

DV Criminal Law &
Procedure for Clerks

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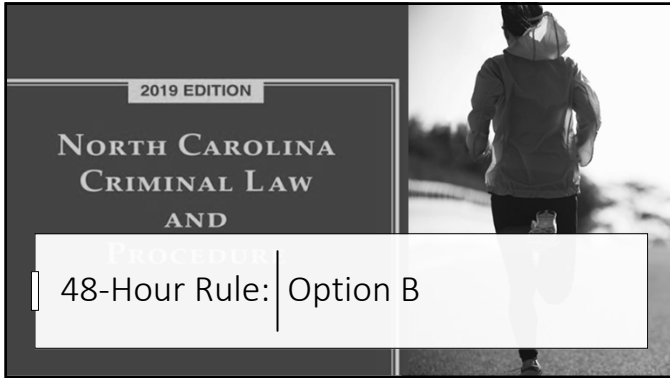


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Authority to Arrest

- Officers have expanded authority make warrantless arrest for certain misdemeanor DV offenses, including
 - Domestic criminal trespass
 - Certain assault offenses if a personal relationship exists under G.S. 50B-1
 - Violation of a DVPO
- Officers also may make warrantless arrest for violation of pretrial release condition
- Officer must arrest (with or without warrant) based on PC that person has knowingly violated DVPO excluding person from residence or directing person to refrain from doing acts in G.S. 50B-3(a)(9)

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2019 EDITION

NORTH CAROLINA
CRIMINAL LAW
AND
PROCEDURE


48-Hour Rule: Option B

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48-Hour Rule: Option B

<ul style="list-style-type: none"> • Covered offense includes charges of <ul style="list-style-type: none"> • assault • stalking • communicating a threat to or committing a felony • provided in Articles 7B, 8, 10, or 15 of Chapter 14 • on a victim 	<ul style="list-style-type: none"> • Qualifying victim <ul style="list-style-type: none"> • Spouse or former spouse • A person with whom the defendant lives or has lived as if married • A person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6)
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A Rule, Not a Hold

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period of time while determining the conditions of pretrial release.

(2) A judge may impose the following conditions on pretrial release:

- That the defendant stay away from the home, school, business or place of employment of the alleged victim.
- That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim.
- That the defendant refrain from removing, damaging or injuring specifically identified property.
- That 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.
- That the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, and that any violation of this condition be reported by the monitoring provider to the district attorney.

G.S. 15A-534.1

The conditions set forth above may be imposed in addition to requiring that the defendant execute a secured appearance bond.

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AOC-CR-630

STATE OF NORTH CAROLINA

County _____

In The General Court Of Justice
 District Superior Court Division

STATE VERSUS _____

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, striking, communicating a threat to, or committing a felony provided in former Article 70a or Article 70b, 70c, 70d, or 70e of Chapter 14 of the General Statutes upon a spouse or former spouse, a person with whom the defendant lives or has lived as a parent, or the releasee committed on or after December 1, 2010, with a person with whom the defendant has had a dating relationship as defined in G.S. 50B-130(b), with domestic violence, as well as violation of an order entered pursuant to Chapter 50B, Domestic Violence, or the criminal statutes.

The undersigned judicial official has considered the defendant's criminal history as shown on a criminal history report provided by an authorized official 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.

- The defendant shall stay away from the home, school, business or place of employment of the alleged victim.
- The defendant shall refrain from assaulting, beating, molesting, or wounding the alleged victim.
- The defendant shall refrain from removing, damaging or injuring the property listed below:

- 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.
- For offenses committed on or after December 1, 2010: 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.
- Other restrictions:**
 - The defendant shall have no contact with the alleged victim.
 - The defendant shall comply with any valid domestic violence protective order in effect.
 - The defendant shall not possess any firearms.

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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:

- The defendant shall stay away from the home, school, business or place of employment of the alleged victim.
- The defendant shall refrain from assaulting, beating, molesting, or wounding the alleged victim.
- The defendant shall refrain from removing, damaging or injuring the property listed below:

- 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.
- For offenses committed on or after December 1, 2010: 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.
- Other restrictions:**
 - The defendant shall have no contact with the alleged victim.
 - The defendant shall comply with any valid domestic violence protective order in effect.
 - The defendant shall not possess any firearms.
 - Other:

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	Sentencing
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	<p>§ 15A-1382.1. Reports of disposition; domestic violence; child abuse; sentencing. (a) When a defendant is found guilty of an offense involving assault, communicating a threat, or any of the acts as defined in G.S. 50B-1(a), the presiding judge shall determine whether the defendant and victim had a personal relationship. If the judge determines that there was a personal relationship between the defendant and the victim, then the judge shall indicate on the form reflecting the judgment that the case involved domestic violence. The clerk of court shall insure that the official record of the defendant's conviction includes the court's determination, so that any inquiry into the defendant's criminal record will reflect that the</p>
	15A-1382.1

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	<p><input type="checkbox"/> 3. The Court finds the above-designated offense(s) is a reportable conviction under G.S. 14-208.6 and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603D, Page Two, Side Two, and makes the additional findings and orders on the attached AOC-CR-615, Side Two.</p> <p><input type="checkbox"/> 4. The Court finds the above-captioned offense(s) involved the (check all that apply) <input type="checkbox"/> physical or mental <input type="checkbox"/> sexual abuse of a minor (if No. 3 not found) and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603D, Page Two, Side Two.</p> <p><input type="checkbox"/> 5. The Court finds this is an offense involving assault, communicating a threat, or an act defined in G.S. 50B-1(e), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim.</p> <p><input type="checkbox"/> 6. The Court finds the above-designated offense(s) involved (check one) <input type="checkbox"/> (offenses committed Dec. 1, 2016 - Nov. 30, 2017) criminal street gang activity <input type="checkbox"/> (offenses committed on or after Dec. 1, 2017) criminal gang activity. G.S. 14-50.25.</p> <p><input type="checkbox"/> 7. The Court did not grant a conditional discharge under G.S. 90-95(a) because (check all that apply) <input type="checkbox"/> the defendant refused to consent.</p>
	AOC-CR-604D

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- (11) Repealed by Session Laws 2011-62, s. 1, as amended by Session Laws 2011-412, s. 2.2, effective December 1, 2011, and applicable to offenses committed on or after December 1, 2011.
- (12) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant, unless the court finds that such would not be in

G.S. 15A-1343: Probation

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REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)

NOTE: Any probationary judgment may be entered pursuant to G.S. 15A-1342. The defendant shall: (1) Commit no criminal offense in any jurisdiction; (2) Possess no firearm, explosive device, or other deadly weapon listed in G.S. 14-209; (3) Remain gainfully and suitably employed or faithfully pursue a course of study or 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) Submit to the taking of digitized photographs, including photographs of the defendant's face, scars, marks, and tattoos, to be included in the defendant's records. If the defendant is on supervised probation, the defendant shall also: (6) Not abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer; (7) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer; (8) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner; permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment; (9) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment; (10) Submit at reasonable times to warrant searches by a probation officer of the defendant's person and of the defendant's vehicle and premises while the defendant is present, for purposes directly related to the probation supervision, but the defendant may not be required to submit to any other searches that would otherwise be unlawful; (11) Submit to warrantless searches by a law enforcement officer of the defendant's person and of the defendant's vehicle, upon a reasonable suspicion that the defendant is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-209 without written permission of the court; (12) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it, not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drug or controlled substance; and not knowingly be present at or frequent any place where such illegal drug or controlled substances are sold, kept, or used; (13) Supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Adult Correction and Juvenile Justice for the actual costs of drug or alcohol screening and testing.

14. The Court finds that the defendant is responsible for acts of domestic violence and therefore makes the additional findings and orders on the attached AOC-CR-6043D, Page Two, Side Two.

SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1)

The defendant shall also comply with the following special conditions which the Court finds are reasonably related to the defendant's rehabilitation:

15. Surrender the defendant's drivers license to the Clerk of Superior Court for transmission/notification to the Division of Motor Vehicles and not operate a motor vehicle for a period of _____ or until relicensed by the Division of Motor Vehicles, whichever is later.

AOC-CR-604D

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STATE OF NORTH CAROLINA GENERAL COURT OF JUSTICE

FIREARM PROHIBITION NOTICE

NOTICE

If you are convicted of a misdemeanor involving violence when you are or were a spouse, intimate partner, parent, or guardian of the victim or you were involved in such a violent act, your possession of a firearm may be restricted by you to persons to whom a firearm is being a rifle, pistol, or revolver, or ammunition, purchased to be used for your personal or business use. If you have any questions whether these laws apply to you, please contact the State Bar of North Carolina at 1-800-333-3333 or visit our website at www.ncbar.org.

NOTE: Effective January 1, 2008, all defendants convicted of crimes subject to the firearm restriction requirements shall be provided a copy of this notice by the court. (S.L. 2007-246)



Gun Ownership

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