



SCHOOL OF GOVERNMENT
North Carolina Judicial College

Basic School for Magistrates: Winter 2023 Criminal Session

UNC School of Government

February 20-24, 2023

Pre-Recorded Lectures (to be viewed prior to the course)

Motor Vehicle Crimes: Shea Denning (30 mins)

Impaired Driving Holds: Shea Denning (20 mins)

CVRs and Vehicle Seizures: Shea Denning (40 mins)

Live Session Schedule

Monday, February 20

- 9:00 a.m.** **Welcome and Introduction to Criminal Law**
Jeff Welty, School of Government
- 9:15 a.m.** **Elements of Crimes: Trespass (60 mins)**
Jamie Markham, School of Government
- 10:15 a.m.** *Break*
- 10:30 a.m.** **Elements of Crimes: Sexual Assaults (90 mins)**
Jamie Markham, School of Government
- 12:00 p.m.** *Lunch*
- 1:00 p.m.** **Selecting Process (60 mins)**
Jeff Welty, School of Government
- 2:00 p.m.** *Break*
- 2:15 p.m.** **Selecting Process (continued) (60 mins)**
- 3:15 p.m.** *Break*
- 3:30 p.m.** **Selecting Process (continued) (30 mins)**
- 4:00 p.m.** *Break*
- 4:15 p.m.** **Under 18: Juvenile vs Adult (45 mins)**
Jacqui Greene, School of Government
- 5:00 p.m.** *Adjourn*

Tuesday, February 21

- 9:00 a.m.** **Search Warrants** (60 mins)
Jeff Welty, School of Government
- 10:00 a.m.** *Break*
- 10:15 a.m.** **Search Warrants** (*continued*) (60 mins)
- 11:15 a.m.** *Break*
- 11:30 a.m.** **Search Warrants** (*continued*) (60 mins)
- 12:30 p.m.** *Lunch*
- 1:30 p.m.** **Elements of Crimes: Larceny, Robbery, Obtaining Property by False Pretense** (105 mins)
Jonathan Holbrook, North Carolina Conference of District Attorneys
- 3:15 p.m.** *Break*
- 3:30 p.m.** **Elements of Crimes: Assaults** (90 mins)
Jonathan Holbrook, North Carolina Conference of District Attorneys
- 5:00 p.m.** *Adjourn*

Wednesday, February 22

- 9:00 a.m.** **Solicitation, Conspiracy, Attempts, Principals, and Accessories Offenses** (30 mins)
Brittany Bromell, School of Government
- 9:30 a.m.** **Elements of Crimes: Drunk, Weapons, Resisting** (60 mins)
Brittany Bromell, School of Government
- 10:30 a.m.** *Break*
- 10:45 a.m.** **Elements of Crime: Burglary** (75 mins)
Phil Dixon, School of Government
- 12:00 p.m.** *Lunch*
- 1:00 p.m.** **Initial Appearance** (75 mins)
John Rubin, School of Government
Takeeta Tyson, Business Systems Analyst, NCAOC
- 2:15 p.m.** *Break*
- 2:30 p.m.** **Initial Appearance** (*continued*) (75 mins)
- 3:45 p.m.** *Break*

4:00 p.m. **Initial Appearance** (*continued*) (60 mins)

5:00 p.m. *Adjourn*

Thursday, February 23

9:00 a.m. **Contempt** (60 mins)
Cheryl Howell, School of Government

10:00 a.m. *Break*

10:15 a.m. **Elements of Crimes: Drugs** (60 mins)
Phil Dixon, School of Government

11:15 a.m. *Break*

11:30 a.m. **Elements of Crimes: Drugs** (*continued*) (60 mins)

12:30 p.m. *Lunch*

1:30 p.m. **Impaired Driving Holds, Civil License Revocations, and Vehicle Seizures** (75 mins)
(Magistrates must watch the pre-recorded lectures in advance of this session)
Shea Riggsbee Denning, School of Government
Takeeta Tyson, Business Systems Analyst, NCAOC

2:45 p.m. *Break*

3:00 p.m. **Elements of Crimes: Motor Vehicle Offenses** (45 mins)
(Magistrates must watch the pre-recorded lecture in advance of this session)
Shea Riggsbee Denning, School of Government

3:45 p.m. *Break*

4:00 p.m. **Check In: How's It Going?** (45 mins)
Phil Dixon, School of Government
Jeff Welty, School of Government

4:45 p.m. *Adjourn*

Friday, February 24

9:00 a.m. **Domestic Violence Procedure** (60 mins)
Brittany Bromell, School of Government

10:00 a.m. *Break*

10:15 a.m. **Capstone Exercise** (75 mins)
Brittany Bromell, School of Government

11:30 a.m. *Lunch*

12:30 p.m. **Criminal Session Exam** (Room 2603)

Sponsored by
North Carolina Administrative Office of the Courts
UNC School of Government

Magistrate's Oath of Office

I do solemnly swear that I will administer justice without favoritism to anyone or to the State; that I will not knowingly take, directly or indirectly, any fee, gift, gratuity or reward whatsoever, for any matter or thing done by me or to be done by me by virtue of my office, except the salary and allowances by law provided; and that I will faithfully and impartially discharge all the duties of magistrate of the District Court Division of the General Court of Justice to the best of my ability and understanding, and consistent with the Constitution and laws of the State; so help me, God.

SOG FACULTY BIOGRAPHIES

Brittany Bromell

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Brittany Bromell joined the School of Government in July 2020. Prior to joining the School, she received her JD from the North Carolina Central University School of Law (*summa cum laude*), where she served as the Notes and Comments Editor for the *North Carolina Central Law Review*. Brittany is a member of the North Carolina State Bar.

Areas of Interest: Criminal law and procedure; local government law

Shea Riggsbee Denning

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Shea Riggsbee Denning is not only a UNC School of Government faculty member; she is a double Tar Heel. After earning an AB with distinction in journalism and mass communication from the University in 1994, and a JD with high honors from the UNC School of Law in 1997, she began her legal career by clerking for the Honorable Malcolm J. Howard, US District Judge for the Eastern District of North Carolina, in Greenville. She then practiced law in Atlanta with the firm of King & Spalding before returning to North Carolina to work as a research attorney and then as an assistant federal defender for the Eastern District of North Carolina. She joined the SOG faculty in 2003. Denning's scholarship focuses on motor vehicle law and criminal law and procedure. She teaches and advises judges, magistrates, prosecutors, defense attorneys, and law enforcement officers. She has written extensively about North Carolina's motor vehicle laws, including a book on the law of impaired driving. She is a regular contributor to the North Carolina Criminal Law blog and a co-coauthor of *Pulled Over: The Law of Traffic Stops and Offenses in North Carolina*.

Areas of Interest: Courts; criminal law and procedure; driver's license revocations; impaired driving law; motor vehicle law; prosecutor training

Phil Dixon

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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: Cannabis/hemp; criminal law and procedure; evidence; expunction; indigent defense education; public defender training; sex offender registration

Jacqui Greene**greene@soq.unc.edu / (919) 966-4327**

Jacquelyn "Jacqui" Greene joined the School's legal faculty in 2018 to focus on juvenile justice. Before coming to the School, she was program area director for the New York-based consultancy firm Policy Research Associates. She also served as executive director of the New York State Governor's Commission on Youth, Public Safety, and Justice; director of juvenile justice policy at the New York State Division of Criminal Justice Services; and counsel to the committees on children and families and social services for the New York State Assembly. Her work experience includes representing children in family court matters as well as developing and implementing juvenile justice, delinquency prevention, and child welfare policy. Her recent research and policy work centers on the school-to-prison pipeline, juvenile justice reform, and behavioral health interventions for at-risk youth. Greene holds a bachelor's degree in psychology and political science from the University of North Carolina at Chapel Hill and a law degree from Harvard Law School.

Areas of Interest: Raise the Age; juvenile justice

Cheryl Howell**howell@soq.unc.edu / (919) 966-4437**

Cheryl Howell joined the School of Government (then the Institute of Government) in 1992. Prior to that, she practiced law in Winston-Salem and Fayetteville and worked as a research assistant to Chief Judge R.A. Hedrick of the NC Court of Appeals. Currently, Howell teaches, consults, and writes about family law and other issues, and she works with the NC Association of District Court Judges and the North Carolina Judicial College in planning and coordinating judicial branch education programs. She is a member of the North Carolina Bar Association. She also has served as a member of the Family Court Advisory Committee, appointed by the Chief Justice of the NC Supreme Court, since its creation in 1998, and also serves as a member of the NC Child Custody and Visitation Mediation Advisory Committee, appointed by the director of the Administrative Office of the Courts. Her publications include articles and bulletins relating to family law and family court, as well as chapters created for the *Trial Judges' Bench Book, District Court Edition*. Howell earned a BA, magna cum laude, from Appalachian State University and a JD, with honors, Order of the Coif, from the University of North Carolina at Chapel Hill.

Areas of Interest: Child custody; child support; courts; domestic violence; equitable distribution; family law; judicial education

John Rubin**rubin@soq.unc.edu / (919) 962-2498**

John Rubin joined the School of Government in 1991. He previously practiced law for nine years in Washington, DC 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; teaches and consults with judges, prosecutors, public defenders, and other officials in the criminal justice system; and manages the School's indigent defense education program. He is a frequent consultant to the Office of Indigent Defense Services, which is responsible for overseeing and enhancing legal representation for indigent defendants and others entitled to counsel under North Carolina law. In 2008, he was awarded a two-year distinguished professorship for faculty excellence. In 2012, he was named Albert Coates Professor of Public Law and Government. Rubin earned a BA from the University of California at Berkeley and a JD from UNC-Chapel Hill.

Areas of Interest: Bail and pretrial release; collateral consequences (criminal convictions); criminal law and procedure; domestic violence; evidence; expunction; indigent defense education; public defender training; search and seizure; sentencing law; sex offender registration; subpoenas

Jeff Welty**welty@soq.unc.edu / (919) 445-1082**

Jeff Welty joined the School of Government in 2008 and works in the area of criminal law and procedure. His research interests include the law of policing, search and seizure, digital evidence, and criminal pleadings. Welty founded and contributes regularly to the *North Carolina Criminal Law Blog*, an award-winning resource visited by approximately 100,000 users each month. He has written for, appeared on, or been quoted in the *New York Times*, the *Washington Post*, *TIME*, *Newsweek*, National Public Radio, Bloomberg News, *Lawyers' Weekly*, the *Raleigh News and Observer*, and many other media outlets. His books about capital punishment and digital evidence are widely-used legal references. He previously served as the director of the North Carolina Judicial College, which provides training and education to the state's judicial officials. Welty completed a federal judicial clerkship and worked in private practice before coming to the School. From 2020 to 2021, he spent two years on leave from the School at the North Carolina Department of Justice, where he led the Special Prosecutions and Law Enforcement Section. Welty earned a J.D. at Duke University School of Law, where he served as executive editor of the *Duke Law Journal* and graduated in 1999 with highest honors.

Areas of Interest: Bail and pretrial release; capital punishment; criminal law and procedure; firearm law; judicial education; magistrates; police attorneys; prosecutor training; search and seizure law

TAB:

General

Information



Mission

The mission of the School of Government is to improve the lives of North Carolinians by engaging in practical scholarship that helps public officials and citizens understand and improve state and local government.

Values

Consistent values for more than 75 years have built a legacy of trust with North Carolina's public officials:

- Nonpartisan
- Policy-neutral
- Responsive

How We Serve North Carolina

As the largest university-based local government training, advisory, and research organization in the United States, the School of Government offers up to 200 courses, seminars, and specialized conferences for more than 12,000 public officials each year.

Faculty members respond to more than 100,000 phone calls and e-mail messages each year on routine and urgent matters and also engage in long-term advising projects for local governing boards, legislative committees, and statewide commissions.

In addition, faculty members annually publish approximately 50 books, periodicals, and other reference works related to state and local government. Each day that the General Assembly is in session, the School produces the *Daily Bulletin*, which reports on the day's activities for members of the legislature and others who need to follow the course of legislation.

History

Established in 1931 as the Institute of Government, the School provides educational, advisory, and research services for state and local governments. The School of Government is also home to specialized centers focused on information technology, environmental finance, and civic education for youth.

School of Government faculty members have made notable contributions to North Carolina government:

- Study to reorganize state government
- Study of the state's court system
- North Carolina Constitutional Commission
- Local Government Study Commission
- Open Meetings Study Commission
- NC Sentencing and Policy Advisory Commission
- Governor's Crime Commission on Juvenile Crime and Justice

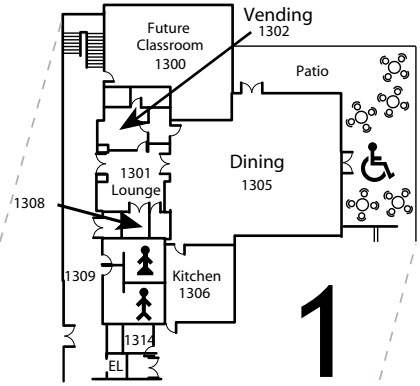
Support for the School of Government

Operating support for the School of Government's programs and activities comes from many sources, including state appropriations, local government membership dues, private contributions, publication sales, course fees, and service contracts. Visit www.sog.unc.edu or call 919.966.5381 for more information on the School's courses, publications, programs, and services.

Knapp-Sanders Building

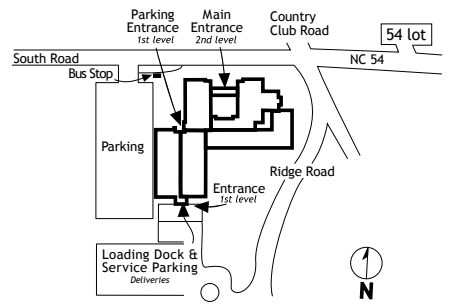
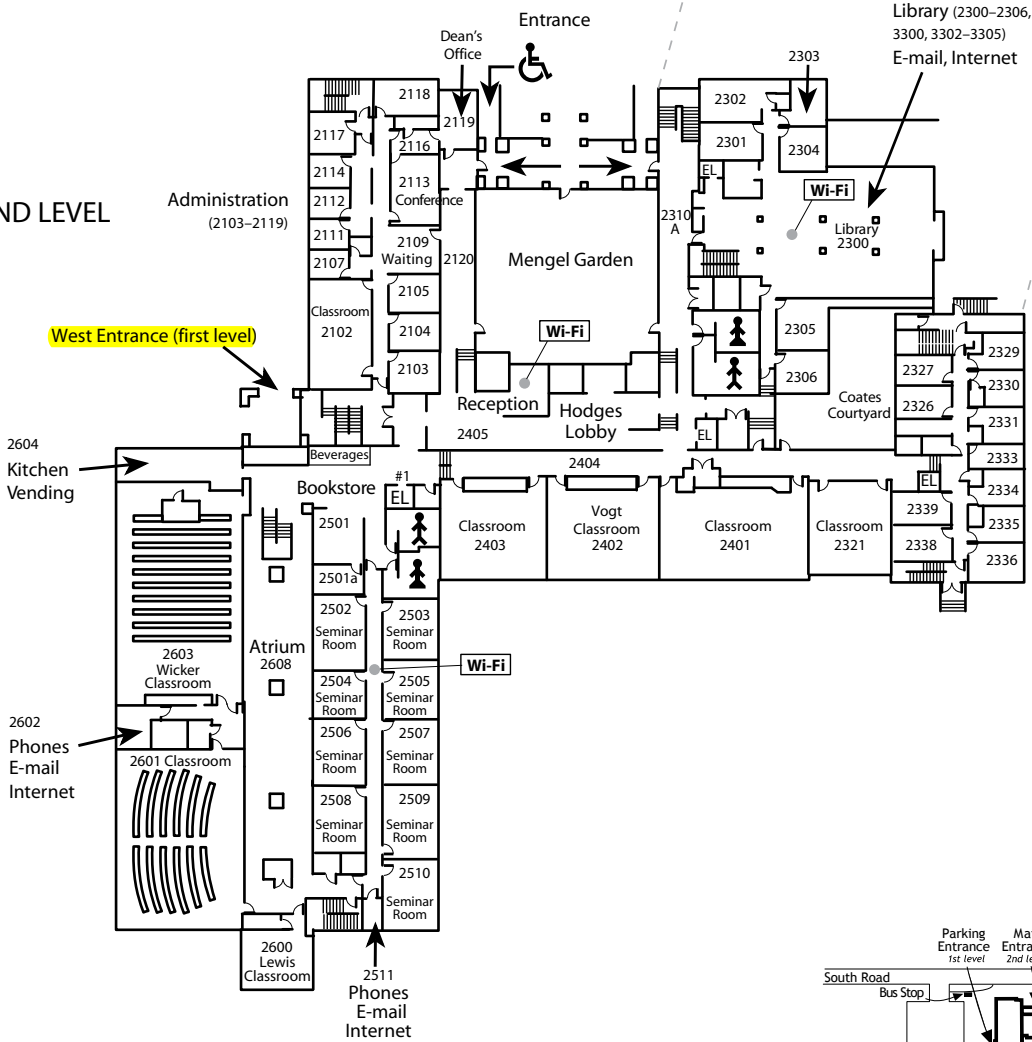
School of Government
UNC-Chapel Hill

May 2008
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2 SECOND LEVEL



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Upcoming School of Government Courses for Magistrates

2023

Basic School for Magistrates https://www.sog.unc.edu/courses/basic-school-magistrates	January 23-27 (Civil) & February 20-24 (Criminal) <i>*By invitation only*</i>	Chapel Hill, NC
NC Magistrates' Spring Conference https://www.sog.unc.edu/courses/nc-magistrates-spring-conference		March 13-17 Beaufort, NC
What Magistrates Need to Know About Domestic Violence https://www.sog.unc.edu/courses/domestic-violence-magistrates		April 24-26 Chapel Hill, NC
Introduction to Small Claims https://www.sog.unc.edu/courses/introduction-holding-small-claims-court-magistrates-0		May 15-19 Chapel Hill, NC
Special Topic in Small Claims https://www.sog.unc.edu/courses/special-topics-small-claims-magistrates		June 29-30 Chapel Hill, NC

For more information about upcoming events, publications, and other resources for magistrates, please visit our webpage: <https://www.sog.unc.edu/resources/microsites/nc-magistrates>

On the Civil Side – A School of Government Blog: <http://civil.sog.unc.edu/>

Website Resources

School of Government Website

www.sog.unc.edu

School of Government's Magistrate Website

<https://sog.unc.edu/resources/microsites/nc-magistrates>

School of Government's Criminal Law Website

<https://www.sog.unc.edu/resources/microsites/criminal-law-north-carolina>

School of Government's District Court Judges Website

<http://www.sog.unc.edu/programs/dcjudges>

NC Judicial College Website

<http://www.sog.unc.edu/programs/judicialcollege>

NC Magistrate's Association Website

www.aoc.state.nc.us/magistrate

Administrative Office of the Courts' (AOC) Website

www.nccourts.gov

General Assembly's Website

(can download any bill or statute)

<https://www.ncleg.gov>

School of Government Blogs

School of Government's Criminal Law Blog

<https://nccriminallaw.sog.unc.edu/>

School of Government's *On The Civil Side* Blog

<http://civil.sog.unc.edu/>

REIMBURSEMENT FOR TRAVEL AND SUBSISTENCE

DUE TO THE CONSTANTLY CHANGING BUDGET POLICIES, please be aware there may be delays in processing your reimbursement, as well as the potential for changes in coverage. If you have any questions you should contact LaShonda Brown at the AOC at the number below.

LaShonda Brown
Accounting Specialist III
901 Corporate Center Dr
PO Box 2448
Raleigh, NC 27602
919.890.1007

The Administrative Office of the Courts will reimburse magistrates attending the Basic School as follows:

Breakfast	\$ 9 .00
Lunch	\$ 11.80
Dinner	\$ 20.50
Lodging (actual cost, up to)	\$ 78.90
Total Daily Rate	\$ 120.20
Travel mileage	Check with your supervisor or AOC to determine the current rate

To obtain reimbursement for qualifying expenses, you will need to submit **AOC-A-25**, which is available from your clerk of superior court, or which may be downloaded from www.nccourts.org (click on "Forms" and then type in "AOC-A-25"). You will find a copy following this memo.

After completing the form, send it to your Chief District Court Judge, who is your supervisor, for his or her signature before mailing the completed form to Raleigh. (The mailing address is shown in the instruction box at the top of the form.) Make a copy of the form to keep with your records.

MEALS:

You do not need to attach receipts for meals to your reimbursement form.

On Mondays you may claim breakfast if you had to leave home before 6 a.m. and on Fridays you may claim dinner if you arrive home after 8:00 p.m.

NOTE: If meals are provided by the School of Government you cannot claim them.

If you are commuting daily, you are not entitled to recover any meal expenses except you may claim \$9.00 for breakfast if you left before 6:00 a.m. and may claim \$20.50 for dinner if you return to your duty station after 8:00 p.m.

ROOM:

The actual cost of your daily room rate is reimbursed up to a maximum of \$78.90. **The original itemized hotel receipt** (not a photocopy) must be attached to the reimbursement form. The itemized hotel receipt must show each day's total and tax separately. Your receipt must show a "0" balance owed.

NOTE: You can request an itemized receipt when you checkout of the hotel.

TRAVEL:

NOTE: Because of the constantly changing mileage policies you should check with your supervisor or AOC to determine the current rate.

Magistrates who are located 35 miles or less from the school are expected to commute daily and will be reimbursed at the current rate of mileage.

Tab: Elements of Crimes

ELEMENTS OF CRIMES

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Armed Robbery and Representations about Weapons

Jeff Welty

Twice each year, the School of Government welcomes newly-appointed magistrates for two weeks of training. Part of the curriculum involves learning the elements of common crimes. When I teach the elements of armed robbery, an exchange like this always ensues:

Me: Imagine that a bad guy comes into a convenience store and tells the clerk “I have a gun, give me all the money in the register or I’ll use it.” The bad guy gets the money, but is apprehended as he leaves the store and doesn’t actually have a gun. Should he be charged with armed robbery?

Magistrate: Of course. The bad guy said he had a gun and the clerk had no reason to doubt that. He was probably scared to death!

Me: Good try. But the bad guy wasn’t actually armed, so he didn’t actually endanger the clerk’s life and so didn’t actually commit armed robbery.

Magistrate: What are you talking about? [G.S. 14-87](#) includes the “threatened use of any firearm.” The bad guy threatened to use a gun, and that’s good enough.

I have always taken the position that armed robbery can’t be charged on the posited facts, but every year, I struggle to convince the group of that. Sometimes I get the same question, or a variant thereof, from a prosecutor. So I thought I’d look into the issue more closely and write a post about it, in the hopes of putting it to bed.

Here’s the statute:

Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

The two elements relevant to this issue are:

- “[H]aving in possession or with the use or threatened use” of a dangerous weapon
- “[W]hereby the life of a person is endangered or threatened”

Looking at the text of the statute and at the elements, the magistrate’s argument is plausible: the bad guy arguably threatened to use a dangerous weapon, and in so doing, threatened the life of the clerk. There’s also some support in the case law for that argument. The best case for the magistrate is *State v. Jarrett*, 167 N.C. App.

336 (2004). There, the court of appeals affirmed two armed robbery convictions where the defendant told each victim that he had a gun, but did not display a gun and was eventually arrested without a gun. The court emphasized the “threatened use” language in the statute and held that the evidence was sufficient because “the defendant represented he had a firearm and . . . circumstances led the victim reasonably to believe the defendant had a firearm and might use it.” *Id.* (internal quotation marks and citations omitted).

But consider *State v. Allen*, 317 N.C. 119 (1986), where the state’s evidence suggested that the defendant used a .22 caliber pistol during a robbery while the defendant’s evidence suggested that it was a cap pistol. Because the trial judge instructed the jury that items that “look like firearms” count as dangerous weapons, the state supreme court reversed the defendant’s armed robbery conviction. It stated that “the law does not transform [a cap pistol] into a dangerous weapon merely because it appears to be one.” In essence, the court held that the endangerment element is not satisfied when a defendant falsely represents that he has a weapon. And that rationale applies equally to the scenario I discuss with the magistrates. In other words, if a defendant cannot be convicted of armed robbery based on the representation that he has a gun when in fact he has a toy pistol, surely it follows that a defendant cannot be convicted of armed robbery based on the representation that he has a gun when in fact he has *no weapon at all*. Indeed, the court stated, “[i]f all the evidence shows the instrument could not have been a firearm or other dangerous weapon capable of threatening or endangering the life of the victim, the armed robbery charge should not be submitted to the jury.” *Id.* Based on *Allen* – a supreme court decision, unlike *Jarrett* – I believe that my answer to the magistrate in the dialogue above is correct. *See also State v. Williams*, 127 N.C. App. 464 (1997) (“It is reversible error for a trial court to submit an armed robbery charge to the jury where conclusive evidence at trial establishes that no actual gun was used.”)

I’m inclined to view the quoted language in *Jarrett* as dicta. The court was surely correct to affirm the defendant’s convictions, under the rule that “[w]hen a robbery is committed with what appeared to the victim to be a firearm or other dangerous weapon capable of endangering or threatening the life of the victim and there is no evidence to the contrary, there is a mandatory presumption that the weapon was as it appeared to the victim to be.” *Allen, supra*. The fact that the defendant didn’t have a gun on his person when he was arrested hours later doesn’t undercut the presumption, because it is entirely plausible that the defendant had a gun at the time of the robbery, but disposed of it before his arrest. *Cf. State v. Joyner*, 312 N.C. 779 (1985) (the defendant robbed the victim at gunpoint; he was arrested six hours later and led officers to the gun he said he used, an unloaded .22 rifle with no firing pin; sufficient evidence supported his armed robbery conviction because the gun might have been altered in the interim between crime and arrest).

To sum up, when a defendant claims he has a gun but the evidence clearly shows otherwise – as in the scenario I use with new magistrates – he shouldn’t be charged with armed robbery. When a defendant claims he has a gun and there’s no evidence to the contrary, he may be charged and the state is entitled to a mandatory presumption on the deadly weapon element. When a defendant claims he has a gun and there’s only inconclusive evidence to the contrary, he may be charged but there is no mandatory presumption. Of course, some fact patterns will fall in a gray area – for example, when a robber claims he has a gun but doesn’t show it, then is apprehended on foot a few minutes thereafter, and the police find no gun on his

person and no gun along his flight path. But making tough decisions like that is why magistrates get paid the big bucks!

Larceny of a Motor Vehicle

Jeff Welty

There's a popular video game — or really, [series of video games](#) — called *Grand Theft Auto*. And many states have a crime called grand theft auto, or have some other theft offense that is specific to motor vehicles. In fact, according to [this handy chart](#) from the National Conference of State Legislatures, it appears that at least half of all states have a vehicle theft crime. When I told a group of magistrates the other day that North Carolina *doesn't* have such an offense, they gave me a collective look that said “we're too polite to contradict you during class, but you're hopelessly dim.” So I did a little poking around.

First of all, we really don't have a separate vehicle theft offense. We have an unauthorized use of a vehicle offense, G.S. 14-72.2, and a crime for stealing gasoline, G.S. 14-72.5, and an offense covering the theft of certain motor vehicle parts, G.S. 14-72.8, and even a special offense for receiving or transferring a stolen vehicle, G.S. 20-106. But there is no distinct statutory offense for stealing a car. Motor vehicle thefts are prosecuted under the general larceny statute, [G.S. 14-72](#), meaning that such a theft is generally a misdemeanor when the vehicle is worth less than \$1000, and is a felony when the vehicle is worth more than \$1000. [Update: a thoughtful reader pointed out that G.S. 20-106 also covers possession of a stolen vehicle, and it's a felony regardless of value, meaning that a person who steals a car worth less than \$1000 can virtually always be charged with a felony offense, even if not felony larceny.]

Nonetheless, it seems to be very common to speak of “larceny of a motor vehicle” as if it were a separate offense. Our appellate courts have used that description many, many times. Just in published cases in the last year, for example, there's *State v. Kidwell*, ___ N.C. App. ___, 720 S.E.2d 795 (2012) (“[D]efendant was indicted for larceny of a motor vehicle.”); *State v. Teague*, ___ N.C. App. ___, 715 S.E.2d 919 (2011) (stating that the defendant was sentenced to “15 to 18 months imprisonment for the larceny of a motor vehicle conviction”); *State v. Flaughner*, ___ N.C. App. ___, 713 S.E.2d 576 (2011) (“[D]efendant was indicted for . . . larceny of a motor vehicle.”); and *State v. Womack*, ___ N.C. App. ___, 712 S.E.2d 193 (2011) (“At the habitual felon sentencing hearing, the State introduced certified copies of documents establishing Defendant's convictions for larceny of a motor vehicle.”). I suspect that practicing lawyers, officers, and others also talk about larceny of a motor vehicle as if it were a distinct offense.

As far as I can tell, the reason for that is that the computer system used by magistrates to create charging documents in criminal cases has a separate form or option for larceny of a motor vehicle. So if an officer wants to arrest someone for stealing a TV, the magistrate will generate an arrest warrant that is simply captioned “larceny,” but if an officer wants to arrest someone for stealing a car, the magistrate will generate an arrest warrant that is captioned “larceny of a motor vehicle.” Even though both warrants will refer to G.S. 14-72, this practice creates the perception that there is a separate crime called larceny of a motor vehicle. A quick glance at recent AOC data suggests that felony larceny of a motor vehicle is

charged a few thousand times per year, while misdemeanor larceny of a motor vehicle is charged a few hundred times per year. Why the computer system creates this artificial distinction, I don't know. One thoughtful person suggested that it might facilitate the collection of data on stolen vehicles, which might be of interest to the DMV and others.

In any event, I don't think there's any harm to the practice. I just thought it was interesting and figured that others might, too.

REVIEW QUESTIONS ON LARCENY, ROBBERY, & RELATED OFFENSES

Which offense(s) from Chapter 13, 14, or 16 would be proper to charge under these facts?

1. A man picks a lock and enters a home at 4 p.m., takes a magazine off the coffee table and nothing else.
2. A man goes into another man's field and takes a hunting dog worth about \$300.
3. A woman is trying on jackets at a department store. While the sales clerk is busy elsewhere, the woman puts on one of the jackets worth \$200 and walks out without paying for it.
4. At the State Farmers' Market, a man is selling "gluten-free doughnuts" for \$1 each, but lab testing shows they are made with regular wheat flour.
5. Two men are working together at the State Fair. While one man bumps into, pushes, and starts an argument with the victim, the second man slips behind the victim and takes his wallet. There is \$25 in the wallet.
6. 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 wife's 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.
7. 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.
8. 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.

9. A man hits another man over the head with a blackjack and takes from him a wallet containing \$12.

10. 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 large cell phone. The amount of cash was \$327.

11. While searching a house for drugs, officers finds 3 iPhones which were stolen one week earlier in a housebreaking. The iPhones are worth about \$250 each..

12. 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 out of state, tells him the goods are stolen. The man will be giving the goods back to the friend when he returns in a week.

13. 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.

14. A store employee sees a man put a pen worth \$3.00 in his pocket while shopping in the store.

15. A man slips a tablet computer worth \$300 under his coat and leaves the store through an emergency exit without paying for it.

16. 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 \$75, then takes the racket to the cashier to pay for it.

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] - on another person as retaliation [I] - with deadly weapon or inflicting serious injury [F]
Inflicting serious injury [A1]	By pointing gun [A1]	On child under 12 [A1]	On gov't officer/employee or company/campus police officer [A1]
Inflicting serious bodily injury [F]	With deadly weapon with intent to kill [E]	In presence of minor [A1]	With deadly weapon on: - gov't officer/employee or company/campus police [F]
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 school personnel [A1]
	With deadly weapon with intent to kill inflicting serious injury [C]	On unborn child : - battery [A1] - inflicting serious bodily injury [F]	On sports official [I] On transit operator [A1] On TNC driver [A1, 12/1/19]
	Discharge of firearm into occupied: - property [E] - dwelling/conveyance in operation [D] - property causing serious bodily injury [C]		On firefighter, EMT, medical responder, hospital personnel, and hospital security personnel: - inflicting physical injury [I] - inflicting serious bodily injury or with deadly weapon other than firearm inflicting physical injury [G instead of H, 12/1/19] - with firearm [E instead of F, 12/1/19]
	Discharge of firearm within property to incite fear [F]		On emergency personnel in declared emergency/riot: - inflicting physical injury [I] - with dangerous weapon or substance [F]
	Secret assault [E]	Malicious conduct by prisoner [F]	

DEFINING "INJURY" FOR NORTH CAROLINA ASSAULT AND OTHER OFFENSES

Brittany Williams, UNC School of Government • February 2022

Across North Carolina's various assault offenses, the governing statutes often require some level of injury as an element of the crime. These injuries include physical injury, serious injury or serious physical injury, and serious bodily injury. Some statutes specifically define these terms, while others have been interpreted by the courts on a case-by-case basis. This guide reviews and provides examples of the different types of injuries to create a better idea of specific harms in each category.

PHYSICAL INJURY

Some assault offenses require physical injury as an element. The term "physical injury" is defined in G.S. 14-34.7(c), which applies to assault on a law enforcement or other officer. Other statutes also require physical injury as an element of the offense but do not include a specific definition. Most likely, the definition in G.S. 14-34.7 applies.

STATUTE		
Includes cuts, scrapes, bruises, or other physical injury which does not constitute serious injury. G.S. 14-34.7(c).		
APPLICABLE OFFENSES		
G.S. 14-288.9	Assault on emergency personnel inflicting physical injury	Class I felony
G.S. 14-318.2	Misdemeanor child abuse	Class A1 misdemeanor
G.S. 14-32.4	Strangulation	Class H felony
G.S. 14-34.6(a)	Assault on a firefighter, EMT, medical responder, or hospital personnel inflicting physical injury	Class I felony
G.S. 14-34.7(c)	Assault on law enforcement and other officers inflicting physical injury	Class I felony

Examples of physical injury

The court upheld a conviction of misdemeanor child abuse inflicting physical injury where the child suffered a second-degree burn on his face, appearing that something had been placed or held against the child's face. *State v. Church*, 99 N.C. App. 647 (1990).

The court upheld a conviction of assault inflicting physical injury by strangulation where the victim testified that the defendant strangled her twice and there was photographic evidence depicting bruising, abrasions, and bite marks on and around her neck. *State v. Lowery*, 228 N.C. App. 229 (2013).

The court upheld a conviction of assault on a law enforcement officer inflicting physical injury where the defendant bit the officer's finger and broke the skin, and the officer sustained cuts on his elbow and wrist during the encounter. *State v. Cobb*, 272 N.C. App. 81 (2020).

Notes

Our courts have recognized that, as a general rule, a parent is not criminally liable for inflicting physical injury on a child in the course of lawfully administering corporal punishment. *State v. Varner*, 252 N.C. App. 226 (2017). However, this general rule does not apply where the parent (1) administers punishment that causes or is calculated to cause an injury that is lasting or will continue indefinitely, (2) administers punishment borne of malice or wickedness of purpose rather than a good faith or honest effort to discipline the child, or (3) uses cruel or grossly inappropriate procedures. *Id.*

SERIOUS PHYSICAL INJURY/SERIOUS INJURY

Some assault offenses require serious physical injury or serious injury as an element. The term “serious physical injury” is defined in G.S. 14-318.4(d)(2), which applies to felony child abuse. Other statutes also require serious physical injury as an element of the offense but do not include a specific definition. Most likely, the definition in G.S. 14-318.4 applies. Our courts have defined “serious injury” as injury which is serious but falls short of causing death. *State v. Carpenter*, 155 N.C. App. 35 (2002).

STATUTE		Physical injury that causes great pain and suffering, including serious mental injury. G.S. 14-318.4(d)(2).
APPLICABLE OFFENSES		
G.S. 14-223(b)	Resisting officer causing serious injury <i>[effective for offenses committed on or after 12/1/21]</i>	Class I felony
G.S. 14-318.4(a)	Felony child abuse	Class D felony
G.S. 14-32	Assault with a deadly weapon inflicting serious injury	Class E felony
G.S. 14-32.1	Assault on a person with a disability inflicting serious injury	Class F felony
G.S. 14-33(c)(1)	Assault inflicting serious injury	Class A1 misdemeanor

Examples of serious injury

The court upheld a conviction of felony child abuse inflicting serious physical injury where there were second-degree burns on a child’s buttocks, left untreated for several days. *State v. Church*, 99 N.C. App. 647 (1990).

The court upheld a conviction of assault inflicting serious injury where the victim sustained a broken bone in the mouth, a damaged tooth, and a broken bone in the hand as a result of being struck by the defendant’s hands and fists. *State v. Carpenter*, 155 N.C. App. 35 (2002).

The court upheld a conviction of assault with a deadly weapon inflicting serious injury where the victim was treated at a hospital for multiple lacerations to his forearm, small stab wounds to his leg, a deep laceration to his thumb, bruising to his back, and a puncture wound to his right orbital rim, causing fracture of the bone. *State v. Morgan*, 164 N.C. App. 298 (2004).

The court upheld a conviction of felony child abuse inflicting serious physical injury where the child was beaten with a belt for a total time of between forty minutes and an hour and forty minutes and suffered bleeding, bruising on both arms, swelling and puffiness of the legs, black and blue buttocks, and being in pain for two weeks. *State v. Williams*, 184 N.C. App. 351 (2007).

The court upheld a conviction of assault inflicting serious injury where the victim was beaten by means of stomping and punching, had the letter “Z” carved in his back, was hospitalized, received twenty-four staples in his head, and was emotionally traumatized by the encounter. *State v. Rowe*, 231 N.C. App. 462 (2013).

Notes

Factors our courts consider in determining if an injury is serious include pain, loss of blood, hospitalization, and time lost from work. *State v. Owens*, 65 N.C. App. 107 (1983); *State v. Romero*, 164 N.C. App. 169 (2004).

Our courts have rejected the notion that a “serious physical injury” is one requiring hospitalization or even immediate medical attention. In cases involving child abuse, there is not a requirement that a child be unable to attend school or engage in play. *State v. Williams*, 154 N.C. App. 176 (2002).

Because the nature of an injury depends on the facts of each case, whether an injury is “serious” is generally a question for the jury. *State v. Romero*, 164 N.C. App. 169 (2004); *State v. Ezell*, 159 N.C. App. 103 (2003).

SERIOUS BODILY INJURY

Some assault offenses require serious bodily injury as an element. The term “serious bodily injury” is defined in G.S. 14-32.4, which applies to assault inflicting serious bodily injury. Other statutes also require serious bodily injury as an element of the offense, but some do not include a specific definition. Most likely, the definition in G.S. 14-32.4 applies. Our courts have indicated that the element of “serious bodily injury” requires proof of more severe injury than the element of “serious injury.” *State v. Carpenter*, 155 N.C. App. 35 (2002).

STATUTE	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 or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization. G.S. 14-318.4(d)(1); G.S. 14-32.4; G.S. 14-233(d).	
	G.S. 14-23.5 uses similar language but also includes bodily injury that causes the birth of the unborn child prior to 37-weeks’ gestation, if the child weighs 2,500 grams or less at the time of birth.	
APPLICABLE OFFENSES		
G.S. 14-16.6(c)	Assault on a legislative, executive, or court officer inflicting serious bodily injury	Class F felony
G.S. 14-223(c)	Resisting officers causing serious bodily injury [effective for offenses committed on or after 12/1/21]	Class F felony
G.S. 14-23.5	Assault inflicting serious bodily injury on an unborn child	Class F felony
G.S. 14-318.4(a3)	Felony child abuse	Class B2 felony
G.S. 14-32.4(a)	Assault inflicting serious bodily injury	Class F felony
G.S. 14-34.1(c)	Discharging a firearm into occupied property	Class C felony
G.S. 14-34.6(b)	Assault on a firefighter, EMT, medical responder, or hospital personnel inflicting serious bodily injury	Class G felony
G.S. 14-34.7(a)	Assault on law enforcement and other officers inflicting serious bodily injury	Class F felony

Examples of serious bodily injury

The court upheld a conviction of assault inflicting serious bodily injury where the victim suffered a broken jaw which was wired shut for two months, loss of thirty pounds in those two months, \$6,000 worth of damage to his teeth, broken ribs, and spasms on two occasions that made it so difficult for him to breathe that he had to visit the emergency room. *State v. Williams*, 150 N.C. App. 497 (2002).

In upholding a conviction of assault inflicting serious bodily injury, the court held that permanent loss of teeth in an assault qualifies as “permanent disfigurement.” *State v. Downs*, 179 N.C. App. 860 (2006).

The court upheld a conviction of felony child abuse inflicting serious bodily injury where a three-month-old child presented with subdural hematomas and bi-lateral retinal hemorrhaging, as a result of being severely shaken. *State v. Oakman*, 191 N.C. App. 796 (2008).

In upholding a conviction of assault inflicting serious bodily injury, the court held that a scar over the victim’s eye that resulted from an assault and subsequent lingering infection amounts to permanent disfigurement. *State v. Williams*, 201 N.C. App. 161 (2009).

The court upheld a conviction of felony child abuse inflicting serious bodily injury where a three-month-old child presented with hemorrhages around the brain. *State v. Bohannon*, 247 N.C. App. 756 (2016).

The court upheld a conviction of assault on an officer inflicting serious bodily injury where an officer sustained puncture wounds on his left forearm and right bicep, severe bruising and depressions, permanent scarring (including a large circle on his right bicep, “just over a half an inch to an inch in a circle” with a “large depression” and “a deep ridge” on his left arm), and scabbing, as a result of being bitten several times by the defendant. Given that the bites caused extreme pain, skin removal, permanent scarring, and hospitalization, the court held that a reasonable juror could find this evidence sufficient to conclude the officer’s injuries caused serious permanent disfigurement, or a permanent or protracted condition that caused extreme pain, or injury that resulted in prolonged hospitalization. *State v. Burwell*, 256 N.C. App. 722 (2017).

Examples of evidence that does not constitute serious bodily injury

The court concluded that a bite-shaped discoloration on an officer’s arm was not sufficient to support a finding that the defendant’s bite resulted in “serious permanent disfigurement.” Although the court has previously held that a scar can be considered permanent disfigurement, the court reasoned here that the officer’s ability to leave the hospital and return to the police station to complete paperwork that same night demonstrated that his pain was not protracted and thus did not rise to the level of serious bodily injury. *State v. Williams*, 255 N.C. App. 168 (2017).

The court concluded that there was insufficient evidence to submit the charge of felony child abuse inflicting serious bodily injury to the jury where the child suffered a non-accidental femur fracture, which took between five to eight months to fully heal, and where the doctor testified that there should be no permanent disfigurement or any loss or impairment of function of the leg due to the surgical scars. Given that the child’s surgical scars had healed by the time of trial, and she was engaged in unrestricted physical activities, the court concluded that the evidence was sufficient to submit and support a conviction of intentional child abuse resulting in serious physical injury. *State v. Dixon*, 258 N.C. App. 78 (2018).

Notes

The Court of Appeals has held that while each case must be considered on its own facts, the presence of a minor [permanent] scar or other mild disfigurement alone cannot be sufficient to support a finding of serious bodily injury. *State v. Williams*, 255 N.C. App. 168 (2017).

Units of Prosecution: Charging Multiple Counts for the Same Conduct

Brittany L. Bromell

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It has long been held that the allowable unit of prosecution for an offense is within the discretion of the legislature.¹ “[W]hen the legislature does not clearly express legislative intent, the court must determine the allowable unit of prosecution. In doing so, any ambiguity should be resolved in favor of lenity,”² meaning “doubt will be resolved against turning a single transaction into multiple offenses.”³

North Carolina courts have resolved issues related to units of prosecution in some contexts—including kidnapping, possession of firearms, and theft crimes—while there are questions that remain unanswered in other contexts. Some answers are clearer and more direct than others. This bulletin reviews case law on permissible units of prosecution for certain offenses against the person, possession offenses, and theft offenses. This bulletin also provides some insight as to how courts have resolved issues related to permissible units of prosecution, including statutory construction and the rule of lenity.

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1. See, e.g., *Bell v. United States*, 349 U.S. 81 (1955).
 2. *State v. Smith*, 323 N.C. 439, 441 (1988) (citing *Bell*, 349 U.S. 81).
 3. *Id.* at 442 (quoting *Bell*, 349 U.S. at 84).

encompass the entire period of a victim’s . . . involuntary or sexual servitude[,] from the time of the initial act of recruiting, enticing, harboring, transporting, providing, or obtaining . . . until the victim’s free will is regained.”¹⁵

Applewhite is currently on appeal to the North Carolina Supreme Court based on Judge Arrowood’s dissent.

Sex Crimes

The court of appeals has held that “[e]ven when multiple sex acts occur in a ‘single transaction’ or a short span of time, each act is a distinct and separate offense.”¹⁶ Distinct sexual acts perpetrated during the same incident can thus support multiple indictments and convictions for a sexual offense.

In *State v. Scott*, the defendant was found guilty of two counts of sexual activity by a substitute parent. The defendant argued that he was “being punished twice for a single offense because the sexual acts upon which his convictions were based were perpetrated during the same incident and that the indictment was thus ‘multiplicious.’”¹⁷

The court of appeals held that the indictment was not “multiplicious” because it charged the defendant with multiple counts of the same crime. The indictment charged, the judge instructed, and the jury specifically found that the defendant committed separate, delineated sexual acts. According to the court, “[w]hile the crime [was] the same in each count, each count represent[ed] a different charge—a separate instance of commission of the crime based on a distinct predicate act.”¹⁸ The first count, of which he was acquitted, was based on vaginal intercourse. The two counts of which he was found guilty were based on cunnilingus and fellatio, respectively. The court thus upheld the defendant’s convictions.

This interpretation is the trend in cases involving sex crimes. Similar holdings have been reached with respect to other sex crimes, including first-degree sexual offense, indecent liberties, and rape.¹⁹

Assault

The North Carolina Supreme Court has recently decided *State v. Dew*, giving some guidance for this issue as it applies to assault offenses.²⁰ For multiple acts to constitute separate assaults, there must be a “distinct interruption” in the original assault followed by a second or subsequent assault.²¹ Even when a victim sustains various injuries through several acts of violence, the perpetrator may still be convicted of only one count of assault if there is no distinct interruption in the perpetrator’s actions.

15. *Id.* (quoting *State v. White*, 127 N.C. App. 565, 571 (1997) (internal quotation marks omitted)).

16. *State v. Gobal*, 186 N.C. App. 308, 322 n.7 (2007).

17. 278 N.C. App. 585, 595 (2021).

18. *Id.*

19. See *State v. Williams*, 201 N.C. App. 161 (2009) (upholding the defendant’s convictions of two counts of first-degree sexual offense for inserting his fingers in the victim’s vagina and in her rectum during a single incident); *State v. James*, 182 N.C. App. 698 (2007) (upholding defendant’s convictions of three counts of indecent liberties for touching and sucking victim’s breasts, performing oral sex on her, and having intercourse with her); *State v. Dudley*, 319 N.C. 656 (1987) (upholding two rape convictions in which the defendant’s acts of forcible intercourse with one victim were interrupted by his attempted rape of a second victim).

20. 379 N.C. 64 (2021).

21. See *Williams*, 201 N.C. App. at 182; *State v. Littlejohn*, 158 N.C. App. 628, 635 (2003).

While the distinct interruption test is used frequently in physical assault cases, the cases are not always easy to reconcile. Thus, the supreme court used *Dew* as an opportunity to provide examples to further explain what can qualify as a distinct interruption. This nonexclusive list of examples includes: (1) “an intervening event,” (2) “a lapse of time in which a reasonable person could calm down,” (3) “an interruption in the momentum of the attack,” (4) “a change in location,” or (5) “some other clear break delineating the end of one assault and the beginning of another.”²²

The distinct interruption approach “look[s] beyond the number of physical contacts with the victim to determine whether more than one assault has occurred such that the State can appropriately charge a defendant with multiple assaults.”²³ As the court notes, to allow otherwise would open the door “for the State to be able to charge someone with a separate assault for every punch thrown in a fight.”²⁴

In *Dew*, the defendant beat the victim for hours inside a trailer and subsequently beat the victim in a car while driving home. The assaults were separated by an intervening event interrupting the momentum of the attack—cleaning the mattress and packing the car. The assaults also were distinct in time and location. The court thus concluded that the jury could find that the beating in the trailer and the beating in the car were distinct assaults.

Additionally, the defendant was charged with at least two assaults for conduct occurring only inside the trailer: assault on a female involving a headbutt to the forehead and assault with a deadly weapon inflicting serious injury resulting in a fractured nose. Because the State did not present evidence showing that a distinct interruption occurred in the trailer, the court concluded that the evidence showed that there was only a single assault inside the trailer as the attack was continuous and ongoing.²⁵

There is also a statutory prohibition on multiple assaults. Several North Carolina assault provisions state that conduct is punished at a certain level unless it is covered under a different provision that provides for increased punishment. For example, under [G.S. 14-32.4\(b\)](#), conduct constituting assault by strangulation is a Class H felony “unless that conduct is covered under some other provision of law providing greater punishment.” This clause indicates that more extensive or severe injuries, whether caused by strangulation or another type of assault, might be charged as assault inflicting serious bodily injury, a Class F felony under [G.S. 14-32.4\(a\)](#); assault inflicting serious injury with a deadly weapon, a Class E felony under [G.S. 14.32\(b\)](#); or attempted first-degree murder, a Class B2 felony under [G.S. 14-17](#) and [G.S. 14-2.5](#).

Courts have interpreted this language to mean that if a greater offense is charged, the defendant may not also be punished for the lesser offense for the same conduct.²⁶

22. *Dew*, 379 N.C. at 72.

23. *Id.* at 70–71.

24. *Id.* at 70.

25. For further discussion, see Brittany Bromell, *State v. Dew: Multiple Assault Offenses and Distinct Interruptions*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Jan. 4, 2022).

26. See *Williams*, 201 N.C. App. 161, 173 (“the language ‘[u]nless the conduct is covered under some other provision of law providing greater punishment’ indicated legislative intent to punish certain offenses at a certain level, but that if the same conduct was punishable under a different statute carrying a higher penalty, defendant could only be sentenced for that higher offense”); *State v. Braxton*, 183 N.C. App. 36, 43 (2007) (evidence showing “that a defendant strangled his or her victim to the point of death or close to it, . . . [is conduct that] is provided for by other criminal offenses in our State’s statutes”).

While this limiting provision does not bar a finding of multiple assaults when there is a distinct interruption, it does prevent charging each individual instance of assault under a separate statute for the same conduct. Even if two different assault statutes “require proof of different elements, so as to be distinct crimes for purposes of double jeopardy under *Blockburger v. United States*,”²⁷ the insertion of the limiting language in the statute indicates the intent of the legislature that a defendant only be sentenced for the higher of two offenses.²⁸

Discharging a Firearm into Occupied Property

Our appellate courts have used the three-factor test set out in *State v. Rambert* in determining whether the defendant committed a single assault or multiple assaults when the offense charged was discharging a firearm into occupied property. Those factors are (1) whether the acts were the result of separate thought processes, (2) whether the acts were distinct in time, and (3) whether the acts resulted in different injuries.²⁹

In *Rambert*, the defendant was in the backseat of a car that parked next to a man in another car. The defendant and the man got into an argument, after which the defendant produced a gun and fired a bullet through the front windshield of the man’s car. The man then drove forward, and the defendant fired again and struck the passenger door of the man’s car. The defendant chased the man and fired a third shot, which lodged in the rear bumper of the man’s car. The defendant was charged with and convicted of three counts of discharging a firearm into occupied property.

The state supreme court upheld the convictions, noting that the defendant committed three separate and distinct acts. The court reasoned that “[e]ach shot fired from a pistol, as opposed to a machine gun or other automatic weapon, required that [the] defendant employ his thought processes each time he fired the weapon. Each act was distinct in time, and each bullet hit the vehicle in a different place.”³⁰

The *Rambert* factors were also used in upholding a defendant’s conviction for seven counts of discharging a firearm into occupied property. In *State v. Morrison*, the court held that “testimony was proper and sufficient for the jury to determine that the rifle [the] defendant used was semi-automatic—therefore requiring [the] defendant to pull the trigger each time he chose to fire another shot into [a] fleeing truck.”³¹

Some courts have applied the *Rambert* factors rather than the distinct interruption test in physical assault cases, which has resulted in defendants being charged with and convicted of multiple assault offenses for multiple physical acts.³² However, the state supreme court concluded in *State v. Dew* that the *Rambert* factors are not appropriate for an assault analysis and thus declined to extend *Rambert* to assault cases generally.³³

27. 284 U.S. 299 (1982).

28. *Williams*, 201 N.C. App. at 174.

29. 341 N.C. 173 (1995).

30. *Id.* at 176–77.

31. 272 N.C. App. 656, 668 (2020).

32. See *State v. Harding*, 258 N.C. App. 306 (2018).

33. 379 N.C. 64, 72 (2021).

REVIEW QUESTIONS ON ASSAULT AND RELATED OFFENSES

Which assault offense(s) from Chapter 7 would be proper to 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—but only trying 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, spanks 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. 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.

19. A middle-aged husband and wife are arguing, and he slaps her twice in the face. They continue arguing for several more minutes. The husband then goes into the kitchen and he gets a knife, and he comes back into the living room and stabs her three times. How many assaults has the husband committed?

20. 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 by pointing a gun, what is the most serious charge that may be brought against Jones?

Tab: Selecting Process

SELECTING PROCESS

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Warrant for Arrest (AOC-CR-100)	Selecting Process-Page 19

SELECTING (AND COMPLETING) PROCESS

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February 2023

1

Three Steps

- Determine whether there is probable cause, and if so, for which offense(s)
- If there is PC, determine which process to issue
- Ensure that the process is completed correctly, especially the charging language

2

Objectives

After this session, you will be able to:

- Apply the probable cause standard
- Name the purposes of, and legal requirements for, criminal process
- Choose the most appropriate criminal process for each case
- Understand NCAOC forms and know how to complete them
- Draft legally sufficient charging language when necessary

3

What Is Probable Cause?

"Probable cause to arrest means that at the moment of arrest, the facts and circumstances within the officer's knowledge and of which the officer had reasonably trustworthy information were sufficient to warrant a prudent person in believing that the defendant committed the offense."

- [Beck v. Ohio](#), 379 U.S. 89 (1964)

4

Applying the Probable Cause Standard

"The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances. We have stated, however, that '[t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt.'"

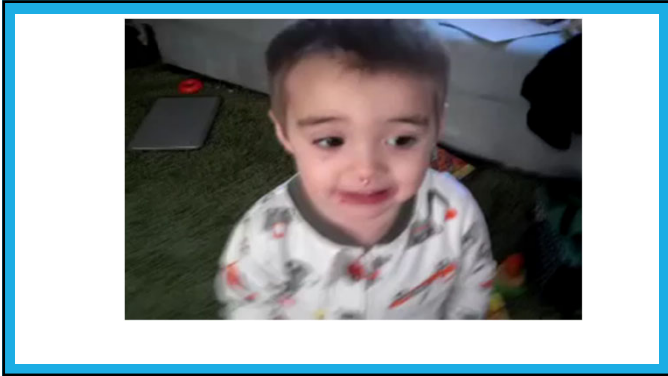
- [Maryland v. Pringle](#), 540 U.S. 366 (2003)

5

You May/Should Consider

- Evidence from officers
- Evidence from citizens
- Hearsay evidence
- Remote testimony

6



7

Credibility

- Nature of the witness
- Basis of knowledge
- Bias/interest
- Corroboration
- Demeanor?

8

You May/Should Not Consider

- Whether evidence is admissible (or may be excluded or suppressed)
- Defenses
- What about "slam dunk" defenses?

9

Loose Ends about Probable Cause

- What if the complainant isn't asking for the most serious offense the facts support?
- What should you do if you find no PC?

10

When Not to Charge

- _____ Felonies based on citizen complaints
- _____ School employee offenses. G.S. 15A-301(b1), (b2)
- _____ Patient abuse. G.S. 14-32.2(g)
- _____ Obscenity offenses. G.S. 14-19.20
- _____ Habitual felon and similar status offenses
- _____ Offenses committed entirely in other counties

11

Purposes of Criminal Process

- Establish the court's authority to act (jurisdiction)
- Compel the defendant to come to court
- Give the defendant notice of the charge
- Enable the defendant to assert double jeopardy if later charged with the same offense
- Provide a record of the case

12

Selecting Process: the Options

Process	Citation	Who Issues	What Charges
Citation	G.S. 15A-302	LEO	MDM or infraction
Summons	G.S. 15A-303	Judicial Official	Felony, MDM, or infraction
Arrest Warrant	G.S. 15A-304	Judicial Official	Felony or MDM
Magistrate's Order	G.S. 15A-511(c)	Judicial Official	Felony or MDM

13

Requirements for Criminal Process: G.S. 15A-924

- (a)(1) • Name
- (a)(2) • One crime per count
- (a)(3) • County
- (a)(4) • Date (or range)
- (a)(5) • Charging language with all elements
- (a)(6) • Statutory citation

14

Selecting Process: Generally

- Unless there is a specific reason to use a warrant, use a summons.
- "In order to emphasize the desirability of utilizing the criminal summons when arrest and custody are not needed, [G.S. 15A-304(b)] states the circumstances for the use of a warrant for arrest." G.S. 15A-304, official commentary.
- Using a summons means that "the entire machinery of arrest, processing, and bail can be avoided with resultant savings to the system of criminal justice." G.S. 15A-303, official commentary.

15

Selecting Process: When to Use a Warrant

- Factors supporting use of a warrant: G.S. 15A-304(b)
- **D "should be taken into custody"**
 - "[F]ailure to appear when previously summoned"
 - "[F]acts making it apparent that a person summoned will fail to appear"
 - Risk of flight ("escape")
 - Risk of "injury to person or property"
 - Seriousness of the offense
 - Other factors?

16

Selecting Process: Citizen-Initiated

- Stronger preference for a summons: G.S. 15A-304(b)(3)
- You "shall not issue a warrant for arrest and instead shall issue a criminal summons, unless . . ."
 - There is corroborating testimony from an officer or a disinterested witness
 - Having an officer investigate "would constitute a substantial burden for the complainant"
 - There is "substantial evidence" of one of the listed factors justifying issuance of a warrant

17

Selecting Process: Felonies

- A summons may be used for a felony
 - "The appropriate use of the criminal summons is in any case in which it appears that it is not necessary to arrest the defendant and take him into custody in order to ensure his appearance in court. This should be true in many misdemeanors and a number of felonies." G.S. 15A-303, official commentary.
- What's your local practice?

18

Loose Ends re Creating Process

- Should you charge greater and lesser included?
- How many charges per process?
- Copies and distribution
- Recall of process

22

SELECTING (AND COMPLETING) PROCESS

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23

Selecting Process

In Class Exercises

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Considering Evidence from Citizens

1. Lisa Lopez comes before you. She reports that her boyfriend, Dan Spillane, pushed her to the ground during an argument last night. She has no visible injuries. She says that she did not call the police at the time, but she has decided that what Dan did was not OK. You know that Lisa has taken out charges on Dan twice before and has asked that the charges be dropped each time. Is there probable cause to issue a charge? If so, what form of process would you issue?

2. Do you have an office policy regarding citizen complainants who have been drinking? What is the policy? Is it written or unwritten? What is the justification for the policy?

3. Tom Tanker comes before you. He just turned 16 and got a red Ford Mustang for his birthday. He says that Sam Singleton, a 19-year-old from his neighborhood, "keyed" the car yesterday afternoon while taunting Tom by saying, "How do like your new car now, pretty boy?" Tom reports that Sam has bullied him before and that Sam may be jealous of Tom because Tom's family is better off financially than Sam's. Is there probable cause to issue a charge?

Considering Defenses

1. Officer Smith comes before you. She has arrested Jim Anderson and Alex Zimmerman for assaulting one another during a bar fight and has Anderson with her for his initial appearance. She tells you that she responded to a call at the bar and found the two men punching each other. All the witnesses agreed that the fight began when Anderson offered to buy a drink for Zimmerman's girlfriend, and Zimmerman pushed Anderson to the ground and started kicking him. Anderson says "I was just defending myself!" What do you do?

2. Felicia Jackson comes before you. She wants you to charge her sister Angela with misdemeanor larceny for stealing Felicia's Olympic silver medal. Felicia tells you that she keeps the medal in a display

case in her guest bedroom. Angela came for a three-day visit recently and when she left, the case had been opened and the medal was gone. Felicia says that Angela struggles with mental illness and substance abuse and during one part of the visit claimed to be “Athena reborn, goddess of the Olympics.” At other times, she acknowledged that she was Angela. Felicia has no idea what Angela was thinking when she took the medal or whether she even understood that it was wrong to do so. What do you do?

3. Tim Tarheel comes before you. He wants you to charge his former friend, Dan Dukes, with assault with a deadly weapon. Tarheel describes an incident that took place four years ago during a cookout.

He says that he and Dukes got into an argument about whether UNC or Duke men’s basketball was better. Dukes got frustrated, pulled out a box cutter and held it towards Tarheel, saying “I’ll hurt you for talking dirty about my favorite team!” Tarheel was frightened but not injured. He left the cookout and has tried to avoid Dukes since.

However, Tarheel ran into Dukes yesterday at a local restaurant. He says “Dukes gave me the stink eye, and made me worried again.” Tarheel is accompanied to see you by his friend Willie Wingman, who was also at the cookout. Wingman tells you a similar story about what happened and he says that what Dukes did back then scared him too.

You know that the statute of limitations generally for misdemeanors in North Carolina is two years. What would you do?

Warrant vs. summons

1. There is probable cause that Darlene stole a soccer ball from a neighbor’s yard and gave it to her nephew for his birthday. Darlene lives in town, works as a cashier at the local Wal-Mart, and has no criminal record. Would you issue a summons or a warrant?

2. There is probable cause that Eric assaulted Zeke after the two got into an argument over a parking space at the grocery store. Eric punched and kicked at Zeke, who received several bruises before another person intervened. Eric lives in town, works as a plumber’s apprentice when the plumber has work for him to do, and was charged with simple possession of marijuana 8 years ago but the charge was dismissed. Would you issue a summons or a warrant?

3. There is probable cause that Sterling, a 42 year-old businessman who owns multiple fast-food franchises in town, committed “statutory rape of a person 15 or younger by a defendant who is at least 12 years old and at least six years older than the victim” (GS 14-27.25). He had vaginal intercourse with a 14-year-old girl he met when she came to interview him for her school newspaper. Sterling has lived in town his entire life, owns significant property in town, and has no criminal record. Would you issue a summons or a warrant?

4. Alexis was stopped while driving on an interstate highway that passes through your county. She consented to a search of her car, which revealed several small baggies of cocaine in the glove compartment. You plan to charge her with PWIMSD cocaine. She is from New Jersey and is not working right now. She has two cocaine-related charges, and one conviction resulting in probation, in the New York/New Jersey area. Would you issue a summons or a warrant?

Arrest warrant form treasure hunt

G.S. 15A-924(a) lists six things that a criminal pleading must contain. (Don’t worry about G.S. 15A-924(a)(7), as it is only rarely applicable.) Looking at the arrest warrant form, AOC-CR-100, find and mark the spot on the form where each of the items listed in G.S. 15A-924(a) is addressed.

Drafting charging language

In the 2018 legislative session, the General Assembly enacted a new statute, as follows:

14-277.7. Communicating a threat of mass violence at a place of religious worship.

(a) A person who, by any means of communication to any person or groups of persons, threatens to commit an act of mass violence at a place of religious worship is guilty of a Class H felony.

(b) The following definitions apply to this section:

(1) Mass violence. – As defined in G.S. 14-277.5(a)(2).

(2) Place of religious worship. – Any church, chapel, meetinghouse, synagogue, temple, longhouse, or mosque, or other building that is regularly used, and clearly identifiable, as a place for religious worship."

Neither the NCAOC nor the School of Government has drafted charging language for this offense. You want to charge Kevin Denny with a violation of this statute. An officer has shared the following information with you. Monday night, Denny told his ex-girlfriend Alexis Anderson, "I will blow up your stupid church with all your stupid friends and family in it. I'm building my bomb now." Further, Anderson has stated that she attends First Baptist Church of Hometown, NC. She has also stated that she is afraid of Denny and has seen small explosives he has built in his garage. How should the charge read?

Statutory Limits on Issuing Process

John Rubin, UNC School of Government, Feb. 2020

G.S. 15A-301(b1) and (b2)

Charges against school employees

Basic rule: Except as described below, a magistrate may not issue an arrest warrant or other criminal process against a school employee for an alleged offense committed in the discharge of his or her duties.

Exceptions: This policy does not apply to traffic offenses and offenses committed in the presence of a law enforcement officer.

Procedure: Before issuing process, the magistrate must obtain the approval of the DA's office unless one of the above exceptions applies. If the DA's office has declined approval authority, the magistrate must obtain the approval of a magistrate appointed by the chief district court judge before issuing process against a school employee for an alleged misdemeanor committed in the discharge of his or her duties. If the appointed magistrate is unavailable to review the case, the magistrate may proceed as in other cases.

G.S. 14-32.2(g)

Patient abuse causing death or bodily injury (felony)

Basic rule: Criminal process for a violation of G.S. 14-32.2 may be issued only on the request of a District Attorney.

Exceptions: None stated.

Procedure: None indicated.

G.S. 14-190.20

Obscenity offenses (felony/misdemeanor)

Basic rule: Criminal process for a violation of G.S. 14-190.1 or G.S. 14-190.5 may be issued only on the request of a prosecutor.

Exceptions: None stated.

Procedure: None indicated.

G.S. 15A-304(b)

Warrant for arrest

(b) When Issued.--

- (1) Generally.--A warrant for arrest may be issued, instead of or subsequent to a criminal summons, when it appears to the judicial official that the person named should be taken into custody. Circumstances to be considered in determining whether the person should be taken into custody may include, but are not limited to, failure to appear when previously summoned, facts making it apparent that a person summoned will fail to appear, danger that the person accused will escape, danger that there may be injury to person or property, or the seriousness of the offense.
- (2) Repealed by [S.L. 2018-40, § 7.1, eff. Oct. 1, 2018](#).
- (3) When Citizen-initiated.--If the finding of probable cause pursuant to subsection (d) of this section is based solely upon an affidavit or oral testimony under oath or affirmation of a person who is not a sworn law enforcement officer, the issuing official shall not issue a warrant for arrest and instead shall issue a criminal summons, unless one of the following circumstances exists:
 - a. There is corroborating testimony of the facts establishing probable cause from a sworn law enforcement officer or at least one disinterested witness.
 - b. The official finds that obtaining investigation of the alleged offense by a law enforcement agency would constitute a substantial burden for the complainant.
 - c. The official finds substantial evidence of one or more of the circumstances listed in subdivision (1) of this subsection.

G.S. 7A-38.5

Mediation of citizen-initiated charges

- (e) Except as provided in this subsection and subsection (f) of this section, each chief district court judge and district attorney shall refer any misdemeanor criminal action in district court that is generated by a citizen-initiated arrest warrant or criminal summons to the local mediation center for resolution, except for (i) any case involving domestic violence; (ii) any case in which the judge or the district attorney determine that mediation would be inappropriate; or (iii) any case being tried in a county in which mediation services are not available. The mediation center shall have 45 days to resolve each case and report back to the court with a resolution. The district attorney shall delay prosecution in order for the mediation to occur. If the case is not resolved through mediation within 45 days of referral, or if any party declines to enter into mediation, the court may proceed with the case as a criminal action. For purposes of this section, the term "citizen-initiated arrest warrant or criminal summons" means a warrant or summons issued pursuant to G.S.15A-303 or G.S.15A-304 by a magistrate or other judicial official based upon information supplied through the oath or affirmation of a private citizen.
- (f) Any prosecutorial district may opt out of the mandatory mediation under subsection (e) of this section if the district attorney files a statement with the chief district court judge declaring that subsection shall not apply within the prosecutorial district.

§ 15A-924. Contents of pleadings; duplicity; alleging and proving previous convictions; failure to charge crime; surplusage.

- (a) A criminal pleading must contain:
- (1) The name or other identification of the defendant but the name of the defendant need not be repeated in each count unless required for clarity.
 - (2) A separate count addressed to each offense charged, but allegations in one count may be incorporated by reference in another count.
 - (3) A statement or cross reference in each count indicating that the offense charged therein was committed in a designated county.
 - (4) A statement or cross reference in each count indicating that the offense charged was committed on, or on or about, a designated date, or during a designated period of time. Error as to a date or its omission is not ground for dismissal of the charges or for reversal of a conviction if time was not of the essence with respect to the charge and the error or omission did not mislead the defendant to his prejudice.
 - (5) A plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation. When the pleading is a criminal summons, warrant for arrest, or magistrate's order, or statement of charges based thereon, both the statement of the crime and any information showing probable cause which was considered by the judicial official and which has been furnished to the defendant must be used in determining whether the pleading is sufficient to meet the foregoing requirement.
 - (6) For each count a citation of any applicable statute, rule, regulation, ordinance, or other provision of law alleged therein to have been violated. Error in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.
 - (7) A statement that the State intends to use one or more aggravating factors under G.S. 15A-1340.16(d)(20), with a plain and concise factual statement indicating the factor or factors it intends to use under the authority of that subdivision.

(b) If any count of an indictment or information charges more than one offense, the defendant may by timely filing of a motion require the State to elect and state a single offense alleged in the count upon which the State will proceed to trial. A count may be dismissed for duplicity if the State fails to make timely election.

(c) In trials in superior court, allegations of previous convictions are subject to the provisions of G.S. 15A-928.

(d) In alleging and proving a prior conviction, it is sufficient to state that the defendant was at a certain time and place convicted of the previous offense, without otherwise fully alleging all the elements. A duly certified transcript of the record of a prior conviction is, upon

proof of the identity of the person of the defendant, sufficient evidence of a prior conviction. If the surname of a defendant charged is identical to the surname of a defendant previously convicted and there is identity with respect to one given name, or two initials, or two initials corresponding with the first letters of given names, between the two defendants, and there is no evidence that would indicate the two defendants are not one and the same, the identity of name is prima facie evidence that the two defendants are the same person.

(e) Upon motion of a defendant under G.S. 15A-952(b) the court must dismiss the charges contained in a pleading which fails to charge the defendant with a crime in the manner required by subsection (a), unless the failure is with regard to a matter as to which an amendment is allowable.

(f) Upon motion of a defendant under G.S. 15A-952(b) the court may strike inflammatory or prejudicial surplusage from the pleading. (1973, c. 1286, s. 1; 1975, c. 642, s. 2; 1989, c. 290, s. 3; 2005-145, s. 3.)

Immunity Defenses to Specific Drug Offenses

Tom Thornburg

June 7, 2022

Limited Immunity to Good Samaritans and People Seeking Medical Assistance in a Drug Overdose Situation

GS 90-96.2 provides limited immunity to prosecution for specifically listed drug offenses for people who seek medical assistance for themselves or others in the event of a drug-related overdose. It provides that if evidence of named crimes was obtained as a result of the person seeking medical assistance, the person “shall not be prosecuted.” The offenses covered by this limited immunity are:

- Misdemeanor violation of GS 90-95(a)(3), possession of a controlled substance
- Felony violation of GS 90-95(a)(3) for possession of less than one gram of cocaine
- Felony violation of GS 90-95(a)(3) for possession of less than one gram of heroin
- A violation of GS 90-113.22 (possession of drug paraphernalia).

The statute is far too detailed for the Basic Course, but we want to alert you to the presence of this limited immunity statute.

Limited Immunity for Participants in Needle Exchange Programs Established Pursuant to Statute

GS 90-113.27 provides limited immunity for employees, volunteers, and participants in needle exchange programs established pursuant to this statute. In section (c), this statute provides that such persons shall not be charged or prosecuted for any of the following within restrictions:

- Possession of needles, syringes, or other injection supplies obtained from the program.
- Residual amounts of a controlled substance in a used needle, syringe, or injection supplies obtained from the program.

Person must show written verification that the supplies came from the program. Program must be established pursuant to the rules of the statute.

This statute is also too detailed for the Basic Course, but be alert to it if you have needle exchange programs operating in your jurisdiction.

STATE VERSUS _____ County

File No. 

Name Of Defendant

Date Of Issuance Of Warrant For Arrest

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-100. G.S. 15A-924(a)(5).

OFFENSES (continued)

Count 1. Offense:

Charging Text For This Count

Count 2. Offense:

Charging Text For This Count

STATE VERSUS _____ County

File No. 

Name Of Defendant

Date Of Issuance Of Warrant For Arrest

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-100. G.S. 15A-924(a)(5).

OFFENSES (continued)	
Count 3. Offense:	
<i>Charging Text For This Count</i>	
Count 4. Offense:	
<i>Charging Text For This Count</i>	

STATE VERSUS _____ County

File No. 

Name Of Defendant

Date Of Issuance Of Warrant For Arrest

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-100. G.S. 15A-924(a)(5).

OFFENSES (continued)	
Count 5. Offense:	
<i>Charging Text For This Count</i>	
Count 6. Offense:	
<i>Charging Text For This Count</i>	

STATE VERSUS _____ County

File No. 

Name Of Defendant

Date Of Issuance Of Warrant For Arrest

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-100. G.S. 15A-924(a)(5).

OFFENSES (continued)

Count 7. Offense:

Charging Text For This Count

Count 8. Offense:

Charging Text For This Count

STATE VERSUS _____ County

File No. 

Name Of Defendant

Date Of Issuance Of Warrant For Arrest

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-100. G.S. 15A-924(a)(5).

OFFENSES (continued)	
Count 9. Offense:	
<i>Charging Text For This Count</i>	
Count 10. Offense:	
<i>Charging Text For This Count</i>	

Name Of Defendant _____

Date Of Issuance Of Warrant For Arrest _____

If the 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 the Warrant For Arrest issued in this case on the date noted above for the defendant named above, was received and served as follows:

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

By arresting the defendant and bringing the defendant before:
Name Of Judicial Official _____

The 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 Of Clerk	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM

I certify that the Warrant For Arrest issued in this case on the date noted above for the defendant named above, was received and served as follows:

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

By arresting the defendant and bringing the defendant before:
Name Of Judicial Official _____

The Warrant WAS NOT served for the following reason:

Signature Of Officer Making Return _____ Name Of Officer (type or print) _____

Department Or Agency Of Officer _____

STATE VERSUS

Name Of Defendant _____

Date Of Issuance Of Warrant For Arrest _____

JUDGMENT

Def. Waived Attorney Def. Found Not Indigent Appointed
 Def. Denied Appointed Counsel Def. Denied Appointed Counsel Retained

PRIOR CONVICTIONS:

No./Level: 0 I (0) II (1-4) III (5+)

NOTE: Use this page to enter judgment on a Warrant For Arrest. Use this Judgment page only if imposing a **single, consolidated judgment** for all offenses of conviction charged under this file number. Do not use this Judgment page to impose sentence: (i) if imposing separate judgments for separate offenses of conviction charged under this file number; (ii) to impose supervised probation; or (iii) for DWI sentences under G. S. 20-179. For DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). For structured sentencing offenses, use AOC-CR-602 (active) or AOC-CR-604 (probation).

- OFFENSES:** The following offenses, which are set forth by Count No. in the Warrant For Arrest issued in this case on the date noted above for the defendant named above, are the subject of this Judgment:
- Count 1 PLEA: guilty not guilty no contest guilty not guilty M.C.L.: A1 1 2 3
 - Count 2 PLEA: guilty not guilty no contest guilty not guilty M.C.L.: A1 1 2 3
 - Count 3 PLEA: guilty not guilty no contest guilty not guilty M.C.L.: A1 1 2 3
 - Count 4 PLEA: guilty not guilty no contest guilty not guilty M.C.L.: A1 1 2 3
 - Count 5 PLEA: guilty not guilty no contest guilty not guilty M.C.L.: A1 1 2 3
 - Count 6 PLEA: guilty not guilty no contest guilty not guilty M.C.L.: A1 1 2 3
 - Count 7 PLEA: guilty not guilty no contest guilty not guilty M.C.L.: A1 1 2 3
 - Count 8 PLEA: guilty not guilty no contest guilty not guilty M.C.L.: A1 1 2 3
 - Count 9 PLEA: guilty not guilty no contest guilty not guilty M.C.L.: A1 1 2 3
 - Count 10 PLEA: guilty not guilty no contest guilty not guilty M.C.L.: A1 1 2 3

Name Of Defendant _____

***NOTE:** Use this Judgment page only if imposing a single, consolidated judgment for all offenses of conviction charged under this file number. Do not use this Judgment page to impose sentence: (i) if imposing separate judgments for separate offenses of conviction charged under this file number, (ii) to impose supervised probation; or (iii) for DWI sentences under G.S. 20-179. For DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). For structured sentencing offenses, use AOC-CR-602 (active) or AOC-CR-604 (probation).

JUDGMENT (continued)

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the plea(s) on Side One. On the verdict(s) from Side One, it is **ORDERED** that all offenses of conviction, if more than one, be consolidated for judgment with Count No. _____ (list count of lead offense) and that the defendant:

- pay the following fine/penalty and costs:

Amount Of Fine/Penalty	Costs
\$ _____	\$ _____
- be imprisoned for a term of _____ days in custody of the sheriff, MCP, Other:** Pretrial credit _____ days served.
- Work release is recommended. is not recommended. (**NOTE:** To order work release, use form AOC-CR-602 to impose judgment.)
- 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. 14-289.
 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. 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.
 6. pay to the Clerk the costs of court and any additional sums shown below.

Costs	Fine	Restitution**	Total Amount Due
\$ _____	\$ _____	\$ _____	\$ _____

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).")

- 7. 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-1483 within _____ days.
- 8. not be found in or on the premises of the complainant or _____
- 9. not assault, communicate with or be in the presence of the complainant or _____
- 10. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)
- 11. Other: _____

The Court finds just cause to waive costs as ordered on attached AOC-CR-415. AOC-CR-618. 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 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 _____

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 _____ 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 _____ Date _____ Date Delivered To Sheriff _____ Signature _____
 Dep. CSC Asst. CSC
 Clerk Of Superior Court

Tab:

Juvenile vs.

Adult

UNDER 18: JUVENILE VS. ADULT

Under 18: Juvenile vs. Adult Presentation..... Juvenile vs. Adult – Page 1
Review Questions Juvenile vs. Adult – Page 7
Juvenile Justice Flowchart..... Juvenile vs Adult – Page 9

Under 18: Juvenile vs. Adult

Basic School for Magistrates
Jacqui Greene, UNC School of Government

1

Topics

- Which system for offenses at age 16 and 17?
- What if the person is 18 and the offense occurred when they were 17?
- Potential magistrate involvement in posting bond after transfer of cases from juvenile to criminal court
- Place of pretrial confinement for youth under age 18

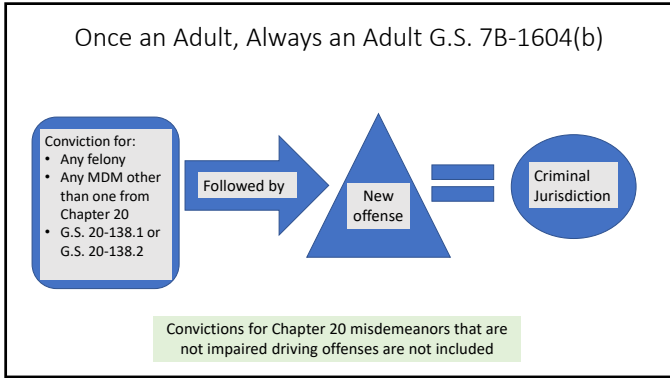
2

Delinquency Jurisdiction
G.S. 7B-1501(7), -1604

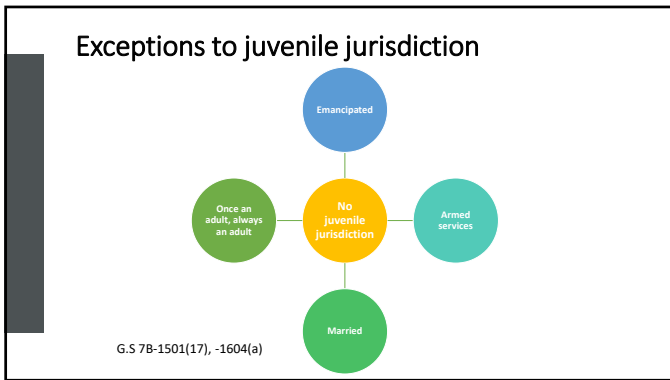
<p>Offense at ages 8 or 9</p> <p>Class A – G felony or previous delinquency adjudication</p>	<p>Offense at ages 10 - 15</p> <p>All crimes and infractions, indirect contempt</p>	<p>Offense at age 16 or 17</p> <p>All crimes and infractions except those in Chapter 20 (motor vehicle), indirect contempt</p>
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Never juvenile jurisdiction if “once an adult, always an adult” applies

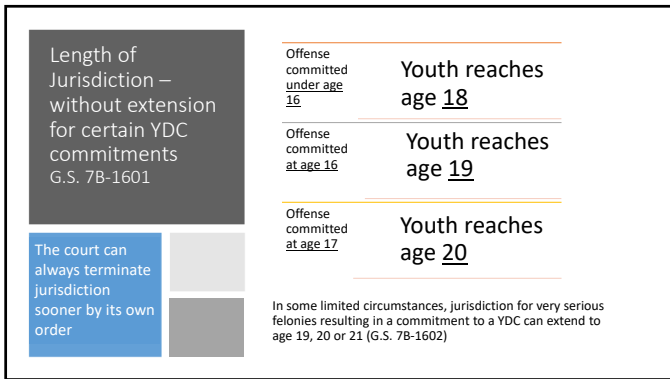
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4



5



6


Felony Transfer to Superior Court

Age at Offense	Felony Classification	Transfer Mechanism	Mandatory?
13-15	A	Finding of probable cause ^a	Yes ^b
	B1-I	Finding of probable cause, motion for transfer, and judicial determination at transfer hearing ^c	No ^d
	A-C	Finding of probable cause or return of an indictment ^e	Yes ^f
16, 17	D-G	Finding of probable cause or return of an indictment ^e	Only if prosecutor chooses to transfer ^h
	H-I	Finding of probable cause, motion for transfer, and judicial determination at transfer hearing ^g	No ⁱ

a. G.S. 7B-2200. f. *Id.*
 b. *Id.* g. *Id.*
 c. G.S. 7B-2200, -2203. h. G.S. 7B-2200.5(a).
 d. *Id.* i. G.S. 7B-2200.5(b), -2203.
 e. G.S. 7B-2200.5(a). j. *Id.*


7

If Transfer Ordered




MUST SET BOND

G.S. 7B-2204



IMMEDIATE APPEAL TO SUPERIOR COURT

G.S. 7B-2603



FINGERPRINTING REQUIRED

G.S. 7B-2201

8

AOC-CR-922

STATE OF NORTH CAROLINA	
County:	In the Superior Court of Justice
RELEASE ORDER FOR JUVENILE TRANSFERRED TO SUPERIOR COURT FOR TRIAL	
Case No.:	Case Title:
Plaintiff:	Defendant:
I, the undersigned, being a qualified juror, do hereby certify that I am a member of the judicial branch of the State of North Carolina, and that I have read and understand the contents of this Release Order for Juvenile Transferred to Superior Court for Trial, and that I have signed this Release Order for Juvenile Transferred to Superior Court for Trial in my official capacity.	
I have signed this Release Order for Juvenile Transferred to Superior Court for Trial in my official capacity, and I have signed my name to this Release Order for Juvenile Transferred to Superior Court for Trial.	
I have signed this Release Order for Juvenile Transferred to Superior Court for Trial in my official capacity, and I have signed my name to this Release Order for Juvenile Transferred to Superior Court for Trial.	
I have signed this Release Order for Juvenile Transferred to Superior Court for Trial in my official capacity, and I have signed my name to this Release Order for Juvenile Transferred to Superior Court for Trial.	
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I have signed this Release Order for Juvenile Transferred to Superior Court for Trial in my official capacity, and I have signed my name to this Release Order for Juvenile Transferred to Superior Court for Trial.	

9



10-Day Appeal Window

Glvshædqj #ñudqvihu#
Frqixvlrq #ñ3Gd|#
DsshdcZ lgrz #
Rughu#rur#Duhvw

<https://civil.sog.unc.edu/dispelling-transfer-confusion-10-day-appeal-window-orders-for-arrest/>

10

Key Points

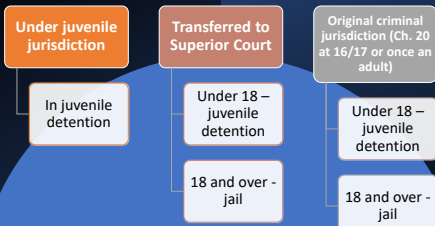
Criminal matter under jurisdiction of the superior court

CRS numbers can and should be manually generated

No orders for arrest based on returned indictment

11

Pre-trial Secure Confinement



12

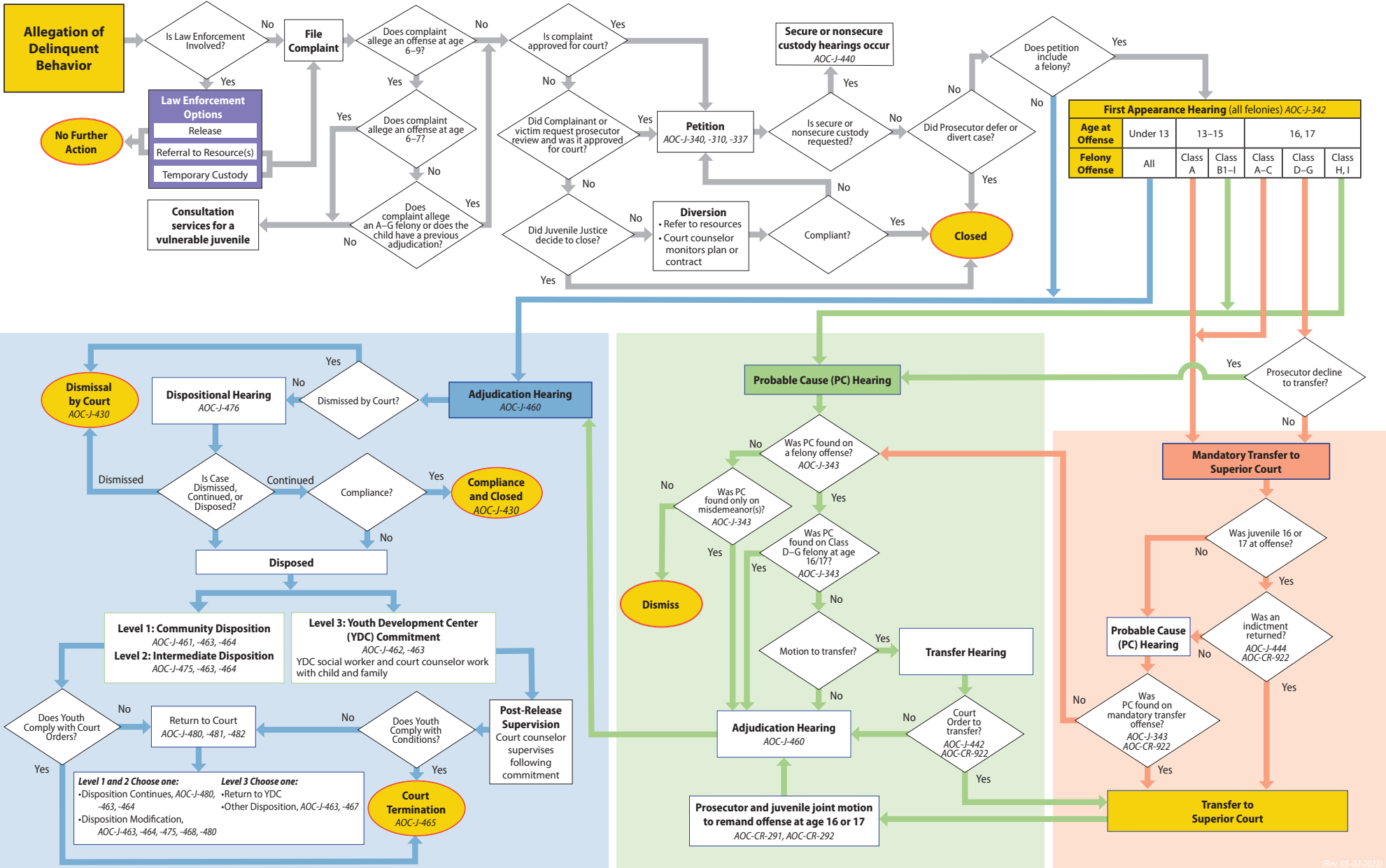


Contact Info

Jacqui Greene
UNC SOG
919-966-4327
greene@sog.unc.edu

Basic School for Magistrates Juvenile v. Adult Review Questions

1. A 17-year-old is taken into custody for felony speeding to elude arrest, possession with intent to sell or deliver cocaine, and resist, delay, and obstruct of a public officer. What system should process these charges?
2. After law enforcement receives new evidence regarding a robbery that occurred two years ago, a 19-year-old is accused of committing robbery with a dangerous weapon when he was 17. He was also charged with a series of larcenies at age 18, pled guilty, and is on adult probation as a result. What system should process the RWDW charge?
3. A 16-year-old is charged with common law robbery. His case begins as a juvenile matter and is then transferred to superior court for criminal prosecution. He is able to post bond after his case is transferred and he is released with an electronic monitor in place. Two weeks after his release he cuts off his monitor and is picked up by law enforcement for violation of his conditions of pretrial release. What system has jurisdiction over this violation? Where should he be confined as a result of this violation?



Tab:
Search
Warrants

SEARCH WARRANTS

A Short Introduction to Search Warrants	Search Warrants-Page 1
Test Yourself	Search Warrants-Page 5
Problem Pack for Search Warrants 101.....	Search Warrants-Page 7
Evaluation Form of Real Applications	Search Warrants-Page 11
Application 1: Bartlett.....	Search Warrants-Page 13
Application 2: Taylor	Search Warrants-Page 15
Application 3: Edwards.....	Search Warrants-Page 21
Search Warrant Form (AOC-CR-119) and copy	Search Warrants-Page 23
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A Short Introduction to Search Warrants

Jeff Welty

UNC School of Government

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

Problem Pack for Search Warrants 101

Jeff Welty
School of Government
July 2018

1. Does the following information provide probable cause?

A narcotics officer states that yesterday, he purchased two ounces of cocaine for \$1,650 in marked bills. The cocaine was delivered to the applicant by three men, who were arrested when they delivered the cocaine. The officer further states that during the purchase, he 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 that the U.S. currency . . . and other controlled substances are at this time located in” a residence belonging to a fourth man.

2. Does the following information provide probable cause?

An officer applies for a search warrant, stating: “A reliable informant who has provided accurate and reliable information in the past and whose information in the past had led to arrest[s] and convictions under the N.C. Controlled Substance[s] 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 Substance[s] Act.” The officer wants a warrant to search Beam’s home for marijuana.

3. Does the following information provide probable cause?

An officer states that he has been “informed by a reliable confidential informant that he has been inside the [residence that is the subject of the warrant] within the past 48 hours and has seen cocaine inside the residence and cocaine is being sold at this time by the . . . 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.”

4. Does the following information provide probable cause?

A deputy states: "During the last year I have been involved in several investigations concerning drug offenses in [this] County. Within the past five days . . . [a person] contacted me. This person offered his assistance . . . in the investigation of drug sales . . . This person told me that he had been inside the residence [that is the subject of the warrant] 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."

5. Does the following information provide probable cause?

An officer states: "Sometime between [one and five days ago]," the Fairchild Christian School in the City of Livingston "was broken into and two microscopes [described by brand elsewhere in the application]" were stolen. The officer also states that "sometime prior to 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." The officer is seeking a warrant to search Roark's residence.

6. Does the following information provide probable cause?

An officer states that she and other officers "have received information from a confidential and reliable informant that . . . 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. [The officers] have known this informant for approximately [one and a half years] 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." The officer is seeking a search warrant for 1509 Luther Street.

7. Does the following information provide probable cause?

An experienced narcotics officer states that he "has received information from a confidential and reliable informant that James Paul Brody is possessing and selling cocaine from his residence at 3124 Olde Creek Trail. . . . This informant has arranged, negotiated and purchased cocaine from Brody under the direct supervision of [the applicant] and has been to 3124 Olde Creek Trail . . . within the past 48 hours and has observed Brody possessing and selling cocaine. . . . Investigators have known this informant for approximately two weeks. This informant has provided information on other persons involved in drug trafficking . . . which we have investigated independently. Through interviews with the informant, detectives know this informant is familiar with drug pricing and how controlled substances are packaged and sold for distribution." The officer is seeking a search warrant for 3124 Olde Creek Trail.

8. Does the following information provide probable cause?

An informant told an officer that the defendant was growing marijuana in his house. According to the officer, "all previous information from the confidential informant had proven to be truthful and accurate." The officer conducted a knock and talk at the defendant's home. No one answered the door, but the officer saw "substantial mold and condensation [in a window] . . . consistent with the heat and humidity associated with marijuana growing operations," and he heard the sound of a generator running, which was consistent with the informant's report. Based on this information, the officer wants a search warrant for the house.

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

True/False

10. A search warrant issued on the basis of information supplied by a confidential informant is usually valid even if no other basis for reliability appears in the affidavit.

True/False

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

True/False

12. Which of the following are adequate descriptions of things to be seized?

- a. "quantity of marijuana"
- b. "quantity of stolen iPads"
- c. "cocaine"
- d. "stolen property"
- e. "evidence of any crime"
- g. "Xbox game console with a Mellow Mushroom sticker on the top"
- h. "journals, registers, ledgers, canceled checks, and similar records and documents that constitute evidence of the embezzlement described in the affidavit"
- i. "Glock 19 9mm handgun"

13. 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 plate 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.

14. If you have a street address, there is no reason to include a physical description of the building.

True/False

15. 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

16. 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.

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: A.M. Cristaldi Magistrate: [Signature]

Date: 4/26/07

APPLICATION 1: BARTLETT

000006

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: [Signature]

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;

APPLICATION 2: TAYLOR

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

- (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
 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 550 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.

SEP 01 2005

APPLICATION 3: EDWARDS

SWORN AND SUBSCRIBED TO BEFORE ME:

Judge / Magistrate: [Signature]
Date: 7-14-05

Applicant(s): [Signature]
Date: 7/14/05

File No.

STATE OF NORTH CAROLINA

In The General Court Of Justice
District/Superior Court Division

County

SEARCH WARRANT

IN THE MATTER OF

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.

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

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 and time of issuance and I hereby return it not executed.

Name Of Officer Making Return (type or print)

Signature Of Magistrate

Signature Of Officer Making Return

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

Department Or Agency Of Officer	Incident Number	Signature Of Clerk	Dep. CSC <input type="checkbox"/>	Asst. CSC <input type="checkbox"/>	CSC <input type="checkbox"/>
---------------------------------	-----------------	--------------------	--------------------------------------	---------------------------------------	---------------------------------

Date

Time

AM
 PM

Name Of Clerk (type or print)

Signature Of Clerk

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

Signature Of Magistrate

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)

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)
<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	Signature Of Applicant

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 recorded, and I have filed any such writing/recording 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

County

SEARCH WARRANT

IN THE MATTER OF

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.

Name Of Applicant

Name Of Additional Affiant(s)

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

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 and time of issuance and I hereby return it not executed.

Date Issued

Time Issued AM PM

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

Signature Of Magistrate

Signature Of Officer Making Return

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

Date

Time AM PM

Signature Of Clerk

Dep. CSC
 Asst. CSC
 CSC

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)

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

Signature	Date
<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	Name Of Applicant (type or print) Signature Of Applicant

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
 recorded, and I have filed any such writing/recording 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 Warrants

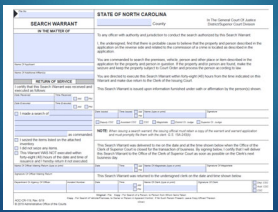
Jeff Welty
UNC School of Government
February 2022



1

What is a search warrant?

- ▶ "A search warrant is a court order . . . directing a law-enforcement officer to search designated premises, vehicles, or persons for the purpose of seizing designated items."
- ▶ G.S. 15A-241



2

When do officers need warrants?

- ▶ To search areas subject to a "reasonable expectation of privacy"
- ▶ To trespass on private property in search of information
- ▶ To track a person's location over an extended period of time
- ▶ Officers can do some searches without a warrant

3

Where do the rules about warrants come from?

1. North Carolina General Statutes 15A-241 et seq.
2. United States Constitution (Fourth Amendment)
 - a. No "unreasonable searches and seizures"
 - b. No warrants without "probable cause"
 - c. Warrants must particularly describe place to be searched and items to be seized

4

Why it is important that you follow the law of search warrants

- ▶ Issuing faulty warrants violates citizens' rights
- ▶ Evidence seized under faulty warrants may be excluded from court
- ▶ Issuing faulty warrants exposes officers to civil and criminal liability

5

Plan for learning the law

- ▶ Walk through the search warrant form
- ▶ Discuss legal issues as they arise

The image shows a screenshot of a North Carolina Search Warrant form. The form is titled "SEARCH WARRANT" and includes fields for "COUNTY" and "JUDICIAL DISTRICT". It contains several sections with instructions and checkboxes, such as "I, the undersigned, do hereby certify that the person, person or other place to be searched is the person, person or other place named in the return and that the items to be searched for are those named in the return." There are also checkboxes for "I have searched the return and find it correct" and "I have searched the return and find it incorrect".

6

Name of applicant

I, _____
(Print name and address of 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) _____

7

Description of property to be seized (I)

- ▶ This is part of the "particularity requirement"
- ▶ Ensures that officers seize the right stuff, not the wrong stuff
- ▶ Usually the warrant describes inanimate objects: drugs, stolen property, a gun, etc.
- ▶ When a search warrant is used to enable officers to serve an arrest warrant, it describes the person to be arrested

8

Description of property to be seized (II)

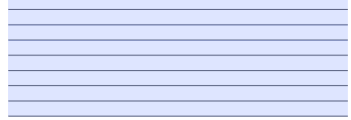
- ▶ Degree of specificity depends on circumstances
 - ▶ Be more specific with common items, e.g., TVs
 - ▶ Less specificity required with contraband, e.g., drugs
 - ▶ Less specificity required when multiple types of evidence are likely to be present

9

Description of people

- ▶ Name is usually sufficient
- ▶ May include sex, DOB, height, weight, race, etc.
- ▶ Must include full description if name is not known

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)



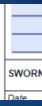
10

Naming the crime

- ▶ Common "short" name is OK
- ▶ Need not include all the language used in charging documents

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

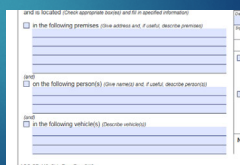
and is located (Check appropriate box(es) and fill in specified information)



11

Description of the place to be searched

- ▶ The other aspect of the "particularity requirement"
- ▶ Purpose is to prevent an officer from searching the wrong place by mistake
- ▶ Form allows description of premises (home or business), person(s), vehicles, or other



12

Premises

- ▶ Include
 - ▶ Street number
 - ▶ Apartment or suite number, if applicable
 - ▶ Possessor/resident
 - ▶ Description
 - ▶ Directions
- ▶ Consider
 - ▶ Outbuildings?
 - ▶ Separate warrant for each premise?

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

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

(and)

Case

Sign

13

Person

- ▶ Include
 - ▶ Name
 - ▶ Alias, if known
 - ▶ Description (age, race, sex, etc.)

(and)

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

(and)

14

Vehicles

- ▶ Best ways to describe
 - ▶ Plate number
 - ▶ VIN number
- ▶ Other ways to describe
 - ▶ Owner
 - ▶ Make and model
 - ▶ Year and color
 - ▶ Distinguishing features, dents, scratches

(and)

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

AOC-CR-119, Side Two, Rev. 6/19
© 2019 Administrative Office of the Courts

15

Other items

- ▶ Examples: luggage, laptops, etc.
- ▶ Provide as much detail as possible

OR SEARCH WARRANT

(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

16

Statement of probable cause (I)

- ▶ Determining whether probable cause exists is a critical task
- ▶ The application must show a fair probability that the object of the search is evidence of a crime and is located in the place to be searched.

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]

17

Statement of probable cause (II)

- ▶ Probable cause (or "fair probability") is a common-sense standard, no tidy legal rules
- ▶ More than suspicion, less than beyond a reasonable doubt

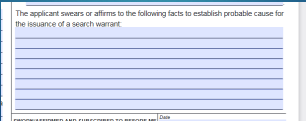
The applicant swears or affirms to the following facts to establish probable cause for the issuance of a search warrant:

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME [Date]

18

What you need to determine probable cause

- ▶ The whole story, in order
- ▶ Plenty of details
- ▶ Think who, what, when, where, how, why
- ▶ Don't accept the officer's conclusion or opinion that he thinks there's probable cause



19

More about probable cause

- ▶ Consider all of the circumstances
- ▶ Consider timeliness of information
- ▶ Consider the quality of the information
 - ▶ Hearsay can be considered
 - ▶ Special rules for informants
- ▶ Consider whether another magistrate has refused

20

Informants (I)

- ▶ Officers may use informants
- ▶ Types
 - ▶ Citizen informants (witnesses, victims, other officers)
 - ▶ Confidential informants
 - ▶ Anonymous informants (tipsters)
- ▶ The more you know about the informant, the more likely their information establishes probable cause

21

Informants (II)

- ▶ Always consider quality of information
- ▶ Citizen informants
 - ▶ may presume they are telling the truth
- ▶ Confidential informants
 - ▶ need a reason to believe they are telling the truth, usually past reliability or corroboration
- ▶ Anonymous informants
 - ▶ must have corroboration

22

Additional pages

- ▶ Common to use additional pages

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.

23

Additional affidavits

- ▶ Not as common, but still OK

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

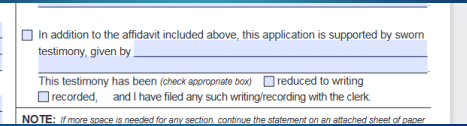
In addition to the affidavit included above, this application is supported by additional affidavits, attached, made by _____

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

24

Additional testimony

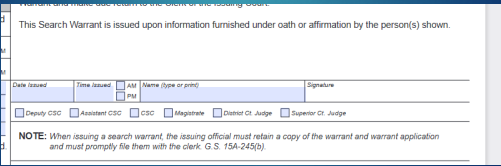
- Usually happens when officer prepares shoddy application and you need to get more information from him
- But the better practice is to have the officer amend the application



25

Decide whether to issue the warrant

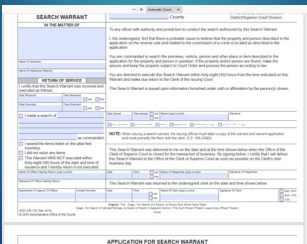
- Decide whether probable cause exists
- Decide whether the descriptions of the place to be searched and the items to be seized are adequate



26

Issue the warrant

- Fill out the warrant side of the form
- Make enough copies
- Distribute them correctly



27

Execution and Return

- ▶ An officer must execute the warrant within 48 hours of issuance
- ▶ The officer must prepare an inventory, or list of items seized, and must leave a copy with the person in control of the premises
- ▶ The officer must also return the executed warrant and a copy of the inventory to the clerk

28

Search Warrants

Jeff Welty
UNC School of Government
February 2022



29

Tab:

Initial

Appearance

INITIAL APPEARANCE

Exceptions to Pretrial Release Procedures:

A Guide for Magistrates Initial Appearance-Page 1

Domestic Violence 48-Hour Rule Initial Appearance-Page 5

Problems in Determining the

Conditions of Pretrial Release Initial Appearance-Page 13

Problems in Setting Pretrial Release Conditions Initial Appearance-Page 17

EXCEPTIONS TO PRETRIAL RELEASE PROCEDURES: A GUIDE FOR MAGISTRATES

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

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

Category	Specific Situation	Response	Statutory Basis	Form to Use
<p>Conduct initial appearance, set pretrial release conditions, BUT delay release</p>	<p>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</p>	<p>Set pretrial release conditions 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.</p>	<p>15A-534.2</p>	<p>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.</p>
<p>Conduct initial appearance, BUT deny any pretrial release conditions if criteria met</p>	<p>Probable cause that individual was exposed to defendant in a nonsexual manner that poses significant risk of transmission of AIDS or Hepatitis B</p>	<p>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.</p>	<p>15A-534.3</p>	<p>AOC-CR-200, AOC-CR-270 (side two) See above.</p>
<p>Conduct initial appearance, BUT deny any pretrial release conditions if criteria met</p>	<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 • 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) 	<p>AOC-CR-200</p> <p>In upper portion of form, check the box that states "Your release is not authorized." In additional information section, write any findings or instructions.</p> <p>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)</p>

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	
<p>Conduct initial appearance, BUT set certain pretrial release conditions</p>	<p>Arrested on order for arrest (OFA) after failure to appear (FTA)</p>	<p>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.</p>	<p>15A-534(d1)</p>	<p>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.</p>	
	<p>Surrendered by surety following FTA</p>	<p>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.</p>	<p>15A-534(d1)</p>	<p>AOC-CR-200 See immediately above. See also AOC-CR-214 (surrender of defendant by surety)</p>	
	<p>New offense while on pretrial release for prior offense</p>	<p>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.</p>	<p>15A-534(d3)</p>	<p>AOC-CR-200 Set pretrial release conditions with required bond amount.</p>	
	<p>Felony by person on probation if danger to public</p>	<p>Set secured bond, with or without electronic house arrest.</p>	<p>15A-534(d2)</p>	<p>AOC-CR-200, AOC-CR-272 (side one) Check the appropriate box in AOC-CR-200 and fill out AOC-CR-272 (side one)</p>	
	<p>Electronic house arrest</p>	<p>If you require house arrest with electronic monitoring, set secured bond.</p>	<p>15A-534(a)</p>	<p>AOC-CR-200 Check appropriate box.</p>	
	<p>Order of judge</p>	<p>Follow judge's order.</p>		<p>AOC-CR-200</p>	
	<p>Domestic violence offense</p>	<p>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</p>	<p>15A-534.1(a)(2)</p>	<p>AOC-CR-200, AOC-CR-630 In space for restrictions in AOC-CR-200, refer to AOC-CR-630 if additional conditions included there.</p>	

Category	Specific Situation	Response	Statutory Basis	Form to Use
<p>Set certain pretrial release conditions (cont'd)</p> <p>Reasons that initial appearance and/or pretrial release conditions may NOT be delayed or denied</p>	Sex offenses and crimes of violence against a minor	In addition to any other PTR conditions, require that defendant stay away from, not communicate with, and not assault, threaten, or harm alleged victim; stay away and non-communication conditions may be waived on proper findings.	15A-534.4	AOC-CR-200, AOC-CR-631 In space for restrictions in AOC-CR-200, refer to AOC-CR-631 if additional conditions included there.
	Threats of mass violence	If authorized to set PTR conditions, magistrate may impose conditions that defendant stay away from threatened educational property or place of worship and, unless granted permission by person in control of property, other such properties.	15A-534.7	AOC-CR-660
	When fingerprints or DNA sample have not been collected as required by certain statutes	In addition to any other PTR conditions, require the collection of fingerprints or DNA sample as condition of release.	15A-534(a)	AOC-CR-200 In space for restrictions, write condition.
	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 Rule

Jeff Welty
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December 2019

Overview

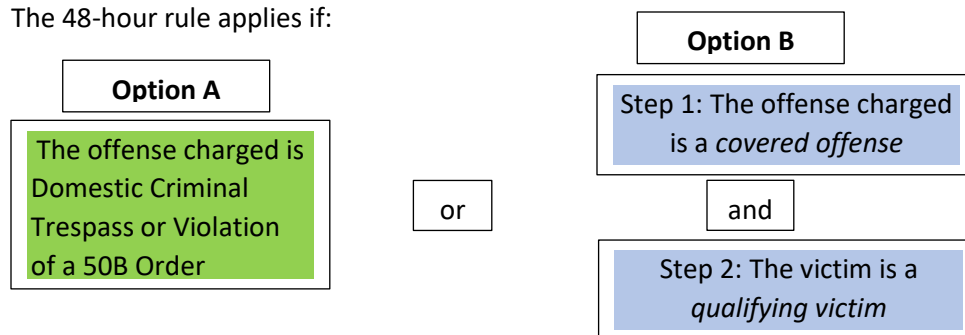
G.S. 15A-534.1 provides that, for certain domestic violence crimes, only a judge may set conditions of release in the first 48 hours after the defendant’s arrest. A magistrate is empowered to set conditions only if 48 hours pass without a judge setting conditions. For example, if a defendant is arrested on Friday night and no judge is available during the weekend, a magistrate could set conditions on Sunday night. This provision is known across the state as “the 48-hour rule.” Note that the rule does not require or permit the defendant to be held for 48 hours if a judge is available to set conditions of release sooner. If a judge is available and the defendant is not presented to him or her, the case may be dismissed. See *State v. Thompspon*, 349 N.C. 483 (1998) (finding a due process violation where a defendant was held despite several judges being available). Thus, the rule is *not* a “48-hour hold.”

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 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 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.” G.S. 15A-534.1.

This document is intended to assist magistrates and others in applying the 48-hour rule. It is current as of December 1, 2019. It does not address the similar rule contained in G.S. 15A-534.7 regarding defendants charged with communicating certain threats of mass violence.¹

48-Hour Rule Flow Chart

The 48-hour rule applies if:



¹ Previous versions of this document also addressed whether certain offenses were covered by the Crime Victims’ Rights Act, Article 46 of Chapter 15A of the General Statutes. However, the victims’ rights statutes were substantially revised by the General Assembly during the 2019 legislative session. Whether an offense is covered by the victims’ rights statutes now depends exclusively on the offense charged, regardless of the relationship between the defendant and the victim, and thus is an entirely separate question from whether the 48-hour rule applies. A complete list of offenses covered by the new victims’ rights statutes may be found at Jamie Markham, [Crimes Covered under the New Victims’ Rights Law](https://nccriminallaw.sog.unc.edu/crimes-covered-under-the-new-victims-rights-law/), N.C. CRIM. L. BLOG (Sept. 27, 2019), <https://nccriminallaw.sog.unc.edu/crimes-covered-under-the-new-victims-rights-law/>.

Option A: When the offense charged is domestic criminal trespass or violation of a 50B order

The 48-hour rule *always* applies when the defendant is charged with

- G.S. 14-134.3: Domestic criminal trespass
- G.S. 50B-4.1: Violation of valid protective order (note that although G.S. 50B-4.1 addresses violations of both North Carolina protective orders and out-of-state orders, G.S. 15A-534.1 applies only to defendants charged with “violation of an order entered pursuant to Chapter 50B,” i.e., to defendants charged with violating North Carolina protective orders)

When one of these crimes is charged, no further inquiry into the relationship between the defendant and the victim is required.

Option B: When there is a covered offense and a qualifying victim

The 48-hour rule also applies when the defendant is charged with committing what this paper will call a *covered offense* against what this paper will call a *qualifying victim*. Both a covered offense and a qualifying victim are required for the rule to apply. This paper will address the existence of a covered offense as step 1 of the analysis, then will proceed to address the existence of a qualifying victim as step 2.

Step 1: Covered offenses

Covered offenses include charges of “assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes upon” a victim. G.S. 15A-534.1. A list of each offense that is covered by the statute is below, organized by the word or clause within G.S. 15A-534.1 that covers the offense.

Assaults

The 48-hour rule applies to “assault[s].”² Many assault crimes are contained in Article 8 of Chapter 14 of the General Statutes, and the 48-hour rule also applies to all “felon[ies] provided in Article . . . 8,” so the list of assault crimes set forth below is partly redundant with the list of felonies contained in Article 8 that is set forth later in this document.

The list below includes many assault crimes that are unlikely to arise in a domestic violence context and normally will not involve a qualifying victim. For example, G.S. 14-16.6 makes it unlawful to assault certain executive, legislative, and court officials “because of the exercise of that officer’s duties.” Such an assault normally will be committed by a disgruntled citizen with no personal relationship to the official in question. But the offense is an assault crime and therefore is a covered offense under the terms of the 48-hour rule, so it is included below.³

² Is sexual battery, G.S. 14-27.33, an “assault”? Probably not under *State v. Corbett*, 196 N.C. App. 508 (2009) (ruling in part that “assault is not a lesser included offense of sexual battery”). *But see In re K.C.*, 226 N.C. App. 452 (2013) (stating, in the course of finding insufficient evidence of sexual battery but sufficient evidence of simple assault, that “[a] battery always includes an assault”).

³ It is possible to imagine unusual circumstances under which the offense would involve a qualifying victim. For example, suppose that a district court judge finds a DWI defendant guilty and imposes an active sentence. The

- G.S. 14-16.6: Assault on executive, legislative, or court officer (including with a firearm and inflicting serious bodily injury)
- G.S. 14-23.5: Assault inflicting serious bodily injury on an unborn child (note that it appears to be impossible for an unborn child to be a qualifying victim, but the statute requires “a battery on the mother of the unborn child,” and the mother could be a qualifying victim)
- G.S. 14-23.6: Battery on an unborn child (same note as for G.S. 14-23.5)
- G.S. 14-28: Malicious castration (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does appear to require unconsented contact; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-29: Castration or other maiming without malice aforethought (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does appear to require unconsented contact; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-30: Malicious maiming (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does appear to require unconsented contact; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-30.1: Malicious throwing of corrosive acid or alkali (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does appear to require unconsented contact; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-31: Maliciously assaulting in a secret manner
- G.S. 14-32: Felonious assault with deadly weapon with intent to kill or inflicting serious injury
- G.S. 14-32.1: Assaults on individuals with a disability
- G.S. 14-32.2: Patient abuse and neglect (includes several gradations depending on the defendant’s intent and the severity of the injury inflicted; it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does require physical abuse; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-32.3: Domestic abuse, neglect, and exploitation of disabled or elder adults (note that “assault” is one way of establishing the element of abuse but not the only way, so the assault provisions of the 48-hour rule might apply to some offenses under this statute but not others; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-32.4: Assault inflicting serious bodily injury; strangulation
- G.S. 14-33: Misdemeanor assaults, batteries, and affrays, simple and aggravated (this statute includes simple assault, assault inflicting serious injury, assault on a female, and assault on a child under 12, as well as several other assault offenses less likely to arise in a domestic violence context)
- G.S. 14-33.2: Habitual misdemeanor assault
- G.S. 14-34: Assaulting by pointing gun
- G.S. 14-34.1: Discharging certain barreled weapons or a firearm into occupied property (includes several gradations; it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does require discharging a firearm into occupied property, which

defendant is angry and assaults the judge. If, years ago, the defendant and the judge had engaged in a dating relationship, the 48-hour rule would apply.

arguably inherently amounts to an assault; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)

- G.S. 14-34.2: Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers
- G.S. 14-34.5: Assault with a firearm on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility
- G.S. 14-34.6: Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel
- G.S. 14-34.7: Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility
- G.S. 14-34.9: Discharging a firearm from within an enclosure (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does require discharging a firearm toward a person; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-34.10: Discharge firearm within enclosure to incite fear (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does require discharging a firearm with the intent to incite fear in another person; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-288.9: Assault on emergency personnel

Stalking

The only offense that is clearly covered under this provision is

- G.S. 14-277.3A: Stalking

A frequent question is whether cyberstalking, as defined in G.S. 14-196.3, is a covered offense. At least under most circumstances, it probably is not for the reasons given in Jeff Welty, *Cyberstalking and the 48-Hour Rule*, N.C. CRIM. L. BLOG (Nov. 28, 2012), <https://nccriminallaw.sog.unc.edu/cyberstalking-and-the-48-hour-rule/>.

Communicating threats

As with the list of assault crimes, above, the list below includes several offenses that are unlikely to arise in a domestic violence context and normally will not involve a qualifying victim.

- G.S. 14-16.7: Threats against executive, legislative, or court officers
- G.S. 14-277.1: Communicating threats
- G.S. 14-277.6: Communicating a threat of mass violence on educational property⁴
- G.S. 14-277.7: Communicating a threat of mass violence at a place of religious worship⁵

⁴ Note that when charging this offense, the 48-hour rule set forth in G.S. 15A-534.7 will apply regardless of whether there is a qualifying victim.

⁵ Note that when charging this offense, the 48-hour rule set forth in G.S. 15A-534.7 will apply regardless of whether there is a qualifying victim.

- G.S. 14-394: Anonymous or threatening letters, mailing or transmitting

A frequent question is whether harassing phone calls, as defined in G.S. 14-196, is a covered offense. At least under most circumstances, it probably is not as discussed in Jeff Welty, *Cyberstalking and the 48-Hour Rule*, N.C. CRIM. L. BLOG (Nov. 28, 2012), <https://nccriminallaw.sog.unc.edu/cyberstalking-and-the-48-hour-rule/>.

Felonies in Article 7B (“Rape and Other Sex Offenses”)

The following felonies are contained in Article 7B. As with several other categories of offenses addressed in this paper, some crimes on this list may be unlikely to involve a qualifying victim and so may rarely require the application of the 48-hour rule.

- G.S. 14-27.21: First-degree forcible rape
- G.S. 14-27.22: Second-degree forcible rape
- G.S. 14-27.23: Statutory rape of a child by an adult
- G.S. 14-27.24: First-degree statutory rape
- G.S. 14-27.25: Statutory rape of person who is 15 years of age or younger
- G.S. 14-27.26: First-degree forcible sexual offense
- G.S. 14-27.27: Second-degree forcible sexual offense
- G.S. 14-27.28: Statutory sexual offense with a child by an adult
- G.S. 14-27.29: First-degree statutory sexual offense
- G.S. 14-27.30: Statutory sexual offense with a person who is 15 years of age or younger
- G.S. 14-27.31: Sexual activity by a substitute parent or custodian
- G.S. 14-27.32: Sexual activity with a student

Felonies in Article 8 (“Assaults”)

The following felonies are contained in Article 8. As noted above, many of these crimes are also assault offenses, making this list partly duplicative of the above list of assault crimes. As with several other categories of offenses addressed in this paper, some crimes on this list may be unlikely to involve a qualifying victim and so may rarely require the application of the 48-hour rule.

- G.S. 14-28: Malicious castration
- G.S. 14-29: Castration or other maiming without malice aforethought
- G.S. 14-30: Malicious maiming
- G.S. 14-30.1: Malicious throwing of corrosive acid or alkali
- G.S. 14-31: Maliciously assaulting in a secret manner
- G.S. 14-32: Felonious assault with deadly weapon with intent to kill or inflicting serious injury
- G.S. 14-32.1: Assaults on individuals with a disability (note, not all offenses defined in this statute are felonies)
- G.S. 14-32.2: Patient abuse and neglect
- G.S. 14-32.3: Domestic abuse, neglect, and exploitation of disabled or elder adults
- G.S. 14-32.4: Assault inflicting serious bodily injury; strangulation
- G.S. 14-33.2: Habitual misdemeanor assault
- G.S. 14-34.1: Discharging certain barreled weapons or a firearm into occupied property

- G.S. 14-34.2: Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers
- G.S. 14-34.4: Adulterated or misbranded food, drugs, or cosmetics; intent to cause serious injury or death; intent to extort
- G.S. 14-34.5: Assault with a firearm on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility
- G.S. 14-34.6: Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel
- G.S. 14-34.7: Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility
- G.S. 14-34.9: Discharging a firearm from within an enclosure
- G.S. 14-34.10: Discharge firearm within enclosure to incite fear

Felonies in Article 10 (“Kidnapping and Abduction”)

The following felonies are contained in Article 10. As with several other categories of offenses addressed in this paper, some crimes on this list may be unlikely to involve a qualifying victim and so may rarely require the application of the 48-hour rule.

- G.S. 14-39: Kidnapping
- G.S. 14-41: Abduction of children
- G.S. 14-43.3: Felonious restraint

Felonies in Article 15 (“Arson and Other Burnings”)

The following felonies are contained in Article 15. As with several other categories of offenses addressed in this paper, some crimes on this list may be unlikely to involve a qualifying victim and so may rarely require the application of the 48-hour rule. Additionally, for several of the offenses in this Article, it may be difficult to determine whether the offense was committed “upon” a qualifying victim because the principal target of the offense is property, not a person. For example, if A burns B’s residence, has A committed an offense “upon” B? What if A burns a residence that does not belong to B but B is injured in the fire? There is no case law explaining when an arson offense is committed “upon” a person for purposes of G.S. 15A-534.1.

- G.S. 14-58: Punishment for arson (note that this statute defines the punishment class for first- and second-degree arson; perhaps an argument could be made that because arson is a common law offense, arson is not a “felony provided in” Article 15 notwithstanding this statute; no case law addresses this issue)
- G.S. 14-58.2: Burning of mobile home, manufactured-type house or recreational trailer home
- G.S. 14-59: Burning of certain public buildings
- G.S. 14-60: Burning of schoolhouses or buildings of educational institutions
- G.S. 14-61: Burning of certain bridges and buildings
- G.S. 14-62: Burning of certain buildings
- G.S. 14-62.1: Burning of building or structure in process of construction
- G.S. 14-62.2: Burning of churches and certain other religious buildings

- G.S. 14-63: Burning of boats and barges
- G.S. 14-64: Burning of ginhouses and tobacco houses
- G.S. 14-65: Fraudulently setting fire to dwelling houses
- G.S. 14-66: Burning of personal property
- G.S. 14-67.1: Burning other buildings
- G.S. 14-67.2: Burning caused during commission of another felony
- G.S. 14-69.1: Making a false report concerning destructive device
- G.S. 14-69.2: Perpetrating hoax by use of false bomb or other device
- G.S. 14-69.3: Arson or other unlawful burning that results in serious bodily injury to a firefighter, law enforcement officer, fire investigator, or emergency medical technician

Step 2: Qualifying victims

If a defendant is charged with a covered offense, the applicability of the 48-hour rule depends on the existence of a qualifying victim. The statute provides that such a victim is “a spouse or former spouse [of the defendant], 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).” Thus, a qualifying victim must have one of the following relationships to the defendant:

- *Spouse*. Presumably this applies when the victim and the defendant are legally married, even if separated or in the process of divorce.
- *Former spouse*. There is no time limit in the statute, so this provision appears to apply even if the defendant and the victim divorced years or decades ago.
- *Person with whom the defendant lives as if married*. Although this term is not defined in the statute, presumably this provision applies when the victim and the defendant live together and have a romantic or sexual relationship.
- *Person with whom the defendant has lived as if married*. As with the category “former spouse,” there is no time limit in the statute regarding when the defendant and the victim must have lived together.
- *Person with whom the defendant is in a dating relationship as defined in G.S. 50B-1(b)(6)*. Under G.S. 50B-1(b)(6), a “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.”
- *Person with whom the defendant has been in a dating relationship as defined in G.S. 50B-1(b)(6)*. Again, there is no time limit in the statute regarding when the dating relationship must have existed.

It is not relevant whether the defendant and the victim are the same sex or different sexes. Persons of the same sex or of different sexes may be “spouses,” may “live together as if married,” and may have a “dating relationship.” Confusion sometimes arises on this point because of the reference to G.S. 50B-1(b)(6). If one looks at G.S. 50B-1(b) generally, rather than at (b)(6) specifically, one might focus on the definition of 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.

Note that 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.”⁶

Conclusion

To sum up, the 48-hour rule always applies when the offense charged is domestic criminal trespass or violation of a 50B order. It also applies when a defendant is charged with committing a covered offense against a qualifying victim.

⁶ Whether it would be constitutional to apply the 48-hour rule only to different-sex couples might be questioned under *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015) (holding that laws limiting marriage to same-sex couples are unconstitutional, in part on equal protection grounds).

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 SELECTING THE PROPER CHARGE AND SETTING PRETRIAL RELEASE CONDITIONS

Instructions: For the following problems: (1) decide, if appropriate for the problem, what criminal offense was committed; and (2) set the conditions of pretrial release as you would do so in your county. Each magistrate should complete one release order from one of the problems.

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 98 months
Class B1.....	144 months to life without parole	Class F.....	10 to 59 months
Class B2.....	92 to 471 months	Class G.....	8 to 44 months
Class C.....	44 to 261 months	Class H.....	4 to 30 months
Class D.....	38 to 229 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.
2. Officer Kerry Davis arrests without a warrant Jerry Dennis Lawrence, age 18, 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.
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.

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.
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.
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."
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.

Tab:
Contempt

CONTEMPT

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 (AOC-CR-219)	Criminal Contempt – Page 7
Direct 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
Update by Thomas H. Thornburg, July 2021

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(a)(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.

File No.

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

STATE VERSUS/IN THE MATTER OF

Name And Address Of Defendant/Contemnor

County Of Residence		Telephone No.	
Race	Sex	Date Of Birth	Age
Social Security No.		Drivers License No. & State	
Name And Address Of Moving Party, If Not The Court			

RETURN OF SERVICE

I certify that this Order was received and served as follows:
 By personally serving the defendant/contemnor named above with a copy of this Order.
 Defendant/contemnor WAS NOT served for the following reason:

Date Received	Date Served	Time Served	<input type="checkbox"/> AM <input type="checkbox"/> PM	Date Returned
Name Of Officer (type or print)				

Signature Of Officer _____

Department Or Agency _____

County Of Department/Agency _____

NOTE TO CLERK: An Order under No. I is filed in the original criminal/infraction case. An Order under No. II is either a Miscellaneous or Registration file, based on its disposition; see Rule of Recordkeeping 16. An Order under No. III establishes a new CR/CRS case if prosecuted as criminal contempt, but it is filed in the existing case file if disposed as civil contempt. An Order under No. IV or V establishes a new CR/CRS case in the court in which filed.

STATE OF NORTH CAROLINA

County _____ District Superior Court Division Before The Clerk
In The General Court Of Justice

To the Defendant/Contemnor Named To The Left: Upon motion of the moving party named herein or on its own motion, the Court finds probable cause to believe that you should be held in contempt of court or fined for your:

I. Failure To Pay Fine And/Or Costs [G.S. 15A-1364]

Failure to pay the fine and/or costs as ordered in this case. The Court will conduct a hearing and decide whether you should be imprisoned for your failure to pay the fine and/or costs. The amount of the fine and/or costs that you were ordered to pay and the balance due as of the date of this Order are as follows:

Amount Of Fine And/Or Costs Ordered Paid	Balance Due As Of The Date Of This Order
\$ _____	\$ _____

II. Failure To Obey Jury Summons [G.S. 9-13]

Failure to report for jury duty as directed pursuant to a jury summons issued on (date) _____.

III. Failure To Obey Other Order Of The Court [G.S. 5A-11; G.S. 5A-21]

Failure to obey the order of the Court indicated below:

Date Of Order	File Number	County	Name Of Official Who Entered Order
Describe Action(s) Ordered And Facts Constituting Contempt			

IV. Failure To Obey Order To Appear Pursuant To Criminal Summons [G.S. 15A-303(e)(3); G.S. 5A-11]

Failure to appear before this Court as directed by a criminal summons issued and duly served on you, ordering you to appear before this Court and answer to the offense(s) indicated below:

Date Summons Issued	File Number	County	Name Of Official Who Issued Summons
Date Summons Served	Date Of Failure To Appear	Offense(s)	

V. Other Criminal Contempt [G.S. 5A-11; G.S. 15A-1344(e1)]

Act of criminal contempt described below: (NOTE TO COURT: The grounds provided in G.S. 5A-11(a) are exclusive.)

You are ORDERED to appear before the Court as indicated below and show cause why you should not be punished for contempt or for failure to comply with the Court's order as described above. If you do not appear, the Court may issue an order for your arrest or may enter other sanctions against you in your absence.

Location Of Court		Court Date	Court Time
Date Order Issued	Name Of Issuing Official (type or print)	Signature Of Issuing Official	<input type="checkbox"/> AM <input type="checkbox"/> PM
<input type="checkbox"/> Superior Court Judge	<input type="checkbox"/> District Court Judge	<input type="checkbox"/> Magistrate	<input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Deputy CSC

(Over)

Attorney For State/Moving Party

Attorney For Defendant/Contemnor

Def. Not Indigent Waived Appointed 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.*

The defendant/contemnor gives notice of appeal from the judgment of the District Court to the Superior Court.

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.

Date _____ Name Of Presiding Judge (type or print)

Signature Of Presiding Judge _____

CERTIFICATION

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.
 Appellate Entries (AOC-CR-350)
 Other: _____

Date _____ Date Certified Copies Delivered To Sheriff _____

Signature Of Clerk _____

SEAL

Deputy CSC Assistant CSC Clerk Of Superior Court

FINDINGS

The defendant/contemnor having appeared 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).)
 that the defendant/contemnor is not in criminal or civil contempt.
 that the defendant/contemnor is in criminal civil contempt of court, based on the Court's findings of fact beyond a reasonable doubt and conclusions of law herein: (attach additional pages if necessary)

Failure To Obey Jury Summons. G.S. 9-13.

that the juror was summoned to appear, was served with a jury summons, failed to appear, and has not rendered an excuse deemed sufficient for that failure to appear.
 Other: _____

Failure To Pay Fine And/Or Costs. G.S. 15A-1364.

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.
 Other: _____

JUDGMENT

Dismissal. All proceedings pursuant to this Show Cause Order are dismissed.

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.*

1. is hereby censured for contempt. 2. shall pay a fine of \$ _____ (max \$500.00). 3. shall pay the costs of court.
 4. be imprisoned for a term of _____ days in the custody of the Sheriff Other: _____
The defendant 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 _____.
 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.

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. Recompensation is allowed only after a de novo hearing for contempt. G.S. 5A-21 (b2).*

Location Of Court _____ Court Date _____ Court Time _____ AM PM

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.

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.*
 the defendant be imprisoned for _____ days (not to exceed 30) in the custody of the Sheriff N.C. DACJJ (felony fines, only).
 The Court finds that the defendant is is not suitable for placement in a county satellite jail/work release unit.

The defendant's fine and cost obligations are modified as follows:
 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.

The Clerk shall docket the fine of \$ _____ and costs of \$ _____ against the defendant as a civil judgment, G.S. 15A-1365.
 but pursuant to the defendant's election to serve a sentence of imprisonment for the default, no execution may issue thereon.

ORDER OF COMMITMENT

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.

SIGNATURE OF JUDICIAL OFFICIAL

Date _____ Name Of Presiding Judicial Official (type or print) _____ Signature Of Presiding Judicial Official _____

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
Before the Clerk District Superior Court Division

IN THE MATTER OF

DIRECT CRIMINAL CONTEMPT/
SUMMARY PROCEEDINGS/
FINDINGS AND ORDER

Name And Address Of Contemnor

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

Criminal Contempt

Before the Magistrate

Cheryl Howell
February 2023

"Hah! - I've been found in contempt by better judges than you!"

UNC SCHOOL OF GOVERNMENT www.sog.unc.edu Video

1

<p>CRIMINAL</p> <p>To <i>punish</i> for an act already committed</p> <p>G.S. 5A-11 to 5A-17</p>	<p>CIVIL</p> <p>Magistrate has no authority to enforce with court order</p> <p>G.S. 5A-21 to 5A-23</p>
--	---

UNC SCHOOL OF GOVERNMENT

2

What is criminal contempt?

- (1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.
- (2) 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.
- (3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.
- (4) 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.
- (5) Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present danger of imminent and serious threat to the administration of justice, made with knowledge that it was false or with reckless disregard of whether it was false. No person, however, may be punished for publishing a truthful report of proceedings in a court.
- (6) Willful or grossly negligent failure by an officer of the court to perform his duties in an official transaction.
- (7) Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.
- (8) Willful refusal to testify or produce other information upon the order of a judge acting pursuant to Article 61 of Chapter 15A, Granting of Immunity to Witnesses.
- (9) Willful communication with a juror in an improper attempt to influence his deliberations.
- (9a) Willful refusal by a defendant to comply with a condition of probation.
- (9b) Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision by a prisoner whose offense requiring post-release supervision is a reportable conviction subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes. ... "Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision" includes, but is not limited to, knowingly violating the terms of post-release supervision in order to be returned to prison to serve out the remainder of the supervisee's sentence.
- (10) Any other act or omission specified elsewhere in the General Statutes of North Carolina as grounds for criminal contempt.

G.S. 5A-11(a)

UNC SCHOOL OF GOVERNMENT

3

What is criminal contempt?

(1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.

(2) 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.

with the business of the court.
(8) Willful refusal to testify or produce other information upon the order of a judge acting pursuant to Article 61 of Chapter 15A, Granting of Immunity to Witnesses.
(9) Willful communication with a juror in an improper attempt to influence his deliberations.
(9a) Willful refusal by a defendant to comply with a condition of probation.
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(10) Any other act or omission specified elsewhere in the General Statutes of North Carolina as grounds for criminal contempt.

G.S. 5A-11



4

Magistrates can only punish "direct" criminal contempt.

G.S. 7A-292(2)

"Direct" criminal contempt is contempt committed:

- *Within sight or hearing of presiding judicial official; and*
- *In, or in immediate proximity to, room where proceedings are being held; and*
- *Likely to interrupt or interfere with matters before the court.*



5

• *Serious disrespect toward the court during a hearing. Such as...*

- Yelling, cursing, calling magistrate foul names
- Throwing things, slamming a chair
- Repeated interrupting/arguing with court

• *Disrupting hearing after warning. Such as...*

- Repeatedly interrupting other party/counsel
- Loud side conversations/arguments
- Taking a call during evidence



6



Direct criminal contempt?

You walk past the waiting area outside the small claims hearing room. You hear one guy say to his friend, *"I heard this magistrate is so dumb she makes decisions with a Magic 8 ball."*



7

Direct criminal contempt?

As you're about to hold the next initial appearance, the deputy informs you that the defendant just called him (the deputy) a *"sh--head"* and a *"son of a b----"*.

8

Direct criminal contempt?

As you start an initial appearance, the defendant, looking a little drunk, interrupts you by loudly asking, *"Why am I here? Why in hell am I even in this place? I didn't do a damned thing to deserve being here!"*

Delay the proceeding under 15A-511(a)(3)?

9

Punishment



10

Punishment

- Imprisonment up to 30 days;
- Fine up to \$500;
and/or
- Censure.



Magistrate can withdraw or reduce a sentence any time "if warranted by the conduct of the contemnor and the ends of justice."

-SA-12(c)



11

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North Carolina Criminal Law

A UNC School of Government Blog

Consecutive Sentences for Criminal Contempt

Posted on Aug 11, 2016, 3:31 PM by James H. Burrow • 2 comments



One of the [last posts](#) I wrote on this blog was about the punishment for criminal contempt. The post included a discussion about whether sentences for contempt could be run consecutively—something our appellate courts hadn't yet ruled on at the time. In [State v. Burrow](#), decided last week, the court of appeals approved a trial court's orders sentencing a defendant to six consecutive 30-day terms of imprisonment for contempt.

Burrow involved a defendant tried and convicted for attempted felony breaking or entering. He was also convicted of being a habitual felon, raising the punishment class for the attempted breaking or entering from Class 1 to Class E. The jury found an aggravating factor. The judge found that it outweighed the lone mitigating factor and sentenced the defendant from the top of the aggravated range for Prior Record Level VI: 63–88 months.

In addition to the felony sentence, the court entered six orders finding the defendant guilty of direct criminal contempt. The appellate opinion in Burrow doesn't give much detail about what happened, but the trial court orders themselves, available as part of the [appellate record](#), do.

The Court finds beyond a reasonable doubt that during this session of Court and during the defendant's trial on Tuesday, 12 May 2015, in Surry County, in the absence of the jury and just before receiving the verdict in the second phase of the defendant's jury trial, when the Court was instructing the defendant's wife, Ms. Amber Childress, not to move about the courtroom

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12



Procedure

- **Summary proceeding** – Punish the direct contempt right after it occurs;
– This is the only way a magistrate can punish contempt;
or
- *Issue show cause order* – Matter goes to district court for **plenary proceeding**

13

Summary proceeding

Summary proceeding appropriate “when necessary to restore order or maintain dignity and authority of the court.”

G.S. 5A-14

Magistrate *must*:

1. Gives person summary notice of charges
2. Give “summary opportunity to respond.”

14

“summary opportunity to respond”

“...[i]ntended not to provide for a hearing, or anything approaching that...but merely to assure that the alleged contemnor had an opportunity to point out instances of gross mistake about who committed the contemptuous act or matters of that sort.” -Official commentary to 5A-14 (quoted often in cases)



For an SOG instructional video see <https://www.sog.unc.edu/courses/online-modules/contempt-court>

[Video](#)

15

“Summary opportunity to respond”

In re Korfmann, 786 S.E.2d 768
(N.C. App. 2016).

Trial judge:

This Court takes the strong position that technology is not to be utilized by jurors and, in fact, this jury has been warned several times not to use.

In my opinion the utilization by the juror is blatantly disrespecting the Court's order not to use.

Sir, I think that what I am going to do with you is I am going to send you to Wilson County Jail for 30 days for failing to follow the order given to you by this Court.

The ladies and gentlemen of this jury are now excused. You can get a certificate as to where you have been for the last several days. You are excused.

This gentleman is in your custody.

Court of Appeals:

Contempt order VACATED:

“The trial court did not give appellant the necessary ‘summary notice of the charges and a summary opportunity to respond[.]”



16

State v. Robinson, 281 NC App 614 (2022)

- Defendant: “Look at the messages on my cell phone.”
- Magistrate: “If you do not remove the cell phone from the courtroom, I will hold you in contempt.”
- Defendant: “But here are all the reasons you should look at my cell phone”
- Magistrate enters order of direct criminal contempt



17

State v. Robinson, 281 NC App 614 (2022)

- Court of appeals REVERSED
- Magistrate failed to give summary notice of the basis for the contempt charge
- Magistrate failed to give defendant an opportunity to respond



18

Summary proceeding

Summary proceeding appropriate *“when necessary to restore order or maintain dignity and authority of the court.”*

G.S. 5A-14

Magistrate *must*:

1. Gives person summary notice of charges
2. Give “summary opportunity to respond.”
3. Find facts supporting summary imposition of punishment.
 - Must find willfulness (or prior warning)
 - Must state that facts found “beyond reasonable doubt.”

AOC-CR-390

If magistrate cannot or does not wish to hold a **summary proceeding**, may refer matter to district court for a...

Plenary proceeding

- Magistrate issues show cause order
 - Must state facts upon which order is based.
 - Form: **AOC-CR-219**
- Hearing before District Court Judge
 - Burden of proof on State
 - Beyond a reasonable doubt
 - Indigent entitled to counsel
 - Self-incrimination protection applies.
- Order
 - Guilty or not guilty
 - Findings of fact required.
 - *Must find willfulness (or prior warning).*
 - Judge *must* state “beyond reasonable doubt.”

22

AOC-CR-219

STATE OF NORTH CAROLINA

County District Before The Clerk Superior Court Division

SHOW CAUSE ORDER, FINDINGS AND JUDGMENT - FAILURE TO OBEY JURY SUMMONS, TO APPEAR PURSUANT TO CRIMINAL SUMMONS, OR FOR CONTEMPT OF COURT

STATE VERSUS THE MATTER OF

Name and Address of Defendant: _____

County of Residence: _____ Date of Birth: _____ Age: _____

Place: _____ Sex: _____ Social Security No.: _____

Name and Address of Hearing Party (Not The Court): _____

RETURN OF SERVICE

I certify that this Order was received and served as follows:

The personally appearing defendant/defendant named above with a copy of this Order.

Defendant/defendant WAS NOT served for the following reason: _____

Date Served: _____ Date Served: _____ Date Served: _____ Date Served: _____

Name of Officer (Date or time): _____

Signature of Officer: _____

County of Defendant/Defendant: _____

NOTE TO CLERK: An Order No. 2 is a Step in the original criminal proceeding. It is not a final judgment. It is subject to appeal. The Clerk of Superior Court shall file this Order with the Clerk of Superior Court. The Clerk of Superior Court shall file this Order with the Clerk of Superior Court.

Date Order Issued: _____ Court Judge: _____ Court Time: _____ Court Date: _____

Superior Court Judge Magistrate Clerk of Superior Court Assistant Clerk Deputy Clerk

23

Appeal

Magistrate → Superior Court
(de novo appeal)

Bail hearing required

- District court judge sets release conditions
- Hearing must be held within 24 hours

24

Should I?

Some alternatives:

- Ignore and move on.
- Admonish and move on.
- If the person is not a party, instruct him or her to leave.
- Take a break. (Hit the reset button.)
- Unruly or grossly intoxicated criminal defendant? Delay the proceeding. Order confinement under **15A-511(a)(3)**.

SOG contempt resources (selected)

- North Carolina Trial Judges' Bench Book, DCJ Volume 2, Chapter 4, Contempt (most comprehensive)
- Contempt (overview), AOJ Bulletin, M. Crowell 2015: (<http://sogpubs.unc.edu/electronicversions/pdfs/aojb1503.pdf>)
- Contempt of Court - Online training module (<https://www.sog.unc.edu/courses/online-modules/contempt-court>)
- Numerous blog posts at "On the Civil Side": (civil.sog.unc.edu/)
- Numerous blog posts at Criminal Law Blog (nccriminallaw.sog.unc.edu)



<http://nccriminalaw.sog.unc.edu>

Contempt and Cellphones

Posted on May 1, 2013, 5:11 am by Michael Crowell • 2 comments



A couple of this blog's recent Friday News Roundups have linked offbeat stories about contempt and cellphones. In the first a Michigan judge held himself in contempt and ordered a \$25 fine when his cellphone rang in court. The second story was the federal Sixth Circuit upholding a 30-day contempt sentence for a courtroom spectator caught texting in federal district court. Actually it was more than that, as he later admitted to also using his phone to photograph his friend being sentenced. After all, what are friends for?

Some readers might be wondering about contempt and cellphones in North Carolina courtrooms. In the Tar Heel state you might be held in contempt if your phone goes off, though not necessarily. Here is a brief primer on contempt and some observations about cellphones.

There are two kinds of contempt, civil and criminal. Civil contempt is used only when a person is currently disobeying a court order, and its only sanction is to lock up the person until they comply with the order. The most common example is the deadbeat father not paying child support. He does not get a set sentence; he stays in jail until he pays, and he gets out just as soon as he catches up on the support.

Criminal contempt can be for any of a number of behaviors listed in the statute. The most common are disrupting or showing disrespect for the court, not following the court schedule, refusing to testify. It's shouting at the judge, cursing, refusing to sit down, coming late to court — the stuff people usually think about when they hear the word "contempt." Refusing to obey a court order also may be criminal contempt, just as it may be civil contempt. But it can't be both, the judge has to choose one, either civil or criminal contempt. The difference between the two is that criminal contempt is used to punish the person for past behavior; civil contempt is used to get the person to comply. Criminal contempt carries a set punishment which can be a fine of up to \$500 and/or jail for up to 30 days; civil contempt is jail until the order is complied with.




Tab: Impaired Driving

IMPAIRED DRIVING HOLDS, CIVIL LICENSE REVOCATIONS, AND VEHICLE SEIZURES

Impaired Driving Holds & Implied Consent Offense Notices.....Page 1
Civil License Revocations & Motor Vehicle SeizuresPage 11
AOC-CR-323A – Affidavit for Seizure and Impoundment and
Magistrate Order for Impaired Driving.....Page 27

Impaired Driving Holds & Implied Consent Offense Notices


Shea Denning
School of Government
February 2020



1

Impaired Driving Holds

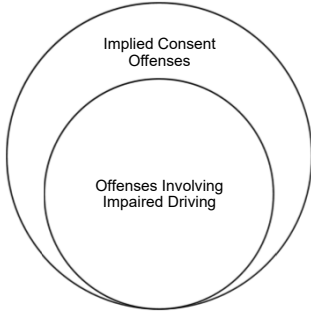

§ 15A-534.2. Detention of impaired drivers.
 (a) A judicial official conducting an initial appearance for an offense involving impaired driving, as defined in G.S. 20-4.01(24a), must follow the procedure in G.S. 15A-511 except as modified by this section. This section may not be interpreted to impede 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.



2

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

3

AOC-CR-200: Conditions of Release

STATE OF NORTH CAROLINA

County: _____

To: The General Court of Justice
 District Superior Court Division

STATE VERSUS _____

Address of Defendant: _____

CONDITIONS OF RELEASE AND RELEASE ORDER

U.S. Chapter 15A, Art. 25, 26

Amount of Bond: _____

Offense and Additional File Number: _____

Arrested on: _____

Arrested at: _____

Arrested by: _____

To the Defendant Named Above, you are ORDERED to appear before the Court as provided above and at all subsequently continued calls. If you fail to appear, you will be arrested and you may be charged with the crime of 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. This defendant has been advised of his/her legal rights and has had opportunity to communicate with counsel and friends.

Your release is authorized upon execution of your: **WARRANT PROCESSED TO BOND** **UNRECORDED BOND** in the amount shown above

UNRECORDED BOND **UNRECORDED BOND** in the amount shown above

UNRECORDED BOND with the following conditions: employment schooling source of funds medical treatment

Your release is not authorized.

The defendant is required to provide a new urine sample: Requirements under G.S. 13A-152(a) or (b). DNA sample under G.S. 13A-206.3A.

Clear to release the defendant and provide further conditions of release: Department District Division

Your release is subject to the conditions as shown on the attached AOC-CR-270. Other: _____

Additional Information: _____

Division of Justice Department District Division

UNC

7

Impaired Driving Holds

Offense involving impaired driving

§ 15A-534.2. Detention of impaired drivers.

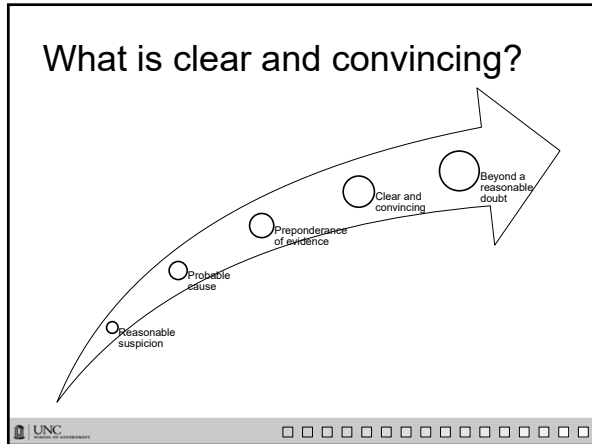
(a) A judicial official conducting an initial appearance for an offense involving impaired driving, as defined in G.S. 20-4.01(24a), must follow the procedure in G.S. 15A-511 except as modified by this section. This section may not be interpreted to impede a defendant's right to communicate with counsel 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 facilities 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, the judicial official must at this time determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.

Clear and convincing evidence that the impairment presents a danger

UNC

8



9

When is a defendant impaired to extent he or she presents a danger?

UNC

10

State v. Bumgarner,
97 N.C. App. 567 (1990)

- Hold warranted based on
 - Trooper’s testimony
 - Magistrate’s personal observations
 - 0.14 alcohol concentration

UNC

11

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.~~

UNC

12

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.

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

UNC

13

How does magistrate determine that defendant is no longer impaired to the extent that he/she presents a danger?

UNC

14

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.)

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15

May request periodic breath tests

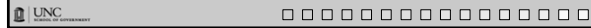


- Less than 0.05, no longer impaired
- Unless evidence that defendant still impaired from combination of alcohol and some other impairing substance or condition



16

Who is a sober, responsible adult willing and able to assume responsibility for the defendant?



17

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



18

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



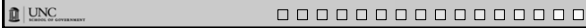
19

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.)



20

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.)



21

Procedures for Access

Procedures for the Observation of Prisoners Charged with Implied Consent Offense Pursuant to N.C.G.S. 20-38.4

1. Any person seeking to observe jailed or incarcerated impaired drivers shall first check in with the Staff Duty Officer or Detention staff on duty at the Guilford County Sheriff's Office. Observations are limited to the first twenty-four hours following the defendant's admission into the jail.
2. The Staff Duty or Detention Officer shall immediately notify the arresting officer and Booking officer that a witness is present to observe the defendant. The time of this notification shall be documented by Booking in the Booking log book and by the dispatcher on the attached witness observation form.
3. Booking shall inform the jail supervisor on-duty of the witness's presence in the facility. The supervisor shall send a detention officer to escort the witness to the jail or appropriate viewing area. The escorting officer shall obtain the form and complete the information concerning the name of the witness, the person to be observed, the time and date the witness was escorted to the jail and the time and date of the completion of the observation.
4. A witness seeking to observe the defendant shall be admitted to observe the defendant in an area designated by the Sheriff for observation of the defendant. Jail staff shall note the time the witness is admitted to the jail and the time the observation begins.
5. All witnesses shall be required to submit to a search of their person and belongings prior to entry into the jail. Witnesses must comply with all jail or facility regulations prior to being admitted into any secured area.
6. Guilford County Sheriff's Office staff shall not hold or retain any personal property items for the witness.

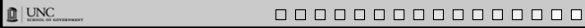


22

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 impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.
 (3) If there is a finding of probable cause, the magistrate shall consider whether the provisions of G.S. 15A-534.2 apply.
 (b) The Administrative Office of the Courts shall adopt forms to implement this Article. (2006-253, s. 5.)

AOC shall adopt forms



23

AOC-CR-271: Implied Consent Offense Notice

Defendant must list contacts and phone numbers

Magistrate: I informed defendant in writing of access procedures



24

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.)



25

Implied Consent Offense Notice

STATE OF NORTH CAROLINA
County: _____
MAGISTRATE: _____
IMPLIED CONSENT OFFENSE NOTICE

TO THE DEFENDANT:
The undersigned hereby notifies you of your constitutional right of appearance at the courthouse for an initial appearance before a magistrate. If you are unable to appear at the courthouse, you may appear at any other location within the county. If you are unable to appear at any location within the county, you may appear at the jail to observe your condition or to administer an additional chemical analysis if you are unable to make bond. If you are unable to make bond, you must list all persons you wish to contact and their telephone numbers on a copy of this form. A copy of this form must be filed with the case file. G.S. 20-38.4(b)(4).

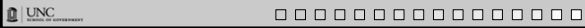
TO THE DEFENDANT:
The undersigned hereby notifies you of your constitutional right of appearance at the courthouse for an initial appearance before a magistrate. If you are unable to appear at the courthouse, you may appear at any other location within the county. If you are unable to appear at any location within the county, you may appear at the jail to observe your condition or to administer an additional chemical analysis if you are unable to make bond. If you are unable to make bond, you must list all persons you wish to contact and their telephone numbers on a copy of this form. A copy of this form must be filed with the case file. G.S. 20-38.4(b)(4).

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 Deputy CDS: _____ Assistant CDS: _____ 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 filed in the case file. G.S. 20-38.4(b)(4).

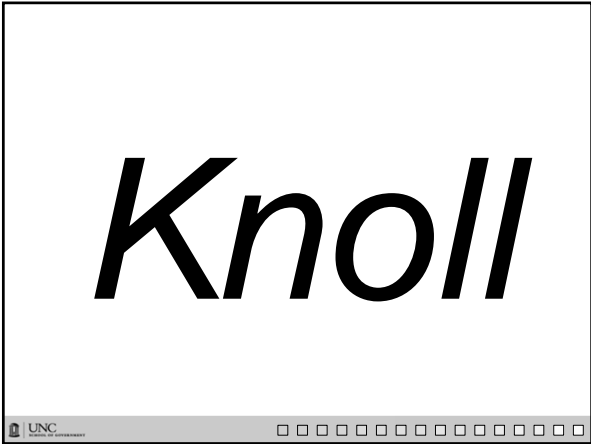


26

What's the big deal?



27



28

- If the State violates a defendant's statutory right to pretrial release by impermissibly holding the defendant; and
- The defendant is—during the crucial time period following his or her arrest—denied access to witnesses;
- The defendant may be entitled to ***dismissal*** of the charges.

29

- If a defendant charged with an impaired driving offense is denied access to witnesses
- He may be entitled to dismissal of the charges based on a flagrant violation of his constitutional rights
- **Even if he is lawfully detained**

30

Civil License Revocations & Motor Vehicle Seizures

Shea Denning
School of Government
February 2020



1

What is a CVR?

STATE OF NORTH CAROLINA
County _____ In the General Court of Justice
District Court Division _____

Know for what: _____ IN THE MATTER OF _____

**REVOCATION ORDER
WHEN PERSON PRESENT**
G.S. 20-16.5

FINDINGS FOR PROBABLE CAUSE

The undersigned justice of the peace 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 prohibited in G.S. 20-16.2(a);
3. The above-named person either did the chemical analysis required by the provisions of G.S. 20-16.2 and 20-176.1 in respect to the above-named person's submission to or procuring a chemical analysis, and:
 - a. The above-named person is subject to the provisions of G.S. 20-16.5;
 - 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.
4. The above-named person has one or more pending offenses in the following jurisdiction(s) _____ in which the person's driver's license had been or is to be revoked under G.S. 20-16.6.

CONCLUSION

It is ORDERED that the above-named person's driver's 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 expires in effect on _____ (20) days from _____.

The state justice approves neither driver's license or privilege to drive to the Court, or determines that he/she is not currently licensed to drive in this state.

The state justice approves for Probable Cause No. 3 above a review of the data he/she submits neither driver's license or privilege to drive to the Court to determine whether he/she is currently licensed to drive with restrictions and if that judgment, including any terms, has been entered for the same offense and for all pending offenses for which neither driver's license or privilege to drive has been or is to be 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 received appropriate notice from the person's respective state and has paid a \$100 fee to the Office of Register of Motor Vehicles.

Justice of the Peace

NOTE: See statute for supplemental findings and order, and for disposition of license.

Name of Justice of the Peace

Date of Signature

Name of Defendant

Date of Signature

F at the time of the Court you have only a temporary driving privilege. DO NOT purchase the vehicle, and then you may not surrender your license and registration until you have received a final Court date.

2

CVRs in Implied Consent Cases

CVRs “provide for swift and certain penalties for DWI, rather than the lengthy and uncertain outcomes of criminal courts”

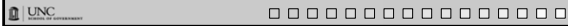
(NHTSA 2011 Highway Safety Countermeasure Guide at 1-11)



3

**Henry v. Edminston,
315 NC 474 (1986)**

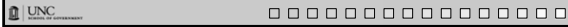
Remedial
highway safety
measure – not
punishment



4

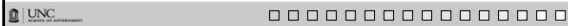
G.S. 20-16.5 Civil License Revocation (CVR)

1. LEO has reasonable grounds to believe person committed implied consent offense
2. Person is charged with that offense
3. LEO and CA comply with implied consent procedures re chemical analysis
4. Person
 - a. Willfully refuses
 - b. A/C of 0.08 or more
 - c. A/C of 0.04 or more if CMV
 - d. Any A/C if person <21



5

AOC-CVR-1A



6

G.S. 20-16.5 Civil License Revocation (CVR)

- 1. LEO has reasonable grounds to believe person committed implied consent offense
- 2. Person is charged with offense
- 3. LEO and CA comply with implied consent procedures re chemical analysis
- 4. Person
 - a. Willfully refuses
 - b. A/C of 0.08 or more
 - c. A/C of 0.04 or more if CMV
 - d. Any A/C if person <21

UNC

7

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 _____ while committing an implied-consent offense in that _____ (Give Street, Highway, Or Public Vehicular Area)

(List Sufficient Facts To Establish Probable Cause)

UNC

8

G.S. 20-16.5

- 2. Person is charged with that offense

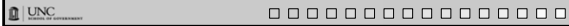
4. The driver was charged with the implied-consent offense of: G.S. 20-138.1. Other: _____

UNC

9

G.S. 20-16.5

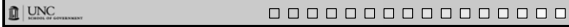
3. The law enforcement officer and chemical analyst comply with G.S. 20-16.2 and G.S. 20-139.1 in requiring person's submission to or procuring a chemical analysis.



10

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 4082.
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.k.a. j.p.m.) on the _____ day of _____, _____, at _____ (a.k.a. j.p.m.). I requested the driver to submit to a chemical analysis of his/her breath or blood or urine.
9. 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 that taking of a blood sample by a person qualified under G.S. 20-138.1 based on the arrest warrant _____ (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.
10. 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 ECIR II, and I 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 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.



11

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

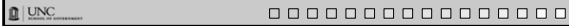
- 1. You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.
2. The test results, or the fact of your refusal, will be admissible in evidence at trial.
3. Your driving privileges 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.

12

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



13

Duplicate sequential breath samples?

Lot Number: AG011703 Exp Date: 04/27/2012	Lot Number: AG011703 Exp Date: 04/27/2012
Test 9/21/11 DIAG Pass AIR BLK .00 ACY CHK .08 AIR BLK .00 SUB TEST .10 AIR BLK .00 SUB TEST **	Test 9/21/11 DIAG Pass AIR BLK .00 ACY CHK .08 AIR BLK .00 SUB TEST .09 AIR BLK .00 SUB TEST **
11:27 p.m.	11:38 p.m.
TEST IME OUT Signature: [Signature] Chemical Analyst CVR	NO TEST Signature: [Signature] Chemical Analyst Court CVR
Insuff. sample 11:32 p.m.	



14

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.



15

Intoximeter: Intox EC/IR II

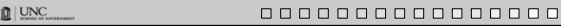
10A NCAC 41B .0322 INTOXIMETERS: MODEL INTOX EC/IR II

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.

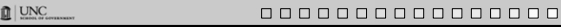
History Note: G.S. 20-139.1(b);
Eff. November 1, 2007.



16

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



17

AOC-CVR-02: Revocation Order

STATE OF NORTH CAROLINA

County: _____

in the MATTER OF: _____

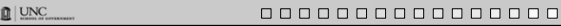
REVOCATION ORDER
SINCE PERSON PRESENT

§ 20-16.5

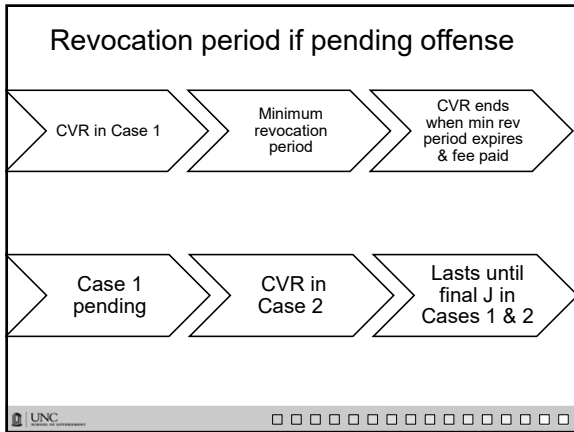
REASONS FOR PROBABLE CAUSE

1. A breathalyzer device failed to display a reading.
2. The officer did not observe the driver's eyes or other indicators of impairment.
3. The officer did not observe the driver's speech or other indicators of impairment.
4. The officer did not observe the driver's performance on any field sobriety test.
5. The officer did not observe the driver's odor of alcohol or other indicators of impairment.
6. The officer did not observe the driver's behavior or other indicators of impairment.
7. The officer did not observe the driver's any other indicators of impairment.

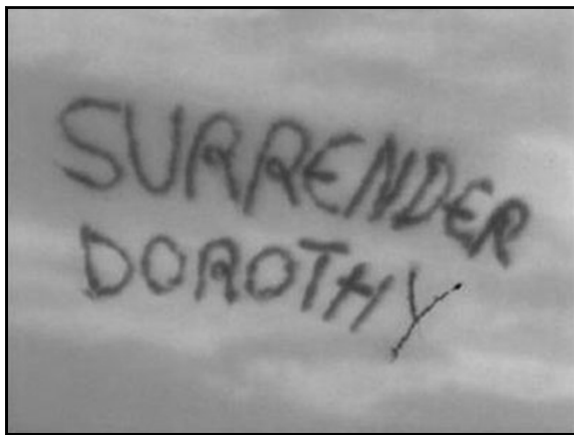
NOTE: This form is to be used to issue a revocation order when the person is present at the time of the hearing. It is not to be used to issue a revocation order when the person is not present at the time of the hearing. The person's name and address must be provided. The person's name and address must be provided. The person's name and address must be provided.



18



19



20

Affidavit - No License AOC-CVR-8

STATE OF NORTH CAROLINA
County: _____ In The General Court Of Justice
Chief Court Clerk

IN THE MATTER OF: _____
AFFIDAVIT - NO LICENSE

County Of Residence: _____ Date Of Residence: 03/20/2023

NORTH CAROLINA RESIDENTS

I, the undersigned, being that duly sworn, my that I am a resident of the county and state named above, and at the time of the offense:

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 that duly sworn, my that I am a resident of the county and state named above, and at the time of the offense:

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:

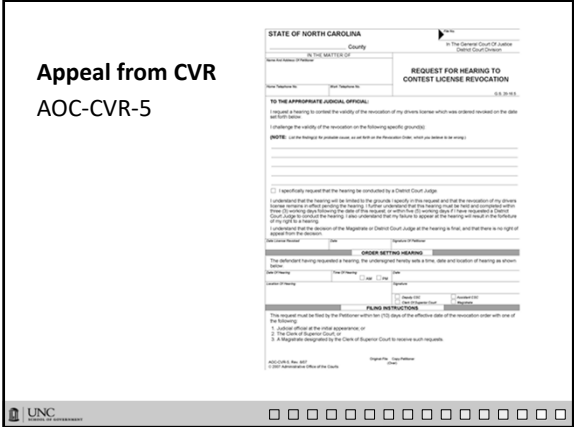
my license is revoked my license has expired
 I have never had a license other: _____

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: _____

UNC

21



**Appeal from CVR
AOC-CVR-5**

22

Hearing to contest CVR

- Time for hearing
 - Within 3 working days if before magistrate
 - Within 5 working days if before judge
 - If deadline missed, revocation must be rescinded (unless person contesting CVR contributed to delay)
- Issue(s) on appeal
 - Was contested condition under G.S. 20-16.5 satisfied?
 - Was there a pending offense for which license had been or is revoked under G.S. 20-16.5?
- Standard of review
 - Greater weight of the evidence

23


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

24

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?

UNC

25

Violation of A/C restriction on license NOT implied consent offense

NOTE TO OFFICER: The officer should review and follow the instructions on Side Two of this form. ATTACH TEST RECORD TICKET HERE.

STATE OF _____

NOTE: A "transportation" offense is not a "driving" offense.

Name _____ City of _____ Department of Justice

Address _____ Division _____

City _____ State _____

Sex _____

The driver violated a drivers license restriction by . . .

NOTE: A "transportation" offense is not a "driving" offense.

1. I am a law enforcement officer who believes the above named person, hereinafter referred to as driver, operated a vehicle on or under "stat" whenever in the above named county upon _____ while committing _____ consistent offense in that _____ (Give Street Highway, or Public Highway Name)

2. driver has a drivers license restriction: alcohol concentration ignition interlock conditional restoration (driver is not authorized to drive without an ignition interlock on the vehicle being driven) 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

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

4. The driver was charged with the implied consent offense of: G.S. 20-138.1, _____ and the driver has one or more pending offenses in the following county(ies) _____ for which the driver's 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 _____

UNC

26

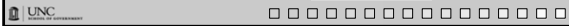
What about violation of an ignition interlock restriction?

- DWLR (G.S. 20-17.8(f))
- Revocation under G.S. 20-17.8(f)
 - Lasts until case is resolved
 - AOC-CR-341
- If alcohol consumed, then DWLR for ignition interlock violation *is* implied consent offense
- So CVR also may issue

UNC

27

G.S. 20-13.3:
CVR for 16- and 17-year-olds



31

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?



32

What about Lilly?

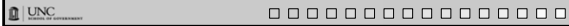


- Lilly is 16. She has a limited provisional license.
- She is charged with driving after consuming by a person under 21
- The results of her breath test are 0.02
- Is Lilly's license subject to civil revocation?
- Under what provision?



33

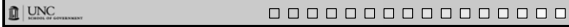
Motor Vehicle Seizure & Impoundment:
G.S. 20-28.3



34

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



35

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.



36

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)(8) - 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
- G.S. 20-138.5 - Driving While Impaired In Commercial Motor Vehicle
- G.S. 20-17(a)(12) - 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.

UNC

37

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

UNC

38



Driving While Not Covered by an Automobile Liability Policy

UNC

39

Exceptions to Seizure

1. Vehicle reported stolen
2. Rental vehicle and driver not listed in contract


UNC

40

Affidavit for Seizure and Impoundment
AOC-CR-323

UNC

41



Expedited Sales
\$1500 or less, may be sold after 90 days
When towing & storage costs > 85% FMV

UNC

42

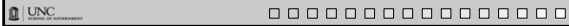
Purpose?

"[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."

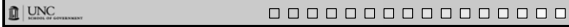
NHTSA, 2011 Highway Safety Countermeasure Guide at 1-34.



43

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"



44

(TYPE OR PRINT IN BLACK INK)
STATE OF NORTH CAROLINA
 _____ County

File No.

In The General Court Of Justice
 District Court Division

**OFFICER'S AFFIDAVIT FOR SEIZURE AND
 IMPOUNDMENT AND MAGISTRATE'S ORDER -
 IMPAIRED DRIVING**

G.S. 20-28.3

Name And Address Of Defendant					Name And Address Of Vehicle Owner
Defendant's Drivers License No.			State		
Vehicle Identification No.			Vehicle License No.		
State	Year	Make	Model	Body Style	
Date Of Offense					Present Location Of Motor Vehicle
Date Of Seizure			Time Of Seizure <input type="checkbox"/> AM <input type="checkbox"/> PM		

I. OFFICER'S AFFIDAVIT

The undersigned being first duly sworn says:

- I am a law enforcement officer. On or about the date of offense shown above, I had probable cause to believe that the defendant named above drove the motor vehicle described above in the above county upon *(Give street, highway or public vehicular area.)* _____ while committing an offense involving impaired driving in violation of G.S. 20-138.1 G.S. 20-138.5 G.S. _____ *(See Section III on reverse for a list of offenses involving impaired driving.)* in that: *(List sufficient facts to constitute probable cause.)* _____
 (Check if defendant charged under G.S. 20-138.5.) and a check of the Division of Motor Vehicles' records or other reliable information indicates that the defendant has been convicted of three (3) or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within ten (10) years of the date of offense shown above.
- I charged the defendant with an offense in violation of the statute cited above.
- A check of the records of the Division of Motor Vehicles or other reliable information indicates that, at the time of the above offense, the defendant's drivers license was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a). *(See Section IV on reverse for a list of impaired driving license revocations.)* the defendant was driving without a valid drivers license and was not covered by an automobile liability insurance policy.
- A check of law enforcement records or other reliable information indicates that the motor vehicle described above has not been reported stolen.
- The motor vehicle described above is not a rental vehicle, or if it is a rental vehicle, the defendant is listed as an authorized driver on the rental contract.
- (a) On the date of seizure shown above, I seized the vehicle described above and it is presently at the location shown above.
 (b) The motor vehicle has not yet been seized.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		Signature Of Seizing Officer
Date	Signature Of Official Authorized To Administer Oaths	Name Of Seizing Officer (type or print)
<input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	Date My Commission Expires	Name Of Department Or Agency Of Officer
<input type="checkbox"/> Notary	County Where Notarized	
SEAL		

II. MAGISTRATE'S ORDER

- On the basis of the facts set forth in the above Affidavit and any additional information furnished under oath, the undersigned finds that the requirements of G.S. 20-28.3 for the seizure and impoundment of the motor vehicle described above have have not been met.
- a. It is ORDERED that the above described motor vehicle be impounded and held pending further orders of the court.
 b. It is ORDERED that any officer with authority and jurisdiction seize the above described motor vehicle and that it be impounded and held pending further orders of the court.
 2. It is ORDERED that the above described motor vehicle be released to the motor vehicle owner upon payment of all towing and storage charges incurred as a result of the seizure of that vehicle.

Date	Name Of Magistrate (type or print)	Signature Of Magistrate
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NOTE TO OFFICER: *The seizing officer shall notify the Division of Motor Vehicles (DMV) of the seizure as soon as practical, but not later than 24 hours after the seizure of the motor vehicle. G.S. 20-28.3(b). The seizing officer should complete form LT-176 and forward it to the officer's DCI terminal operator. The terminal operator will then transmit the information to DMV via DCI. This Order authorizes any officer with jurisdiction to enter the property of the defendant to seize the motor vehicle. Consent or a search warrant is required to enter the private property of another. G.S. 20-28.3(c1).*

NOTE TO MAGISTRATE: *The magistrate shall provide the original of this form to the Clerk. G.S. 20-28.3(c). The magistrate should provide copies to the defendant and to the seizing officer.*

NOTE TO CLERK: *If a seizure is ordered, the Clerk shall provide copies of this form to the district attorney and the attorney for the county board of education. G.S. 20-28.3(c).*

(Over)

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.

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.

V. GROUNDS FOR SEIZURE - G.S. 20-28.3(a)

A motor vehicle is subject to seizure if the driver is charged with an offense involving impaired driving as listed in Section III above and at the time of the offense

- the driver's license is revoked for one of the reasons listed in Section IV above or
- the driver does not have a valid drivers license and is not covered by an automobile liability insurance policy.

Tab:
Motor Vehicle
Offenses

MOTOR VEHICLE Law

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Elements of Motor Vehicle Offenses

Basic School for Magistrates
 Shea Denning, School of Government
 August 2019

DWI Offenses		Elements	Items to note
DWI: G.S. 20-138.1		<ol style="list-style-type: none"> 1. Drive 2. 3. 4. While impaired <ol style="list-style-type: none"> a. b. c. 	p. 29 of yellow book
Misdemeanor sentenced under G.S. 20-179		<ol style="list-style-type: none"> 1. Drive 2. 3. Street/highway or PVA 4. While impaired <ol style="list-style-type: none"> a. b. c. 	p. 68 of yellow book
Habitual impaired driving: G.S. 20-138.5		<ol style="list-style-type: none"> 1. DWI 2. 	p. 52 of yellow book
Class F felony			

Zero Tolerance Offenses		Elements	Items to Note
Driving after consuming by person < 21: G.S. 20-138.3 Class 2 misdemeanor	<ol style="list-style-type: none"> 1. Less than 21 2. Drive 3. 4. <ol style="list-style-type: none"> a. While consuming alcohol; b. At any time while person has remaining in his or her body any alcohol previously consumed; or c. Any time while he or she has remaining in his or her body any previously consumed controlled substance, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts 	<p>p. 75 of yellow book</p> <p>Not a lesser included offense of DWI, but punishment limitations apply.</p>	
Operating commercial motor vehicle after consuming: G.S. 20-138.2A Class 3 misdemeanor	<ol style="list-style-type: none"> 1. Drive 2. Commercial motor vehicle* 3. Street, Highway, or PVA 4. While consuming alcohol or while alcohol remains in body 	<p>p. 76 of yellow book</p> <p>*Does not apply to the driving of Class C motor vehicles designed to transport 16 or more passengers or that are transporting hazardous material</p>	
Driving school bus/child care vehicle/ambulance/EMS vehicle/firefighting vehicle/LE Vehicle after consuming: G.S. 20-138.2B Class 3 misdemeanor	<ol style="list-style-type: none"> 1. Drive 2. School bus, school activity bus, child care vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle 3. Street, Highway, or PVA 4. While consuming alcohol or while alcohol remains in body 	<p>p. 77 of yellow book</p> <p>Does not apply to law enforcement officers acting in the course of, and within the scope of, their duties</p>	

Driver's License Offenses		Elements	Items to Note
Driving while license revoked: G.S. 20-28(a) Class 3 misdemeanor	<ol style="list-style-type: none"> 1. Drive 2. 3. 4. While driver's license or privilege to drive in NC is revoked 5. 	p. 101 of Pulled Over	
Driving while license revoked for impaired driving: G.S. 20-28(a1) Class 1 misdemeanor	<ol style="list-style-type: none"> 1. Drive 2. 3. 4. While driver's license or privilege to drive in NC is revoked 5. 6. 	<p>p. 103 of Pulled Over</p> <p>A person subject to ignition interlock who violates that condition commits the offense of driving while license revoked for impaired driving under G.S. 20-28(a1). See G.S. 20-17.8(f).</p> <p>Driving in violation of the terms of a limited driving privilege constitutes the offense of DWLR. If the limited driving privilege was issued to permit driving during an impaired driving revocation, then violation of its terms constitutes DWLR for an impaired driving revocation.</p>	
No operator's license: G.S. 20-7(a) Class 3 misdemeanor	<ol style="list-style-type: none"> 1. Drive 2. 3. 4. Without a valid license 	p. 98 of Pulled Over	
Failure to comply with license restriction: G.S. 20-7(e) Class 3 misdemeanor	<ol style="list-style-type: none"> 1. Drive 2. 3. 4. In violation of license restriction 	<p>p. 98 of Pulled Over</p> <p>This is proper charge for violation of alcohol concentration restriction.</p>	

Rules of the Road	Elements	Items to Note
Reckless driving: G.S. 20-140(a) <i>Carelessly and heedlessly</i>	<ol style="list-style-type: none"> 1. Drive 2. 3. 4. Carelessly and heedlessly 5. In willful or wanton disregard 6. Of the rights and safety of others 	p. 133 of Pulled Over
Class 2 misdemeanor Reckless driving: G.S. 20-140(b) <i>Endangering persons or property</i>	<ol style="list-style-type: none"> 1. Drive 2. 3. 4. Without due caution and circumspection 5. At a speed or in a manner 6. That endangers or is likely to endanger any person or property 	p. 133 of Pulled Over A person who violates both G.S. 20-140(a) and (b) in "one continuous operation of [a] vehicle" may be convicted of only one offense of reckless driving.
Aggressive driving: G.S. 20-141.6(a) Class 1 misdemeanor	<ol style="list-style-type: none"> 1. Drive 2. 3. Carelessly and heedlessly in willful or wanton disregard of the rights or safety of others 4. Street/highway or PVA 5. In violation of speed restrictions in G.S. 20-141 or speed restrictions in school zones in G.S. 20-141.1 	p. 144 of Pulled Over Reckless driving is a lesser-included offense of aggressive driving.

<p>Hit and run: G.S. 20-166(a1) <i>Failure to stop, remain at scene when injury occurs</i> Class H felony</p>	<ol style="list-style-type: none"> 6. Drive 7. Vehicle 8. Street/highway or PVA 9. Involved in crash 10. Causing injury 11. Knows or reasonably should that vehicle was involved in crash causing injury 12. Willfully <ol style="list-style-type: none"> a. Fails to _____ b. Fails to _____ c. _____ 	<p>p. 165 of Pulled Over</p> <p>An exception permits a driver to leave the scene of a crash in his or her vehicle to call for a law enforcement officer, to call for or obtain medical assistance or treatment, or to remove himself, herself, or others from significant risk of injury. A driver who leaves for one of these purposes must return with the vehicle to the accident scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer.</p>
<p>Hit and run: G.S. 20-166(b) <i>Failure to give information or assistance when injury, serious bodily injury, or death occurs</i> Class 1 misdemeanor</p>	<ol style="list-style-type: none"> 1. Drive 2. Vehicle 3. Street/highway or PVA 4. Involved in crash 5. Causing injury, serious bodily injury, or death 6. Knows or reasonably should that vehicle was involved in crash causing injury, serious bodily injury, or death 7. Driver fails to <ol style="list-style-type: none"> a. Give name, address, DL #, license plate number of vehicle involved in crash to person struck by his or her vehicle or to the driver or occupants of any vehicle with which he or she collided; or b. Render reasonable assistance to any person injured, including calling for medical assistance if it is apparent that such assistance is necessary or is requested by injured person 	<p>p. 166 of Pulled Over</p> <p>A driver is not required to give information to person who is not physically and mentally capable of receiving it.</p>

<p>Misdemeanor flee to elude: G.S. 20-141.5(a)</p> <p>Class 1 misdemeanor If violation causes death, Class H felony</p>	<p>1. Drive 2. _____ 3. _____ 4. While fleeing or attempting to elude a LEO who is lawfully performing duties</p>	<p>p. 143 of Pulled Over</p>
<p>Felony flee to elude: G.S. 20-141.5(b)</p> <p>Class H felony If violation causes death, Class E felony</p>	<p>Misdemeanor flee to elude, plus two of the following:</p> <ol style="list-style-type: none"> 1. Speeding more than 15 m.p.h. over the legal speed limit; 2. Person's faculties are grossly impaired while driving due to: <ol style="list-style-type: none"> a. consumption of an impairing substance; or b. BAC of 0.14 or more; 3. Reckless driving under G.S. 20-140; 4. Negligent driving leading to an accident causing: <ol style="list-style-type: none"> a. property damage of more than \$1,000; or b. personal injury; 5. Driving while driver's license is revoked; 6. Driving over speed limit on school property, in school zone, or in a highway work zone; 7. Passing a stopped school bus under G.S. 20-217; or 8. Driving with a child under 12 in the vehicle. 	<p>p. 143 of Pulled Over</p> <p>Motor vehicle subject to seizure if driven by person charged with felony flee to elude.</p> <p>Officer must seize motor vehicle unless (1) it has been reported stolen or (2) is a rental vehicle and the driver is not listed as an authorized driver on contract. G.S. 20-28.3(a1).</p> <p>Seizing officer presents affidavit of impoundment to magistrate. Magistrate determines if seizure requirements are met.</p>

<p>Second degree murder: G.S. 14-17</p> <p>Class B2 felony if based on inherently dangerous act performed in reckless and wanton manner, such as DWI</p>	<ol style="list-style-type: none"> 1. Killing 2. Another person 3. With malice 	<p>p. 58 of yellow book</p>
<p>Involuntary manslaughter: Common law offense</p> <p>Class F felony</p>	<ol style="list-style-type: none"> 1. Kill 2. Another person 3. (a) By an unlawful act that does not amount to a felony and is not ordinarily dangerous to life or (b) by a culpably negligent act or omission 	<p>p. 60 of yellow book</p> <p>DWI is culpable negligence.</p> <p>DWI and proximately causing death of another is both involuntary manslaughter and felony death by vehicle. A person convicted of both offenses based on a single death in a single incident may be sentenced only for felony death by vehicle, the more serious offense.</p> <p>This offense is not limited to deaths caused by DWI.</p> <p>Violation of traffic laws other than DWI unintentionally or negligently is not culpable negligence unless act is likely to result in death/great bodily harm. Consider whether the person intentionally violated a statute (culpable negligence) or simply negligently failed to observe its provisions (ordinary negligence).</p>

<p>Felony death by vehicle: G.S. 20-141.4(a1) Class D felony</p>	<ol style="list-style-type: none"> 1. Unintentionally cause death of another 2. While engaged in offense of (a) _____ or (b) _____ 3. _____ is proximate cause of death 	<p>p. 61 of yellow book</p>
<p>Aggravated felony death by vehicle: G.S. 20-141.4(a5) Class D felony (sentenced in aggravated range)</p>	<ol style="list-style-type: none"> 1. Felony death by vehicle 2. Prior conviction for offense involving impaired driving within 7 years 	<p>p. 62 of yellow book</p>
<p>Repeat felony death by vehicle: G.S. 20-141.4(a6) Class B2 felony</p>	<ol style="list-style-type: none"> 1. Felony death by vehicle 2. 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 DWI 	<p>p. 63 of yellow book</p>
<p>Misdemeanor death by vehicle: G.S. 20-141.4(a2) Class A1 misdemeanor</p>	<ol style="list-style-type: none"> 1. Unintentionally cause death of another 2. While violating a state law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic – other than DWI 3. Traffic offense is proximate cause of death 	<p>p. 64 of yellow book</p>

Serious Injury by Vehicle	Elements	Items to Note
Felony serious injury by vehicle: G.S. 20-141.4(a3) Class F felony	<ol style="list-style-type: none"> 1. Unintentionally cause serious injury to another person 2. While engaged in DWI or DWI in commercial motor vehicle 3. DWI is proximate cause of serious injury 	<p>p. 64 of yellow book</p> <p>Serious injury is not defined by statute. Refer to definitions in assault context. Consider pain and suffering, loss of blood, hospitalization, and/or time lost from work.</p> <p>This offense is limited to DWI and does not include serious injuries caused by other types of traffic offenses.</p>
Aggravated felony serious injury by vehicle: G.S. 20-141.4(a4) Class E felony	<ol style="list-style-type: none"> 1. Felony serious injury by vehicle 2. Previous conviction for offense involving impaired driving within 7 years of offense 	<p>p. 66 of yellow book</p>

Definitions.

Drive: To be in actual physical control of a vehicle that is in motion or that has the engine running. Drive and operate have the same meaning. G.S. 20-4.01(7), (25).

Vehicle: Any device that will take people or property down the road other than devices moved by human power. But, bicycles are vehicles, even though human-powered. Segways are not vehicles. And certain devices used by a person who has a mobility impairment are not vehicles. G.S. 20-4.01(49).

Motor Vehicle: Every vehicle that is self-propelled and every vehicle designed to run on the highways that is pulled by a self-propelled vehicle. Except as specifically provided otherwise, this term does not include mopeds or electric assisted bicycles. G.S. 20-4.01(23).

Moped: A vehicle, other than a motor-driven bicycle or electric assisted bicycle, that has two or three wheels, no external shifting device, a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 30 miles per hour on a level surface. The motor may be powered by electricity, alternative fuel, motor fuel, or a combination of each. G.S. 20-4.01(27)].

Commercial Motor Vehicle: Any of the following vehicles designed or used to transport passengers or property:

- a. A Class A motor vehicle that has a combined gross vehicle weight rating (GVWR) of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds;
- b. A Class B motor vehicle: (1) a single motor vehicle that has a GVWR of at least 26,001 pounds or (2) a combination of motor vehicles that includes as part of the combination a towing unit that has a GVWR of at least 26,001 pounds and a towed unit that has a GVWR of less than 10,001 pounds;
- c. A Class C motor vehicle that:
 - 1. Is designed to transport sixteen or more passengers, including the driver; or
 - 2. Is transporting hazardous materials and is required to be placarded in accordance with federal regulations.

G.S. 20-4.01(3d).

Street, Highway: The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. G.S. 20-4.01(13), (46).

Public Vehicular Area: Any area within the State of North Carolina that meets one or more of the following requirements:

- a. The area is used by the public for vehicular traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:
 1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.
 2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space whether the business or establishment is open or closed.
 3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina.
- b. The area is a beach area used by the public for vehicular traffic.
- c. The area is a road used by vehicular traffic within or leading to a gated or non-gated subdivision or community, whether or not the subdivision or community roads have been offered for dedication to the public.
- d. The area is a portion of private property used by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.
G.S. 20-4.01(32).

While Impaired: Impairment can be proved in one of three ways. To violate G.S. 20-138.1, the person must drive:

1. While under the influence of an impairing substance;
2. After having consumed sufficient alcohol that the person has, at any relevant time after the driving an alcohol concentration of 0.08 or more; or
3. With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

Impairing substance: Alcohol, controlled substance under Chapter 90, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances. G.S. 20-4.01(14a).

Offense involving impaired driving: The following are offenses involving impaired driving:

1. Impaired driving under G.S. 20-138.1
2. Habitual impaired driving under G.S. 20-138.5
3. Impaired driving in a commercial vehicle under G.S. 20-138.2
4. Death or serious injury by vehicle under G.S. 20-141.4 based on impaired driving
5. Murder under G.S. 14-17 based on impaired driving
6. Involuntary manslaughter under G.S. 14-18 based on impaired driving
7. Substantially similar offenses committed in another jurisdiction.
G.S. 20-4.01(24a).

Impaired driving license revocation: The revocation of a person's driver's license is an impaired driving license revocation if the revocation is pursuant to:

- 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 license revocation
 - G.S. 20-17(a)(2) Driving while impaired; driving while impaired in a commercial motor vehicle
 - G.S. 20-17(a)(12) Transporting open container – second or subsequent
 - G.S. 20-138.5 Habitual driving while impaired
 - G.S. 20-16(a)(7) Out-of-state offense similar to DWI resulting in NC revocation
 - G.S. 20-17(a)(1) Manslaughter involving DWI
 - G.S. 20-17(a)(3) Any felony in the commission of which a motor vehicle is used if the offense includes 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 the offense involves impaired driving; or
 - The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this State would result in a revocation listed above.
- G.S. 20-28.2(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 share the same meaning. G.S. 20-4.01(4b).

Self-test.

Basic School for Magistrates, August 2019

1. Donna Davis has been arrested for DWI. The officer discovered her sleeping in the driver's seat of her car in the parking lot of a closed business. The engine of the car was running, but the officer did not see it move. Donna was noticeably impaired and admitted to the officer that she had consumed several mixed drinks that evening. She said, however, that she only turned on the engine in the car to keep it warm inside. Do you find probable cause for DWI?
 - a. No, because Donna did not drive the car anywhere.
 - b. No, because the business was closed.
 - c. No, for the reasons in (a) and (b).
 - d. Yes, I find probable cause because Donna was in actual physical control of a vehicle in a public vehicular area whose engine was running.

2. Luther Logan was riding his bicycle on a city street, when he lost control of it and ran into a ditch. An officer who was concerned that Logan might be hurt, approached. He noticed that Logan was unsteady on his feet, smelled of alcohol, and that his speech was slurred. Logan admitted that he had consumed several beers at a nearby bar and that he was riding his bicycle to avoid driving his car while impaired. The officer arrested Logan for DWI. Do you find probable cause for DWI?
 - a. No, because Logan was riding a bicycle.
 - b. No, because Logan was trying to do the right thing.
 - c. No, for the reasons in (a) and (b).
 - d. Yes, I find probable cause, because a bicycle is a vehicle.

3. Paul Jones has been arrested for DWI. A security officer stopped Jones while he was driving his Mercedes on a private road within the gated subdivision where Jones lives. The security officer called a city police officer to the scene. The city officer formed the opinion, based on Jones' strong odor of alcohol, slurred speech, and his poor performance on field sobriety tests, that Jones was impaired and arrested him. Do you find probable cause for DWI?
 - a. No, because Jones was driving in a gated subdivision on a private road.
 - b. No, because I need to know the results of the breath test before I can find probable cause.
 - c. No, for the reasons in (a) and (b).
 - d. Yes, I find probable cause because Jones was driving while impaired in a public vehicular area.

4. Marla Manning was driving her moped on a city street when she was stopped on suspicion of DWI. Marla smelled strongly of alcohol, her speech was slurred, and she was unsteady on her feet. She also performed poorly on field sobriety tests. The officer discovered that Marla's driver's license was revoked. Which of the following statements is true?
 - a. Marla may properly be charged with DWI only.
 - b. Marla may properly be charged with DWI and DWLR.
 - c. Marla may **not** be charged with DWI or DWLR because she was driving a moped.

5. Marla is 20 years old. May she also be charged with Driving after consuming by a person under 21?
 - a. Yes
 - b. No

6. Cassie Clayton was convicted two years ago of driving after consuming while under 21. Cassie is now 24 years old. Her license has been restored with a restriction that she not drive with an alcohol concentration of .00 or more. She is stopped at a checkpoint, and the officer asks whether she has had anything to drink. She said that she had wine with dinner a few hours ago. The results of a portable breath test are positive. The officer requires Cassie to submit to a breath test. She blows a .03. For which, if any, of the following offenses do you find probable cause?
 - a. DWI
 - b. Driving while license revoked
 - c. Driving after consuming
 - d. Driving in violation of a license restriction
 - e. None of the above

7. Merle Maynard's license was revoked last year for a DWI conviction and he obtained a limited driving privilege from the court. Because Merle had an alcohol concentration of 0.15, the limited driving privilege requires that he operate only a motor vehicle equipped with ignition interlock. Merle is stopped for speeding, and the officer discovers that the car Merle is driving does not have ignition interlock. What is the proper charge (in addition to speeding)?
 - a. DWI
 - b. Driving while license revoked
 - c. Driving in violation of a license restriction
 - d. None of the above

8. May Merle continue to drive pursuant to the limited driving privilege until the charges are disposed of?
 - a. Yes, the limited driving privilege remains in effect until it is revoked by the trial court
 - b. No, the magistrate must suspend and order Merle to surrender the limited driving privilege

9. Suppose that the ignition interlock was imposed as a restriction on Merle's driver's license rather than as a condition of a limited driving privilege. If Merle is discovered to be driving a car that does not have ignition interlock, what is the proper charge?
 - a. DWI
 - b. Driving while license revoked
 - c. Driving in violation of a license restriction
 - d. None of the above

10. May Merle, in this second example, continue to drive until the charges are disposed of?
 - a. Yes, the license remains in effect until it is revoked by the trial court
 - b. No, the magistrate must suspend and order Merle to surrender his license

Tab:

DV Procedure

DOMESTIC VIOLENCE PROCEDURE

Special Procedures for Cases Involving Domestic Violence Statutes and Rules Sheet.....
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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
 - N.C. Gen. Stat. Ch. 50B, or
 - A court of another state, or
 - A court of an Indian tribe.

Other 50B criminal offenses (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.
- 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.

BUT SEE Jeff Welty’s post on the SOG Criminal Law Blog *DVPOs for Same-Sex Dating Relationships?* (8/15/2017), in which Jeff discusses recent case law raising questions about the constitutionality of the GS Ch 50B restriction to opposite sex dating relationships.

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

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).

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 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.

Domestic Violence Crimes and the 48-Hour Rule

Jeff Welty
UNC School of Government
December 2019

Overview

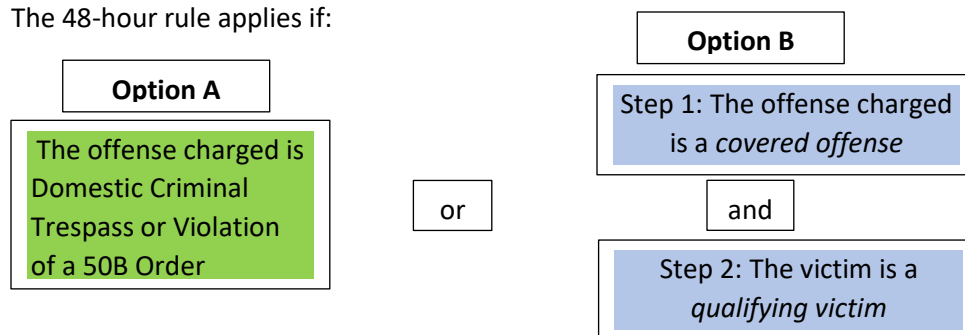
G.S. 15A-534.1 provides that, for certain domestic violence crimes, only a judge may set conditions of release in the first 48 hours after the defendant’s arrest. A magistrate is empowered to set conditions only if 48 hours pass without a judge setting conditions. For example, if a defendant is arrested on Friday night and no judge is available during the weekend, a magistrate could set conditions on Sunday night. This provision is known across the state as “the 48-hour rule.” Note that the rule does not require or permit the defendant to be held for 48 hours if a judge is available to set conditions of release sooner. If a judge is available and the defendant is not presented to him or her, the case may be dismissed. See *State v. Thompspon*, 349 N.C. 483 (1998) (finding a due process violation where a defendant was held despite several judges being available). Thus, the rule is *not* a “48-hour hold.”

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 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 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.” G.S. 15A-534.1.

This document is intended to assist magistrates and others in applying the 48-hour rule. It is current as of December 1, 2019. It does not address the similar rule contained in G.S. 15A-534.7 regarding defendants charged with communicating certain threats of mass violence.¹

48-Hour Rule Flow Chart

The 48-hour rule applies if:



¹ Previous versions of this document also addressed whether certain offenses were covered by the Crime Victims’ Rights Act, Article 46 of Chapter 15A of the General Statutes. However, the victims’ rights statutes were substantially revised by the General Assembly during the 2019 legislative session. Whether an offense is covered by the victims’ rights statutes now depends exclusively on the offense charged, regardless of the relationship between the defendant and the victim, and thus is an entirely separate question from whether the 48-hour rule applies. A complete list of offenses covered by the new victims’ rights statutes may be found at Jamie Markham, [Crimes Covered under the New Victims’ Rights Law](https://nccriminallaw.sog.unc.edu/crimes-covered-under-the-new-victims-rights-law/), N.C. CRIM. L. BLOG (Sept. 27, 2019), <https://nccriminallaw.sog.unc.edu/crimes-covered-under-the-new-victims-rights-law/>.

Option A: When the offense charged is domestic criminal trespass or violation of a 50B order

The 48-hour rule *always* applies when the defendant is charged with

- G.S. 14-134.3: Domestic criminal trespass
- G.S. 50B-4.1: Violation of valid protective order (note that although G.S. 50B-4.1 addresses violations of both North Carolina protective orders and out-of-state orders, G.S. 15A-534.1 applies only to defendants charged with “violation of an order entered pursuant to Chapter 50B,” i.e., to defendants charged with violating North Carolina protective orders)

When one of these crimes is charged, no further inquiry into the relationship between the defendant and the victim is required.

Option B: When there is a covered offense and a qualifying victim

The 48-hour rule also applies when the defendant is charged with committing what this paper will call a *covered offense* against what this paper will call a *qualifying victim*. Both a covered offense and a qualifying victim are required for the rule to apply. This paper will address the existence of a covered offense as step 1 of the analysis, then will proceed to address the existence of a qualifying victim as step 2.

Step 1: Covered offenses

Covered offenses include charges of “assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes upon” a victim. G.S. 15A-534.1. A list of each offense that is covered by the statute is below, organized by the word or clause within G.S. 15A-534.1 that covers the offense.

Assaults

The 48-hour rule applies to “assault[s].”² Many assault crimes are contained in Article 8 of Chapter 14 of the General Statutes, and the 48-hour rule also applies to all “felon[ies] provided in Article . . . 8,” so the list of assault crimes set forth below is partly redundant with the list of felonies contained in Article 8 that is set forth later in this document.

The list below includes many assault crimes that are unlikely to arise in a domestic violence context and normally will not involve a qualifying victim. For example, G.S. 14-16.6 makes it unlawful to assault certain executive, legislative, and court officials “because of the exercise of that officer’s duties.” Such an assault normally will be committed by a disgruntled citizen with no personal relationship to the official in question. But the offense is an assault crime and therefore is a covered offense under the terms of the 48-hour rule, so it is included below.³

² Is sexual battery, G.S. 14-27.33, an “assault”? Probably not under *State v. Corbett*, 196 N.C. App. 508 (2009) (ruling in part that “assault is not a lesser included offense of sexual battery”). *But see In re K.C.*, 226 N.C. App. 452 (2013) (stating, in the course of finding insufficient evidence of sexual battery but sufficient evidence of simple assault, that “[a] battery always includes an assault”).

³ It is possible to imagine unusual circumstances under which the offense would involve a qualifying victim. For example, suppose that a district court judge finds a DWI defendant guilty and imposes an active sentence. The

- G.S. 14-16.6: Assault on executive, legislative, or court officer (including with a firearm and inflicting serious bodily injury)
- G.S. 14-23.5: Assault inflicting serious bodily injury on an unborn child (note that it appears to be impossible for an unborn child to be a qualifying victim, but the statute requires “a battery on the mother of the unborn child,” and the mother could be a qualifying victim)
- G.S. 14-23.6: Battery on an unborn child (same note as for G.S. 14-23.5)
- G.S. 14-28: Malicious castration (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does appear to require unconsented contact; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-29: Castration or other maiming without malice aforethought (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does appear to require unconsented contact; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-30: Malicious maiming (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does appear to require unconsented contact; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-30.1: Malicious throwing of corrosive acid or alkali (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does appear to require unconsented contact; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-31: Maliciously assaulting in a secret manner
- G.S. 14-32: Felonious assault with deadly weapon with intent to kill or inflicting serious injury
- G.S. 14-32.1: Assaults on individuals with a disability
- G.S. 14-32.2: Patient abuse and neglect (includes several gradations depending on the defendant’s intent and the severity of the injury inflicted; it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does require physical abuse; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-32.3: Domestic abuse, neglect, and exploitation of disabled or elder adults (note that “assault” is one way of establishing the element of abuse but not the only way, so the assault provisions of the 48-hour rule might apply to some offenses under this statute but not others; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-32.4: Assault inflicting serious bodily injury; strangulation
- G.S. 14-33: Misdemeanor assaults, batteries, and affrays, simple and aggravated (this statute includes simple assault, assault inflicting serious injury, assault on a female, and assault on a child under 12, as well as several other assault offenses less likely to arise in a domestic violence context)
- G.S. 14-33.2: Habitual misdemeanor assault
- G.S. 14-34: Assaulting by pointing gun
- G.S. 14-34.1: Discharging certain barreled weapons or a firearm into occupied property (includes several gradations; it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does require discharging a firearm into occupied property, which

defendant is angry and assaults the judge. If, years ago, the defendant and the judge had engaged in a dating relationship, the 48-hour rule would apply.

arguably inherently amounts to an assault; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)

- G.S. 14-34.2: Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers
- G.S. 14-34.5: Assault with a firearm on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility
- G.S. 14-34.6: Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel
- G.S. 14-34.7: Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility
- G.S. 14-34.9: Discharging a firearm from within an enclosure (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does require discharging a firearm toward a person; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-34.10: Discharge firearm within enclosure to incite fear (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does require discharging a firearm with the intent to incite fear in another person; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-288.9: Assault on emergency personnel

Stalking

The only offense that is clearly covered under this provision is

- G.S. 14-277.3A: Stalking

A frequent question is whether cyberstalking, as defined in G.S. 14-196.3, is a covered offense. At least under most circumstances, it probably is not for the reasons given in Jeff Welty, *Cyberstalking and the 48-Hour Rule*, N.C. CRIM. L. BLOG (Nov. 28, 2012), <https://nccriminallaw.sog.unc.edu/cyberstalking-and-the-48-hour-rule/>.

Communicating threats

As with the list of assault crimes, above, the list below includes several offenses that are unlikely to arise in a domestic violence context and normally will not involve a qualifying victim.

- G.S. 14-16.7: Threats against executive, legislative, or court officers
- G.S. 14-277.1: Communicating threats
- G.S. 14-277.6: Communicating a threat of mass violence on educational property⁴
- G.S. 14-277.7: Communicating a threat of mass violence at a place of religious worship⁵

⁴ Note that when charging this offense, the 48-hour rule set forth in G.S. 15A-534.7 will apply regardless of whether there is a qualifying victim.

⁵ Note that when charging this offense, the 48-hour rule set forth in G.S. 15A-534.7 will apply regardless of whether there is a qualifying victim.

- G.S. 14-394: Anonymous or threatening letters, mailing or transmitting

A frequent question is whether harassing phone calls, as defined in G.S. 14-196, is a covered offense. At least under most circumstances, it probably is not as discussed in Jeff Welty, *Cyberstalking and the 48-Hour Rule*, N.C. CRIM. L. BLOG (Nov. 28, 2012), <https://nccriminallaw.sog.unc.edu/cyberstalking-and-the-48-hour-rule/>.

Felonies in Article 7B (“Rape and Other Sex Offenses”)

The following felonies are contained in Article 7B. As with several other categories of offenses addressed in this paper, some crimes on this list may be unlikely to involve a qualifying victim and so may rarely require the application of the 48-hour rule.

- G.S. 14-27.21: First-degree forcible rape
- G.S. 14-27.22: Second-degree forcible rape
- G.S. 14-27.23: Statutory rape of a child by an adult
- G.S. 14-27.24: First-degree statutory rape
- G.S. 14-27.25: Statutory rape of person who is 15 years of age or younger
- G.S. 14-27.26: First-degree forcible sexual offense
- G.S. 14-27.27: Second-degree forcible sexual offense
- G.S. 14-27.28: Statutory sexual offense with a child by an adult
- G.S. 14-27.29: First-degree statutory sexual offense
- G.S. 14-27.30: Statutory sexual offense with a person who is 15 years of age or younger
- G.S. 14-27.31: Sexual activity by a substitute parent or custodian
- G.S. 14-27.32: Sexual activity with a student

Felonies in Article 8 (“Assaults”)

The following felonies are contained in Article 8. As noted above, many of these crimes are also assault offenses, making this list partly duplicative of the above list of assault crimes. As with several other categories of offenses addressed in this paper, some crimes on this list may be unlikely to involve a qualifying victim and so may rarely require the application of the 48-hour rule.

- G.S. 14-28: Malicious castration
- G.S. 14-29: Castration or other maiming without malice aforethought
- G.S. 14-30: Malicious maiming
- G.S. 14-30.1: Malicious throwing of corrosive acid or alkali
- G.S. 14-31: Maliciously assaulting in a secret manner
- G.S. 14-32: Felonious assault with deadly weapon with intent to kill or inflicting serious injury
- G.S. 14-32.1: Assaults on individuals with a disability (note, not all offenses defined in this statute are felonies)
- G.S. 14-32.2: Patient abuse and neglect
- G.S. 14-32.3: Domestic abuse, neglect, and exploitation of disabled or elder adults
- G.S. 14-32.4: Assault inflicting serious bodily injury; strangulation
- G.S. 14-33.2: Habitual misdemeanor assault
- G.S. 14-34.1: Discharging certain barreled weapons or a firearm into occupied property

- G.S. 14-34.2: Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers
- G.S. 14-34.4: Adulterated or misbranded food, drugs, or cosmetics; intent to cause serious injury or death; intent to extort
- G.S. 14-34.5: Assault with a firearm on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility
- G.S. 14-34.6: Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel
- G.S. 14-34.7: Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility
- G.S. 14-34.9: Discharging a firearm from within an enclosure
- G.S. 14-34.10: Discharge firearm within enclosure to incite fear

Felonies in Article 10 (“Kidnapping and Abduction”)

The following felonies are contained in Article 10. As with several other categories of offenses addressed in this paper, some crimes on this list may be unlikely to involve a qualifying victim and so may rarely require the application of the 48-hour rule.

- G.S. 14-39: Kidnapping
- G.S. 14-41: Abduction of children
- G.S. 14-43.3: Felonious restraint

Felonies in Article 15 (“Arson and Other Burnings”)

The following felonies are contained in Article 15. As with several other categories of offenses addressed in this paper, some crimes on this list may be unlikely to involve a qualifying victim and so may rarely require the application of the 48-hour rule. Additionally, for several of the offenses in this Article, it may be difficult to determine whether the offense was committed “upon” a qualifying victim because the principal target of the offense is property, not a person. For example, if A burns B’s residence, has A committed an offense “upon” B? What if A burns a residence that does not belong to B but B is injured in the fire? There is no case law explaining when an arson offense is committed “upon” a person for purposes of G.S. 15A-534.1.

- G.S. 14-58: Punishment for arson (note that this statute defines the punishment class for first- and second-degree arson; perhaps an argument could be made that because arson is a common law offense, arson is not a “felony provided in” Article 15 notwithstanding this statute; no case law addresses this issue)
- G.S. 14-58.2: Burning of mobile home, manufactured-type house or recreational trailer home
- G.S. 14-59: Burning of certain public buildings
- G.S. 14-60: Burning of schoolhouses or buildings of educational institutions
- G.S. 14-61: Burning of certain bridges and buildings
- G.S. 14-62: Burning of certain buildings
- G.S. 14-62.1: Burning of building or structure in process of construction
- G.S. 14-62.2: Burning of churches and certain other religious buildings

- G.S. 14-63: Burning of boats and barges
- G.S. 14-64: Burning of ginhouses and tobacco houses
- G.S. 14-65: Fraudulently setting fire to dwelling houses
- G.S. 14-66: Burning of personal property
- G.S. 14-67.1: Burning other buildings
- G.S. 14-67.2: Burning caused during commission of another felony
- G.S. 14-69.1: Making a false report concerning destructive device
- G.S. 14-69.2: Perpetrating hoax by use of false bomb or other device
- G.S. 14-69.3: Arson or other unlawful burning that results in serious bodily injury to a firefighter, law enforcement officer, fire investigator, or emergency medical technician

Step 2: Qualifying victims

If a defendant is charged with a covered offense, the applicability of the 48-hour rule depends on the existence of a qualifying victim. The statute provides that such a victim is “a spouse or former spouse [of the defendant], 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).” Thus, a qualifying victim must have one of the following relationships to the defendant:

- *Spouse*. Presumably this applies when the victim and the defendant are legally married, even if separated or in the process of divorce.
- *Former spouse*. There is no time limit in the statute, so this provision appears to apply even if the defendant and the victim divorced years or decades ago.
- *Person with whom the defendant lives as if married*. Although this term is not defined in the statute, presumably this provision applies when the victim and the defendant live together and have a romantic or sexual relationship.
- *Person with whom the defendant has lived as if married*. As with the category “former spouse,” there is no time limit in the statute regarding when the defendant and the victim must have lived together.
- *Person with whom the defendant is in a dating relationship as defined in G.S. 50B-1(b)(6)*. Under G.S. 50B-1(b)(6), a “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.”
- *Person with whom the defendant has been in a dating relationship as defined in G.S. 50B-1(b)(6)*. Again, there is no time limit in the statute regarding when the dating relationship must have existed.

It is not relevant whether the defendant and the victim are the same sex or different sexes. Persons of the same sex or of different sexes may be “spouses,” may “live together as if married,” and may have a “dating relationship.” Confusion sometimes arises on this point because of the reference to G.S. 50B-1(b)(6). If one looks at G.S. 50B-1(b) generally, rather than at (b)(6) specifically, one might focus on the definition of 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.

Note that 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.”⁶

Conclusion

To sum up, the 48-hour rule always applies when the offense charged is domestic criminal trespass or violation of a 50B order. It also applies when a defendant is charged with committing a covered offense against a qualifying victim.

⁶ Whether it would be constitutional to apply the 48-hour rule only to different-sex couples might be questioned under *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015) (holding that laws limiting marriage to same-sex couples are unconstitutional, in part on equal protection grounds).

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.



Domestic Violence Law and Procedure

Author : John Rubin

Categories : [Crimes and Elements](#), [Procedure](#), [Sentencing](#), [Uncategorized](#)

Tagged as : [domestic violence](#), [DVPO](#), [personal relationship](#)

Date : September 5, 2017

In getting ready for the North Carolina magistrates' fall conference and a session that I'm teaching on issuing process in domestic violence cases, I began thinking about the ways that North Carolina criminal law addresses domestic violence. The North Carolina General Assembly has made numerous changes and additions in this area of criminal law, collected below. If I omitted some part of North Carolina criminal law involving domestic violence cases, please let me know.

Crimes Involving Domestic Violence

Several laws address crimes involving domestic relationships, although the relationship requirement varies. Some offenses require a romantic relationship of some kind. For example, domestic criminal trespass requires that the defendant trespass on premises occupied by the defendant's present or former spouse or a person with whom the defendant lives or has lived as if married. Others incorporate the broader definition of "personal relationship" for obtaining a domestic violence protective order (DVPO) in G.S. 50B-1, as for the offense of assault in the presence of a minor. Some offenses do not require a specific relationship but were evidently enacted with relationship violence in mind, such as assault by strangulation under G.S. 14-32.4(b) and stalking under G.S. 14-277A. Although the latter statute does not require a specific relationship, it opens with the statement that the General Assembly "recognizes . . . the strong connections between stalking and domestic violence . . ."

The offenses requiring a specific relationship include:

- Domestic criminal trespass, G.S. 14-134.3
 - Simple, Class 1 misdemeanor
 - Entry of safe house with deadly weapon, Class G felony
- Assault with a deadly weapon or inflicting serious injury, a Class A1 misdemeanor, in the presence of a minor, G.S. 14-33(d)
 - First offense, supervised probation if active sentence not imposed
 - Subsequent offense, minimum 30 day active sentence
- Disclosure of private images (sometimes referred to as revenge porn), G.S. 14-190.5A
 - If the defendant is 18 or older at the time of the offense, Class H felony
 - If the defendant is under 18 at the time of the offense, Class 1 misdemeanor for the first offense and Class H felony for a subsequent offense
 - This offense has required a personal relationship between the defendant and victim, but the requirement does not apply to offenses committed on or after December 1, 2017
- Domestic violence homicide, G.S. 14-17(a1) (effective for offenses committed on or after December 1, 2017)
 - First-degree premeditated and deliberate murder, Class A felony
 - This crime is based on a rebuttable presumption that the defendant acted with premeditation and deliberation if he kills with malice as defined in G.S. 14-17(b)(1) and was in a certain type of relationship with the victim and had previously been convicted of a certain type of crime against the victim. As written, this presumption may not be enforceable because it bases premeditation and deliberation on the version of malice in G.S. 14-17(b)(1), which involves recklessness, not an intentional act. See

generally County Court of Ulster v. Allen, 442 U.S. 140 (1979) (even if a presumption is considered permissive, there must be a “rational connection” between the facts proved and the fact to presumed); *see also State v. Coble*, 351 N.C. 448 (2000) (crime of attempted second-degree murder, which requires specific intent to commit underlying offense, does not exist because second-degree murder does not include specific intent to kill as element).

Several other offenses involve violations of domestic violence protective orders:

- DVPO violation, G.S. 50B-4.1
 - Simple, Class A1 misdemeanor
 - Third offense, Class H felony
 - Felony while DVPO prohibits act, one class higher than felony committed
 - Violation of stay-away condition with deadly weapon, Class H felony
 - Entry of safe house where protected person resides, Class H felony
- Possession of firearm while DVPO in effect, Class H felony, G.S. 14-269.8, G.S. 50B-3.1(j)
- Cyberstalking by electronic tracking device while subject to DVPO, Class 2 misdemeanor, G.S. 14-196.3(b)(5)

Arrest Procedures

Several provisions permit or require law enforcement officers to take action in cases involving domestic violence.

Warrantless arrests. G.S. 15A-401(b)(2) regulates an officer’s authority to make a warrantless arrest for offenses committed outside the officer’s presence. An officer has this authority when the officer has probable cause for any felony but only for certain misdemeanors. The statute gives officers this authority for the following misdemeanors involving domestic violence (as well as in cases in which the person will cause physical injury or property damage or will not be apprehended unless immediately arrested):

- Domestic criminal trespass
- Simple assault, assault with deadly weapon or inflicting serious injury, and assault by pointing a gun if a personal relationship exists as defined in G.S. 50B-1
- DVPO violation

An officer also may make a warrantless arrest for a violation of a pretrial release condition, whether committed in or outside the officer’s presence. G.S. 15A-401(b)(1), (2). Originally, this statute concerned domestic violence cases only, allowing warrantless arrests for violations of pretrial release conditions under G.S. 15A-534.1(a)(2), which lists pretrial release conditions in domestic violence cases. The statute was later broadened to other pretrial release violations.

Mandatory arrests. An officer must arrest when the officer has probable cause that a person has violated a DVPO excluding the person from the residence or household of a domestic violence victim or directing the person to refrain from doing any act in G.S. 50B-3(a)(9), such as threatening the victim. G.S. 50B-4.1(b).

Fingerprinting and other information. The arresting law enforcement agency must take the fingerprints of a defendant for all felonies and certain misdemeanors, including the following domestic violence offenses: domestic criminal trespass; an offense involving domestic violence as described in G.S. 15A-1382.1 (discussed further below under Sentencing); a DVPO violation; and misdemeanor assault, stalking, or communicating a threat if the person is held under G.S. 15A-534.1 (discussed further below under Pretrial Release Procedures). G.S. 15A-502(a2), (a4). The arresting agency must provide the magistrate with available information about the defendant’s relationship with the alleged victim and whether it is a personal relationship as defined in G.S. 50B-1, and the magistrate must enter the information into the court information system. G.S. 15A-502(a3), (a5).

Pretrial Release Procedures

G.S. 15A-534.1 contains several provisions on pretrial release in cases involving domestic violence:

- The most well-known provision is what has become known as the 48-hour law, which requires that a judge set pretrial release conditions in the first 48 hours after arrest. Over the years, the provision has been expanded to cover additional offenses and relationships, such as dating relationships. See Jeff Welty, [Recent Changes to the Pretrial Release Statutes](#), N.C. Crim. L. Blog (Nov. 19, 2015).
- The judicial official, whether a judge or magistrate, must consider the defendant's criminal history when setting pretrial release conditions. G.S. 15A-534.1(a); [Conditions of Release for Person Charged with a Crime of Domestic Violence](#), AOC-CR-630 (Dec. 2015) (form release order with these conditions).
- The judicial official may impose the pretrial release conditions listed in G.S. 15A-534.1(a)(2), such as stay-away conditions.
- The judicial official may detain a defendant for a reasonable time if the judicial official determines that immediate release will pose a danger to the victim or other person or result in intimidation to the victim and an appearance bond will not reasonably avert this risk. G.S. 15A-534.1(a)(1). This provision predated the 48-hour procedure and allowed for a cooling-off period for the defendant and an opportunity for the alleged victim to take safety precautions.

Sentencing

The following provisions concern sentencing in cases involving domestic violence:

- If the conviction involves assault, communicating a threat, or any act in G.S. 50B-1(a), and the defendant and victim had a personal relationship, the judge must indicate in the judgment and the clerk of court must indicate in the official record that the offense involved domestic violence. G.S. 15A-1382.1(a).
- If the court finds the defendant responsible for acts of domestic violence and sentences the defendant to probation, a regular condition of probation is to attend and complete an abuser treatment program. G.S. 15A-1343(b)(12).
- The Department of Public Safety must establish a domestic violence treatment program for inmates whose official record includes a finding that they committed acts of domestic violence. G.S. 143B-704(e).

See also G.S. 15A-1340.16(d)(15) (aggravating factor at felony sentencing for the defendant to have taken advantage of a position of trust and confidence, including a domestic relationship, in committing the offense).

Victims' Rights

The North Carolina Crime Victims' Rights Act gives victims of certain offenses various rights, including the right to notice throughout the proceedings and the right to restitution and a civil judgment for damages greater than \$250. G.S. 15A-830 through G.S. 15A-841, G.S. 15A-1340.34(b), G.S. 15A-1340.38. Many felonies are covered. The following misdemeanors, which involve domestic violence, are also covered:

- Simple assault, assault on female, assault with a deadly weapon or inflicting serious injury, assault by pointing a gun, domestic criminal trespass, and stalking if the defendant and victim had a personal relationship as defined in G.S. 50B-1
- Violation of a DVPO

Firearm Consequences

Federal law imposes a firearms ban for felonies and misdemeanor crimes of domestic violence. State law follows suit, providing that a person may not obtain a permit to purchase or carry a concealed handgun if prohibited by state or federal law. G.S. 14-404(a)(1), G.S. 14-415.12(b)(1), (8b); *see also* [Firearm Prohibition Notice](#), AOC-CR-617 (Dec. 2007) (form notice to convicted defendants that firearm possession may be unlawful under federal or state law). *But*

see Jeff Welty, [Vinson, Voisine, and Misdemeanor Crimes of Domestic Violence](#) , N.C. Crim. L. Blog (July 18, 2016) (questioning whether North Carolina misdemeanor assaults constitute misdemeanor crimes of domestic violence under federal law as applied by Fourth Circuit, but suggesting that North Carolina courts should continue to consider using AOC form to notify convicted defendants that possession of firearms “may” be unlawful).

During the term of a DVPO, it is unlawful for the defendant to possess firearms (discussed above under Crimes Involving Domestic Violence). After the DVPO expires, a defendant may move for return of firearms surrendered during the term of the DVPO, but the court must deny the motion if the defendant is disqualified from possessing firearms under state or federal law or has pending charges for an offense against the person protected by the DVPO. G.S. 50B-3.1(f).

Same Sex Marriage and Domestic Violence

Author : Jeff Welty

Categories : [Procedure](#), [Uncategorized](#)

Tagged as : [48 hour rule](#), [bond](#), [Chapter 50B](#), [domestic violence](#), [DVPOs](#), [same-sex marriage](#)

Date : October 29, 2014

Same sex marriage has been permitted in North Carolina for a couple of weeks. Shea blogged [here](#) about one potential criminal law implication: the possibility, discussed in a memorandum from the Administrative Office of the Courts, that magistrates could be charged criminally for refusing to marry same-sex couples. As noted in [this recent news article](#), a number of magistrates have resigned as a result. But the issue I've been asked most about is how same-sex marriage relates to our domestic violence laws.

Specifically, I have been asked how same-sex marriage relates to the 48-hour rule and to domestic violence protective orders issued under Chapter 50B.

The 48-hour rule. Under G.S. 15A-534.1, only a judge may set bond in a domestic violence case within the first 48 hours after arrest. The statute applies mainly to certain crimes committed against a "spouse or former spouse or a person with whom the defendant lives or has lived as if married." I noted in [this prior post](#) the uncertainty about whether same-sex couples were covered by that language. I don't see any more uncertainty. A same-sex couple married in North Carolina or elsewhere are "spouse[s]," or if subsequently divorced, "former spouse[s]." Same-sex couples who are cohabiting are living together as if married.

Chapter 50B orders. More complicated interpretive and legal issues arise in the context of Chapter 50B orders. G.S. 50B-1(b) lists the types of relationships that are eligible for DVPOs. The list includes "current or former spouses," and the new meaning of that term is clear. However, the expanded definition of that term probably doesn't cover many more people, as "current or former household members" was already a covered category and presumably reached most same-sex spouses.

I can imagine some changes to the category "related as parents and children," if the law regarding adoption changes in the aftermath of the same-sex marriage ruling. I imagine that it might but the issue is far beyond my expertise. (My colleagues Sara DePasquale and Meredith Smith address one aspect of the question in [this blog post](#).) Again, I tend to think that any change will be of limited practical import given the existing coverage of household members.

Perhaps the most interesting issue here, and the one of greatest practical import, concerns subdivision (b)(6), which encompasses "persons of the opposite sex who are in a dating relationship or have been in a dating relationship." I can imagine a constitutional challenge to that provision on the grounds that there is no basis for limiting it to opposite-sex couples. If such a challenge were successful, I don't know whether the remedy would be a judicial expansion of the rule or an excision of the rule from the statute.

As always, questions and comments are invited.



Does a No Contact Order Apply While the Defendant Is in Jail?

Author : Shea Denning

Categories : [Crimes and Elements](#), [Procedure](#)

Tagged as : [15A-534](#), [contempt](#), [domestic violence](#), [nancy](#), [no contact](#), [stalking](#), [state v. mitchell](#)

Date : June 6, 2018

When setting conditions of pretrial release in domestic violence cases, magistrates and judges often order a defendant not to contact the victim. Those directives clearly apply to a defendant once he is released from jail subject to those conditions. But what about a defendant who remains in jail? Is he also subject to a no contact condition included on a release order? The court of appeals addressed that issue yesterday in [State v. Mitchell](#).

The court in *Mitchell* concluded that the no contact directive set forth on Mitchell's release orders (he was charged with more than one crime for allegedly assaulting his girlfriend) applied to Mitchell while he was confined in jail. Thus, Mitchell's mailing of letters to his girlfriend from jail violated a court order. And because the letters amounted to stalking, Mitchell's conduct was felonious since there was a court order in effect (the pretrial release orders) prohibiting his conduct.

Facts. Mitchell was arrested for assault on a female on December 26, 2014 after he allegedly punched his girlfriend, "Nancy," in the face. At his initial appearance, the magistrate wrote on the [AOC-CR-200](#), Conditions of Release and Release Order form, that he was "NOT TO HAVE ANY CONTACT WITH [NANCY]." Mitchell's release was not authorized that evening because he was charged with a domestic violence offense for which only a judge could set pretrial release conditions during the first 48 hours following his arrest. Two days later, a judge authorized Mitchell's release upon the posting of a secured bond. The judge, like the magistrate, ordered that Mitchell have no contact with the victim.

A week later, while Mitchell remained in jail, he was charged in an arrest warrant with habitual misdemeanor assault for the alleged December 26 assault of Nancy. The Conditions of Release and Release Order issued in connection with this charge imposed a secured bond and ordered Mitchell "NOT TO HAVE ANY CONTACT WITH [NANCY]." Mitchell did not post bond and remained jailed on both charges.

Mitchell wrote six letters to Nancy from jail while he was subject to conditions of release orders for one or both of these charges. The first letters were "cordial," but the later letters "escalated to threats when she did not respond or reply." Slip op. at 5. Nancy also received a letter marked "return to sender" that listed her return address. The letter was addressed to the Federal Building on Fayetteville Street in Raleigh and contained a bomb threat and demand for \$1 million, purportedly written by Nancy. The defendant later admitted to writing the letter.

In March 2015, the Wake County District Attorney's Office received a letter through "jail mail" from the Wake County Detention Center that purported to be written by Nancy. The letter stated that Nancy had falsely accused Mitchell and threatened to place explosives in the Wake County Courthouse. Nancy denied sending the letter.

Mitchell was charged with felony stalking while a court order was in effect for the letters to Nancy and with two counts of felony obstruction of justice based on the letters to the Federal Building and the District Attorney's office.

Felony stalking. [G.S. 14-277.3A](#) defines the offense of stalking, which generally is a Class A1 misdemeanor. If, however, stalking is committed "when there is a court order in effect prohibiting the conduct described under [G.S.

14-277.3A] by the defendant against the victim,” the offense is elevated to a Class H felony.

Defendant’s argument. Mitchell moved to dismiss the felony stalking charges on the basis that he was not subject to the conditions of pretrial release that prohibited him from having contact with Nancy because he never posted his bond. Instead, he remained in jail during the entire time the letters were sent. Since he was not released, he said that the order did not apply to him.

Court’s analysis. Calling Mitchell’s argument “deceptively simple,” the court rejected it. Slip op. at 9. The court noted that the orders, titled “Conditions of Release and Release Order,” contained more than their title suggested. In addition to establishing conditions of release, the orders committed Mitchell to a detention facility (as required by [G.S. 15A-521\(a\)](#)), noted that he was subject to a domestic violence hold, directed when the defendant was to again be produced before a judicial official (as required by G.S. 15A-521(b) and [G.S. 15A-534.1](#)), and, for one of the orders, required that Mitchell provide fingerprints.

Such orders, the court of appeals said, “memorialize[] the trial court’s determinations governing the defendant, whether the defendant is held in a detention facility or released.” Slip op. at 12. Some of the terms of such an order, the court explained, apply whether a defendant is committed or released, while others apply only in one circumstance or another.

The court stated that the directive in the *Mitchell* orders that Mitchell have no contact with Nancy contained no language indicating that the provision applied only upon Mitchell’s release. Thus, the court concluded, contact with Nancy was barred as long as the orders were in effect. And the orders were in effect until the charges were disposed of, whether Mitchell remained confined in jail or was released.

The stalking enhancement. The court further held that Mitchell’s stalking was felonious because the pre-trial release orders barring Mitchell from contacting Nancy “prohibit[ed] the conduct described under [G.S. 14-277.3A] by the defendant against the victim.”

The court reasoned: Conduct described in G.S. 14-277.3A includes harassment, which requires “[k]nowing contact” that may consist of “written or printed communication.” Mitchell was ordered not to contact Nancy. Because harassment under G.S. 14-277.3A requires contact, the orders prohibited conduct under G.S. 14-277.3A, even though they did not specifically mention stalking.

The court said its view that the no contact order prohibited conduct described in the stalking statute was “in keeping with the intent” of the stalking statute, which provides in part: “[T]he General Assembly enacts this law to encourage effective intervention by the criminal justice system before stalking escalates into behavior that has serious or lethal consequences. The General Assembly intends to enact a stalking statute that permits the criminal justice system to hold stalkers accountable for a wide range of acts, communications, and conduct.” Slip op. at 15 (citing G.S. 14-277.3A(a)).

Practical effect. The *Mitchell* court did not identify the source of a judicial official’s authority to impose conditions upon a person that apply while the person is detained, but its analysis assumes such authority exists. *Cf. Baker v. United States*, 891 A.2d 208 (D.C. Cir. 2006) (declining to decide whether trial court that ordered defendant preventatively detained had the authority to issue a no-contact order under the bail statute or pursuant to the court’s inherent authority). That issue has been the subject of considerable debate in the trenches (see Jeff’s post [here](#)), so its resolution is significant, particularly given the frequency with which no contact conditions are imposed.

The court also did not address what limitations exist on a judicial official’s authority to impose such conditions. While Mitchell’s post-arrest conduct leaves little doubt about the need for such a restriction in his case, it is not clear what standard judicial officials are to use in crafting general conditions regulating the conduct of a defendant both in and out of jail. *Cf. G.S. 15A-534(a)* (permitting a judicial official to “place restrictions on the travel, associations, conduct, or

place of abode of the defendant ***as conditions of pretrial release*** (emphasis added); G.S. [15A-534.1](#)(a)(2)(permitting a judge to impose, among other “pretrial release” conditions, a condition that the defendant “stay away from the home, school, business or place of employment of the alleged victim”).

Most violations of no contact orders do not, of course, result in statutorily enhanced charges like those in *Mitchell*. Instead, they are more often addressed through contempt proceedings under Chapter 5A. *Cf. Baker*, 891 A.2d at 212 (stating that “even assuming for the sake of argument that the trial court’s no-contact order was invalid, Baker’s conviction for contempt must be upheld for his failure to comply with that order” which he did not challenge or appeal). After *Mitchell*, I expect that magistrates and judges will continue to impose such conditions (though they may wish to specify whether they apply in jail as well as upon release) and that contempt proceedings will continue to be initiated for defendants who do not follow them.

Thanks to my colleague John Rubin for helping me think through the issues in State v. Mitchell and for teaching me everything I know about pretrial release.

DVPOs for Same-Sex Dating Relationships?

Author : Jeff Welty

Categories : [Uncategorized](#)

Tagged as : [domestic violence](#), [DVPO](#), [equal protection](#), [same-sex couples](#), [south carolina](#)

Date : August 15, 2017

Domestic violence protective orders (DVPOs) are available to “persons of the opposite sex who are . . . or have been in a dating relationship,” and who are able to establish that the person that they are or were dating committed an act of domestic violence against them. Persons of the same sex who are or were in a dating relationship don’t have the same opportunity. Is that constitutional? The Supreme Court of South Carolina just addressed a related question, and its opinion suggests that the answer is no.

Background. [G.S. 50B-1](#) defines a “personal relationship” as a relationship where the parties involved:

- (1) Are current or former spouses;
- (2) Are persons of opposite sex who live together or have lived together;
- (3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
- (4) Have a child in common;
- (5) Are current or former household members;
- (6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, 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.

The statute defines “domestic violence” as the commission of certain acts by a party to a “personal relationship,” so only individuals in a “personal relationship” are eligible for a DVPO. Same-sex couples who are dating but not living together aren’t in a “personal relationship” as defined by the statute.

It has been clear at least since [Obergefell v. Hodges](#), 576 U.S. ___ (2015) (ruling that the Due Process Clause and the Equal Protection Clause of the Constitution require all states to permit and to recognize same-sex marriages), that distinctions between same-sex and opposite-sex relationships require legal scrutiny. In [this prior post](#), I noted that Chapter 50B contained several questionable provisions.

South Carolina case. The recent South Carolina case that bears on this issue is [Doe v. State](#), ___ S.E.2d ___, 2017 WL 3165132 (S.C. July 26, 2017). South Carolina’s domestic violence statutes apply only to “household members,” defined in part as a “male and female who are cohabiting or formerly have cohabited.” A woman who suffered domestic violence at the hands of her female partner -- the two were engaged, but not married -- sought a DVPO but was denied based on the above definition. She challenged the law in court, arguing that the exclusion of same-sex couples violated equal protection principles.

The state supreme court agreed. It stated that it “cannot find a reasonable basis for providing protection to one set of domestic violence victims—unmarried, cohabiting or formerly cohabiting, opposite-sex couples—while denying it to others. Accordingly, we find no constitutionally valid rational basis for the statutory classifications created by the definitional subsections at issue.”

Turning to the question of how to remedy the defect, the court decided to “sever the discriminatory provision,” removing the reference to cohabiting couples from the statute. In other words, *the court made opposite-sex cohabiting couples ineligible for DVPOs* so that both same-sex and opposite-sex couples are treated in the same way. (The chief justice dissented as to the remedy. He would have held the statute unconstitutional as applied to the plaintiff and would have held “that the family court may not utilize these statutory provisions to prevent [the plaintiff] or those in similar same-sex relationships from seeking [a DVPO].”)

Back to North Carolina. Obviously, South Carolina cases aren’t binding on North Carolina courts. But that court was unanimous on the fundamental equal protection issue. Using the same lens to look at North Carolina’s statute, there are two provisions that are worth considering:

- The phrase “[a]re persons of opposite sex who live together or have lived together.” This is virtually indistinguishable from the language at issue in the South Carolina case. However, it may be difficult for a plaintiff to establish standing to contest this portion of the North Carolina statute because the statute also covers individuals who “[a]re current or former household members.” Persons of the same sex who “live together or have lived together” appear to be covered by the latter provision -- though I have heard arguments that the “household members” provision should not be interpreted to include romantic partners -- and so arguably suffer no legally cognizable injury by their exclusion from the “live together” prong of the statute.
- The phrase “[a]re persons of the opposite sex who are in a dating relationship or have been in a dating relationship.” This provision is the focus of today’s post, and I must say, the argument that this provision violates equal protection strikes me as quite strong. Violence in same-sex relationships seems to be [as common](#), or maybe even [more common](#), than in opposite-sex ones, suggesting an equivalent need for DVPOs. Of course, legislative actions are presumptively constitutional; *Obergefell* was decided partly based on the fundamental right to marry, which is not implicated in the “dating relationship” provision; and it is not clear what degree of scrutiny would apply to a challenge to this provision, so perhaps the issue is not a complete slam dunk.

What’s the practice? I suspect that judges are receiving DVPO requests arising out of same-sex dating relationships, and I have heard that at least some judges will issue DVPOs in such circumstances. But as always, I welcome comments regarding how this issue is playing out in the real world.



State v. Elder: DVPO Cannot Authorize Search for Guns

Author : Shea Denning

Categories : [Search and Seizure](#)

Tagged as : [domestic violence](#), [DVPO](#), [firearms](#), [fourth amendment](#), [search warrants](#)

Date : June 25, 2015

A judge who issues an emergency or ex parte domestic violence protective order must order the defendant to surrender all firearms in his care, custody or control if the judge makes certain findings about the defendant's prior conduct. Among the findings that trigger the weapons-surrender requirement is a finding that the defendant used or threatened to use a deadly weapon or has a pattern of prior conduct involving the use or threatened use of violence with a firearm. A defendant served with such an order must immediately surrender his firearms to the sheriff. If the weapons cannot be immediately surrendered, he must surrender them within 24 hours. But what if the defendant does not turn over any firearms? May the protective order authorize the sheriff to search the defendant, his home, and/or his vehicle for such weapons?

No. The North Carolina Supreme Court in [State v. Elder](#), ___ N.C. ___, ___ S.E.2d ___ (June 11, 2015), held that [G.S. 50B-3](#) did not authorize the district court to include in a domestic violence protective order (DVPO) a directive that law enforcement officers search the defendant, his vehicle and his residence for weapons.

Facts. Gregory Elder's wife sought an ex parte DVPO in September 2010. The court entered the DVPO, finding that Elder had threatened to get gasoline and torch their son's preschool, his wife's house and her sister's house. The court also found that Elder had said "I'm going to get you all," and "you won't [expletive deleted] stop me, and the police won't [expletive deleted] stop me." (Slip op. at 2.) Finally, the court found that Elder had a history of substance abuse and mental illness and that he had made threats to anyone who attempted to go into the marital residence.

The court concluded that Elder had committed acts of domestic violence in the past and that he continued to present a danger of future violence. The court ordered him to surrender his firearms, ammunition and gun permits, as provided in [G.S. 50B-3.1](#).

Relying on [G.S. 50B-3\(a\)\(13\)](#), which authorizes the court to include as relief in a DVPO "any additional prohibitions or requirements the court deems necessary to protect any party or minor child," the court ordered that "[a]ny Law Enforcement officer serving this Order shall search the Defendant's person, vehicle and residence and seize any and all weapons found." (Slip op. at 2.)

The DVPO contained no findings that Elder owned or possessed a weapon.

Service of the DVPO. After several attempts, officers successfully served the DVPO on Elder three days after it was issued. They knocked on his door for fifteen minutes. Elder came outside and locked the door behind him? a reasonable precaution since there was marijuana growing operation inside.

The officers took the keys from Elder's pockets, unlocked the door and went inside to search for weapons as ordered in the DVPO.

You know what they found growing in the basement.

Motion to suppress. Elder was charged with several drug crimes. He moved to suppress the evidence the officers found on the basis that the search violated his Fourth Amendment rights. The trial court denied the motion. A divided panel of the court of appeals reversed, [holding](#) that the DVPO statutes did not authorize the district court to order the search, that the DVPO was not a de facto search warrant because it contained no findings of probable cause to believe that evidence of a crime would be found in the places ordered searched, and that the search was not authorized by exigent circumstances. The dissenting opinion concluded that the district court was statutorily authorized to order the search. The State appealed, and the state supreme court affirmed.

Supreme Court's Analysis. G.S. 50B-3(a)(1)-(13) lists thirteen types of relief that a court may order in a DVPO. The first twelve subsections authorize the court to impose specific prohibitions or requirements on a party to the DVPO. The court may order a party to refrain from acting in a certain way (not to harass the other party, for example) or to act in a certain way (to pay child support, for example). The last subsection, G.S. 50B-3(a)(13), is a catch-all provision that authorizes the court to order "any additional prohibitions or requirements the court deems necessary to protect any party or any minor child."

The *Elder* court held that this catch-all provision limits the court to ordering a party to act or refrain from acting, as do the preceding subsections. The provision does not authorize the court to order in a DVPO that law enforcement officers search the defendant, his vehicle, or his residence.

Fourth Amendment. The *Elder* court explained that its interpretation was consistent with the Fourth Amendment and Article 1, Section 20 of the North Carolina Constitution. Were it to conclude otherwise, the court reasoned, "district courts would have seemingly unfettered discretion to order a broad range of remedies in a DVPO so long as the judge believes they are necessary for the protection of any party or child." (Slip op. at 6.)

Because *Elder* was, of course, a criminal case and the defendant's motion to suppress was based on the violation of his state and constitutional rights, the court then considered whether the search indeed violated those rights. The court concluded that nothing in the case excused the requirement that a search of person's home be conducted pursuant to a warrant issued by a judicial official following a determination of probable cause. While acknowledging that domestic violence is a significant problem and the state has a vital interest in protecting victims, the court concluded that the facts of the case did not justify a special needs search of the type authorized when interests beyond the normal need for law enforcement make the warrant and probable cause requirement impracticable. Thus, the court determined that the warrantless search of the defendant's home violated his state and federal constitutional rights.

What if the DVPO had included findings that the defendant had a gun? I don't think the outcome would be any different. *Elder* held that the trial court had no authority under G.S. 50B-3 to order in a DVPO that law enforcement officers search the defendant, his home, or vehicle. The court's interpretation of the statute does not appear to hinge on the possible presence of a weapon. I'm likewise doubtful that a finding that the defendant had a firearm would alter the constitutional analysis governing an ensuing search of the defendant's home. At the time a DVPO is served, the defendant must surrender his firearms. If a law enforcement officer has probable cause to believe that a firearm is located within a defendant's residence and has not been surrendered as required, she may seek issuance of a search warrant to recover the weapon.



Can the Person Protected by a DVPO Be Charged with Violating the Order?

Author : John Rubin

Categories : [Crimes and Elements](#), [Procedure](#), [Uncategorized](#)

Tagged as : [aiding and abetting](#), [domestic violence](#), [DVPO](#)

Date : April 27, 2015

Here's a question I get occasionally: What language should I use to charge aiding and abetting a violation of a domestic violence protective order (DVPO)? Here's a similar one: If someone is arrested for aiding and abetting a violation of a DVPO, is the person subject to the 48-hour pretrial release law for domestic violence offenses? I know the scenario immediately. A person protected by a DVPO (Mary) has invited the person subject to the DVPO (her ex-boyfriend, John) over to her house although the DVPO prohibits him from being there. Things deteriorate, and Mary calls the police for assistance. I also know my answers to these questions. There isn't language for charging Mary with aiding and abetting a violation of a protective order that was entered for her protection because such a charge isn't valid. For the same reason, Mary isn't subject to arrest so the 48-hour law doesn't apply. If such a charge is brought, the remedy is for the court to dismiss it for failure to state a crime.

The North Carolina appellate courts haven't addressed whether these charges are proper, but decisions from other states explain why they should not stand. In *State v. Lucas*, 795 N.E.2d 642 (Ohio 2003), the facts were similar to the above scenario. In *Patterson v. State*, 979 N.E.2d 1066 (Ind. App. 2012), the police came to the residence for other reasons (to serve a subpoena) and found the two together. In dismissing the aiding and abetting charge, the court in both cases focused on the legislature's intent in authorizing domestic violence protective orders—namely, to protect victims of domestic violence. As stated by the Ohio Supreme Court in *Lucas*, the legislature did not intend to undo those protections by “allowing abused women to be charged with complicity” in violating orders for their protection. 795 N.E.2d at 648. The courts' reading of legislative intent rests on a combination of common law principles, statutory language, and policy considerations. In light of our state's commitment to protecting victims of domestic violence, I believe our appellate courts would find the reasoning persuasive.

First, a basic tenet of criminal law is that the victim of a crime cannot be charged with aiding and abetting commission of the crime. “Where the statute in question was enacted for the protection of certain defined persons thought to be in need of special protection, it would clearly be contrary to the legislative purpose to impose accomplice liability upon such a person.” See Wayne R. LaFave, *Substantive Criminal Law* § 13.3(e), at 370 (2d ed. 2003). For example, a victim of statutory rape cannot, by consenting, be charged with aiding and abetting the crime.

Second, the language of the statutes indicates that the legislature did not intend for a person protected by a protective order to be held criminally liable for a violation of the order. Thus, the Ohio statute prohibits “mutual” protective orders. That means that a court may not issue a protective order against the person who petitions for a protective order unless the respondent also files for and meets the requirements for issuance of a protective order against the petitioner. The North Carolina DVPO procedures did not originally include such a provision, but the North Carolina General Assembly amended G.S. 50B-3(b) to add it specifically. See S.L. 1995-591 (H 686). The Ohio and Indiana statutes contain an additional provision, not present in North Carolina's statutes, that an invitation to return to the residence does not nullify or waive a protective order. The difference is not critical; jurisdictions without such a provision have interpreted their protective order statutes as establishing the same rule. See, e.g., *State v. Dejarlais*, 969 P.2d 90 (Wash. 1998) (so interpreting statute before legislature enacted such a provision); accord *State v. Branson*, 167 P.3d 370 (Kan. Ct. App. 2007). North Carolina's courts likely would follow the same approach. See Domestic Violence Order of Protection, AOC Form AOC-CV-306 (Oct. 2013) (“Only the Court can change this order. The plaintiff cannot give you permission

to violate this order.”).

Third, the policies behind protective order statutes indicate that the legislature did not intend for the victims of domestic violence to be charged with violations of orders for their protection. Such charges could “chill” enforcement of protective orders, contrary to the legislature’s intent to strengthen protections. *Lucas*, 795 N.E.2d at 647. Even though protected by a protective order, a person may be reluctant to call for help if fearful of being prosecuted for having invited the other person to her home. *See generally Branson*, 167 P.3d at 372 (noting petitioner’s testimony that she did not call police immediately because she thought she “would be in as much trouble as he was”). People in need of protective orders might even be deterred from seeking protective orders. In our Mary and John example, if Mary invites John to her house, wants him to leave, and does *not* have a protective order, she can call the police without being arrested herself; yet, if the law allowed charges of aiding abetting, Mary would be in worse shape for having a protective order.

A somewhat older case from Iowa held that a person could be held liable for, in essence, aiding and abetting a violation of a protective order. *See Henley v. Iowa District Court*, 533 N.W.2d 199 (Iowa 1995). The proceeding in that case was for contempt, but the basic question is the same: whether a person protected by a protective order may be prosecuted for consenting to a violation of the order. The court’s holding rests on far older, “turn-of-the-century” decisions in which the Iowa courts held that nonparties to orders could be held in contempt for violations if they acted in concert or were in privity with the person against whom the order was directed. *See Henley*, 533 N.W. 2d at 202, *citing Hutcheson v. Iowa District Court*, 480 N.W.2d 260, 263–64 (Iowa 1992) (reviewing history). Those decisions are unpersuasive because they recite general contempt principles only and do not consider the complex dynamics of relationships involving domestic violence or the legislature’s intent in enacting procedures for the protection of domestic violence victims.

Dealing with repeated problems with the same couples can undoubtedly be frustrating for court officials and law enforcement officers as well as counselors, family members, and friends. The solution of splitting up and staying split up seems obvious, but research shows that it’s not so simple. For many reasons, it may take a person many tries and many months, if not years, to get out of an abusive relationship. The law’s answer to this difficult problem is not to charge the person protected by a protective order with violating the order.



I've Been Arrested . . . But Committed No Crime

Author : Shea Denning

Categories : [Procedure](#)

Tagged as : [arrest](#), [conditions of release](#), [domestic violence](#), [Initial appearance](#), [pretrial release](#)

Date : February 25, 2015

[Author's Note: This post has been substantively edited to make corrections in response to helpful comments from readers.]

A person generally may not lawfully be arrested unless there is probable cause to believe he has committed a crime. But there are several exceptions to this rule. Most involve arrests made pursuant to an order for arrest issued by a judicial official. A judicial official may, for example, issue an order for the arrest of a defendant who fails to appear in court or who violates conditions of probation. See G.S. 15A-305(b). And there is one circumstance in which a law enforcement officer may, without a judicial order or warrant for the defendant's arrest and without probable cause to believe a crime has been committed, arrest a defendant. That's when the officer has probable cause to believe the defendant has violated a condition of pretrial release. G.S. 15A-401(b)(1),(b)(2)(f.).

Arrests for violations of pretrial release conditions. The General Assembly amended G.S. 15A-401(b) in 2011 to authorize officers to make warrantless arrests of a defendant based on probable cause that the person had violated a condition of pretrial release, regardless of whether the violation occurred in or out of the officer's presence. Those amendments were effective for violations of pretrial release conditions that occurred on or after December 1, 2011. Before that time, officers were authorized to make warrantless arrests for defendants who were charged with crimes of domestic violence and who violated a condition of release for that crime, but were not permitted to arrest defendants who were charged with other types of crimes for a violation of their pretrial release conditions. See [S.L. 2004-186](#), Sections 13.1 -.2. Under current law, officers may arrest for any pretrial release violation, regardless of the nature of the underlying offense. See [G.S. 15A-401\(b\)\(1\)](#), (b)(2)(f.) (authorizing arrest based on probable cause that defendant has violated pretrial release order under [G.S. 15A-534](#) (which governs the determination of conditions of pretrial release for crimes generally) or [G.S. 15A-534.1](#)(which governs the setting of pretrial release conditions for crimes of domestic violence)).

What happens when a person is arrested? Upon arresting a defendant for a violation of a pretrial release order, an officer must take the defendant before a magistrate for an initial appearance. [G.S. 15A-501\(2\)](#); [15A-511\(a\)](#). The magistrate must first determine whether there is probable cause to believe that the defendant violated the conditions of release. Then, if the magistrate finds probable cause, he or she must set new conditions of initial release. The magistrate does *not* modify his or her earlier release order; instead he or she imposes new conditions of release, which supersede the prior release order.

No authority to hold. There is no statutory authority authorizing a magistrate to hold a defendant charged with violating a condition of pretrial release without setting new conditions of release. Confusion about this issue abounds when a defendant who was initially charged with a crime of domestic violence is arrested for violation of the pretrial release order. This might occur if, for example, the defendant was ordered to have no contact with the victim and he is later discovered in the victim's home with the victim's consent. An officer who learns of the defendant's presence may arrest the defendant based on probable cause that the defendant has violated the pretrial release order. The defendant in this circumstance has not, however, committed a new crime, much less a crime of domestic violence. Thus, a magistrate must set conditions of release at the defendant's initial appearance following his arrest.

Is this constitutional? Some defendants have complained that being arrested for a violation of an order based on conduct that is not itself a crime is unconstitutional. None of those complaints appear to have reached our appellate courts. If and when they do, I'm skeptical about their prospects for success. Other courts have recognized that when a defendant "breach[es] a condition of the bond originally set by the court, [he] forfeits the right to continued release under the terms of that bond." *State v. Paul*, 783 So.2d 1042 (Fla. 2001). That same sort of reasoning appears to underlie the legislature's authorizing of officers to arrest for violations of pretrial release orders.

Cyberstalking and the 48 Hour Rule

Author : Jeff Welty

Categories : [Procedure](#), [Uncategorized](#)

Tagged as : [48 hour rule](#), [cyberstalking](#), [harassing phone calls](#), [stalking](#), [threats](#)

Date : November 28, 2012

[G.S. 14-196.3](#) prohibits “cyberstalking,” which the statute generally defines to mean using electronic communications to threaten, extort, make an abusive or embarrassing false statement about, or repeatedly harass another person. As Jessie noted in [this prior post](#), cyberstalking has become a frequently charged offense. It can be committed by text message, email, Facebook, and other means.

I’ve been asked several times recently whether the so-called 48 hour rule, set forth in [G.S. 15A-534.1](#), applies to cyberstalking. That statute provides that for certain domestic violence crimes, bond must normally be set by a judge rather than a magistrate. The statute allows a defendant to be held for up to 48 hours if a judge is not immediately available. I’ve previously written about the 48 hour rule [here](#).

The 48 hour rule applies to “all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing [certain felonies] upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of [a DVPO].”

Does the statute’s reference to “stalking” include cyberstalking? I don’t think so, for two reasons.

- First, although the 48 hour rule has been around since 1995, S.L. 1995-527, “stalking” was only added to the statute in 2007, S.L. 2007-14. Both the original stalking statute, G.S. 14-277 (enacted by S.L. 2001-518), and the cyberstalking statute (enacted by S.L. 2000-125) existed at that time. The General Assembly’s decision to add the term “stalking” but not the term “cyberstalking” to G.S. 15A-534.1 may have been a deliberate choice. To the extent that the statutory language is ambiguous, the rule of lenity suggests that the term “stalking” should be strictly construed not to include cyberstalking.
- Second, the cyberstalking statute is clearly patterned on the harassing phone calls statute, G.S. 14-196, not on the “regular” stalking statute, and the General Assembly chose not to include harassing phone calls in the 48 hour law.

Based on the foregoing, I don’t think that the 48 hour rule generally applies to cyberstalking charges. However, there’s one possible limited exception. The cyberstalking statute encompasses certain threatening communications. One could argue that the 48 hour rule should apply to cases of cyberstalking that involve threats based on the provision in G.S. 15A-534.1 regarding “communicating a threat.” (The same argument could be made for harassing phone calls that involve threats.)

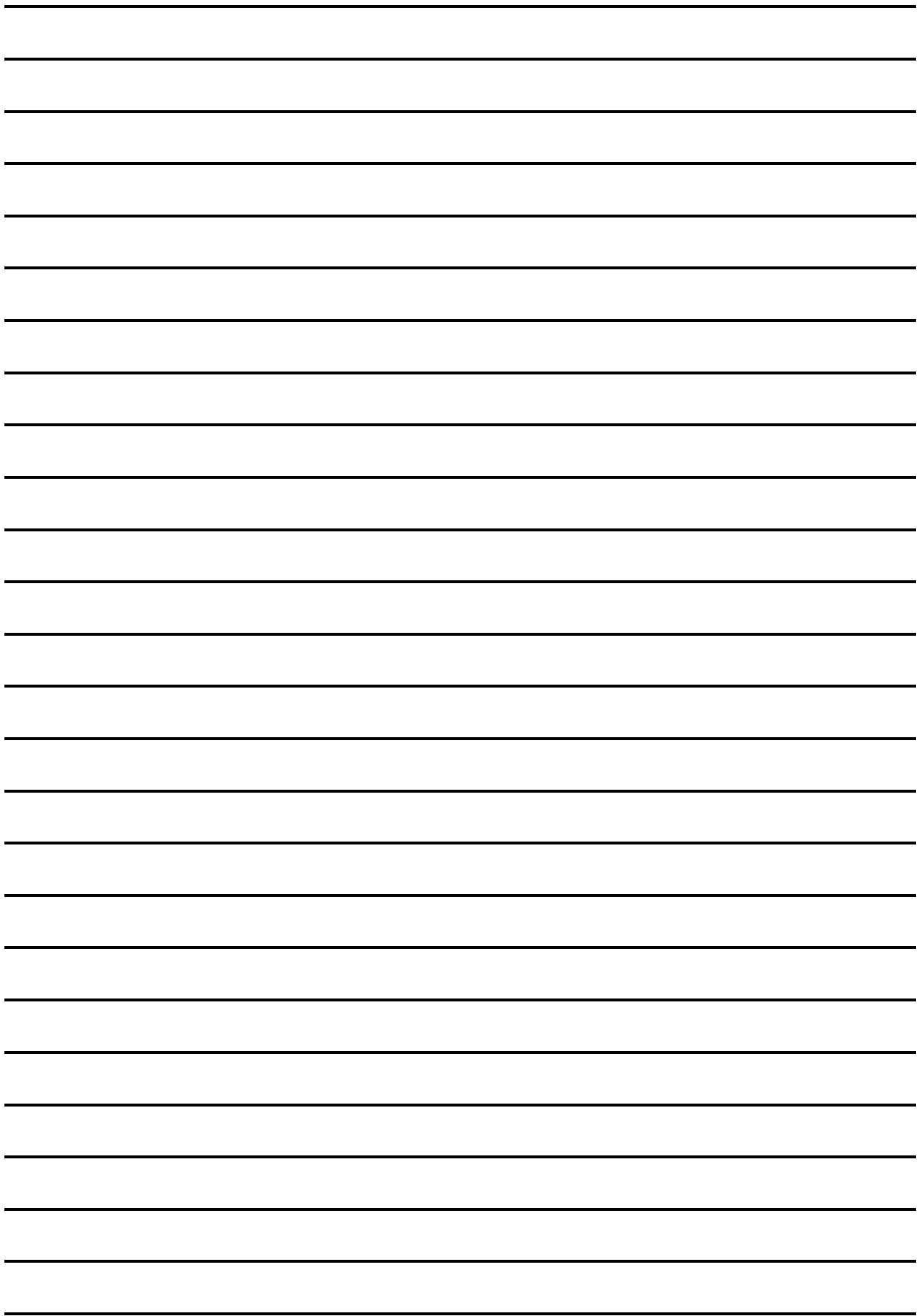
I’ve always thought of the reference in G.S. 15A-534.1 to communicating threats to mean simply that the 48 hour rule applies to charges under G.S. 14-277.1, the communicating threats statute. And I’ve always thought of the 48 hour rule as binary – either it applies to all the charges under a certain statute or it doesn’t apply to that statute at all. But I can see a contrary argument, and I don’t think that there’s a case that squarely addresses the issue.

I’d be interested in feedback about whether, in practice, the 48 hour rule is ever being applied to harassing phone calls or to cyberstalking. But the issue may not arise very often, because in most cases, a phone call or an electronic communication that includes a threat would likely be charged under G.S. 14-277.1, a Class 1 misdemeanor to which

the 48 hour rule clearly does apply, instead of or in addition to being charged as a harassing phone call or cyberstalking (both Class 2 misdemeanors).

It is also worth noting that some conduct that violates the cyberstalking statute will also violate the current “normal” stalking statute, G.S. 14-277.3A, to which the 48 hour rule also clearly applies.

Tab:
Capstone



Tab: Forms

FORMS

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All Forms Used by the AOC can be found at

<http://www.nccourts.org/Forms/FormSearch.asp>

STATE VERSUS _____ County

File No. 

Name Of Defendant

Date Of Issuance Of Warrant For Arrest

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-100. G.S. 15A-924(a)(5).

OFFENSES (continued)

Count 1. Offense:

Charging Text For This Count

Count 2. Offense:

Charging Text For This Count

STATE VERSUS _____ County

File No. 

Name Of Defendant

Date Of Issuance Of Warrant For Arrest

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-100. G.S. 15A-924(a)(5).

OFFENSES (continued)

Count 3. Offense:

Charging Text For This Count

Count 4. Offense:

Charging Text For This Count

STATE VERSUS _____ County

File No. 

Name Of Defendant

Date Of Issuance Of Warrant For Arrest

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-100. G.S. 15A-924(a)(5).

OFFENSES (continued)

Count 5. Offense:

Charging Text For This Count

Count 6. Offense:

Charging Text For This Count

STATE VERSUS _____ County

Name Of Defendant

Date Of Issuance Of Warrant For Arrest

File No. 

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-100. G.S. 15A-924(a)(5).

OFFENSES (continued)

Count 7. Offense:

Charging Text For This Count

Count 8. Offense:

Charging Text For This Count

STATE VERSUS _____ County

File No. 

Name Of Defendant

Date Of Issuance Of Warrant For Arrest

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-100. G.S. 15A-924(a)(5).

OFFENSES (continued)

Count 9. Offense:

Charging Text For This Count

Count 10. Offense:

Charging Text For This Count

Name Of Defendant _____

Date Of Issuance Of Warrant For Arrest _____

If the 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 the Warrant For Arrest issued in this case on the date noted above for the defendant named above, was received and served as follows:

Date Received	Time Served	Date Returned	AM <input type="checkbox"/> PM <input type="checkbox"/>
---------------	-------------	---------------	---

By arresting the defendant and bringing the defendant before:
Name Of Judicial Official _____

The 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 _____ Name Of Clerk (type or print) _____ Signature Of Clerk _____

Deputy CSC Assistant CSC Clerk Of Superior Court

RETURN FOLLOWING REDELIVERY/REISSUANCE

I certify that the Warrant For Arrest issued in this case on the date noted above for the defendant named above, was received and served as follows:

Date Received	Time Served	Date Returned	AM <input type="checkbox"/> PM <input type="checkbox"/>
---------------	-------------	---------------	---

By arresting the defendant and bringing the defendant before:
Name Of Judicial Official _____

The Warrant WAS NOT served for the following reason: _____

Signature Of Officer Making Return _____ Name Of Officer (type or print) _____

Department Or Agency Of Officer _____

Name Of Defendant _____

Date Of Issuance Of Warrant For Arrest _____

JUDGMENT

<input type="checkbox"/> Def. Waived Attorney	<input type="checkbox"/> Def. Found Not Indigent
<input type="checkbox"/> Def. Denied Appointed Counsel	<input type="checkbox"/> 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+)	

OFFENSES: The following offenses, which are set forth by Count No. in the Warrant For Arrest issued in this case on the date noted above for the defendant named above, are the subject of this Judgment:

- | | | | |
|-----------------|---|--|--|
| Count 1 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 2 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 3 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 4 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 5 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 6 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 7 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 8 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 9 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 10 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |

(Over)

Name Of Defendant _____

***NOTE:** Use this Judgment page only if imposing a single, consolidated judgment for all offenses of conviction charged under this file number. Do not use this Judgment page to impose sentence: (i) if imposing separate judgments for separate offenses of conviction charged under this file number, (ii) to impose supervised probation; or (iii) for DWI sentences under G.S. 20-179. For DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). For structured sentencing offenses, use AOC-CR-602 (active) or AOC-CR-604 (probation).

JUDGMENT (continued)

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the plea(s) on Side One. On the verdict(s) from Side One, it is **ORDERED** that all offenses of conviction, if more than one, be consolidated for judgment with Count No. _____ (list count of lead offense) and that the defendant:

- pay the following fine/penalty and costs:

Amount Of Fine/Penalty	Costs
\$ _____	\$ _____
- be imprisoned for a term of _____ days in custody of the sheriff, MCP, Other:** Pretrial credit _____ days served.
- Work release is recommended. is not recommended. (**NOTE:** To order work release, use form AOC-CR-602 to impose judgment.)
- 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. 14-289.
 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. 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.
 6. pay to the Clerk the costs of court and any additional sums shown below.

Costs	Restitution**	Attorney's Fee	Community Service Fee	Other	Total Amount Due
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

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).")

- 7. 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-1483 within _____ days.
- 8. not be found in or on the premises of the complainant or _____
- 9. not assault, communicate with or be in the presence of the complainant or _____
- 10. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)
- 11. Other: _____

The Court finds just cause to waive costs as ordered on attached AOC-CR-415. AOC-CR-618. 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 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 _____

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 _____ 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 _____ Date _____ Date Delivered To Sheriff _____ Signature _____
 Dep. CSC Asst. CSC
 Clerk Of Superior Court

STATE VERSUS _____ County

File No. 

Name Of Defendant

Date Of Issuance Of Criminal Summons

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-113. G.S. 15A-924(a)(5).

OFFENSES (continued)

Count 1. Offense:


Charging Text For This Count

Count 2. Offense:

Charging Text For This Count

STATE VERSUS _____ County

Name Of Defendant

File No. 

Date Of Issuance Of Criminal Summons

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-113. G.S. 15A-924(a)(5).

OFFENSES (continued)

Count 3. Offense:

Charging Text For This Count

Count 4. Offense:

Charging Text For This Count

STATE VERSUS _____ County

File No. 

Name Of Defendant

Date Of Issuance Of Criminal Summons

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-113. G.S. 15A-924(a)(5).

OFFENSES (continued)	
Count 5. Offense:	
<i>Charging Text For This Count</i>	
Count 6. Offense:	
<i>Charging Text For This Count</i>	

STATE VERSUS _____ County

Name Of Defendant

File No. _____

Date Of Issuance Of Criminal Summons

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-113. G.S. 15A-924(a)(5).

OFFENSES (continued)

Count 7. Offense:

Charging Text For This Count

Count 8. Offense:

Charging Text For This Count

STATE VERSUS _____ County

File No. 

Name Of Defendant

Date Of Issuance Of Criminal Summons

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-113. G.S. 15A-924(a)(5).

OFFENSES (continued)

Count 9. Offense:

Charging Text For This Count

Count 10. Offense:

Charging Text For This Count

Name Of Defendant _____
 Date Of Issuance Of Criminal Summons _____

RETURN OF SERVICE

I certify that the Criminal Summons issued in this case on the date noted above for the defendant named above, was received and served as follows:

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

- By personally serving the Criminal Summons on the defendant.
- The 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

<i>Date</i>	<i>Signature Of Clerk</i>
<i>Name Of Clerk (type or print)</i>	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

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 the Criminal Summons issued in this case on the date noted above for the defendant named above, was received and served as follows:

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

- By personally serving the Criminal Summons on the defendant.
- The 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 _____

Name Of Defendant _____

Date Of Issuance Of Criminal Summons _____

NOTE: Use this page to enter judgment on a Criminal Summons. Use this Judgment page only if imposing a single, consolidated judgment for all offenses of conviction charged under this file number. Do not use this Judgment page to impose sentence: (i) if imposing separate judgments for separate offenses of conviction charged under this file number; (ii) to impose supervised probation; or (iii) for DWI sentences under G. S. 20-179. For DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). For structured sentencing offenses, use AOC-CR-602 (active) or AOC-CR-604 (probation).

District Attorney _____	Attorney For Defendant _____
<input type="checkbox"/> Def. Waived Attorney <input type="checkbox"/> Def. Found Not Indigent <input type="checkbox"/> Def. Denied Appointed Counsel	<input type="checkbox"/> Appointed <input type="checkbox"/> Retained
JUDGMENT	
PRIOR CONVICTIONS: No./Level: 0 <input type="checkbox"/> I (0) — <input type="checkbox"/> II (1-4) — <input type="checkbox"/> III (5+)	

OFFENSES: The following offenses, which are set forth by Count No. in the Criminal Summons issued in this case on the date noted above for the defendant named above, are the subject of this Judgment:

- Count 1** PLEA: guilty/resp. not guilty/resp. no contest _____
 FINDING/VERDICT: guilty/resp. not guilty/resp. _____ M.C.L.: A1 1 2 3
- Count 2** PLEA: guilty/resp. not guilty/resp. no contest _____
 FINDING/VERDICT: guilty/resp. not guilty/resp. _____ M.C.L.: A1 1 2 3
- Count 3** PLEA: guilty/resp. not guilty/resp. no contest _____
 FINDING/VERDICT: guilty/resp. not guilty/resp. _____ M.C.L.: A1 1 2 3
- Count 4** PLEA: guilty/resp. not guilty/resp. no contest _____
 FINDING/VERDICT: guilty/resp. not guilty/resp. _____ M.C.L.: A1 1 2 3
- Count 5** PLEA: guilty/resp. not guilty/resp. no contest _____
 FINDING/VERDICT: guilty/resp. not guilty/resp. _____ M.C.L.: A1 1 2 3
- Count 6** PLEA: guilty/resp. not guilty/resp. no contest _____
 FINDING/VERDICT: guilty/resp. not guilty/resp. _____ M.C.L.: A1 1 2 3
- Count 7** PLEA: guilty/resp. not guilty/resp. no contest _____
 FINDING/VERDICT: guilty/resp. not guilty/resp. _____ M.C.L.: A1 1 2 3
- Count 8** PLEA: guilty/resp. not guilty/resp. no contest _____
 FINDING/VERDICT: guilty/resp. not guilty/resp. _____ M.C.L.: A1 1 2 3
- Count 9** PLEA: guilty/resp. not guilty/resp. no contest _____
 FINDING/VERDICT: guilty/resp. not guilty/resp. _____ M.C.L.: A1 1 2 3
- Count 10** PLEA: guilty/resp. not guilty/resp. no contest _____
 FINDING/VERDICT: guilty/resp. not guilty/resp. _____ M.C.L.: A1 1 2 3

(Over)

Name Of Defendant _____

***NOTE:** Use this Judgment page only if imposing a single, consolidated judgment for all offenses of conviction charged under this file number. Do not use this Judgment page to impose sentence: (i) if imposing separate judgments for separate offenses of conviction charged under this file number, (ii) to impose supervised probation; or (iii) for DWI sentences under G.S. 20-179. For DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). For structured sentencing offenses, use AOC-CR-602 (active) or AOC-CR-604 (probation).

JUDGMENT (continued)

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the plea(s) on Side One. On the verdict(s)/finding(s) from Side One, it is **ORDERED** that all offenses of conviction, if more than one, be consolidated for judgment with Count No. _____ (list count of lead offense) and that the defendant:

- pay the following fine/penalty and costs:

Amount Of Fine/Penalty	Costs
\$ _____	\$ _____
- be imprisoned for a term of _____ days in custody of the sheriff, MCP, Other:**
- Work release is recommended. is not recommended. (**NOTE:** To order work release, use form AOC-CR-602 to impose judgment.)
- 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. 14-289.
 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. 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.
 6. pay to the Clerk the costs of court and any additional sums shown below.

Costs	Restitution**	Attorney's Fee	Community Service Fee	Other	Total Amount Due
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

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).")

- 7. 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-1483 within _____ days.
- 8. not be found in or on the premises of the complainant or _____
- 9. not assault, communicate with or be in the presence of the complainant or _____
- 10. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)
- 11. Other: _____

The Court finds just cause to waive costs as ordered on attached AOC-CR-415. AOC-CR-618. 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 Court(s) is dismissed.

Date _____ Name Of District Court Judge Or Magistrate (type or print) _____ Signature Of District Court Judge Or Magistrate _____

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 _____ 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 _____ Date _____ Date Delivered To Sheriff _____ Signature _____
 Dep. CSC Asst. CSC
 Clerk Of Superior Court

STATE VERSUS _____ County

Name Of Defendant

File No. 

Date Of Issuance Of Magistrate's Order

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-116. G.S. 15A-924(a)(5).

OFFENSES (continued)

Count 1. Offense:

Charging Text For This Count

Count 2. Offense:

Charging Text For This Count

STATE VERSUS _____ County

Name Of Defendant

Date Of Issuance Of Magistrate's Order

File No.

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-116. G.S. 15A-924(a)(5).

OFFENSES (continued)

Count 3. Offense:

Charging Text For This Count

Count 4. Offense:

Charging Text For This Count

STATE VERSUS _____ County

Name Of Defendant

File No. 

Date Of Issuance Of Magistrate's Order

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-116. G.S. 15A-924(a)(5).

OFFENSES (continued)	
Count 5. Offense:	
<i>Charging Text For This Count</i>	
Count 6. Offense:	
<i>Charging Text For This Count</i>	

STATE VERSUS _____ County

Name Of Defendant

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-116. G.S. 15A-924(a)(5).

Date Of Issuance Of Magistrate's Order

OFFENSES (continued)

Count 7. Offense:
Charging Text For This Count

Count 8. Offense:
Charging Text For This Count

STATE VERSUS _____ County

Name Of Defendant

NOTE: Use this page to set forth the charging text for each offense listed on the AOC-CR-116. G. S. 15A-924(a)(5).

Date Of Issuance Of Magistrate's Order

OFFENSES (continued)

Count 9. Offense:

Charging Text For This Count

Count 10. Offense:

Charging Text For This Count

Name Of Defendant _____

Date Of Issuance Of Magistrate's Order _____

NOTE: Use this page to enter judgment on a Magistrate's Order. Use this Judgment page only if imposing a single consolidated judgment for all offenses of conviction charged under this file number. Do not use this Judgment page to impose sentence: (i) if imposing separate judgments for separate offenses of conviction charged under this file number; (ii) to impose supervised probation; or (iii) for DWI sentences under G. S. 20-179. For DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). For structured sentencing offenses, use AOC-CR-602 (active) or AOC-CR-604 (probation).

District Attorney <input type="checkbox"/> Def. Waived Attorney <input type="checkbox"/> Def. Found Not Indigent <input type="checkbox"/> Def. Denied Appointed Counsel	Attorney For Defendant <input type="checkbox"/> Appointed <input type="checkbox"/> Retained
JUDGMENT	
PRIOR CONVICTIONS: No./Level: 0 <input type="checkbox"/> I (0) — <input type="checkbox"/> II (1-4) — <input type="checkbox"/> III (5+)	

OFFENSES: The following offenses, which are set forth by Count No. in the Magistrate's Order issued in this case on the date noted above for the defendant named above, are the subject of this Judgment:

- | | | | |
|-----------------|---|--|--|
| Count 1 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 2 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 3 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 4 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 5 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 6 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 7 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 8 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 9 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |
| Count 10 | PLEA: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty <input type="checkbox"/> no contest | VERDICT: <input type="checkbox"/> guilty <input type="checkbox"/> not guilty | M.C.L.: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 |

(Over)

Name Of Defendant _____

***NOTE:** Use this Judgment page only if imposing a single, consolidated judgment for all offenses of conviction charged under this file number. Do not use this Judgment page to impose sentence: (i) if imposing separate judgments for separate offenses of conviction charged under this file number, (ii) to impose supervised probation; or (iii) for DWI sentences under G.S. 20-179. For DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). For structured sentencing offenses, use AOC-CR-602 (active) or AOC-CR-604 (probation).

JUDGMENT (continued)

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea(s) on Side One. On the verdict(s) from Side One, it is **ORDERED** that all offenses of conviction, if more than one, be consolidated for judgment with Count No. _____ (list count of lead offense) and that the defendant:

- pay the following fine/penalty and costs:

Amount Of Fine/Penalty	Costs	
\$ _____	\$ _____	
- be imprisoned for a term of _____ days in custody of the sheriff, MCP, DAC,* Pretrial credit _____ days served.
- Work release is recommended. is not recommended. (**NOTE:** To order work release, use form AOC-CR-602 to impose judgment.)
- 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. 14-289.
 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. 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.
 6. pay to the Clerk the costs of court and any additional sums shown below.

Costs	Restitution**	Attorney's Fee	Community Service Fee	Other	Total Amount Due
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

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).")

- 7. 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-1483 within _____ days.
- 8. not be found in or on the premises of the complainant or _____
- 9. not assault, communicate with or be in the presence of the complainant or _____
- 10. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)
- 11. Other: _____

The Court finds just cause to waive costs as ordered on attached AOC-CR-415. AOC-CR-618. 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 Magistrate's Order and the Count(s) is dismissed.

Date _____ Name Of District Court Judge Or Magistrate (type or print) _____ Signature Of District Court Judge Or Magistrate _____

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 _____ 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 _____ Date _____ Date Delivered To Sheriff _____ Signature _____
 Dep. CSC Asst. CSC
 Clerk Of Superior Court

File No.

STATE OF NORTH CAROLINA

In The General Court Of Justice
District/Superior Court Division

County

SEARCH WARRANT

IN THE MATTER OF

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.

Name Of Applicant

Name Of Additional Affiant(s)

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

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 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 Issued

Time Issued AM PM

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

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

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)

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	
<small>Date</small>	<small>Date</small>
<small>Signature</small>	<small>Name Of Applicant (type or print)</small>
<small>Signature Of Applicant</small>	<small>Signature Of Applicant</small>
<input type="checkbox"/> <small>Magistrate</small> <input type="checkbox"/> <small>Dep. CSC</small> <input type="checkbox"/> <small>Asst. CSC</small> <input type="checkbox"/> <small>Clerk Of Superior Court</small> <input type="checkbox"/> <small>Judge</small>	

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 recorded, and I have filed any such writing/recording 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

File No.

County

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

CONDITIONS OF RELEASE AND RELEASE ORDER

G.S. Chapter 15A, Art. 25, 26

Process No. #

Amount Of Bond \$

File Numbers And Offenses

See Attachment.

Location Of Court

District Superior Date Time AM PM

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.

The defendant has been advised of charge(s) against him/her and his/her right to communicate with counsel and friends.

Your release is authorized upon execution of your: WRITTEN PROMISE to appear UNSECURED BOND in the amount shown above CUSTODY RELEASE SECURED BOND in the amount shown above (NOTE: Give a copy of this order to any surety who posts bond.) HOUSE ARREST with ELECTRONIC MONITORING administered by (agency) and the SECURED BOND above. You may leave your residence for the purpose(s) of employment counseling course of study vocational training

- Your release is not authorized.
The defendant is required to provide (check all that apply) fingerprints under G.S. 15A-502. a DNA sample under G.S. 15A-266.3A.
Prior to release, the defendant shall provide his/her (check all that apply) fingerprints. DNA sample.
The defendant has been (i) charged with a felony while on probation (complete AOC-CR-272, Side One). (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).
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.
The defendant is charged with an offense subject to G.S. 15A-534.1, and no judge has acted under that statute within 48 hours of defendant's arrest.
The defendant was arrested or surrendered after failing to appear as required under a prior release order.
This was the defendant's second or subsequent failure to appear in this case.
Your release is subject to the conditions as shown on the attached AOC-CR-242. AOC-CR-270. AOC-CR-630. AOC-CR-631. AOC-CR-660. Other:

Additional Information

Date Name Of Judicial Official Signature Of Judicial Official Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court DC Judge SC Judge

ORDER OF COMMITMENT

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: produce him/her in Court as provided above.

hold him/her as provided on the attached AOC-CR-272. for the following purpose:
for charges covered by G.S. 15A-534.1 (domestic violence) or 15A-534.7 (threat of mass violence) 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) AM PM produce him/her before a magistrate of this county at that time to determine conditions of pretrial release.

Name Of Detention Facility Date Name Of Judicial Official Signature Of Judicial Official

(Over)

WRITTEN PROMISE TO APPEAR OR CUSTODY RELEASE

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.

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 Custodian
------	---	------------------------

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 Custodian

DEFENDANT RELEASED FOR COURT APPEARANCE

Date	Time	Signature Of Custodian

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

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
 District Superior Court Division

Name And Mailing Address Of Defendant

APPEARANCE BOND FOR PRETRIAL RELEASE

G.S. 15A-531, 15A-534, 15A-544.2

Telephone No. Of Defendant

Total Bond Required

\$

Amount Of This Bond

\$

Bond No.

#

File Numbers And Offenses

See Additional File Numbers And Offenses on Side Two, for which appearance is secured by this Bond.

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.

Cash Appearance Bond By Defendant (See notes 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.

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.

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 notes on reverse side.)**

ACCOMMODATION BONDSMAN

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.

DEFENDANT AND SURETY SIGNATURES

Date Of Execution Of Bond

Signature Of Defendant (required for all appearance bonds)

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)]

COMPLETE IF CASH DEPOSITED

Signature Of Official Accepting Cash

Name Of Official Accepting Cash (type or print)

Receipt No.

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

(see AOC-CR-238 if release Original - File
after judgment in superior court) (Over)

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."

ADDITIONAL FILE NUMBERS AND OFFENSES

Additional File Numbers And Offenses

See Additional File Numbers And Offenses on attached AOC-CR-201A, Side Two, for which appearance is secured by this Bond.

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 Premium Due	Amount Of Premium Received \$	AFFIX BONDSMAN'S SEAL OR POWER OF ATTORNEY CERTIFICATE HERE
Name Of Person From Whom Collateral Received	Nature Of Collateral	Value	

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 Bond No.
#

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 **SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME**

Date Date
Signature Signature

Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court
 Custodian Of Detention Facility [G.S. 15A-537(c)] 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 **SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME**

Date Date
Signature Signature

Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court
 Custodian Of Detention Facility [G.S. 15A-537(c)] 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 **SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME**

Date Date
Signature Signature

Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court Magistrate Deputy CSC Assistant CSC Clerk Of Superior Court
 Custodian Of Detention Facility [G.S. 15A-537(c)] Custodian Of Detention Facility [G.S. 15A-537(c)]

(Over)

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

File Numbers 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).

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 before there has been a breach of the bond obligation. The County Of Surrender shown above is the county where: (check only one)

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 defendant is bonded to appear.
 the defendant was bonded (i.e., where the defendant was in custody when the bond was executed).
 the defendant currently is in custody.

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).

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

(See NOTES TO CUSTODIAN and NOTES TO MAGISTRATE on reverse.)

Original and Attachments-Clerk Copy-Surety Copy-Custodian

(Over)

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.*

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. See Attachment

ORDER FOR ARREST

THE STATE OF NORTH CAROLINA VS.

Name, Address & Telephone No. Of Defendant

Law Enforcement Case No. LID No. SID No. FBI No.

STATE OF NORTH CAROLINA
 In The General Court Of Justice
 District Superior Court Division
 County

To any officer with authority and jurisdiction to serve an Order For Arrest:
 The Court finds that:

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.
 This is the defendant's second or subsequent failure to appear on these charges.

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.

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).]**

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.

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.

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.

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.

8. Other: (specify)

Date Defendant Failed To Appear

Amount Of Bond \$ Type Of Bond

Notes

OFFENSE(S)			
Count No.	In Violation of G.S.	Code	Count No.
1			6
2			7
3			8
4			9
5			10

TRUE BILL OF INDICTMENT ONLY

Date Of Arrest & Check Digit No. (as shown on fingerprint card)

Name Of Issuing Official

Date Issued

Signature Of Issuing Official

Location Of Court

Court Date

Court Time AM PM

Name Of Defendant _____

Date Of Issuance Of Order For Arrest _____

If the 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 the Order For Arrest issued in this case on the date noted above for the defendant named above, was received and served as follows:

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

By arresting the defendant and bringing the defendant before:

Name Of Judicial Official _____

The 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 Of Clerk	Date Returned
		<input type="checkbox"/> AM <input type="checkbox"/> PM

Deputy CSC Assistant CSC Clerk Of Superior Court

I certify that the Order For Arrest issued in this case on the date noted above for the defendant named above, was received and served as follows:

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

By arresting the defendant and bringing the defendant before:

Name Of Judicial Official _____

The 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)
STATE OF NORTH CAROLINA

File No.

Additional File Nos.

_____ County

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)

See Offense Listing on Side Two.

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).

Material opposite unmarked squares is to be disregarded as surplusage.
(Over)

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.

<i>Date</i>	<i>Signature</i>	<input type="checkbox"/> <i>Judge</i>	<input type="checkbox"/> <i>Clerk Of Superior Court</i>	<input type="checkbox"/> <i>Asst. CSC</i>
		<input type="checkbox"/> <i>Deputy CSC</i>	<input type="checkbox"/> <i>Magistrate</i>	

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).

OFFENSE LISTING

Offense(s) (*list offense(s) only if file no. has not been assigned*)

(TYPE OR PRINT IN BLACK INK) In The General Court Of Justice
 District Superior Court Division

File No.

STATE OF NORTH CAROLINA
 _____ County

Additional File Nos.

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 _____

AFFIDAVIT OF INDIGENCY

G.S. 7A-450 et seq.

Offense(s)

See Table Of Charges on Side Two.

Applicant: Do you have other pending criminal charge(s) in which a lawyer has been appointed? Yes No

Name Of Lawyer _____

Defendant Parent/Guardian/Trustee _____

Full Social Security No. Of Applicant

_____-_____-_____-_____-_____-_____-_____-_____-_____-_____-
 Has No Social Security No.

MONTHLY INCOME (money you make)

MONTHLY EXPENSES (money you pay out)

Employment - Applicant \$ _____

Name And Address Of Applicant's Employer (If not employed, state reason; if self-employed, state trade) _____

Other Income (Welfare, Food Stamps, S/S, Pensions, etc.) \$ _____

Employment - Spouse \$ _____

Name And Address Of Spouse's Employer _____

Number Of Dependents _____

Shelter Buying Renting \$ _____

Food (including Food Stamps) \$ _____

Utilities (power, water, heating, phone, cable, etc.) \$ _____

Health Care \$ _____

Installment Payments \$ _____
 Vehicle Other

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 _____ <input type="checkbox"/> Refund <input type="checkbox"/> Owe	\$ _____	\$ _____
Other	\$ _____	\$ _____
Total Assets And Liabilities	\$ _____	\$ _____

Bond Type _____ Amount \$ _____ By Whom Posted _____

NOTE: Read the notice on the reverse side before completing this form.

(Over)

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 <input type="checkbox"/> AM <input type="checkbox"/> 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
<input type="checkbox"/> Superior Court Judge <input type="checkbox"/> District Court Judge <input type="checkbox"/> CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Magistrate	

NOTE TO EXECUTING OFFICER: Following execution of the attached process, deliver this form to the judicial official before whom defendant is brought.

STATE OF NORTH CAROLINA

File No.

_____ County

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

Date Of Birth

DETENTION OF IMPAIRED DRIVER

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

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
Before The Magistrate**STATE VERSUS****IMPLIED CONSENT OFFENSE NOTICE**

Name Of Defendant

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 for the purposes of observing me at the jail or administering an additional chemical analysis.

NOTE TO DEFENDANT: *You still may contact other persons for other purposes, like an attorney, a bail bondsman, family members, or friends, according to the jail's regular procedures for those contacts.*

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 for the purposes of observing him/her at the jail or administering an additional chemical analysis.

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).*

_____ County

In The General Court Of Justice
 District Superior Court Division

STATE VERSUS

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 held at the earlier of (i) the first regular session of district court in the county or (ii) within 72 hours of arrest, or 96 hours if the courthouse is closed for transactions for a period longer than 72 hours. 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.

_____ 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

DIRECT CRIMINAL CONTEMPT/
SUMMARY PROCEEDINGS/
FINDINGS AND ORDER

Name And Address Of Contemnor

Race Sex Date Of Birth Age

G.S. 5A-11, -12, -13, -14

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

MAGISTRATE'S ORDER - MISDEMEANOR ONLY

The named defendant has been arrested without a warrant and there is probable cause for the defendant's detention on the stated charges. This Magistrate's Order is issued upon information furnished under oath by the named officer. A copy of this Order has been delivered to the defendant.

COURT USE ONLY

Signature Of Magistrate/Deputy/Assistant/CSC _____ Date _____

Signature Of District Court Judge _____ Date _____

I certify that this Judgment is a true copy.

PLA: guilty/resp. no contest not guilty/resp.

VERDICT: guilty/resp. not guilty/resp.

FINDING: guilty/resp. not guilty/resp.

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: pay costs and a fine/penalty of \$ _____, be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. The Court finds that a longer shorter period of probation than specified in G.S. 15A-1343.2(d) is necessary. 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: (1) pay costs and a fine/penalty of \$ _____; (2) not operate a motor vehicle until properly licensed by DMV; (3) complete _____ hours of community service within _____ days and pay the fee; (4) Other: _____.

It is ORDERED that this: Judgment is continued upon payment of costs. Case be consolidated for judgment with _____.

sentence is to run at expiration of sentence in _____.

The Court finds just cause to waive costs as ordered on attached AOC-CR-618. Other: _____.

COMMITMENT: It is ORDERED that the Clerk deliver 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.

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

Date _____ Signature Of District Court Judge _____

Date _____ Signature Of Deputy/Assistant/CSC _____

PRIOR CONVICTIONS: No./Level: 0 I (0) II (1-4) III (5+)

MISD. CLASS: A1 1 2 3 V/D

MISD. CLASS: A1 1 2 3 V/D

VERDICT: guilty/resp. not guilty/resp.

FINDING: guilty/resp. not guilty/resp.

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: pay costs and a fine/penalty of \$ _____, be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. The Court finds that a longer shorter period of probation than specified in G.S. 15A-1343.2(d) is necessary. 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: (1) pay costs and a fine/penalty of \$ _____; (2) not operate a motor vehicle until properly licensed by DMV; (3) complete _____ hours of community service within _____ days and pay the fee; (4) Other: _____.

It is ORDERED that this: Judgment is continued upon payment of costs. Case be consolidated for judgment with _____.

sentence is to run at expiration of sentence in _____.

The Court finds just cause to waive costs as ordered on attached AOC-CR-618. Other: _____.

COMMITMENT: It is ORDERED that the Clerk deliver 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.

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

Date _____ Signature Of District Court Judge _____

Date _____ Signature Of Deputy/Assistant/CSC _____

C

NORTH CAROLINA UNIFORM CITATION

Defendant Is To Appear In District Court

File No. _____

N.C. AM PM

Day Of Week _____ Month _____ Day _____ Year _____ Time _____

DL DCI Other # Of Chgs _____ Interpreter Needed SP OTS 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 _____

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 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 N.C. Patrol Police/Sheriff _____

Area _____ Wea. _____ Vis. _____ Traffic _____ Accident _____ Speed _____

On Highway No./Street _____ Injury Or Serious Injury Passenger(s) Under 18

In Vicinity/City Of _____ At/Near Intersection _____

Wit. _____ Chemical Analyst Refused AC Blood

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(i)(2). 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). 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 see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154.

11. By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158(b)(1), (b)(3).

12. By entering an intersection while a traffic signal was emitting a steady red circular light for traffic in defendant's direction of travel. G.S. 20-158(b)(2).

13. Without having in full force and effect the financial responsibility required by G.S. 20-313. The defendant was the owner of the motor vehicle that was (registered) (required to be registered) in this State. G.S. 20-313.

14. (Possess an open container of) (Consume) an alcoholic beverage in the (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 _____

WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

MAGISTRATE'S ORDER - MISDEMEANOR ONLY

The named defendant has been arrested without a warrant and there is probable cause for the defendant's detention on the stated charges. This Magistrate's Order is issued upon information furnished under oath by the named officer. A copy of this Order has been delivered to the defendant.

COURT USE ONLY

Signature Of Magistrate/Deputy/Assistant/CSC _____ Date _____

Signature Of District Court Judge _____ Date _____

I certify that this judgment is a true copy.

PLA: guilty/resp. no contest not guilty/resp.

VERDICT: guilty/resp. not guilty/resp.

FINDING: guilty/resp. not guilty/resp.

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: pay costs and a fine/penalty of \$ _____, be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. The Court finds that a longer shorter period of probation than specified in G.S. 15A-1343.2(d) is necessary. 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: (1) pay costs and a fine/penalty of \$ _____; (2) not operate a motor vehicle until properly licensed by DMV; (3) complete _____ hours of community service within _____ days and pay the fee; (4) Other: _____.

It is ORDERED that this: judgment is continued upon payment of costs. case be consolidated for judgment with _____.

sentence is to run at expiration of sentence in _____.

The Court finds just cause to waive costs as ordered on attached AOC-CR-618. Other: _____.

COMMITMENT: It is ORDERED that the Clerk deliver 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.

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

Date _____ Signature Of District Court Judge _____

Date _____ Signature Of Deputy/Assistant/CSC _____

PRIOR CONVICTIONS: No./Level: 0 I (0) II (1-4) III (5+)

MISD. CLASS: A1 1 2 3 V/D

MISD. CLASS: A1 1 2 3 V/D

VERDICT: guilty/resp. not guilty/resp.

FINDING: guilty/resp. not guilty/resp.

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: pay costs and a fine/penalty of \$ _____, be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. The Court finds that a longer shorter period of probation than specified in G.S. 15A-1343.2(d) is necessary. 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: (1) pay costs and a fine/penalty of \$ _____; (2) not operate a motor vehicle until properly licensed by DMV; (3) complete _____ hours of community service within _____ days and pay the fee; (4) Other: _____.

It is ORDERED that this: judgment is continued upon payment of costs. case be consolidated for judgment with _____.

sentence is to run at expiration of sentence in _____.

The Court finds just cause to waive costs as ordered on attached AOC-CR-618. Other: _____.

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

Date _____ Signature Of District Court Judge _____

Date _____ Signature Of Deputy/Assistant/CSC _____

C

NORTH CAROLINA UNIFORM CITATION

Defendant Is To Appear In District Court

File No. _____

Day Of Week _____ Month _____ Day _____ Year _____ Time _____

DL DCI Other # Of Chgs _____ Interpreter Needed SP OTS 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 _____

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 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 a 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 N.C. Patrol Police/Sheriff _____

Area _____ Wea. _____ Vis. _____ Traffic _____ Accident _____ Speed _____

On Highway No./Street _____ Injury Or Serious Injury Passenger(s) Under 18

In Vicinity/City Of _____ At/Near Intersection _____

Wit. _____ Chemical Analyst Refused AC Blood

DEFENDANT'S COPY (SEE IMPORTANT NOTICE ON REVERSE)

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). 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). 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 see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154.

11. By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158(b)(1), (b)(3).

12. By entering an intersection while a traffic signal was emitting a steady red circular light for traffic in defendant's direction of travel. G.S. 20-158(b)(2).

13. Without having in full force and effect the financial responsibility required by G.S. 20-313. The defendant was the owner of the motor vehicle that was (registered) (required to be registered) in this State. G.S. 20-313.

14. (Possess an open container of) (Consume) an alcoholic beverage in the (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.

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.NCCourts.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.NCCourts.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

INSTRUCTIONS TO DEFENDANT *(Only the checked block applies)*

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
\$ _____	\$ _____

Date	Signature Of Defendant
_____	_____

MAGISTRATE'S ORDER - MISDEMEANOR ONLY
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.)
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.



File No. NORTH CAROLINA UNIFORM CITATION
Defendant Is To Appear In District Court
Day Of Week Month Day Year Time
THE STATE OF NORTH CAROLINA VS.
Name Of Defendant
Address
City State Zip
Drivers License No. State CDL Class
Race Sex Date Of Birth Age
Social Security No. Of Defendant Telephone No.
Vehicle License No. State
Vehicle Type Trailer Type CMV Haz. Mat. Make Year
Name And Telephone No. Of Defendant's Employer
Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card)
ACKNOWLEDGMENT/NONRESIDENT PERSONAL RECOGNIZANCE FOR APPEARANCE
I acknowledge receipt of this Citation 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 a 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.

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.
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 see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154.
11. By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158(b)(1), (b)(3).
12. By entering an intersection while a traffic signal was emitting a steady red circular light for traffic in defendant's direction of travel. G.S. 20-158(b)(2).
13. Without having in full force and effect the financial responsibility required by G.S. 20-313. The defendant was the owner of the motor vehicle that was (registered) (required to be registered) in this State. G.S. 20-313.
14. (Possess an open container of) (Consume) an alcoholic beverage in the (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)

MAGISTRATE'S ORDER - MISDEMEANOR ONLY		Signature Of Magistrate/Deputy/Assistant/CSC	
Date		OFFICER'S NOTES	
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.			

File No.		NORTH CAROLINA UNIFORM CITATION	
N.C.		Defendant Is To Appear In District Court	
Day Of Week	Month	Day	Year
			Time <input type="checkbox"/> AM <input type="checkbox"/> PM
<input type="checkbox"/> 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.	
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"/> Blood <input type="checkbox"/> Refused

The undersigned officer has probable cause to believe that on or about _____ (a.) 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(i)(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 see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154.

11. By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158(b)(1), (b)(3).

12. By entering an intersection while a traffic signal was emitting a steady red circular light for traffic in defendant's direction of travel. G.S. 20-158(b)(2).

13. Without having in full force and effect the financial responsibility required by G.S. 20-313. The defendant was the owner of the motor vehicle that was (registered) (required to be registered) in this State. G.S. 20-313.

14. (Possess an open container of) (Consume) an alcoholic beverage in the passenger area of a motor vehicle. G.S. 20-138.7(a1). [NOTE: Strike "operate a (motor) vehicle" and "(public vehicular area)" above.]

15. Without decreasing speed as necessary to avoid colliding with a (vehicle) (person). G.S. 20-141(m).

16. _____

17. And on or about the date and time shown above in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

Date _____ Signature Of Officer _____

OFFICER'S NOTES

VIN

CONSENT TO TOW, REMOVE OR STORE VEHICLE OR LEAVE VEHICLE AT THE SCENE	
<p>I, the undersigned, declare that I am the <input type="checkbox"/> registered owner <input type="checkbox"/> legal possessor of the motor vehicle identified on the reverse of this Citation.</p> <p>(check appropriate block)</p> <p><input type="checkbox"/> I consent to have this vehicle <input type="checkbox"/> towed <input type="checkbox"/> removed <input type="checkbox"/> and stored by towing service _____.</p> <p><input type="checkbox"/> I consent to have this vehicle removed to the shoulder of the road by the undersigned law enforcement officer and left at this location.</p>	
Date	Signature
Date	Signature

NORTH CAROLINA UNIFORM CITATION (G.S. 15A-302)

NOTE: First character of "C" is a "commercial motor vehicle" as defined in G.S. 20-4.01(3d).

LEGEND

(USE THESE LETTERS, NUMERALS AND WORDS APPROPRIATELY)



VIOLATION AREA	VEHICLE TYPE
B Business or Industrial	AMB Ambulance
R Residential Section	BI Bicycle
S School or Playground	CAB Activity Bus - 16 or More Passengers
OC Open Country or Undeveloped	CB Commercial Bus
WEATHER	CSB School Bus - 16 or More Passengers
C Clear	CTTT Commercial Truck Tractor with Trailer
O Overcast	CT2A Commercial Truck with Two Axles
R Rain	CT3A Commercial Truck with Three Axles
S Sleet, Snow, or Hail	CT4A Commercial Truck with Four Axles
I Icing Due to Low Temperature	CT5A Commercial Truck with Five Axles
VISIBILITY	CT6A Commercial Truck with Six Axles
C Clear	CVN Van - 16 or More Passengers
R Rain on Windshield	FE Farm Equipment
S Sleet, Snow, or Hail Obscuring	FTR Farm Tractor
F Fog, Smoke, or Dust	MC Motorcycle
VISIBILITY	MP Moped
C Clear	MS Motor Scooter or Motor Bike
R Rain on Windshield	OT Other
S Sleet, Snow, or Hail Obscuring	P Two or Four Door Sedan (Passenger)
F Fog, Smoke, or Dust	PED Pedestrian
TRAFFIC VOLUME	PU Pickup Truck
H Heavy	RV Recreational Vehicle, Self-Contained
M Medium	SW Station Wagon (Passenger)
L Light	SWT Station Wagon (Truck)
N None	TAXI Taxicab
ACCIDENT INVOLVEMENT	TRV Camper Mounted on Two-Axle Truck
F Fatal (list number killed; if others are injured in the same accident, list I and number) Example F-1	TT Truck Tractor Only
I-2	TTT Truck Tractor with Trailer
I Injury (list number injured)	T2A Truck with Two Axles
P Property Damage (list number vehicles damaged) (if damage is under \$500, enter the word No under the other entries)	VN Van
NE Near Accident (almost collided)	Non-Semi Trailers:
NO No Accident Involvement	BT Boat
	CT Camper
	UT Utility
	HE Horse
	HS House Trailer (Mobile Home)
	TV Towed Vehicle
	OT Other
	Semi Trailers:
	TN Tanker
	VN Enclosed Van
	FB Flatbed
	DT Double/Twin
	OS Other Semi

NOTE: Select appropriate words in parentheses, or state specific facts, as directed. Strike words in the printed citation as directed. When charging a non-traffic offense, always strike "operate a (motor vehicle on a (street or highway) (public vehicular area))." When possible, a non-traffic offense should be charged in the second count.

- I. LICENSE VIOLATIONS**
- A. Restricted Privilege:** While the drivers license issued to the defendant was revoked by violation of the restrictions in the limited driving privilege issued to the defendant. G.S. 20-179.30; G.S. 20-28(a1).
- B. Unlicensed Driver:** Authorize or knowingly permit a motor vehicle owned by or under the control of the defendant to be driven by a person who was not licensed to drive by the Division of Motor Vehicles. G.S. 20-34. Strike "operate a (motor) vehicle."
- C. Improper Display Of License:** (Display) (Cause to be displayed) (Possess) a (driver license) (learner's permit) known to be (fictitious) (cancelled) (revoked) (suspended) (altered). G.S. 20-30(f). Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- D. Classified License:** Without being licensed for the type or class of vehicle being driven, to wit: (possessing a Class C license while operating a vehicle requiring a Class A license, etc.). G.S. 20-7.
- II. REGISTRATION VIOLATIONS**
- A.** Without having (registered the vehicle with the Division of Motor Vehicles) (attached thereto and displayed thereon the registration number plate assigned by the Division of Motor Vehicles for the current year), such vehicle being one required to be registered. G.S. 20-111(f).
- B.** (Display) (Permit to be displayed) (Possess) a (registration card) (certificate of title) (registration number plate), knowing the same to be (fictitious) (cancelled) (revoked) (suspended) (altered). G.S. 20-111(2). Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- III. INSURANCE VIOLATION**
- A.** Permit a motor vehicle the defendant owned and that was (registered) (required to be registered) in this state to be operated in this state without having in full force and effect the financial responsibility required by G.S. 20-313. Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- IV. COMMERCIAL MOTOR VEHICLE**
- A. Commercial DWI:** While subject to an impairing substance and the vehicle being operated was a commercial motor vehicle. G.S. 20-138.2.
- B. Commercial Drivers License Revoked:** While the defendant's commercial drivers license was under (suspension) (revocation) (disqualification) and the vehicle being operated was a commercial motor vehicle. G.S. 20-28. If the revocation was an impaired driving revocation, add "and the revocation was an impaired driving revocation as defined in G.S. 20-28.2(a)", and cite to G.S. 20-28(a7).
- V. SPEEDING VIOLATIONS**
- A. Exceeding A Safe Speed:** At a speed greater than was reasonable and prudent under, the then existing conditions of (specify conditions, e.g., fog, rain, etc.). G.S. 20-141(a).
- B. Speed Competition:** In willful speed competition with another motor vehicle. G.S. 20-141.3(b).
- C. Speeding To Elude Arrest:** At a speed of _____ MPH in a _____ MPH zone while (fleeing) (attempting to elude) arrest and apprehension by (name officer), a law enforcement officer with authority to enforce the motor vehicle laws. G.S. 20-141.5.
- VI. FOLLOWING TOO CLOSELY**
- A.** By following another vehicle more closely than is reasonable and prudent without due regard for the speed of such vehicles and the traffic upon and the condition of the highway. G.S. 20-152(a).
- VII. PASSING VIOLATIONS**
- A.** In overtaking and passing another vehicle proceeding in the same direction (without passing at least two feet to the left thereof. G.S. 20-149(a)) (without waiting until safely clear of such overtaken vehicle before again driving to the right side of the highway. G.S. 20-149(a)) (without waiting until the left side of the highway was clearly visible and free of oncoming traffic for a sufficiently safe distance ahead before driving to the left side of such highway. G.S. 20-150(a)).
- B.** By overtaking and passing another vehicle proceeding in the same direction upon (the crest of a grade) (a curve) in the highway without having an unobstructed view along such highway for 500 feet. G.S. 20-150(b).
- C.** By overtaking and passing another vehicle proceeding in the same direction at (a railway grade crossing) (an intersection of the highway). G.S. 20-150(c).
- E. Death By Vehicle:** And unintentionally cause the death of (name person) while engaged in a violation of (specify state law or local ordinance) which applies to the operation and use of a motor vehicle and the regulation of traffic. This violation was the proximate cause of the death. G.S. 20-141.4. Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- F. Driving After Drinking By Underaged Person:** (While consuming alcohol) (While the defendant has remaining in (his) (her) body alcohol previously consumed) (While the defendant has remaining in (his) (her) blood a controlled substance previously consumed) and the defendant is less than 21 years of age. G.S. 20-138.3.
- G. Sixteen Year Old Or Older Passenger:** Fail to have the provided seat belt properly fastened about the defendant's body, while a front seat passenger sixteen years of age or older in a motor vehicle in forward motion on a street or highway. G.S. 20-135.2A. Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- H. Resisting A Public Officer:** Resist, delay and obstruct (name officer), a public officer holding the office of (name office), by (describe act), while the officer was discharging and attempting to discharge a duty of (his) (her) office by (describe specific duty). G.S. 14-223. Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- I. Assault On A Public Official:** Assault and strike (name officer), a government officer of the (name agency, e.g., North Carolina State Highway Patrol; Durham, North Carolina Police Department) by (describe act), while the officer was discharging and attempting to discharge (his) (her) official duties by (describe duty, e.g., serving a traffic citation on the defendant). G.S. 14-33(c)(4). Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- J. Failing To Yield Right Of Way:** By failing to yield right of way in obedience to a duty erected (stop sign) (flashing red light) (yield sign). G.S. 20-158; G.S. 20-158.1.

Vehicle Seizure Revocations:

Under G.S. 20-28.2(e), 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(e)(8b) - Military Driving While Impaired
 - G.S. 20-16.2 - Refused Chemical Test
 - G.S. 20-16.5 - Civil Revocation
 - G.S. 20-17(e)(2) - Driving While Impaired
 - G.S. 20-17(e)(2) - Driving While Impaired In Commercial Motor Vehicle
 - G.S. 20-138.5 - Habitual Driving While Impaired
 - G.S. 20-17(e)(12) - Transporting Open Container - 2nd Or Subsequent
 - G.S. 20-16(e)(7) - Out-Of-State Offense Similar To Driving While Impaired Resulting In NC Revocation
 - G.S. 20-17(e)(1) - Manslaughter Involving Driving While Impaired
 - G.S. 20-17(e)(3) - Any Felony In The Commission Of Which A Motor Vehicle Is Used, If The Offense Involves Impaired Driving
 - G.S. 20-17(e)(9) - Any Offense Set Forth Under G.S. 20-141.4 Based On Impaired Driving
 - G.S. 20-17(e)(11) - Conviction Of Assault With A Motor Vehicle If Offense Involves Impaired Driving
 - G.S. 20-28.2(e)(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.
- A motor vehicle is subject to seizure if the driver is charged with an offense involving impaired driving and at the time of the offense (1) the driver's license is revoked for one of the reasons listed above or (2) the driver does not have a valid drivers license and is not covered by an automobile liability insurance policy.

The following states are NOT members of the Nonresident Violator Compact as of December 1, 2015: Alaska, California, Michigan, Montana, Oregon, and Wisconsin.

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

- | | |
|--|--|
| <input type="checkbox"/> Magistrate | <input type="checkbox"/> Clerk Of Superior Court |
| <input type="checkbox"/> Deputy CSC | <input type="checkbox"/> District Court Judge |
| <input type="checkbox"/> Assistant CSC | <input type="checkbox"/> 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

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Court Division

NOTE: A "commercial motor vehicle" is as defined in G.S. 20-4.01(3d).

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.
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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 its approved breath-testing instruments.
- 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 the approved breath-testing instrument shown on the attached DHHS 4082, 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 the instrument utilized 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
--

Magistrate Deputy CSC Assistant CSC 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
 - g. 25= A/C 0.02
 - h. 26= A/C 0.02+ignition interlock

+ 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.

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.

- Judge
- Magistrate
- Deputy CSC
- Assistant CSC
- 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
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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

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 THREAT OF MASS VIOLENCE**

#

G.S. 15A-534.7

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 is charged with communicating a threat of mass violence on educational property, G.S. 14-277.6, or communicating a threat of mass violence at a place of religious worship, G.S. 14-277.7.

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 following educational property(ies) or place(s) of worship, against which the threat was allegedly communicated:

2. The defendant shall stay away from the following, additional educational property(ies) or place(s) of worship, unless granted permission to be present by the person in control of the property (*list educational property or place(s) of religious worship other than the one(s) threatened in the present charge(s)*):

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.

Tab: Notes

