-CR-272, Side One). <input type="checkbox"/> (ii) arrested for violation of probation with a pending felony charge or prior conviction requiring registration under G.S. 14, Article 27A (complete AOC-CR-272, Side Two). <input type="checkbox"/> This Order is entered upon defendant's warrantless arrest for violation of conditions of release entered previously for the above-captioned case in the Order dated _____. <input type="checkbox"/> The defendant was arrested or surrendered after failing to appear as required under a prior release order. <input type="checkbox"/> This was the defendant's second or subsequent failure to appear in this case. <input type="checkbox"/> Your release is subject to the conditions as shown on the attached <input type="checkbox"/> AOC-CR-270. <input type="checkbox"/> Other: _____ </p>				
Additional Information				
Date	Signature Of Judicial Official	<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge		
ORDER OF COMMITMENT				
<p>To The Custodian Of The Detention Facility Named Below, you are ORDERED to receive in your custody the defendant named above who may be released if authorized above. If the defendant is not sooner released, you are ORDERED to: <input type="checkbox"/> produce him/her in Court as provided above. <input type="checkbox"/> hold him/her <input type="checkbox"/> as provided on the attached AOC-CR-272. <input type="checkbox"/> for the following purpose: _____ </p> <p> <input type="checkbox"/> [Check in all domestic violence and stalking cases covered by G.S. 15A-534.1(b)] produce him/her at the first session of District or Superior Court held in this county after the entry of this Order or, if no session is held before (enter date and time 48 hours after time of arrest) _____, <input type="checkbox"/> AM <input type="checkbox"/> PM produce him/her before a magistrate of this county at that time to determine conditions of pretrial release. </p>				
Name Of Detention Facility	Date	Signature Of Judicial Official		
WRITTEN PROMISE TO APPEAR OR CUSTODY RELEASE				
<p>I, the undersigned, promise to appear at all hearings, trials or otherwise as the Court may require and to abide by any restrictions set out above. I understand and agree that this promise is effective until the entry of judgment in the District Court from which no appeal is taken or until the entry of judgment in Superior Court. If I am released to the custody of another person, I agree to be placed in that person's custody, and that person agrees by his/her signature to supervise me.</p>				
Date	Signature Of Defendant	Signature Of Person Agreeing To Supervise Defendant		
Name Of Person Agreeing to Supervise Defendant (type or print)		Address Of Person Agreeing To Supervise Defendant		
DEFENDANT RELEASED ON BAIL				
Date	Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM	Signature Of Jailer		

	CONDITIONS OF RELEASE MODIFICATIONS	
--	--	--

The Conditions of Release on the reverse are modified as follows:

Modification	Date	Signature Of Judicial Official

	SUPPLEMENTAL ORDERS FOR COMMITMENT	
--	---	--

The defendant is next Ordered produced in Court as follows:

Date	Time	Place	Purpose	Signature Of Judicial Official

	DEFENDANT RECEIVED BY DETENTION FACILITY	
--	---	--

Date	Time	Signature Of Jailer

	DEFENDANT RELEASED FOR COURT APPEARANCE	
--	--	--

Date	Time	Signature Of Jailer

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

AOC-CR-200, Side Two, Rev. 12/16

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<h1 style="margin: 0;">STATE OF NORTH CAROLINA</h1>		File No. 	
_____ County		In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division	
Name And Mailing Address Of Defendant		<h2 style="margin: 0;">APPEARANCE BOND FOR PRETRIAL RELEASE</h2>	
Telephone No. Of Defendant			
Total Bond Required \$	Amount Of This Bond \$		
Offenses And Additional File Numbers			
<input type="checkbox"/> See Attachment			
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Unsecured Appearance Bond - I, the undersigned defendant, acknowledge that my personal representatives and I are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side. </div> <div style="width: 45%;"> <input type="checkbox"/> Cash Appearance Bond By Defendant (See note on reverse side.) - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, and hereby deposit the cash identified below as security with the understanding that the deposit will be returned upon the Court's determination that the conditions of release have been performed, subject to the conditions of this Bond stated on the reverse side, and that it will be available to satisfy my obligations. </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Defendant's Property Appearance Bond - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side, and as security for said Bond have executed a mortgage or deed of trust to real or personal property, payable to the State of North Carolina and with power of sale conditioned upon the breach of any condition of this Bond. </div> <div style="width: 45%;"> <input type="checkbox"/> Surety Appearance Bond - We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side. Any undersigned professional bondsman, bail agent, or runner attests that the AFFIDAVIT on the reverse side is complete and true. If a cash deposit is indicated below, surety(ies) has deposited the cash to secure the obligation as surety(ies) on this bond with the understanding that the deposit will be returned to the surety(ies) upon termination of that obligation as provided by law, and that it will NOT be available to satisfy defendant's obligations. (For cash bond, see note on reverse side.) </div> </div>			
Date Of Execution Of Bond		Signature Of Defendant	
ACCOMMODATION BONDSMAN			
<input type="checkbox"/> See attached AOC-CR-201A for additional accommodation bondsmen executing this bond.			
Name And Address Of Accommodation Bondsman		Name And Address Of Accommodation Bondsman	
Telephone No.		Telephone No.	
PROFESSIONAL BONDSMAN			
Name Of Bondsman		Name Of Runner, If Applicable	
License No. Of Bondsman	Telephone No.	License No. Of Runner	Telephone No.
INSURANCE COMPANY			
Name Of Insurance Company		Name Of Bail Agent	
Power Of Appointment No. Of Bail Agent		License No. Of Bail Agent	Telephone No.
SIGNATURE			
Signature Of Surety		Signature Of Surety	
SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME	
Date	Signature	Date	Signature
<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Custodian Of Detention Facility [G.S. 15A-537(c)]		<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Custodian Of Detention Facility [G.S. 15A-537(c)]	
COMPLETE IF CASH DEPOSITED			
Signature Of Official Accepting Cash		Name Of Official Accepting Cash (type or print)	
		Receipt No.	

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

CONDITIONS

The conditions of this Bond are that the above named defendant shall appear in the above entitled action(s) whenever required. It is agreed and understood that this Bond is effective and binding upon the defendant and each surety throughout all stages of the proceedings in the trial divisions of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or until the entry of judgment in the superior court, unless terminated earlier by operation of law or order of the court. If the defendant appears as ordered until termination of the Bond, then the bond is to be void, but if the defendant fails to appear as required, the Court will forfeit the bond pursuant to Part 2 of Article 26 of Chapter 15A of the General Statutes.

Each accommodation bondsman, by signing on the reverse or on the attached AOC-CR-201A, states: "I have reached the age of 18 years and am a bona fide resident of North Carolina. Aside from love and affection and release of the above named defendant, I have received no consideration for acting as surety. I own sufficient property over and above all liabilities, homestead and other exemptions allowed me by law to enable me to pay this Bond should it be ordered forfeited. I understand that if I sign this Bond without sufficient property, I am guilty of a crime."

AFFIDAVIT

NOTE: "Professional bondsmen, surety bondsmen [bail agents], and runners shall file with the clerk of court having jurisdiction over the principal an affidavit on a form furnished by the Administrative Office of the Courts." G.S. 58-71-140(d). Check all options that apply.

- ☐ 1. I have not, nor has anyone for my use, been promised or received any collateral, security or premium for executing this Bond.
- ☐ 2. I have been promised a premium in the amount shown below, which is due on the date shown below.
- ☐ 3. I have received a premium in the amount shown below.
- ☐ 4. I have been given collateral security by the person named below, of the nature and in the amount shown below.

Amount Of Premium Promised \$	Date Due	Amount Of Premium Received \$
Name Of Person From Whom Collateral Received	Nature Of Collateral	Value

**AFFIX STAMP OR
POWER OF ATTORNEY
HERE**

RETURN OF CUSTODIAN OF DETENTION FACILITY

The defendant named on the reverse was released from my custody on the date shown below upon the execution of this Appearance Bond.

Date Defendant Released	Name Of Custodian (type or print)	Signature Of Custodian	<input type="checkbox"/> Sheriff <input type="checkbox"/> Deputy Sheriff
			<input type="checkbox"/> Other _____

NOTES ON CASH BONDS:

(1) **To Official Taking The Bond.** Use this form for all cash bonds. Complete this form as follows:

When Cash Deposited By Defendant Or By Another Person Who Intends For The Cash To Be Used To Satisfy The Defendant's Obligations.

Enter defendant's name, address and telephone number at the top of Side One. Check "Cash Appearance Bond By Defendant." Have defendant sign. Do no more. No other person's name should appear on this form. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to DEFENDANT, not to any other person.

When Cash Deposited By Another Person Who Does NOT Intend For The Cash To Be Used To Satisfy The Defendant's Obligations.

Enter defendant's name, address and telephone number at the top of Side One. Check "Surety Appearance Bond." Have defendant sign. Enter name, address and telephone number of person depositing cash under "Accommodation Bondsman." Have that person sign under "Signature Of Surety." Complete notarization for that person. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to person depositing the cash.

(2) **To Bookkeeper.** If case disposed without forfeiture, disburse cash as follows: (1) If "Cash Appearance Bond By Defendant" checked on Side One, disburse to defendant or apply to defendant's obligations if court so orders. (2) If "Surety Appearance Bond" is checked on Side One, disburse only to the person(s) named under "Accommodation Bondsman."

(3) **Bond By Insurance Company Or Professional Bondsman As Surety Is Same As Cash Except In Child Support.** G.S. 15A-531(4) provides that an appearance bond executed by an insurance company or a professional bondsman (or a bail agent or runner on behalf of one of those sureties) is considered the same as a cash deposit, except in child support contempt proceedings for which only cash may satisfy a cash bond requirement.

STATE VERSUS

File No.

Name Of Defendant

ADDITIONAL ACCOMMODATION BONDSMAN

Name And Address Of Accommodation Bondsman

Name And Address Of Accommodation Bondsman

Telephone No.

Telephone No.

SIGNATURE

Signature Of Surety

Signature Of Surety

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

ADDITIONAL ACCOMMODATION BONDSMAN

Name And Address Of Accommodation Bondsman

Name And Address Of Accommodation Bondsman

Telephone No.

Telephone No.

SIGNATURE

Signature Of Surety

Signature Of Surety

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

ADDITIONAL ACCOMMODATION BONDSMAN

Name And Address Of Accommodation Bondsman

Name And Address Of Accommodation Bondsman

Telephone No.

Telephone No.

SIGNATURE

Signature Of Surety

Signature Of Surety

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature

☐ Magistrate ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court
☐ Custodian Of Detention Facility [G.S. 15A-537(c)]

STATE OF NORTH CAROLINA

File No. (lead file no. listed on Appearance Bond)

County Where Case Pending (if different from County Of Surrender)

County Of Surrender

In The General Court Of Justice

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

Name Of Defendant

Name Of Surrendering Surety(ies) (required)

Name Of Surrendering Agent Of Surety (if applicable)

Date Of Appearance Bond

Amount Of Bond

\$

**SURRENDER OF DEFENDANT
BY SURETY**

G.S. 15A-534, 15A-540, 58-71-20

Additional File Nos. And Offenses (listed on Appearance Bond)

The undersigned hereby surrenders the defendant to the Sheriff of the above-captioned County Of Surrender, and in support of said surrender shows the following:

PRE-BREACH SURRENDER

G.S. 15A-540(a), 58-71-20

POST-BREACH SURRENDER

G.S. 15A-540(b)

NOTE TO SURETY: Complete this section if the surrender occurs before a breach of the bond (i.e., if the defendant has not failed to appear).

This surrender is offered before there has been a breach of the bond obligation. The County Of Surrender shown above is the county where: (check only one)

- ☐ the defendant is bonded to appear.
☐ the defendant was bonded (i.e., where the defendant was in custody when the bond was executed).

Upon delivery of this surrender form to the court with the custodian's completed receipt below, I hereby apply to the clerk for exoneration from the bond obligation pursuant to G.S. 15A-540(a).

NOTE TO SURETY: Complete this section if the surrender occurs after a breach of the bond (i.e., after a failure to appear).

This surrender is offered after there has been a breach of the bond obligation. The County Of Surrender shown above is the county where: (check only one)

- ☐ the defendant is bonded to appear.
☐ the defendant was bonded (i.e., where the defendant was in custody when the bond was executed).
☐ the county where the defendant currently is in custody.

A copy of the bail bond, forfeiture, or release order is attached.

Date

Signature Of Surety/Agent

Date

Signature Of Surety/Agent

RECEIPT BY CUSTODIAN

The undersigned custodian hereby accepts the surrender by the surety/agent and acknowledges that the defendant now is in custody of the County Of Surrender identified above.

Date

Name Of Custodian/Jailer (Type Or Print)

Signature Of Custodian/Jailer

NOTES TO CUSTODIAN:

- (1) Surrender by a surety is governed by G.S. 15A-540 and G.S. 58-71-20. You can determine whether or not the person offering the surrender is the surety on the bond or an agent of that surety by reviewing the Appearance Bond form (AOC-CR-201) or a Bond Forfeiture Notice (AOC-CR-213) issued for a forfeiture of that bond. Both forms identify the surety. If you have any questions about whether or not a person offering a defendant for surrender is authorized to do so, you should consult with your supervising authority or agency counsel; judicial officials may not give sheriffs' personnel advice or approval for the surrender process.
- (2) If the surety completed the section for the Pre-Breach Surrender, above, the previous Conditions Of Release And Release Order (AOC-CR-200) for which the appearance bond was executed remains in effect. You must obtain a copy of that release order from the court in order to determine the defendant's current conditions of release.
- (3) If the surety completed the section for Post-Breach Surrender, above, provide the surrendering surety or agent with a copy of this form with the Receipt By Custodian completed. Then without unnecessary delay, take the defendant before a judicial official along with the completed original of this form and all documentation attached by the surety for entry of a new commitment order and conditions of release.

(See **NOTES TO MAGISTRATE** on reverse.)

Original and Attachments-Clerk

Copy-Surety

Copy-Custodian

NOTES TO MAGISTRATE:

- (1) *A judicial official may not accept or approve a surrender. Surrender is to the Sheriff, only, not to a judicial official. G.S. 15A-540. Sureties who wish to surrender a defendant should be directed to the Sheriff. Custodial personnel with questions about the validity of a proposed surrender should be directed to consult with their supervising authority or agency counsel. You should conduct an appearance for the defendant only if the surety has indicated a Post-Breach Surrender on the reverse and only after the custodian has brought you the original of this form with a completed Receipt By Custodian.*
- (2) *If the defendant was surrendered pursuant to a Pre-Breach Surrender, the previous Conditions Of Release And Release Order (AOC-CR-200) for which the appearance bond was posted remains in effect. You may not enter a new release order for a pre-breach surrender, unless (i) the defendant has had no appearance before the court on any case covered by the bond for which he/she was surrendered, and (ii) you entered the original release order for which the bond was posted. G.S. 15A-534(e). Any court date already scheduled for the defendant remains the same.*
- (3) *If the defendant was surrendered pursuant to a Post-Breach Surrender, G.S. 15A-540(c) requires that a judicial official determine whether the defendant is again entitled to pretrial release and, if so, upon what conditions. If the breach was a failure to appear for any charge(s) covered by the appearance bond for which the defendant was surrendered. G.S. 15A-534(d1) provides that the official shall impose conditions of release as follows:*
 - a. *If an order for arrest (OFA) was issued for the failure to appear and any conditions of release were recommended in that OFA, you must at a minimum impose the conditions of release recommended in the OFA (even if the OFA is recalled pursuant to Note (4), below).*
 - b. *If there were no conditions recommended in an OFA issued for the failure to appear, you must require a secured bond at least double the amount of the most recent secured or unsecured bond.*
 - c. *If there were no conditions recommended in an OFA issued for the failure to appear, and there was no prior monetary condition of release, you must require a secured bond of at least \$1,000.*
- (4) *If an OFA was issued for the defendant's failure to appear, the court date in the new release order should be the same as the court date set in the order for arrest, if any. Arrange to have the OFA served on the defendant as quickly as possible, but do not detain the defendant beyond the time when he or she satisfies the conditions of release imposed in the new release order. If the OFA cannot be served before the defendant satisfies the new conditions of release, arrange to have the OFA recalled as quickly as possible to avoid a duplicate arrest of the defendant.*
- (5) *If the defendant was surrendered in a county other than the county where the defendant is to appear, return the original OFA, if any, with return of service completed, along with all original documentation for the defendant's surrender, conditions of release, and any new bond posted, to the county where the defendant is to appear.*

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

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If this Order For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon.			
RETURN OF SERVICE			
I certify that this Order was received and served as follows:			
Date Received	Date Served	Time Served	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM	
<input type="checkbox"/> By arresting the defendant and bringing the defendant before:			
Name Of Judicial Official			
<input type="checkbox"/> This Order WAS NOT served for the following reason:			
Signature Of Officer Making Return		Name Of Officer (type or print)	
Department Or Agency Of Officer			
REDELIVERY/REISSUANCE			
Date	Signature	<input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> CSC	
RETURN FOLLOWING REDELIVERY/REISSUANCE			
I certify that this Order was received and served as follows:			
Date Received	Date Served	Time Served	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM	
<input type="checkbox"/> By arresting the defendant and bringing the defendant before:			
Name Of Judicial Official			
<input type="checkbox"/> This Order WAS NOT served for the following reason:			
Signature Of Officer Making Return		Name Of Officer (type or print)	
Department Or Agency Of Officer			

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

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If this Order For Arrest is not served within one hundred and eighty (180) days, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon.			
RETURN OF SERVICE			
I certify that this Order was received and served as follows:			
Date Received	Date Served	Time Served	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM	
<input type="checkbox"/> By arresting the defendant and bringing the defendant before:			
Name Of Judicial Official			
<input type="checkbox"/> This Order WAS NOT served for the following reason:			
Signature Of Officer Making Return		Name Of Officer (type or print)	
Department Or Agency Of Officer			
REDELIVERY/REISSUANCE			
Date	Signature	<input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> CSC	
RETURN FOLLOWING REDELIVERY/REISSUANCE			
I certify that this Order was received and served as follows:			
Date Received	Date Served	Time Served	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM	
<input type="checkbox"/> By arresting the defendant and bringing the defendant before:			
Name Of Judicial Official			
<input type="checkbox"/> This Order WAS NOT served for the following reason:			
Signature Of Officer Making Return		Name Of Officer (type or print)	
Department Or Agency Of Officer			

(TYPE OR PRINT IN BLACK INK)

File No.

STATE OF NORTH CAROLINA

County

Additional File Nos.

In The General Court Of Justice

☐ District ☐ Superior Court Division

Name Of Defendant, Petitioner, Respondent

Street Address Of Defendant, Petitioner, Respondent

Permanent Mailing Address Of Defendant, Petitioner, Respondent (If Different Than Above)

Telephone Number Of Defendant, Petitioner, Respondent

☐ Check here if defendant is in jail

Full Social Security No.

☐ Has No Social Security No.

G.S. 7A-146(11), 7A-292(15), 7A-450, 7A-451(a), 15A-1340.23(d)

Date Of Offense

Most Serious Class Of Offense

Offense(s) (List Offense(s) Only If File No. Has Not Been Assigned)

INSTRUCTIONS: The Court should complete Part I. or Part II. of this form. Do not use this form for first-degree murder cases or murder cases where the degree is undesignated, except for cases where the defendant was under 18 years of age at the time of the offense, or for capital post-conviction cases or appeals to the Court of Appeals or Supreme Court. For adult first-degree murder cases or murder cases where the degree is undesignated at the trial level, the Office of Indigent Defense Services will use form AOC-CR-624. For capital post-conviction cases, the Office of Indigent Defense Services will use form AOC-CR-625. For appellate cases, the Court will use form AOC-CR-350.

I. ASSIGNMENT OF COUNSEL

From the petition heard in this matter, the affidavit made by the applicant named above, and the inquiry made by the Court, which is documented in the record, it is determined that the applicant is **not** financially able to provide the necessary expenses of legal representation, and (check one):

- ☐ 1. is charged with a felony, a misdemeanor other than a Class 3, or a Class 3 misdemeanor that was committed before December 1, 2013, or is a petitioner or respondent in a proceeding or action listed in G.S. 7A-451(a); it is ORDERED that the applicant is indigent and is entitled to the services of counsel as contemplated by law; and that the attorney named below or the public defender in this judicial district shall provide representation.
- ☐ 2. is charged with a Class 3 misdemeanor that was committed on or after December 1, 2013, and (check one):
- ☐ a. the Court has found that the defendant has more than three prior convictions; it is ORDERED that the applicant is indigent and is entitled to the services of counsel as contemplated by law.
- ☐ b. the Court has not found at this time that the defendant has more than three prior convictions, the defendant is in custody, the Court does not intend at this appearance to modify the defendant's conditions of release to allow the defendant to be released pending trial without posting a secured bond, and the defendant has a constitutional right to meaningful access to the courts; it is ORDERED that the applicant is indigent and is entitled to the services of counsel as contemplated by law; and that the attorney named below or the public defender in this judicial district shall provide representation that is limited pursuant to G.S. 15A-141(3) and 15A-143 to the time period of the applicant's pretrial confinement on the Class 3 misdemeanor charge.

It is further ORDERED that the defendant shall be represented by:

☐ the attorney named below. ☐ the public defender in this judicial district.

Name Of Appointed Attorney (If Applicable)

Next Court Date

Date

Signature

☐ Judge ☐ Clerk Of Superior Court ☐ Asst. CSC ☐ Deputy CSC ☐ Magistrate

NOTE: A magistrate may appoint counsel if designated to do so by the Chief District Court Judge. See G.S. 7A-146(11) and G.S. 7A-292(15).

II. DENIAL OF COUNSEL

From the petition heard in this matter, the affidavit made by the applicant named above, and the inquiry made by the Court, which is documented in the record, it is determined that the applicant (*check all that apply*):

- ☐ 1. is charged with a felony, a misdemeanor higher than a Class 3, or a Class 3 misdemeanor that was committed before December 1, 2013, but will not receive an active or suspended term of imprisonment if he/she is convicted of the offense(s) for which he/she is charged; it is ORDERED that the defendant's petition is denied.
- ☐ 2. is charged with a Class 3 misdemeanor that was committed on or after December 1, 2013, the Court has found that the defendant has fewer than four prior convictions, and the case shall proceed as a fine only case; it is ORDERED that the defendant's petition is denied.
- ☐ 3. will not receive an active or suspended term of imprisonment if he/she is found in contempt; it is ORDERED that the defendant's petition is denied.
- ☐ 4. is financially able to provide the necessary expenses of legal representation; it is ORDERED that the applicant is not indigent and his/her petition is denied.

Date	Signature	<input type="checkbox"/> Judge <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Magistrate
------	-----------	--

NOTE: A magistrate may appoint counsel if designated to do so by the Chief District Court Judge. See G.S. 7A-146(11) and G.S. 7A-292(15).

(TYPE OR PRINT IN BLACK INK)

In The General Court Of Justice

☐ District ☐ Superior Court Division

File No.

Additional File Nos.

STATE OF NORTH CAROLINA

County

Name Of Applicant

Street Number And Street Name, Including Apartment Or Unit Number If Applicable

City, State And Zip Code

Full Permanent Mailing Address Of Applicant (If Different Than Above)

Telephone Number Of Applicant

Date Of Birth

☐ Defendant ☐ Parent/Guardian/Trustee ☐

AFFIDAVIT OF INDIGENCY

G.S. 7A-450 et seq.

Offense(s)

Applicant: Do you have other pending criminal charge(s) in which a lawyer has been appointed? ☐ Yes ☐ No

Name Of Lawyer

Full Social Security No. Of Applicant

☐ Has No Social Security No.

MONTHLY INCOME (money you make)

MONTHLY EXPENSES (money you pay out)

Employment - Applicant

\$

Number Of Dependents

Name And Address Of Applicant's Employer
(If not employed, state reason; if self-employed, state trade)

Shelter ☐ Buying ☐ Renting

\$

Food (including Food Stamps)

\$

Utilities
(power, water, heating, phone,
cable, etc.)

\$

Other Income (Welfare, Food Stamps,
S/S, Pensions, etc.)

\$

Health Care

\$

Employment - Spouse

\$

Installment Payments

☐ Vehicle ☐ Other

\$

Name And Address Of Spouse's Employer

Car Expenses
(gas, insurance, etc.)

\$

Support Payments

\$

Other: (specify)

\$

Total Monthly Income

\$

Total Monthly Expenses

\$

DESCRIPTION OF ASSETS AND LIABILITIES

**ASSETS
(things you own)**

**LIABILITIES
(amounts you owe)**

Cash On Hand And In Bank Accounts
(List Name Of Bank & Account No.)

\$

Money Owed To Or Held For Applicant

\$

Motor Vehicles (List Make, Model, Year)

(Fair Market Value)

(Balance Due)

\$

\$

Real Estate

(Fair Market Value)

(Balance Due)

\$

\$

Personal Property

(Fair Market Value)

(Balance Due)

\$

\$

Other Debts

\$

Last Income Tax Filed 20 _____ ☐ Refund ☐ Owe

\$

\$

Other

\$

\$

Total Assets And Liabilities

\$

\$

Bond Type

Amount

\$

By Whom Posted

NOTE: Read the notice on the reverse side before completing this form.

NOTICE TO PERSONS REQUESTING A COURT-APPOINTED LAWYER

1. When answering the questions on the Affidavit Of Indigency (*reverse side of this form*), please do not discuss your case with the interviewer. The interviewer can be called as a witness to testify about any statements made in his/her presence. Please wait and speak with your lawyer. Do not ask the interviewer for any advice or opinion concerning your case.
2. **A court-appointed lawyer is not free. If you are convicted or plead guilty or no contest, you may be required to repay the cost of your lawyer as a part of your sentence. The Court may also enter a civil judgment against you, which will accrue interest at the legal rate set out in G.S. 24-1 from the date of the entry of judgment. Your North Carolina Tax Refund may be taken to pay for the cost of your court-appointed lawyer. In addition, if you are convicted or plead guilty or no contest, the Court must charge you an attorney appointment fee and may enter this fee as a civil judgment against you pursuant to G.S. 7A-455.1.**
3. The information you provide may be verified, and your signature below will serve as a release permitting the interviewer to contact your creditors, employers, family members, and others concerning your eligibility for a court-appointed lawyer. A false or dishonest answer concerning your financial status could lead to prosecution for perjury. See G.S. 7A-456(a) ("A false material statement made by a person under oath or affirmation in regard to the question of his indigency constitutes a Class I felony.").

Under penalty of perjury, I declare that the information provided on this form is true and correct to the best of my knowledge, and that I am financially unable to employ a lawyer to represent me. I now request the Court to assign a lawyer to represent me in this case. I authorize the Court to contact my creditors, employers, or family members, any governmental agencies or any other entities listed below concerning my eligibility for a court-appointed lawyer.

I further authorize my creditors, employers, or family members, any governmental agencies or any other entities listed below to release financial information concerning my eligibility for a court-appointed lawyer upon request of the Court.

Governmental Agencies Or Other Entities Authorized To Be Contacted And/Or To Release Information

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		Date
Date	Signature	Signature Of Applicant
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Magistrate		Name Of Applicant (Type Or Print)
<input type="checkbox"/> Notary	Date My Commission Expires	<input type="checkbox"/> Defendant <input type="checkbox"/> Parent/Guardian/Trustee <input type="checkbox"/> _____
SEAL	County Where Notarized	

NOTE: If you are less than 18 years old, or if you are at least 18 years old but remain dependent on and live with a parent or guardian, state name and address of parent, guardian or trustee below.

Name Of Parent/Guardian Or Trustee

Address

City, State, Zip

STATE OF NORTH CAROLINA

File No. _____

_____ County

In The General Court Of Justice

☐ District ☐ Superior Court Division

STATE VERSUS

Name Of Defendant

Name And Address Of Law Enforcement Agency

TRANSMITTAL OF OUT-OF-COUNTY PROCESS

TO THE LAW ENFORCEMENT AGENCY NAMED ABOVE:

Attached please find an ☐ Order For Arrest ☐ Criminal Summons ☐ Warrant For Arrest for execution in your county or city.

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

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

Date Of Hearing

Time Of Hearing

☐ AM ☐ PM

Location of Hearing

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

Name Of Person Or Agency

Date

Telephone No.

Signature

☐ Superior Court Judge

☐ District Court Judge

☐ CSC

☐ Assistant CSC

☐ Deputy CSC

☐ Magistrate

NOTE TO EXECUTING OFFICER: Following execution of the attached process, deliver this form to the judicial official before whom defendant is brought.

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice

☐ District ☐ Superior Court Division

Name Of Defendant

**OUT-OF-COUNTY PROCESS VERIFICATION
RECALL AND TRANSMISSION**
(For use when process electronically transmitted to
out-of-county agency)

G.S. 15A-101.1; 15A-401; 15A-501

NOTE: The county name shown above is the county where the process was originally issued. See instructions on reverse side.**I. VERIFICATION**

Date Of Issuance Of Process

Type Of Process

☐ Warrant☐ Order For Arrest

Offense(s) Charged

☐ Domestic Violence Offense

Name Of Initiating Officer, If Any

Initiating Officer's Court Date(s)

NOTICE TO THE LAW ENFORCEMENT AGENCY THAT ARRESTED THE DEFENDANT:

The initiating law enforcement agency named below hereby verifies that:

1. The original of the process attached to this verification is in our physical possession.
2. The process is still outstanding and has not already been served on the defendant.
3. The defendant is still wanted for prosecution on these charges.
4. We have entered the following notation in the Return of Service on the original: "Defendant has been arrested in (name of county where defendant arrested) _____ County."
5. The initiating officer's next court date(s) are shown above.

Date

Signature

Name Of Initiating Law Enforcement Agency

Name (Type Or Print)

Fax Number of Initiating Law Enforcement Agency

Title (Type Or Print)

II. RECALL OF PROCESS AND TRANSMISSION TO CLERK

County Of Arrest, As Assigned By The Undersigned

Date Of Arrest

Date Of Service Of Process

Name And Address Of Arresting Agency

Defendant's Next Court Date In Your County

NOTICE TO THE LAW ENFORCEMENT AGENCY IN VERIFICATION SECTION ABOVE:

The defendant was arrested in the County of Arrest named above. The attached process ☐ has ☐ has not been served on the defendant. The process is hereby recalled. If you have not already done so, immediately return your original to the office of the Clerk of Superior Court of the county in which the charges are pending.

NOTICE TO THE CLERK OF SUPERIOR COURT OF THE COUNTY WHERE THE PROCESS WAS ISSUED:

The defendant named above has been arrested on the charges specified above and served with a copy of the process in this county. The original process has been recalled. Attached you will find the following:

1. The process served in this county, bearing the officer's return of service.
2. The original release order and appearance bond, if the defendant has been released, or a copy of the release order, if the defendant has not been released.
3. The defendant's next court date in your county is the date shown above, and the defendant has been notified of that court date in the Release Order, of which a copy is attached.

Date

Signature Of Judicial Official

County

Telephone Number

Name Of Judicial Official (Type Or Print)

(Over)

INSTRUCTIONS

THE LAW ENFORCEMENT AGENCY IN POSSESSION OF THE ORIGINAL PROCESS SHOULD:

1. Enter the applicable information in the boxes in the top portion and in the Verification on the reverse side.
2. Under "Name Of Initiating Officer, If Any," enter the name of the officer whose name appears as a complaining witness on the warrant in this case, if any. If the process is an order for arrest, refer to the warrant for this information.
3. If the charges are all misdemeanor(s), under "Initiating Officer's Court Date(s)" enter all the dates on which the initiating officer is scheduled to be in district court during the next month. Otherwise do not enter a date in this box.
4. Complete and sign the Verification on the reverse.
5. Fax this form, and the process, to the law enforcement agency that arrested the defendant.
6. Enter the following notation in the Return of Service on the original: "Defendant has been arrested in *(name of county where defendant arrested)* _____ County."
7. Immediately return the original, with that notation, to the office of the Clerk of Superior Court of the county where the process was issued, to be filed in the defendant's file.
8. Make no further effort to arrest the defendant on this process.
9. If you entered the defendant and the charges in DCI, update DCI with the arrest information.

THE LAW ENFORCEMENT AGENCY THAT ARRESTED THE DEFENDANT SHOULD:

1. By fax or other means, obtain the following from the law enforcement agency in possession of the process:
 - a. the original process,
 - b. this form, with the Verification on Side One of this form completed and signed.
2. Make a copy of the process, serve it on the defendant, and make a return of service on the original or duplicate original.
3. Take the defendant, and these papers, to a magistrate for an initial appearance without unnecessary delay.
4. Give the process bearing your return of service and two (2) copies of this form to the magistrate.
5. Notify DCI that the defendant has been arrested on these charges, if the process was entered.

THE MAGISTRATE SHOULD:

1. Enter the applicable information in the boxes under "RECALL OF PROCESS AND TRANSMISSION TO CLERK."
2. Conduct an initial appearance immediately and set conditions of pretrial release as soon as sufficient information is available.
3. Assign a court date in the county where the charges are pending. Communicate with that county to obtain an appropriate date. Enter this date under "Defendant's Next Court Date In Your County, As Assigned By The Undersigned."
4. Release the defendant upon satisfaction of the conditions of pretrial release.
5. Complete the "Recall Of Process And Transmission To Clerk" on the reverse.
6. Send this form to the Clerk of Superior Court of the issuing county. Attach the following:
 - a. the process bearing the return of service,
 - b. the original release order and appearance bond, if the defendant has been released from jail, or a copy of the release order if the defendant has not been released.
7. Send the above by fax and hard mail in all cases.
8. Send a copy of this form to the law enforcement agency in possession of the original process. Attach a copy of the Release Order.

STATE OF NORTH CAROLINA

File No.

_____ County

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

Name Of Defendant

**CONDITIONS OF RELEASE
ABSTINENCE FROM ALCOHOL AND
CONTINUOUS ALCOHOL MONITORING**

G.S. 15A-534

NOTE: Use this form in conjunction with form AOC-CR-200, Conditions Of Release And Release Order, or AOC-CR-922, Release Order For Juvenile Transferred To Superior Court For Trial.**ORDER**

In addition to the conditions of release imposed on the attached AOC-CR-200 or AOC-CR-922, incorporated herein by reference:

- ☐ 1. (for offenses committed on or after December 1, 2011, but before December 1, 2012) The undersigned judicial official finds that the defendant has been charged with an offense involving impaired driving, G.S. 20-4.01(24a), and was convicted of a prior offense involving impaired driving, which prior offense occurred within 7 years before the date of this offense. The defendant therefore is ORDERED to abstain from alcohol consumption as verified by a continuous alcohol monitoring system for the period of pretrial release or until this condition is removed by entry of order of the court. G.S. 15A-534(i).
- ☐ 2. (for offenses committed on or after December 1, 2012) The defendant is ORDERED to abstain from alcohol, as verified by a continuous alcohol monitoring system. The monitoring provider shall report any violation of this condition to the district attorney. G.S. 15A-534(a).
- ☐ 3. It is further ORDERED that the following conditions related to defendant's release on continuous alcohol monitoring shall apply:

Date

Signature Of Judicial Official

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

STATE OF NORTH CAROLINA

File No.

County

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

Name Of Defendant

DETENTION OF IMPAIRED DRIVER

Date Of Birth

G.S. 15A-534.2, 20-38.4

FINDINGS

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

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

DETENTION ORDER

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

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

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

Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Magistrate	<input type="checkbox"/> Clerk Of Superior Court
Signature Of Judicial Official		<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> District Court Judge
		<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Superior Court Judge

RELEASE FROM DETENTION ORDER

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

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

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

Date	Signature Of Sober Responsible Adult
------	--------------------------------------

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

Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Magistrate	<input type="checkbox"/> Clerk Of Superior Court
Signature Of Judicial Official		<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> District Court Judge
		<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Superior Court Judge

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

NOTE: If a defendant charged with an implied consent offense is unable to make bond, the magistrate must (1) inform the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or administer an additional chemical analysis and (2) require the defendant to list all persons the defendant wishes to contact and their telephone numbers. Use form AOC-CR-271 for this purpose. A copy of this form must be placed in the case file. G.S. 20-38.4(a)(4).

STATE OF NORTH CAROLINA

File No.

____ County

In The General Court Of Justice

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

Name Of Defendant

Date Of Birth

**DETENTION FOR COMMUNICABLE
DISEASE TESTING**

G.S. 15A-534.3

FINDINGS

The undersigned judicial official conducting an initial appearance or first appearance for the defendant named above finds probable cause that an individual had a nonsexual exposure to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by the defendant to the individual in that *(specify reasons)*:

[NOTE: Do **not** include any information indicating that the defendant has or may have a communicable disease. Describe only the nature of the exposure that would pose a significant risk of transmission of the AIDS or Hepatitis B virus if the defendant were infected.

Note that mere contact of the defendant's bodily fluids with a subject's clothing or unbroken skin does not pose a significant risk of transmission of either virus. A significant risk of transmission occurs when the defendant's bodily fluids come into contact with the subject's broken skin or mucous membranes. For example, a bite by the defendant that does not break the subject's skin does not pose a significant risk of transmission. Contact that may pose a significant risk includes things like a needlestick or a bite that actually breaks the subject's skin.]

DETENTION ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS that the defendant be detained in the custody of the Sheriff to allow for investigation by public health officials and for testing for AIDS virus infection and Hepatitis B infection if required by public health officials pursuant to G.S. 130A-144 and G.S. 130A-148.

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

Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge
Signature Of Judicial Official			

RELEASE FROM DETENTION ORDER

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

- ☐ 1. public health officials have completed their investigation and testing, if any, under G.S. 130A-144 and G.S. 130A-148.
- ☐ 2. the period of detention has reached twenty-four (24) hours.

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

Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge
Signature Of Judicial Official			

STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
Before The Magistrate

County

STATE VERSUS

Name Of Defendant

IMPLIED CONSENT OFFENSE NOTICE

G.S. 20-38.4

OBSERVATION PROCEDURE**TO THE DEFENDANT:**

The established local procedure to contact other persons and have other persons appear at the jail to observe your condition or administer an additional chemical analysis to you is provided in writing with this form and incorporated into this form by reference. You are hereby notified of this procedure.

CONTACT PERSONS**TO THE DEFENDANT:**

Pursuant to G.S. 20-38.4(a)(4), you are required to list all persons you wish to contact and their telephone numbers: *(attach additional sheets if necessary)*

Name

Telephone Number

1. _____
2. _____
3. _____

☐ I do not wish to contact anyone.**SIGNATURE**

By signing below, the defendant indicates that he/she has received notice of the contact and observation procedure and has listed all persons that he/she wishes to contact.

Date

Signature Of Defendant

MAGISTRATE'S CERTIFICATION

The undersigned magistrate certifies that pursuant to Article 24 of Chap. 15A and G.S. 20-38.4 that

1. An initial appearance was held and the undersigned found probable cause to believe the defendant committed an implied consent offense.
2. The undersigned reviewed all alcohol screening tests, chemical analyses and testimony from law enforcement officers concerning impairment and the circumstances of the arrest, and observed the defendant.
3. The undersigned considered whether the defendant was impaired to the extent that the provisions of G.S. 15A-534.2 should have been imposed.
4. The undersigned informed the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or to administer an additional chemical analysis.
5. The undersigned required the defendant to list all persons the defendant wishes to contact and telephone numbers on a copy of this form.
☐ The defendant returned this form to the undersigned at the initial appearance.
☐ The defendant failed to return this form at the initial appearance.

Date

Time

☐ AM ☐ PM

Signature Of Magistrate

The defendant returned this form to the undersigned after the initial appearance.

Date

Time

☐ AM ☐ PM

Signature

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

NOTE: If a defendant charged with an implied consent offense is unable to make bond, the magistrate must (1) inform the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or administer an additional chemical analysis and (2) require the defendant to list all persons the defendant wishes to contact and their telephone numbers. A copy of this form must be placed in the case file. G.S. 20-38.4(a)(4).

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice

☐ District ☐ Superior Court Division

STATE VERSUS

Name Of Defendant

DETENTION OF PROBATIONER ARRESTED FOR FELONY

G.S. 15A-534(d2)

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

FINDINGS AND DETENTION ORDER

The undersigned, having found on the attached AOC-CR-200, incorporated herein by reference, that the defendant has been charged with a felony offense while on probation for a prior offense, hereby finds in addition that (*check only one*)

- ☐ 1. the defendant poses a danger to the public, and therefore a secured bond or electronic house arrest with secured bond is required if release is otherwise authorized.
- ☐ 2. the defendant does not pose a danger to the public, and therefore conditions of release are set on the attached AOC-CR-200 as otherwise provided in G.S. Chapter 15A, Article 26.
- ☐ 3. there is insufficient information to determine whether the defendant poses a danger to the public, and therefore makes the following additional findings and orders below. (**NOTE:** Nos. 3.a. and 3.b. **must** be completed when making this finding.)
- a. The undersigned finds the following basis for the decision that additional information is needed to determine whether the defendant poses a danger to the public: _____
- b. The undersigned further finds that the following additional information is necessary to make that determination: _____
- c. The custodian of the detention facility named on the attached AOC-CR-200 is ORDERED to detain the defendant pursuant to G.S. 15A-534(d2)(3). The custodian is further ORDERED to bring the defendant before a judge for first appearance at the location, date and time specified on the attached AOC-CR-200, but if the information identified in No. 3.b. becomes available before that time, the custodian is ORDERED to bring the defendant immediately before **any** judicial official to set conditions of release.

Date

Signature Of Judicial Official

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

RELEASE FROM DETENTION 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 released from the Detention Order entered above, because (*check one*)

- ☐ 1. upon receipt and consideration of the additional information described above,
- ☐ 2. upon review of the defendant's eligibility for release at his/her first appearance,

the undersigned finds that the defendant ☐ does ☐ does not pose a danger to the public, and therefore sets or denies conditions of release accordingly on the attached AOC-CR-200.

Date

Signature Of Judicial Official

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

NOTE TO JUDICIAL OFFICIAL: First appearance must be set for the first regular session of district court in the county or within 96 hours of arrest, whichever occurs first. G.S. 15A-601(c). A lack of information to determine whether the defendant poses a danger to the public does not permit a delay of the first appearance. If the defendant was detained pursuant to No. 3 above, then upon receipt of information identified in No. 3.b., **any** judicial official before whom the defendant is brought must set conditions of release pursuant to G.S. 15A-534(d2)(3), in accord with the official's further finding concerning danger to the public under Release From Detention Order above.

STATE OF NORTH CAROLINA

File No.

County

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, Conditions Of Release And Release Order.

FINDINGS AND DETENTION ORDER

The undersigned, having found on the attached AOC-CR-200, incorporated herein by reference, that the defendant has been arrested for a violation of probation with a pending felony charge or a prior conviction requiring registration under G.S. 14, Article 27A, hereby finds in addition that (check only one)

- ☐ 1. the defendant poses a danger to the public, and therefore release is denied pending the defendant's probation revocation hearing as ordered on the attached AOC-CR-200 and pursuant to G.S. 15A-1345(b1)(1).
- ☐ 2. the defendant does not pose a danger to the public, and therefore conditions of release are set on the attached AOC-CR-200 as otherwise provided in G.S. Chapter 15A, Article 26.
- ☐ 3. there is insufficient information to determine whether the defendant poses a danger to the public, and therefore enters the following Detention Order. (**NOTE:** A date and time for production of the defendant **must** be set in No. 3.b. when making this finding.)
- a. The undersigned ORDERS that the custodian of the detention facility named on the attached AOC-CR-200 detain the defendant pursuant to G.S. 15A-1345(b1)(3), in order for the court to obtain sufficient information to determine whether the defendant poses a danger to the public.
- b. It is further ORDERED that, if conditions of release have not been set based upon the receipt of additional information by _____ (date) at _____ ☐ am ☐ pm (no later than 7 days from arrest), the custodian shall bring the defendant immediately before **any** judicial official at that time to set conditions of release.

Date

Signature Of Judicial Official

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

RELEASE FROM DETENTION 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 released from the Detention Order entered above, because (check one)

- ☐ 1. upon receipt and consideration of additional information,
- ☐ 2. upon review of the defendant's eligibility for release after detention without bail pursuant to G.S. 15A-1345(b1) as specified in No. 3.b. above,

the undersigned finds that the defendant ☐ does ☐ does not pose a danger to the public and therefore sets or denies conditions of release accordingly on the attached AOC-CR-200.

Date

Signature Of Judicial Official

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

NOTE TO JUDICIAL OFFICIAL: If the defendant has been held for seven (7) days since arrest pursuant to G.S. 15A-1345(b1) and without a determination of conditions of release, the defendant must be brought before **any** judicial official, who must record in writing that the defendant has been held for 7 days and impose conditions of release as otherwise provided in G.S. 15A-1345. If the defendant is found to be a danger to the public, whether upon receipt of additional information or after 7 days without additional information, release must be denied pending the probation revocation hearing.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice

☐ Before the Clerk ☐ District ☐ Superior Court Division**IN THE MATTER OF**

Name And Address Of Contemnor

**DIRECT CRIMINAL CONTEMPT/
SUMMARY PROCEEDINGS/
FINDINGS AND ORDER**

G.S. 5A-11, -12, -13, -14

Race

Sex

Date Of Birth

Age

Date

Time

☐ AM☐ PM

Place

On the date, time and place of hearing as stated above, the undersigned judicial official conducted:

☐ an initial appearance☐ a probable cause hearing☐ a trial☐ a first appearance☐ an estates proceeding☐ other: _____☐ a pre-trial motion hearing☐ a special proceeding

The Court finds beyond a reasonable doubt that during the proceeding the above contemnor willfully behaved in a contemptuous manner, in that the above named contemnor did

The undersigned gave a clear warning that the contemnor's conduct was improper. In addition, the contemnor was given summary notice of the charges and summary opportunity to respond.

(NOTE: The contemnor should be given an opportunity to explain his/her behavior, however the contemnor is not entitled to counsel, if court promptly punishes act of contempt.)

The contemnor's conduct interrupted the proceedings of the court and impaired the respect due its authority.

Therefore, it is adjudged that the above named contemnor is in contempt of court. It is ordered that the contemnor

NOTE TO COURT: If suspending a sentence for contempt, impose judgment on form AOC-CR-604.☐ be censured for contempt.☐ shall pay a fine of \$ _____ (max. \$500.00). ☐ shall pay the costs of court.☐ be imprisoned for a term of _____ ☐ hours ☐ days in the custody of the ☐ Sheriff ☐ Other: _____The contemnor shall be given credit for _____ days' pretrial confinement. ☐ Work release is recommended.☐ This sentence shall run at the expiration of the sentence imposed in file number _____.

Date

Name Of Judicial Official (type or print)

Signature Of Judicial Official

ORDER OF COMMITMENT/APPEAL ENTRIES☐ It is ORDERED that the Clerk deliver **two** certified copies of this Findings and Order to the sheriff or other qualified officer and that the officer cause the contemnor to be delivered with these copies to the custody of the sheriff of the county named above to serve the sentence imposed or until the contemnor shall have complied with the conditions of release pending appeal.☐ The contemnor gives notice of appeal from this Findings and Order to the Superior Court.☐ The contemnor gives notice of appeal from this Findings and Order in the Superior Court to the appellate division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.**NOTE TO COURT:** If finding of contempt was made by a judicial official inferior to a Superior Court Judge, the appeal is to Superior Court. G.S. 5A-17.

On appeal from criminal contempt imposing confinement, there must be a bail hearing "within a reasonable time period" after confinement is imposed. The contemnor may not be confined more than 24 hours without a bail hearing. See G.S. 5A-17(b) for officials who may conduct the hearing.

Date

Name Of Judicial Official (type or print)

Signature Of Judicial Official

CERTIFICATION

I certify that this Findings and Order is a true and complete copy of the original which is on file in this case.

Date

Signature

SEAL

Date Certified Copies Delivered To Sheriff

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

Original - File

Copy - Sheriff

WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

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

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

C

File No.		NORTH CAROLINA UNIFORM CITATION	
Defendant Is To Appear In District Court		N.C.	
Day Of Week	Month	Day	Year
Time			
<input type="checkbox"/> AM <input type="checkbox"/> PM			
<input type="checkbox"/> DL <input type="checkbox"/> DCI <input type="checkbox"/> Other # Of Chgs Interpreter Needed <input type="checkbox"/> SP <input type="checkbox"/> OTS <input type="checkbox"/> ASL			
THE STATE OF NORTH CAROLINA VS.			
Name Of Defendant			
Address			
City		State	Zip
Drivers License No.		State	CDL Class
Race	Sex	Date Of Birth	Age
Vehicle License No.		Telephone No.	
State			
Vehicle Type	Trailer Type	CMV	Haz. Mat. Make Year
Name And Telephone No. Of Defendant's Employer			
Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)			
ACKNOWLEDGMENT/NONRESIDENT PERSONAL RECOGNIZANCE FOR APPEARANCE			
I acknowledge receipt of this Citation <input type="checkbox"/> and I promise to appear in the named court at the time and place designated herein to answer the charge(s). I understand that my failure to appear or to dispose of this Citation by other acceptable legal means, such as waiver, will result in my operator's license issued by my state of residence being suspended until I have done so. Also, I may go before a magistrate and make bail in lieu of my personal recognizance.			
Date	Signature Of Defendant		
DEPARTMENTAL USE ONLY			
Officer	No.	Troop	District
SHP Code	<input type="checkbox"/> N.C. Patrol <input type="checkbox"/>		
Area	Wea.	Vis.	Traffic Accident Speed
On Highway No./Street		<input type="checkbox"/> Injury Or Serious Injury <input type="checkbox"/> Passenger(s) Under 18	
In Vicinity/City Of		At/Near Intersection	
Wit.	Chemical Analyst		<input type="checkbox"/> Refused <input type="checkbox"/> Blood <input type="checkbox"/> AC

DEFENDANT'S COPY (SEE IMPORTANT NOTICE ON REVERSE)

STATE OF NORTH CAROLINA County

The undersigned officer has probable cause to believe that on or about _____, (a.) (p.) m., the _____ day of _____, in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

☐ 1. At a speed of _____ MPH in a _____ MPH ☐ zone. G.S. 20-141.77. ☐ work zone. G.S. 20-141(2). 88. ☐ school zone. G.S. 20-141.1.

☐ 2. In forward motion without having the provided seat belt properly fastened about the defendant's body. G.S. 20-135.2A.

☐ 3. By transporting a passenger of less than 16 years of age without having the passenger in a (weight appropriate child passenger restraint system) (seat belt). G.S. 20-137.1.

☐ 4. By transporting a child of less than five years of age and less than 40 pounds in weight without the child being secured in the rear seat, when the vehicle was equipped with an active passenger-side front air bag and the vehicle had a rear seat. G.S. 20-137.1(a1).

☐ 5. While subject to an impairing substance. G.S. 20-138.1.

☐ 6. Without being licensed as a driver by the Division of Motor Vehicles of North Carolina. G.S. 20-7(a).

☐ 7. While the defendant's drivers license ☐ was revoked. G.S. 20-28(a). 33. ☐ was revoked for an impaired driving revocation as defined in G.S. 20-28.2(a) G.S. 20-28(a1).

☐ 8. While displaying an expired registration plate on the vehicle knowing the same to be expired. G.S. 20-111(2).

☐ 9. Without (displaying thereon a current approved inspection certificate) (having a current electronic inspection authorization for the vehicle), such vehicle requiring inspection in North Carolina. G.S. 20-183.8. Month Expired: _____.

☐ 10. By failing to stop before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154.

☐ 11. By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158(b)(1), (b)(3).

☐ 12. By entering an intersection while a traffic signal was emitting a steady red circular light for traffic in defendant's direction of travel. G.S. 20-158(b)(2).

☐ 13. Without having in full force and effect the financial responsibility required by G.S. 20-313. The defendant was the owner of the motor vehicle that was (registered) (required to be registered) in this State. G.S. 20-313.

☐ 14. (Possess an open container of) (Consume) an alcoholic beverage in the passenger area of a motor vehicle. G.S. 20-138.7(a1). [NOTE: Strike "operate a (motor) vehicle" and "(public vehicular area)" above.]

☐ 15. Without decreasing speed as necessary to avoid colliding with a (vehicle) (person). G.S. 20-141(m).

☐ 16. _____

☐ 17. And on or about the date and time shown above in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

Date Signature Of Officer

NOTICE TO DEFENDANT

If you fail to appear in court at the time, place, and location specified on the front side, or to dispose of this case prior to your court date as outlined below, **CRIMINAL PROCESS MAY BE ISSUED AGAINST YOU AND SUBSTANTIAL ADDITIONAL FEES MAY BE ASSESSED**. If you are charged with a motor vehicle offense, your failure to appear may result in the revocation of your drivers license until you dispose of this charge, and certain fees may be assessed against you by the North Carolina Division of Motor Vehicles. In addition, if a cash bond is required and posted, it will be forfeited, and your **failure to appear will be treated as a "conviction"** resulting in "points" against your driving and insurance records or possible license revocation. If you have any questions regarding your legal rights and obligations, consult a licensed attorney.

INSTRUCTIONS TO DEFENDANT

(Only the checked block applies)

☐ **1. You must appear** in District Court at the time, place, and location specified on the front side. If this is a speeding offense, you may be able to dispose of it **online** without appearing in court at **OnlineServices.NC Courts.org**, but if you do not dispose of the offense online prior to your court date, you must appear in court.

☐ **2. You have the following options for disposing of the charge without appearing in court:**

- You may dispose of the offense **online** without appearing in court by completing one of the options at **OnlineServices.NC Courts.org**. The online options available to you will vary depending on the offense.
- You may dispose of the offense without appearing in court by using US Mail or by visiting the office of the clerk or the magistrate. To do so, see the "INSTRUCTIONS FOR WAIVING BY MAIL OR IN PERSON" below.

If you do not use one of these two options prior to your court date, you must appear in court at the time, place, and location specified on the front side.

INSTRUCTIONS FOR WAIVING BY MAIL OR IN

PERSON: You do not have to appear in District Court at the time, place, and location specified if you

waive your trial, plead Guilty/Responsible and pay the amounts shown below for fine/penalty (which is a standard amount set by the Chief District Court Judges of North Carolina) and for costs. You may do so by mail or in person so long as your payment is received by 5:00 p.m. on the last working day prior to your scheduled court date.

Payment By Mail - Date and sign this Citation in the space provided below, place your payment and this Citation in an envelope, affix a stamp, and mail to: Clerk of Superior Court, _____

County Courthouse, _____, North Carolina _____. Payment must be made by **certified check, cashier's check or money order** payable to the Clerk of Superior Court. **Do not** mail cash.

PERSONAL CHECKS WILL NOT BE ACCEPTED.

Payment In Person - Deliver your payment and this Citation to the office of the Clerk of Superior Court at the above address during regular business hours or to any Magistrate of the above county. Payment must be made by **cash, certified check, cashier's check or money order** payable to the Clerk of Superior Court. You may also pay by credit card, in person, in the clerk's office.

PERSONAL CHECKS WILL NOT BE ACCEPTED.

☐ **3. You do not have to appear** in District Court at the time, place, and location specified on the front side if you waive your trial and plead Guilty. If you wish to do so, **you must appear in person before a Magistrate of _____ County**, because of the nature of the charge. Date and sign this Citation in the space provided below, deliver it to the Magistrate, and pay the fine imposed by the Magistrate and the costs shown below. Payment must be made by **cash, certified check, cashier's check or money order** payable to the Clerk of Superior Court.

PERSONAL CHECKS WILL NOT BE ACCEPTED.

If you wish to contest the charge or appear before a judge, you must appear at the time, place, and location specified on the front side.

WARNING: If you decide to plead Guilty/Responsible, you should do so **promptly** to minimize your costs. If you delay in entering your plea and making the specified payment, you may be liable for the costs of serving subpoenas on witnesses plus witness fees.

WAIVER OF TRIAL/HEARING - PLEA OF GUILTY/RESPONSIBLE - CONSENT TO ENTRY OF JUDGMENT

I acknowledge that I have been charged with the offense/infraction noted herein by the charging officer.

I understand that I am presumed by law to be Not Guilty/Not Responsible until proven Guilty/Responsible beyond a reasonable doubt. Nevertheless, I do hereby waive my constitutional rights to a trial/hearing in open court, to confront the witnesses against me, and to representation by an attorney.

I hereby plead Guilty/Responsible to this offense/infraction and tender to the court the sums listed below as payment of the fine/penalty and costs in this case. I request that the court accept my waiver of trial/hearing, plea of Guilty/Responsible and tender of fine/penalty and costs, and that a verdict/finding of Guilty/Responsible be entered. This request is made with the full understanding that a verdict/finding of Guilty/Responsible will be entered against my record, that if this is a motor vehicle offense, the North Carolina Division of Motor Vehicles (or the licensing authority of any other state that issued my license to drive) will be notified of the verdict/finding, that it will have the same legal effect for all purposes as a verdict/finding of Guilty/Responsible after a trial/hearing, and that it may result in the assessment of points on my driving and insurance records or the suspension or revocation of my drivers license.

Amount Of Fine/Penalty	Costs	Total
\$	\$	\$

Signature Of Defendant

Date

MAGISTRATE'S ORDER - MISDEMEANOR ONLY		COURT USE ONLY		District Attorney _____ Attorney For Defendant At Time Of Trial Or Plea	
Signature Of Magistrate/Deputy/Assistant/CSC _____ Date _____		Signature Of District Court Judge _____ Date _____		I certify that this Judgment is a true copy. _____ Date _____	
The named defendant has been arrested without a warrant and there is probable cause for the defendant's detention on the stated charges. This Magistrate's Order is issued upon information furnished under oath by the named officer. A copy of this Order has been delivered to the defendant.					
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>VERDICT: <input type="checkbox"/> guilty/resp. <input type="checkbox"/> not guilty/resp.</p> <p>FINDING: <input type="checkbox"/> guilty/resp. <input type="checkbox"/> not guilty/resp.</p> <p>MISD. CLASS: <input type="checkbox"/> A1 <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> V/D</p> </div> <div style="width: 50%;"> <p>JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict/finding, it is ORDERED that the defendant: <input type="checkbox"/> pay costs and a fine/penalty of \$_____ <input type="checkbox"/> be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. <input type="checkbox"/> The Court finds that a _____ period of probation than specified in G.S. 15A-134.2(d) is necessary. <input type="checkbox"/> Execution of sentence is placed on supervised probation for _____ months, subject to the regular conditions of probation and the following: _____ until properly licensed by DMV; <input type="checkbox"/> (3) complete _____ hours of community service within _____ days and pay the fee; <input type="checkbox"/> (4) Other: _____.</p> </div> </div>					
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>PRIOR CONVICTIONS: No./Level: 0 <input type="checkbox"/> I (0) _____ <input type="checkbox"/> II (1-4) _____ <input type="checkbox"/> III (5+)</p> </div> <div style="width: 50%;"> <p><input type="checkbox"/> Appointed <input type="checkbox"/> Retained <input type="checkbox"/> Waived</p> </div> </div>					
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>PLEA: <input type="checkbox"/> guilty/resp. <input type="checkbox"/> no contest <input type="checkbox"/> not guilty/resp.</p> <p>It is ORDERED that this: <input type="checkbox"/> Judgment is continued upon payment of costs. <input type="checkbox"/> case be consolidated for judgment with _____.</p> <p>It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the conditions of release pending appeal.</p> <p>The defendant in open court, gives notice of appeal to the Superior Court. <input type="checkbox"/> The current pretrial release order is modified as follows: _____.</p> </div> <div style="width: 50%;"> <p>COMMITMENT: It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the conditions of release pending appeal.</p> </div> </div>					

File No.									
NORTH CAROLINA UNIFORM CITATION									
Defendant Is To Appear In District Court									
Day Of Week		Month		Day		Year		Time	
								N.C. <input type="checkbox"/> AM <input type="checkbox"/> PM	
<input type="checkbox"/> DL <input type="checkbox"/> DCI <input type="checkbox"/> Other		# Of Chgs		Interpreter Needed <input type="checkbox"/> SP <input type="checkbox"/> OTS <input type="checkbox"/> ASL					
THE STATE OF NORTH CAROLINA VS.									
Name Of Defendant									
Address									
City		State		Zip		Class			
Drivers License No.				State		CDL		Age	
Race		Sex		Date Of Birth		Age			
Social Security No. Of Defendant				Telephone No.					
Vehicle License No.				State					
Vehicle Type		Trailer Type		CMV		Haz. Mat.		Make Year	
Name And Telephone No. Of Defendant's Employer									
Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)									
ACKNOWLEDGMENT/NONRESIDENT PERSONAL RECOGNIZANCE FOR APPEARANCE									
I acknowledge receipt of this Citation <input type="checkbox"/> and I promise to appear in the named court at the time and place designated herein to answer the charge(s). I understand that my failure to appear or to dispose of this Citation by other acceptable legal means, such as waiver, will result in my operator's license issued by my state of residence being suspended until I have done so. Also, I may go before a magistrate and make bail in lieu of my personal recognizance.									
Date		Signature Of Defendant							
		DEPARTMENTAL USE ONLY							
Officer		No.				Troop		District	
SHP Code		<input type="checkbox"/> N.C. Patrol <input type="checkbox"/>				Police/Sheriff			
Area		Wea.		Vis.		Traffic		Accident Speed	
On Highway No./Street				<input type="checkbox"/> Injury Or Serious Injury <input type="checkbox"/> Passenger(s) Under 18					
In Vicinity/City Of				At/Near Intersection					
Wit.		Chemical Analyst				<input type="checkbox"/> AC <input type="checkbox"/> Refused <input type="checkbox"/> Blood			

AOC-CR-500, Rev. 3/17, © 2017 Administrative Office of the Courts

SHIP DIVISION COPY/CSC AUDIT COPY

OFFICER'S NOTES

STATE OF NORTH CAROLINA

File No.

County

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

Name Of Defendant

**CONDITIONS OF RELEASE FOR PERSON
CHARGED WITH A CRIME
OF DOMESTIC VIOLENCE**

#

G.S. 15A-534.1

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

The undersigned judicial official finds that the defendant named above is charged with assault on, stalking, communicating a threat to, or committing a felony provided in former Article 7A or Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or *(for offenses committed on or after December 1, 2015, only)* a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes.

The undersigned judicial official ☐ has considered the defendant's criminal history as shown on a criminal history report provided by a law enforcement officer or a district attorney. ☐ has not considered the defendant's criminal history as shown on a criminal history report because no report could be obtained within a reasonable time.

ORDER

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

- ☐ 1. The defendant shall stay away from the home, school, business or place of employment of the alleged victim.
- ☐ 2. The defendant shall refrain from assaulting, beating, molesting, or wounding the alleged victim.
- ☐ 3. The defendant shall refrain from removing, damaging or injuring the property listed below:
- ☐ 4. The defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.
- ☐ 5. *(for offenses committed on or after December 1, 2012)* The defendant shall abstain from alcohol, as verified by a continuous alcohol monitoring system. The monitoring provider shall report any violation of this condition to the district attorney.
- ☐ 6. Other restrictions:
- ☐ a. The defendant shall have no contact with the alleged victim.
- ☐ b. The defendant shall comply with any valid domestic violence protective order in effect.
- ☐ c. The defendant shall not possess any firearms.
- ☐ d. Other:

Date

Signature Of Judicial Official

☐ Magistrate
☐ District Court Judge
☐ Superior Court Judge**NOTE TO JUDICIAL OFFICIAL:** The law enforcement officer or district attorney who provided the defendant's criminal history report shall dispose of the report in accordance with DCI regulations. The report shall **NOT** be placed in the case file.

STATE OF NORTH CAROLINA

File No.

____ County

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

Name Of Defendant

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

G.S. 15A-534.4

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

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

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

ORDER

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

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

Date

Signature Of Judicial Official

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

NOTE TO OFFICER: The officer should review and follow the instructions on Side Two of this form.

ATTACH TEST RECORD TICKET HERE

File No.

STATE OF NORTH CAROLINA

County

NOTE: A "commercial motor vehicle" is as defined in G.S. 20-4.01(3d).

In The General Court Of Justice
District Court Division

IN THE MATTER OF

AFFIDAVIT AND REVOCATION REPORT OF

☐ LAW ENFORCEMENT OFFICER

☐ CHEMICAL ANALYST

☐ The charged offense is impaired supervision or instruction under G.S. 20-12.1. Accordingly, substitute "supervisor/instructor" wherever "driver" appears below.

G.S. 20-16.2, 20-16.5, 20-17.8, 20-19(c3), 20-139.1

Name				
Address				
City		State	Zip	
Race	Sex	Date Of Birth	Drivers License No.	State
Vehicle Type		CMV	Haz. Mat.	Citation No.

The undersigned being first duly sworn says:

☐ 1. I am a law enforcement officer. On the _____ day of _____, _____, at _____ (a.)(p.)m., a law enforcement officer had reasonable grounds to believe the above named person, hereinafter referred to as driver, operated a vehicle (☐ commercial motor vehicle) in the above named county upon _____ (Give Street, Highway, Or Public Vehicular Area)

while committing an implied-consent offense in that _____

(List Sufficient Facts To Establish Probable Cause)

- ☐ 2. The driver has a drivers license restriction: ☐ alcohol concentration. ☐ ignition interlock. ☐ conditional restoration (Restr: *9).
- ☐ 3. The driver violated a drivers license restriction by: ☐ refusing to be transported for testing. ☐ not having an operable ignition interlock on the vehicle being driven. ☐ failing to personally activate the ignition interlock on the vehicle being driven. ☐ exceeding the driver's alcohol concentration limitation. ☐ refusing a chemical analysis (if refusal, also complete items no. 14 and 15 below, as appropriate for this case).
- ☐ 4. The driver was charged with the implied-consent offense of: ☐ G.S. 20-138.1. ☐ Other: _____
- ☐ 4a. The driver has one or more pending offenses in the following county(ies) _____ for which the drivers license had been or is revoked under G.S. 20-16.5.
- ☐ 5. After the driver was charged, I took the driver before _____, a chemical analyst authorized to administer a test of the driver's breath.
- ☐ 6. I am a chemical analyst and possess a current permit issued by the Department of Health and Human Services authorizing me to conduct chemical analyses of the breath utilizing the Intox EC/IR II.
- ☐ 7. I informed the driver orally and also gave notice in writing of the rights specified in G.S. 20-16.2(a). I completed informing the driver of the rights as indicated on the attached DHHS 4081.
- ☐ 8. I began observing the driver for the purpose of complying with the observation period requirements for a breath analysis in accordance with the methods/rules approved by the Department of Health and Human Services at _____ (a.)(p.)m. on the _____ day of _____.
- ☐ 9. On the _____ day of _____, _____, at _____ (a.)(p.)m., I requested the driver to submit to a chemical analysis of his/her breath or blood or urine.
- ☐ 10. The driver was unconscious or otherwise incapable of refusal and therefore the notification of rights and request to submit to a chemical analysis were not made. I directed the taking of a blood sample by a person qualified under G.S. 20-139.1 based on the (check one) ☐ AOC-CR-155 search warrant issued and executed in this case. ☐ totality of the circumstances, which demonstrated an exigency that justified the taking of the sample without first obtaining a search warrant.
- ☐ 11. The driver submitted to a chemical analysis of his/her breath. I administered the chemical analysis to the driver in accordance with the methods/rules approved by the Department of Health and Human Services using an Intox EC/IR II, and it printed the results of the driver's chemical analysis on the attached test record, DHHS 4082, which is made part of this Affidavit. The most recent preventive maintenance was performed on this Intox EC/IR II on the _____ day of _____, _____, as shown on the preventive maintenance record. I provided the driver with a copy of the attached test record before any trial or proceeding in which the results of the chemical analysis may be used.
- ☐ 12. The chemical analysis of the driver's breath indicated an alcohol concentration of 0.15 or more.
- ☐ 13. The driver consented to the obtaining of a sample of his/her blood or urine for a chemical analysis, which was collected as indicated on the attached DHHS 4081.
- ☐ 14. The driver willfully refused to submit to a chemical analysis as indicated on the attached ☐ DHHS 4082. ☐ DHHS 4081. ☐ The willful refusal occurred in an implied-consent offense involving death or critical injury to another person.
- ☐ 15. After the driver's willful refusal, a blood sample was obtained based on the (check one) ☐ AOC-CR-155 search warrant issued and executed in this case. ☐ totality of the circumstances, which demonstrated an exigency that justified the taking of the sample without first obtaining a search warrant.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Signature Of Chemical Analyst/Law Enforcement Officer

DHHS Permit No.

Date	Signature Of Official Authorized To Administer Oaths			Print Name Of Chemical Analyst/Law Enforcement Officer
<input type="checkbox"/> Magistrate	<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court	
<input type="checkbox"/> Notary SEAL	Date My Commission Expires	County Where Notarized	Agency Name	

NOTES TO LAW ENFORCEMENT OFFICER/CHEMICAL ANALYST

NOTE TO LAW ENFORCEMENT OFFICER WHO IS NOT GOING TO *administer breath test or read the implied-consent rights:*

1. Complete the identifying information at the top,
2. Check the "Law Enforcement Officer" block under "Affidavit and Revocation Report of" in the title section,
3. Review and check as appropriate for this case paragraphs 1-5 (and if the driver is unconscious or incapable of refusing so that the implied-consent rights need not be read, also review and check as appropriate paragraph 10), and
4. Swear or affirm before notary or magistrate, sign and file copies as indicated.

NOTE TO LAW ENFORCEMENT OFFICER WHO CHARGES DRIVER AND IS CHEMICAL ANALYST *who administers the breath test or reads the implied-consent rights for a blood test:*

1. Complete the identifying information at the top,
2. Check both the "Law Enforcement Officer" and "Chemical Analyst" blocks under "Affidavit and Revocation Report of" in the title section,
3. Review and check as appropriate for this case paragraphs 1-15, and
4. Swear or affirm before notary or magistrate, sign and file copies as indicated.

NOTE TO CHEMICAL ANALYST WHO IS NOT THE CHARGING OFFICER:

1. Complete the identifying information at the top,
2. Check the "Chemical Analyst" block under "Affidavit and Revocation Report of" in the title section,
3. Review and check as appropriate for this case paragraphs 6-15, and
4. Swear or affirm before notary or magistrate, sign and file copies as indicated.

INSTRUCTIONS

1. This form should be used in District Court to prove alcohol concentration in implied-consent criminal cases.
2. This form should be used before the Magistrate for the pretrial civil revocation (CVR) when the driver is charged with DWI or another implied-consent offense and the driver
 - a. has an alcohol concentration of 0.08 or more;
 - b. has an alcohol concentration of 0.04 or more and was operating a commercial motor vehicle;
 - c. is under age 21 and has an alcohol concentration of 0.01 or more; or
 - d. refuses the breath test and/or a blood or urine test.
3. This form should be used to notify DMV of (i) an alcohol concentration of 0.15 or more or (ii) a refusal to submit to a breath test and/or a blood or urine test.
4. This form should be used to notify DMV of violations of the following drivers license restrictions⁺:
 - a. *9= the driver has a Conditional Restoration of his or her drivers license
 - b. 19= alcohol concentration (A/C) of 0.04
 - c. 20= A/C 0.04+ignition interlock
 - d. 21= A/C 0.00
 - e. 22= A/C 0.00+ignition interlock
 - f. 23= ignition interlock only

+ When a driver has violated a restriction and paragraphs 2 and 3 on Side One are completed, ALL sections in these paragraphs that apply must be checked. For example, if the driver had a restriction 20 and violated both the alcohol concentration and the ignition interlock provisions, both the "alcohol concentration" and the "ignition interlock" blocks should be checked in paragraph 2. The same applies to paragraph 3.
5. File the original and copies of this form, with a copy of the test record ticket attached, as follows:
 - a. Original - To the Magistrate for the pretrial civil revocation (CVR).
 - b. Second copy - To the Court for the criminal case.
 - c. Yellow copy - To DMV for violation of any alcohol or ignition interlock restriction on drivers license, alcohol concentration of 0.15 or more, or for refusal to submit to a breath test and/or a blood or urine test. DMV's address is: DMV, Information Processing Services, 3120 Mail Service Center, Raleigh, NC 27699-3120.
 - d. Pink copy - To the Law Enforcement Officer/Chemical Analyst.
 - e. Green copy - To the driver.

STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
District Court Division

County

IN THE MATTER OF

Name And Address

**REVOCATION ORDER
WHEN PERSON PRESENT**

G.S. 20-16.5

FINDINGS FOR PROBABLE CAUSE

The undersigned judicial official finds probable cause to believe that:

1. A law enforcement officer had reasonable grounds to believe that the above-named person committed an offense subject to the implied-consent provisions of G.S. 20-16.2;
2. The above-named person has been charged with that offense as provided in G.S. 20-16.2(a);
3. Both the law enforcement officer and the chemical analyst(s) complied with the provisions of G.S. 20-16.2 and 20-139.1 in requiring the above-named person's submission to or procuring a chemical analysis; and
4. The above-named person:
 - ☐ a. willfully refused to submit to a chemical analysis.
 - ☐ b. had an alcohol concentration of 0.08 or more at any relevant time after the driving.
 - ☐ c. had an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle.
 - ☐ d. had any alcohol concentration at any relevant time after the driving, and at the time of the offense, was under 21 years of age.
- ☐ 5. The above-named person has one or more pending offenses in the following county(ies) _____
_____ for which the person's drivers license had been or is revoked
under G.S. 20-16.5.

ORDER

It is ORDERED that the above-named person's **drivers license or privilege to drive be revoked**. The above-named person is prohibited from operating a motor vehicle on the highways of North Carolina during the period of revocation. The revocation remains in effect **at least thirty (30) days** from:

- ☐ 1. this date
- ☐ 2. the date he/she surrenders his/her drivers license or privilege to drive to the Court, or demonstrates that he/she is not currently licensed to drive.
- ☐ 3. (check this option if Findings For Probable Cause No. 5 above is checked) the date he/she surrenders his/her drivers license or privilege to drive to the Court, or demonstrates that he/she is not currently licensed to drive **and** indefinitely until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which his/her drivers license or privilege to drive had been or is revoked under G.S. 20-16.5.

The above-named person's privilege to drive in North Carolina is revoked and will remain revoked until the person has actually surrendered his/her license for the period specified above and has paid a \$100 fee to the Clerk of Superior Court.

I informed the above-named person of his/her rights to a hearing and gave him/her a copy of this Order.

Date	Name Of Judicial Official (Type Or Print)	Signature Of Judicial Official

NOTE: See reverse for supplemental findings and order, and for disposition of license.

<input type="checkbox"/> Judge	<input type="checkbox"/> Magistrate	<input type="checkbox"/> Deputy CSC
<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court	

NOTICE

If at the time of this Order you have only a temporary driving certificate, you must surrender the certificate, and then you also must surrender your license card immediately when you later receive it in the mail from DMV.

If at the time of this Revocation you were not licensed to drive by the North Carolina Division of Motor Vehicles and did not have a valid drivers license from another state, an additional \$50 restoration fee must be paid to the Division of Motor Vehicles before you can drive again in North Carolina. This fee must be paid even though you are a resident of another state.

You have a right to a hearing to contest the validity of this Revocation before a magistrate or judge. To do so, a written request must be made within ten (10) days of the effective date of the revocation. A hearing request form is available from the office of the Clerk of Superior Court or magistrate. Your license will remain revoked and you are not authorized to drive pending the hearing. If you do request a hearing but fail to appear, you forfeit the right to a hearing.

If your license is revoked under Paragraph 1 or 2 of this Order, at the end of the revocation period you are still prohibited from driving until you have paid a fee of \$100 to the Clerk of Superior Court.

If your license is revoked under Paragraph 3 of this Order, that revocation remains in effect at least thirty (30) days and until a final judgment, including appeals, is entered for this current offense and for all pending offenses for which your license has been or is revoked under G.S. 20-16.5. At the end of the revocation period you are still prohibited from driving until you have paid a fee of \$100 to the Clerk of Superior Court. This fee is in addition to any fee you have paid or are to pay in connection with any other pending offense for which your drivers license has been revoked under G.S. 20-16.5.

The \$100 fee may be paid at any time, **even prior to the end of the period of revocation**, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Payment in person must be made in cash or by certified check, cashier's check or money order. Payment by mail must be made by certified check, cashier's check or money order, payable to the Clerk of Superior Court. If you wish to have your drivers license returned to you by mail, please enclose a stamped, self-addressed envelope with your payment.

IT IS UNLAWFUL FOR YOU TO DRIVE A MOTOR VEHICLE IN THE STATE OF NORTH CAROLINA UNTIL YOU ARE AUTHORIZED TO DO SO. THE DIVISION OF MOTOR VEHICLES MAY ALSO DISQUALIFY YOU FROM OPERATING A COMMERCIAL MOTOR VEHICLE UNDER G.S. 20-17.4.

SUPPLEMENTAL FINDINGS AND ORDER

It is further found that the person named herein appeared before the undersigned judicial official at _____
☐ AM ☐ PM on this _____ day of _____, _____, and,

- ☐ 1. surrendered his/her drivers license to the Court.
- ☐ 2. was validly licensed but unable to locate his/her license card and filed an affidavit which constituted surrender of the drivers license.
- ☐ 3. demonstrated he/she was not currently authorized to drive in North Carolina.

It is ORDERED that this Revocation of the drivers license of the person named herein:

- ☐ 1. remains in effect for at least thirty (30) days from the above date and until payment of a \$100 fee has been made to the Clerk of Superior Court.
- ☐ 2. (check this option if Findings For Probable Cause No. 5 on reverse side is checked) is indefinite and remains in effect for at least thirty (30) days from the above date and until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which his/her drivers license had been or is revoked under G.S. 20-16.5, and until payment of a \$100 fee to the Clerk of Superior Court.

Date	Signature Of Judicial Official		
Name Of Judicial Official (Type Or Print)	<input type="checkbox"/> Judge	<input type="checkbox"/> Magistrate	<input type="checkbox"/> Deputy CSC
	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court	

It is further found that a Pick-Up Order was issued for the license of the person named herein, and the person on the _____ day of _____, _____:

- ☐ 1. surrendered his/her license to the officer serving the Pick-Up Order.
- ☐ 2. demonstrated to the officer serving the Pick-Up Order that he/she was not currently authorized to drive in North Carolina.

It is ORDERED that this Revocation:

- ☐ 1. remains in effect for at least thirty (30) days from the above date and until payment of a \$100 fee to the Clerk of Superior Court.
- ☐ 2. (check this option if Findings For Probable Cause No. 5 on reverse side is checked) is indefinite and remains in effect for at least thirty (30) days from the above date and until a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which his/her drivers license had been or is revoked under G.S. 20-16.5, and until payment of a \$100 fee to the Clerk of Superior Court.

Date	Signature	<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC
		<input type="checkbox"/> Clerk Of Superior Court	

DISPOSITION OF LICENSE OR PRIVILEGE

- ☐ 1. Drivers license of person named herein returned to him/her, and receipt by him/her is acknowledged below.
- ☐ 2. At the licensee's request, license returned to him/her by mail. License mailed on the date shown below.
- ☐ 3. License mailed to Division of Motor Vehicles on date shown below, since the person named herein is not eligible to use the license for the following reason:

- ☐ 4. Limited driving privilege withheld and record forwarded to _____ County.
- ☐ 5. Other: _____

Date	Signature		
Date License Mailed	<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court

ACKNOWLEDGMENT OF RECEIPT

I acknowledge receipt of my license.

Date	Signature Of Licensee		
Date \$100 Fee Paid	Signature	<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC
		<input type="checkbox"/> Clerk Of Superior Court	

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address

AFFIDAVIT - NO LICENSE

G.S. 20-16.5

County Of Residence

State Of Residence

NORTH CAROLINA RESIDENTS

I, the undersigned, being first duly sworn, say that I am a resident of the county and state named above, and at the time of this charge:

☐ I am not currently licensed to drive in the State of North Carolina because:

☐ my license is revoked.

☐ my license has expired.

☐ I have never had a license.

☐ other: _____.

☐ I am validly licensed to drive in North Carolina but am unable to locate my license card. The circumstances of the loss and the efforts I have made to find the license card are:

_____.

OUT-OF-STATE RESIDENTS

I, the undersigned, being first duly sworn, say that I am a resident of the county and state named above, and at the time of this charge:

☐ I am not currently licensed to drive in the State of North Carolina and do not have a valid drivers license from another state because:

☐ my license is revoked.

☐ my license has expired.

☐ I have never had a license.

☐ other: _____.

☐ I am validly licensed to drive by the State of _____, but am unable to locate my license card. The circumstances of the loss and the efforts I have made to find the license card are:

_____.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Signature Of Affiant

Date

Signature

☐ Deputy CSC

☐ Assistant CSC

☐ Magistrate

☐ Clerk Of Superior Court

☐ Notary

Date Commission Expires

SEAL

County Where Notarized

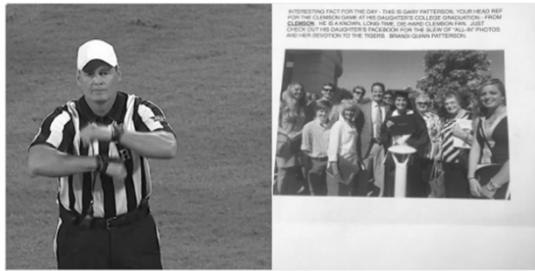
Tab: Judicial Independence

JUDICIAL INDEPENDENCE (February, 2018)

Judicial Independence in Criminal Proceedings Judicial Indep - Page 1

Judicial Independence in Criminal Proceedings

Jeff Welty
UNC School of Government



OK to referee a football game involving your alma mater?

- A. Yes
- B. No



OK to referee a football game involving a school your nephew attends?

- A. Yes
B. No



OK to referee a basketball game involving a school that took you to Portugal for a week to officiate two exhibition games?

- A. Yes
B. No



What the ACC Allows

- Can't officiate
 - Your alma mater
 - A school your spouse or child currently attends (but nephews are OK)
 - A school you've contributed to
 - A school with which you have a business relationship
 - A school you've sued or been sued by
- What is the point of the rules?

Neutrality and Judicial Officials

- The Fourth Amendment requires that arrest and search warrants be issued by “neutral and detached” judicial officials.
 - *Shadwick v. City of Tampa*, 407 U.S. 345 (1972)
- The *North Carolina Code of Judicial Conduct* requires that judges perform their duties “impartially.”
 - Canon 3

What Kinds of Things Might Limit Your Impartiality?

Magistrate Davis retired from the Carolina County Sheriff’s Office last year. May Magistrate Davis consider search/arrest warrant applications coming from that agency?

- A. Yes
B. No



Magistrate Lee's teenage daughter was killed by a drunk driver three years ago. May Magistrate Lee conduct initial appearances in DWI cases?

- A. Yes
- B. No



Neutrality and Your Background

- Everyone has some background
- Many magistrates have had experiences such as
 - Being a law enforcement officer
 - Being a criminal defense attorney
 - Being a crime victim
- You cannot hear matters in which you have "a personal bias or prejudice"
 - *North Carolina Code of Judicial Conduct, Canon 3C(1)(a)*
 - You are the person most likely to know whether aspects of your background create bias

Magistrate Lopez used to date Jenny Jones. Now Jenny Jones is dating Dan Defendant. May Magistrate Lopez conduct an initial appearance for Dan Defendant on drug charges?

- A. Yes
- B. No



Neutrality and Your Relationships

- Everyone has some relationships
- Many magistrates have relationships such as
 - A sibling or spouse who is a law enforcement officer
 - A child who is a prosecutor
 - A friend who is a crime victim
 - A cousin who is accused of a crime
- You cannot hear matters in which you, your spouse, or a person within the third degree of relationship to either of you, or the spouse of such a person, is a participant
 - *North Carolina Code of Judicial Conduct, Canon 3C(1)(d)*

May a magistrate conduct initial appearances in a BATmobile at a DWI checkpoint?

- A. Yes
B. No



May a magistrate call an Assistant District Attorney for advice on whether certain facts constitute a crime?

- A. Yes
B. No

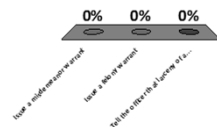


Neutrality and Your Role in the Justice System

- DWI initial appearances may be held “at any place within the county” including “locations other than the courthouse.”
 - G.S. 20-38.4
 - May require extra care to be perceived as neutral
- May not “knowingly initiate nor knowingly consider ex parte . . . communications concerning a pending proceeding,” but may “obtain the advice of a disinterested expert on the law.”
 - *North Carolina Code of Judicial Conduct*, Canon 3A(4).

An officer comes to you seeking a warrant for misdemeanor larceny. The item that was stolen is a gun. Assuming there is PC, what do you do?

- Issue a misdemeanor warrant
- Issue a felony warrant
- Tell the officer that larceny of a firearm is a felony and ask her whether she wants a felony charge

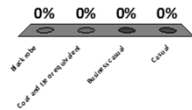


Magistrates as Legal Advisors

- To officers
 - Do facts A, B, and C add up to PC?
 - Do I need a search warrant to search location X under circumstance Y?
- To citizens
 - Is my dispute with my neighbor civil or criminal?
 - Can I throw away my tenant's property after his lease expires?
 - My sister did X to me. Can you charge her with Y?

How do most magistrates in your office dress while on duty?

- A. Black robe
- B. Coat and tie or equivalent
- C. Business casual
- D. Casual



Creating an Atmosphere of Neutrality

- Dress
- Manner of address
- Limiting indicators of familiarity
- Respect for defendants
 - Non-verbal cues
 - Willingness to listen
 - Willingness to answer reasonable questions
 - Willingness to explain procedures and next steps

What to Do When You May Not be Neutral

- Recuse yourself
 - Is another magistrate on duty?
 - Is another magistrate available?
 - Can another official hear the matter?
- Bolster your neutrality with slow and careful deliberation

