



# Basic School for Magistrates: Summer 2024 Criminal Session

## UNC School of Government

August 19-August 23, 2024

### 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)

### Monday, August 19

- 9:00 a.m.**      **Welcome and Introduction to Criminal Law** (0.25 CE)  
Brittany Bromell, School of Government  
Belal Elrahal, School of Government
- 9:15 a.m.**      **Search Warrants** (1.25 CE)  
Danny Spiegel, School of Government
- 10:30 a.m.**      *Break*
- 10:45 a.m.**      **Search Warrants** (*continued*) (1.5 CE)
- 12:15 p.m.**      *Lunch (provided at SOG)*
- 1:15 p.m.**      **Impaired Driving Holds, Civil License Revocations, and Vehicle Seizures** (1.25 CE)  
Shea Denning, School of Government  
Belal Elrahal, School of Government
- 2:30 p.m.**      *Break*
- 2:45 p.m.**      **Elements of Crimes: Motor Vehicle Offenses** (0.75 CE)  
Shea Denning, School of Government  
Belal Elrahal, School of Government
- 3:30 p.m.**      **Contempt** (1.0 CE)  
Cheryl Howell, School of Government
- 4:30 p.m.**      *Adjourn*

## Tuesday, August 20

- 9:00 a.m.      **Initial Appearance** (1.5 CE)  
Brittany Bromell, School of Government
- 10:30 a.m.      *Break*
- 10:45 a.m.      **Initial Appearance** (*continued*) (1.25 CE)  
Brittany Bromell, School of Government
- 12:00 p.m.      *Lunch (provided at SOG)*
- 1:00 p.m.      **Selecting Process** (1.5 CE)  
John Rubin, School of Government
- 2:30 p.m.      *Break*
- 2:45 p.m.      **Selecting Process** (*continued*) (1.0 CE)
- 3:45 p.m.      **Under 18: Juvenile vs Adult** (0.75 CE)  
Jacqui Greene, School of Government
- 4:30 p.m.      *Adjourn*

## Wednesday, August 21

- 9:00 a.m.      **Domestic Violence Procedure** (1.0 CE)  
Brittany Bromell, School of Government
- 10:00 a.m.      **Elements of Crimes: Drunk, Weapons, Resisting** (1.0 CE)  
Brittany Bromell, School of Government
- 11:00 a.m.      *Break*
- 11:15 a.m.      **Elements of Crime: Burglary** (1.25 CE)  
Phil Dixon, School of Government
- 12:30 p.m.      *Lunch (provided at SOG)*
- 1:30 p.m.      **Handling Money** (1.0 CE)  
Amy Bartnett, NC Administrative Office of the Courts
- 2:30 p.m.      **Elements of Crime: Drugs** (0.5 CE)  
Phil Dixon, School of Government
- 3:00 p.m.      *Break*
- 3:15 p.m.      **Elements of Crime: Drugs** (*continued*) (1.5 CE)
- 4:45 p.m.      *Adjourn*

## Thursday, August 22

- 9:00 a.m.**      **Inchoate Offenses and Principal Liability** (0.5 CE)  
Brittany Bromell, School of Government
- 9:30 a.m.**      **Elements of Crimes: Larceny, Robbery, Obtaining Property by False Pretense** (0.75 CE)  
Danny Spiegel, School of Government
- 10:15 a.m.**      *Break*
- 10:30 a.m.**      **Elements of Crimes: Larceny, Robbery, Obtaining Property by False Pretense** (*continued*) (1.0 CE)
- 11:30 a.m.**      *Lunch (provided at SOG)*
- 12:30 p.m.**      **Elements of Crimes: Assaults** (1.5 CE)  
Danny Spiegel, School of Government
- 2:00 p.m.**      *Break*
- 2:15 p.m.**      **Elements of Crimes: Sexual Assaults** (1.5 CE)  
Joe Hyde, School of Government
- 3:45 p.m.**      *Break*
- 4:00 p.m.**      **Check In: How's It Going?** (1.0 CE)  
Melanie Crenshaw, School of Government  
Belal Elrahal, School of Government
- 5:00 p.m.**      *Adjourn*

## Friday, August 23

- 9:00 a.m.**      **Elements of Crimes: Trespass** (1.0 CE)  
Joe Hyde, School of Government
- 10:00 a.m.**      *Break*
- 10:15 a.m.**      **Capstone Exercise** (1.25 CE)  
Phil Dixon, School of Government  
Belal Elrahal, School of Government
- 11:30 a.m.**      *Lunch (provided at SOG)*
- 12:30 p.m.**      **Criminal Session Exam** (*Room 2603*)

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- Open Meetings Study Commission
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- Governor's Crime Commission on Juvenile Crime and Justice

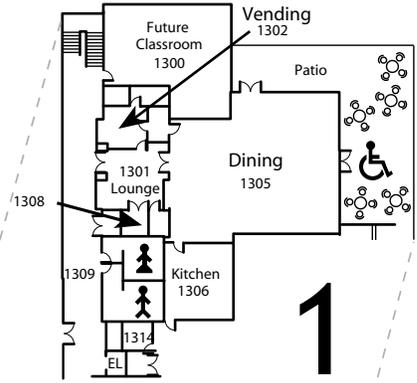
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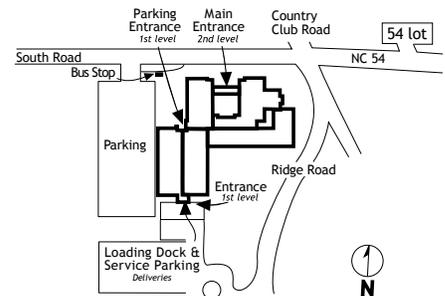
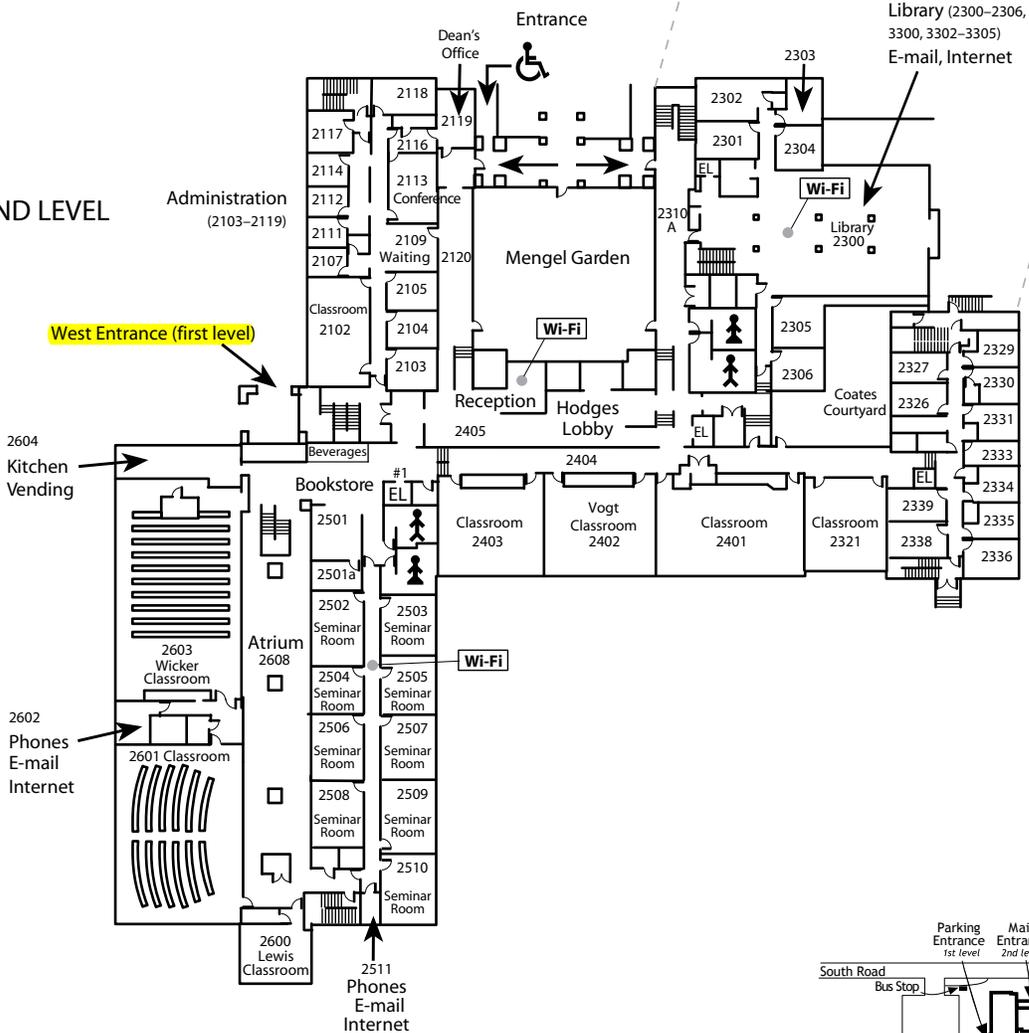
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May 2008  
Guest Map



FIRST LEVEL

2  
SECOND LEVEL



## School of Government - Courts Faculty List

|  |  |              |
|--|--|--------------|
| <b>Mark Botts</b><br>Areas of Expertise:       | <a href="mailto:botts@sog.unc.edu">botts@sog.unc.edu</a><br>Mental health law, including involuntary commitment procedures;<br>Legal responsibilities of area boards; Client rights (especially confidentiality)   | 919.962.8204 |
| <b>Brittany Bromell</b><br>Areas of Expertise: | <a href="mailto:bwilliams@sog.unc.edu">bwilliams@sog.unc.edu</a><br>Criminal law and procedure; Computer crimes; Domestic violence;<br>First appearances; Pretrial release; District Court Judges; Magistrates   | 919.445.1090 |
| <b>Melanie Crenshaw</b><br>Areas of Expertise: | <a href="mailto:mcrenshaw@sog.unc.edu">mcrenshaw@sog.unc.edu</a><br>Civil law; Landlord/tenant; Small claims; Magistrates  | 919.962.2761 |
| <b>Shea Denning</b><br>Areas of Expertise:     | <a href="mailto:denning@sog.unc.edu">denning@sog.unc.edu</a><br>Criminal law and procedure; Judicial authority, administration, and leadership; Motor vehicle law, including legal aspects of driving while impaired and driver's license revocations; Procedural justice; Court system and structure; Superior Court Judges | 919.843.5120 |
| <b>Sara DePasquale</b><br>Areas of Expertise:  | <a href="mailto:sara@sog.unc.edu">sara@sog.unc.edu</a><br>Child welfare law (abuse, neglect, dependency; termination of parental rights; emancipation); Adoptions of minors; Indian Child Welfare Act; Judicial waiver of parental consent; Legitimation; District Court Judges; Parent Attorneys; Social Service Attorneys  | 919.966.4289 |
| <b>Phil Dixon</b><br>Areas of Expertise:       | <a href="mailto:dixon@sog.unc.edu">dixon@sog.unc.edu</a><br>Cannabis/Hemp and drug crimes; Criminal law and procedure; Firearms law; Post-conviction; Right to counsel; Sex offenders; Search and seizure; Public Defense Education; Public Defenders  | 919.966.4248 |
| <b>Jacqui Greene</b><br>Areas of Expertise:    | <a href="mailto:greenes@sog.unc.edu">greenes@sog.unc.edu</a><br>Confidentiality (delinquency); Juvenile delinquency; Juvenile justice; Juvenile transfer; Raise the Age; District Court Judges   | 919.966.4327 |

|  |  |  |
|--|--|--|
| <b>Timothy Heinle</b><br>Areas of Expertise:                     | <a href="mailto:heinle@sog.unc.edu">heinle@sog.unc.edu</a>                 | 919.962.9594<br>Incompetency and guardianship; Juvenile abuse, neglect, and dependency; Social services law (child welfare, protective services); Termination of parental rights; Evidence; Civil Defenders; Adult Guardian Ad Litem (GALs)            |
| <b>Cheryl Howell</b><br>Areas of Expertise:                      | <a href="mailto:howell@sog.unc.edu">howell@sog.unc.edu</a>                 | 919.966.4437<br>Civil Law; Family law; Contempt; Civil domestic violence; Judicial education; District Court Judges; Court of Appeals Judges   |
| <b>Joseph Hyde</b><br>Areas of Expertise:                        | <a href="mailto:jhyde@sog.unc.edu">jhyde@sog.unc.edu</a>                   | 919.966.4117<br>Criminal law and procedure; Criminal pleadings; Evidence; Appellate procedure; Double jeopardy; MARs; Self-defense; Prosecutors  |
| <b>Jamie Markham</b><br>Areas of Expertise:                      | <a href="mailto:markham@sog.unc.edu">markham@sog.unc.edu</a>               | 919.843.3914<br>Criminal sentencing; Community corrections; Corrections; Habitual offenses; Jails and prisons; Sex offenders   |
| <b>John Rubin</b><br>Areas of Expertise:<br>( <i>half-time</i> ) | <a href="mailto:rubin@sog.unc.edu">rubin@sog.unc.edu</a>                   | 919.962.2498<br>Capacity to proceed; Collateral consequences; Expunctions; Mental health defenses; Right to counsel; Self-defense  |
| <b>Jessie Smith</b><br>Areas of Expertise:                       | <a href="mailto:smithj@sog.unc.edu">smithj@sog.unc.edu</a>                 | 919.966.4105<br>Criminal justice data and policy; Supporting stakeholder pilot projects and empirical evaluations in areas such as policing and responding, system scope and impact, case management, indigent defense, pretrial systems, and re-entry |
| <b>Meredith Smith</b><br>Areas of Expertise:                     | <a href="mailto:meredith.smith@sog.unc.edu">meredith.smith@sog.unc.edu</a> | 919.843.2986<br>Abuse, neglect, and exploitation (adults); Elder abuse; Estate administration; Foreclosures; Guardianship; Incompetency; Powers of attorney; Special proceedings; Trusts; Clerks of Superior Court                                     |
| <b>Danny Spiegel</b><br>Areas of Expertise:                      | <a href="mailto:spiegel@sog.unc.edu">spiegel@sog.unc.edu</a>               | 919.966.4377<br>Criminal law and procedure; Evidence; Drug crime; Public Defenders   |
| <b>Emily Turner</b><br>Areas of Expertise:                       | <a href="mailto:eturner@sog.unc.edu">eturner@sog.unc.edu</a>               | 919.843.2032<br>Civil procedure; Conducting civil proceedings  |
| <b>Jeff Welty</b><br>Areas of Expertise:                         | <a href="mailto:welty@sog.unc.edu">welty@sog.unc.edu</a>                   | 919.445.1082<br>Criminal law and procedure; Cybercrime/computer crime; Firearms law; Habitual offenses; Search and seizure law; Policing   |

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### **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](http://www.aoc.state.nc.us/magistrate)

### **Administrative Office of the Courts' (AOC) Website**

[www.nccourts.gov](http://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/>



# Tab: Elements of Crimes

## ELEMENTS OF CRIMES

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## Review Questions

### Chapters 19-22

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

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

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

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

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

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



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

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

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

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

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



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

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

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

\* Not a charging decision made by magistrates.



**NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON DRUG OFFENSES**

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

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

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

Solicitation, Conspiracy,  
Attempts, Principals, and  
Accessories Offenses

Brittany Bromell  
August 2024

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**Crimes of Preparation**  
Solicitation  
Conspiracy  
Attempt

**After-the-Fact Crimes**  
Accessory after the fact  
Compounding a felony

**Responsibility as Principal**  
Accessory before the fact  
Aiding and abetting  
Acting in concert

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General Crimes

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**Solicitation**

Enticing, advising, counseling, inciting, inducing, ordering, or commanding another to commit a crime with the specific intent that the other person commit the crime

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**Conspiracy**

Entering into an agreement with at least one other person to commit an unlawful act with intent that the agreement be carried out

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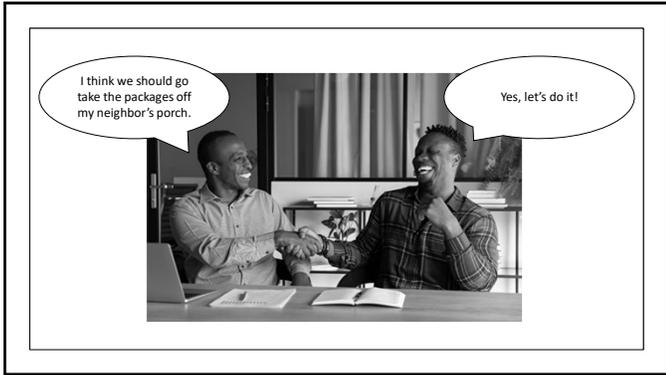
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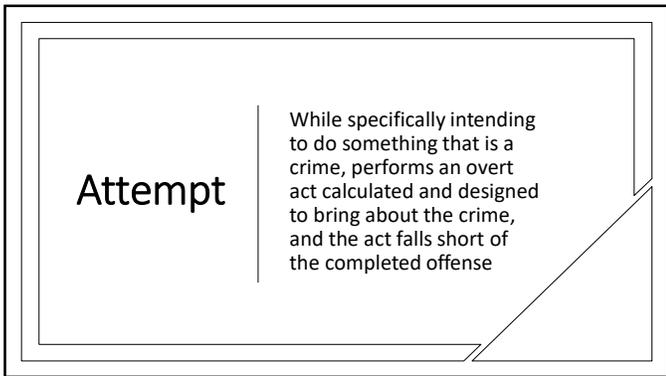
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**Accessory after the Fact**

A person is guilty of this offense

- when a felony was committed by another person (the principal) and
- after the felony was committed, the person knowingly gave the principal personal assistance in escaping or attempting to escape detection, arrest, or punishment
- knowing that the principal committed the crime

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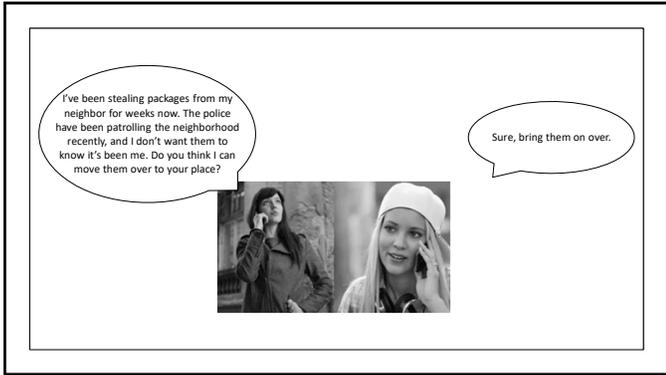
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**Compounding a felony**

A person is guilty of this offense

- when another person (the principal) has committed a felony and
- the person knows that the principal has committed a crime and
- agrees
  - not to prosecute,
  - not to inform, or
  - to dismiss the prosecution
- in exchange for something of value

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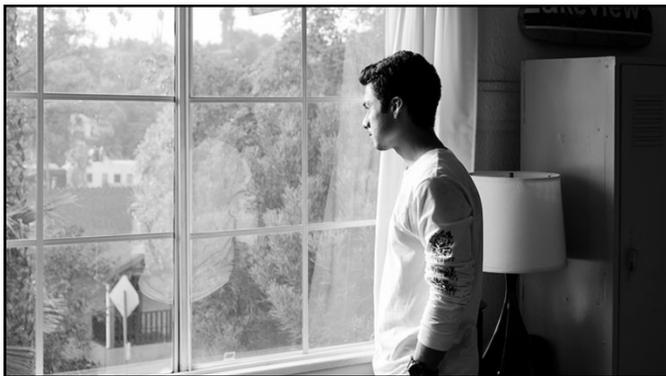
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**Principals**

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- o A person is a principal to a crime when
  - with the required state of mind, he or she commits all of the acts necessary to constitute the crime
  - OR
  - with the required state of mind, he or she causes the occurrence that constitutes the crime by using another who is not himself or herself guilty but brings about the occurrence in the person's absence
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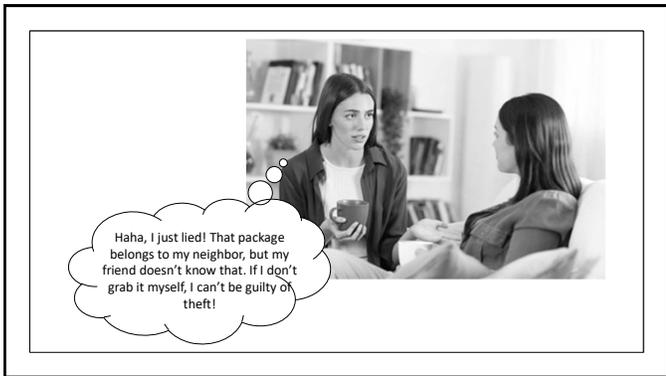
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**Acting in concert**

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A person is a principal to a crime when he or she

- o is actually or constructively present at the scene when the crime is committed and
- o acts together with another who does acts necessary to constitute the crime
- o pursuant to a common plan or purpose

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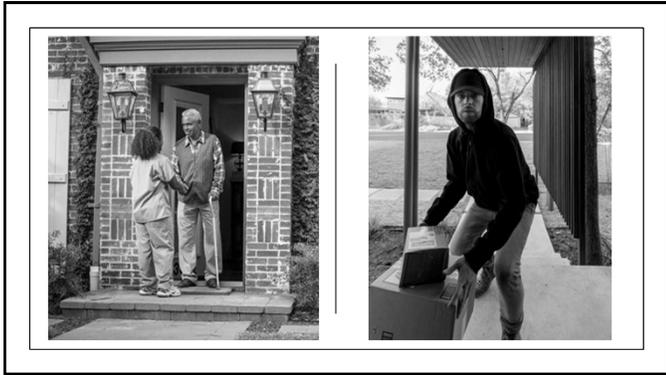
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## Aiding and abetting

A person is a principal to a crime when

- o a crime is committed by another person,
- o he or she knowingly advises, instigates, encourages, procures, or helps the other person commit the crime, and
- o his or her actions or statements caused or contributed to the commission of the crime by the other person

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The neighbor gets so many amazon packages every day. I know it's some good stuff. I saw a box shaped like a TV once! The amazon truck always comes around 10 am and the neighbor is always at work until 5, so the package just sits there on the porch all day! If you want something good, you should get it off his porch.

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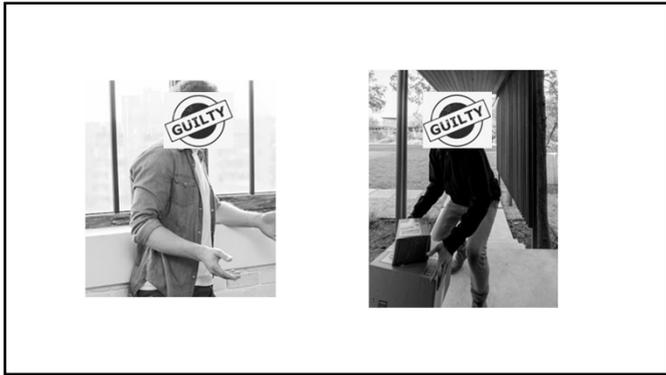
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| <p>+</p> <p>o</p> <p><b>Accessory before the fact</b></p> | <p>A person is a principal to a crime when</p> <p>before a felony is committed by another person, he or she counsels, procures, commands, or knowingly aids the other person to commit the felony,</p> <p>the felony is committed by the other person,</p> <p>he or she is not present when the other person commits the felony, and</p> <p>his or her actions or statements caused or contributed to the commission of the crime by the other person</p> |
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| <p>+</p> <p>o</p> <p><b>Accessory before the fact</b></p> | <p>A person is a principal to a crime when</p> <p>before a felony is committed by another person, he or she counsels, procures, commands, or knowingly aids the other person to commit the felony,</p> <p>the felony is committed by the other person,</p> <p><u>he or she is not present when the other person commits the felony,</u> and</p> <p>his or her actions or statements caused or contributed to the commission of the crime by the other person</p> |
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**Question 1**

Tonya, world class roller skater, suspects that her husband, Jeff, and her bodyguard, Bill, are planning to assault Tonya's chief roller-skating rival, Bambi.

The plan is to break Bambi's nose with a baseball bat so that potential sponsors will not be interested in using her in commercials even if she wins the upcoming world roller-skating championship.

Tonya says nothing to the authorities, and Bambi is later assaulted. What crimes, if any, has Tonya committed?

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**Question 2**

Tonya is concerned that if the World Roller-skating Association (WSA) learns of her prior knowledge of the planned assault on Bambi, the WSA will not let her skate at the world roller-skating championship next month. After the assault takes place, Tonya agrees with Jeff that she will not report him to the police if he will not say anything to the WSA.

What crimes, if any, has Tonya committed?

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**Question 3**

Assume Bill, Tonya's bodyguard, goes to John and offers him \$10,000 to break Bambi's nose with a baseball bat. John says he's not interested. What crimes, if any, has Bill committed? What about John?

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**Question 4**

Same facts as Question # 3, except John accepts the money. However, three weeks later he changes his mind and does not commit the assault. What crimes, if any, have Bill and John committed? What if John returns the money?

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**Question 5**

Suppose Bill goes to Jim and makes the same offer. Jim accepts the money and agrees to break Bambi's nose. Two weeks later Jim follows through on the plan. At the time of the assault, Bill is home asleep. What crimes, if any, has Bill committed?

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

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



# 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.

# The “Single Taking” Rule – North Carolina Criminal Law

*Brittany Bromell*

About a year since the COVID-19 pandemic began, an increasing number of businesses have transitioned to touchless and contactless payments, with the use of cash taking a backseat to debit and credit cards. Not coincidentally, with increased use of financial cards comes [increased financial card theft](#).

## Credit card theft

[G.S. 14-113.9\(a\)\(1\)](#) provides that a person is guilty of financial transaction card theft when the person

takes, obtains or withholds a financial transaction card from the person, possession, custody or control of another without the cardholder’s consent and with the intent to use it; or who, with knowledge that it has been so taken, obtained or withheld, receives the financial transaction card with intent to use it or to sell it, or to transfer it to a person other than the issuer or the cardholder.

This is arguably the most common way we see credit or debit card theft occur—someone steals a purse or wallet that contains the victim’s cards and heads to the nearest Wal-Mart or Best Buy to purchase whatever their heart desires. As typical as the crime itself may seem, you may be surprised to learn how the crime is charged. If a perpetrator takes and uses a single card from a single victim, he is charged with one count of financial transaction card (and financial card fraud under [G.S. 14-113.13](#), should perpetrator use the card). Let’s change the facts: what happens if the perpetrator takes several cards from one victim? What happens when the perpetrator takes one card from several victims? What happens when the perpetrator takes several cards from several victims?

## Single taking and credit card theft

Defendants have argued that when several cards are taken from one victim, courts should apply the “single taking” rule, regardless of how many cards are taken. The “single taking” rule prevents a defendant from being charged or convicted multiple times for a single continuous act or transaction. *State v. Adams*, 331 N.C. 317, 333 (1992). In larceny cases, the single taking rule works to punish a defendant for only one count of larceny regardless of how many items were taken at one time, rather than charging the defendant for each item that was taken in a single sitting. However, our courts have consistently declined to apply the single taking rule to financial transaction card theft cases based on the language of G.S. 14–113.9(a)(1).

In *State v. Rawlins*, 166 N.C. App. 160 (2004), the defendant used the credit cards of two victims to purchase items from Wal-Mart in three separate transactions and was later convicted of three counts of financial transaction card theft. The defendant argued on appeal that the single taking rule applicable in larceny cases

should be applicable to financial transaction card theft. The Court declined to apply the rule in this instance, reasoning:

[T]he statute explicitly uses the word “a” and references “card” in the singular. Thus, the taking, obtaining or withholding of a single card—without the cardholder’s consent and with the intent to use that card—could give rise to a single count of financial transaction card theft in violation of the statute. Accordingly, the single taking rule does not apply to financial transaction card theft. *Id.* at 165.

The Court came to a similar conclusion in *State v. Bright*, 209 N.C. App. 754 (2011), when a defendant stole twelve credit cards from three individuals. The defendant broke into one victim’s car at a gas station and stole her purse, which contained four credit cards. The following day, the defendant broke into another victim’s car and stole her purse, which contained seven of her own credit cards and one of her husband’s credit cards. The defendant argued on appeal that the evidence only showed two separate takings and therefore, the trial court erred in failing to dismiss all but two of the counts of credit card theft. The Court upheld the convictions of all twelve counts, declining to apply the single taking rule.

### **Single taking rule in other contexts**

As the law stands, our courts have declined to apply the single taking rule only in the context of financial transaction card theft. The rule has been upheld in other contexts, such as larceny and obtaining property by false pretenses. Consider the following cases:

In *State v. Froneberger*, 81 N.C. App. 398 (1986), the defendant was convicted of four counts of felonious larceny for taking several items of silver belonging to his mother and pawning it on four separate occasions. The Court of Appeals held that there was no evidence that the silver was stolen on more than one occasion, and thus the defendant could be convicted of only one count of larceny. *Id.* at 401.

In *State v. Mettler*, 255 N.C. App. 215 (2017), the defendant entered the victims’ home through a window, taking \$150 from the wife’s purse and taking the keys to the husband’s truck and driving off in it. The defendant was found guilty of both felonious larceny after breaking or entering and larceny of a motor vehicle. The Court of Appeals held that the evidence showed that both larcenies were part of a single, continuous transaction, and that the trial court erred in sentencing the defendant for two separate larcenies.

Conversely, in cases where there is a temporal break in the thefts committed by the defendant, the courts are less likely to apply the single taking rule. *See State v. Robinson*, 342 N.C. 74 (1995) (takings of the wallet and car were separate where the defendant shot the victim and took the victim’s wallet; left the murder, went to a park, and walked around the neighborhood; and then later returned and took the victim’s car); *State v. Barton*, 335 N.C. 741 (1994) (armed robbery of the victim—resulting in the taking of his wallet and automobile—and the subsequent taking of the victim’s firearm from his automobile constituted separate takings).

The application of the rule is similar in false pretenses cases. In *State v. Buchanan*, 262 N.C. App. 303 (2018), the defendant was indicted for two counts of false pretenses for signing a “Check Fraud/Forgery Affidavit” with his bank, disputing three checks written off his account totaling \$900. The evidence showed that the

defendant had pre-signed the three checks, gave them to the mother of his daughter, and authorized her to use them in the care of their daughter. Based on the defendant's representation in the affidavit, the bank gave the defendant temporary credit for one of the three checks, a \$600 check, but denied him credit for two other checks, a \$200 check and a \$100 check. The defendant was tried and convicted of obtaining property by false pretenses for a \$600 provisional credit placed in his bank account and separately of attempting to obtain property by false pretenses for \$100 and \$200 checks. The defendant argued on appeal that the jury instructions violated the single taking rule. The Court agreed, noting that the defendant submitted one affidavit, disputing three checks, and that the submission of the one affidavit is the one act, or one false representation, for which the defendant was charged. Thus, the Court held, there was only a single act or taking under the single taking rule. *Id.* at 306. Note that the defendant benefitted here because he signed only one affidavit, so there was only one false representation within the meaning of the statute. If this defendant had instead signed a separate affidavit for each dispute, the separate convictions would have likely been upheld.

A defendant facing financial card theft charges won't get the benefit of the single taking rule and will be charged on a separate count for each financial card taken, obtained, or withheld without consent. It is worth mentioning that financial transaction card theft is a Class I felony, and a defendant with no prior felonies who takes three financial cards will have that quickly racked up three felonies. Credit card theft seems to be quite literally more trouble than it's worth.

As always, if you have questions about the application of this rule, please feel free to email me at [bwilliams@sog.unc.edu](mailto:bwilliams@sog.unc.edu).



## REVIEW QUESTIONS ON LARCENY, ROBBERY, & RELATED OFFENSES

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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 2 new iPhones which were stolen one week earlier in a housebreaking. The iPhones are worth about \$450 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:<br>- simple [I]<br>- on another person as retaliation [I]<br>- 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:<br>- gov't officer/employee or company/campus police [F]  |
| Inflicting physical injury: strangulation [H] | With deadly weapon inflicting serious injury [E]  | On handicapped person:<br>- simple [A1]<br>- 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 :<br>- battery [A1]<br>- inflicting serious bodily injury [F]                               | On sports official [I]<br>On transit operator [A1]<br>On TNC driver [A1, 12/1/19]  |
|   | Discharge of firearm into occupied:<br>- property [E]<br>- dwelling/conveyance in operation [D]<br>- property causing serious bodily injury [C] |   | On firefighter, EMT, medical responder, hospital personnel, and hospital security personnel:<br>- inflicting physical injury [I]<br>- inflicting serious bodily injury or with deadly weapon other than firearm inflicting physical injury [G instead of H, 12/1/19]<br>- 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:<br>- inflicting physical injury [I]<br>- 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.

|                            |  |                      |
|----------------------------|--|----------------------|
| <b>STATUTE</b>             | Includes cuts, scrapes, bruises, or other physical injury which does not constitute serious injury. G.S. 14-34.7(c). |                      |
| <b>APPLICABLE OFFENSES</b> |  |                      |
| 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<br><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).

|                            |  |                 |
|----------------------------|--|-----------------|
| <b>STATUTE</b>             | 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.   |                 |
| <b>APPLICABLE OFFENSES</b> |  |                 |
| 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).



## REVIEW QUESTIONS ON ASSAULT AND RELATED OFFENSES

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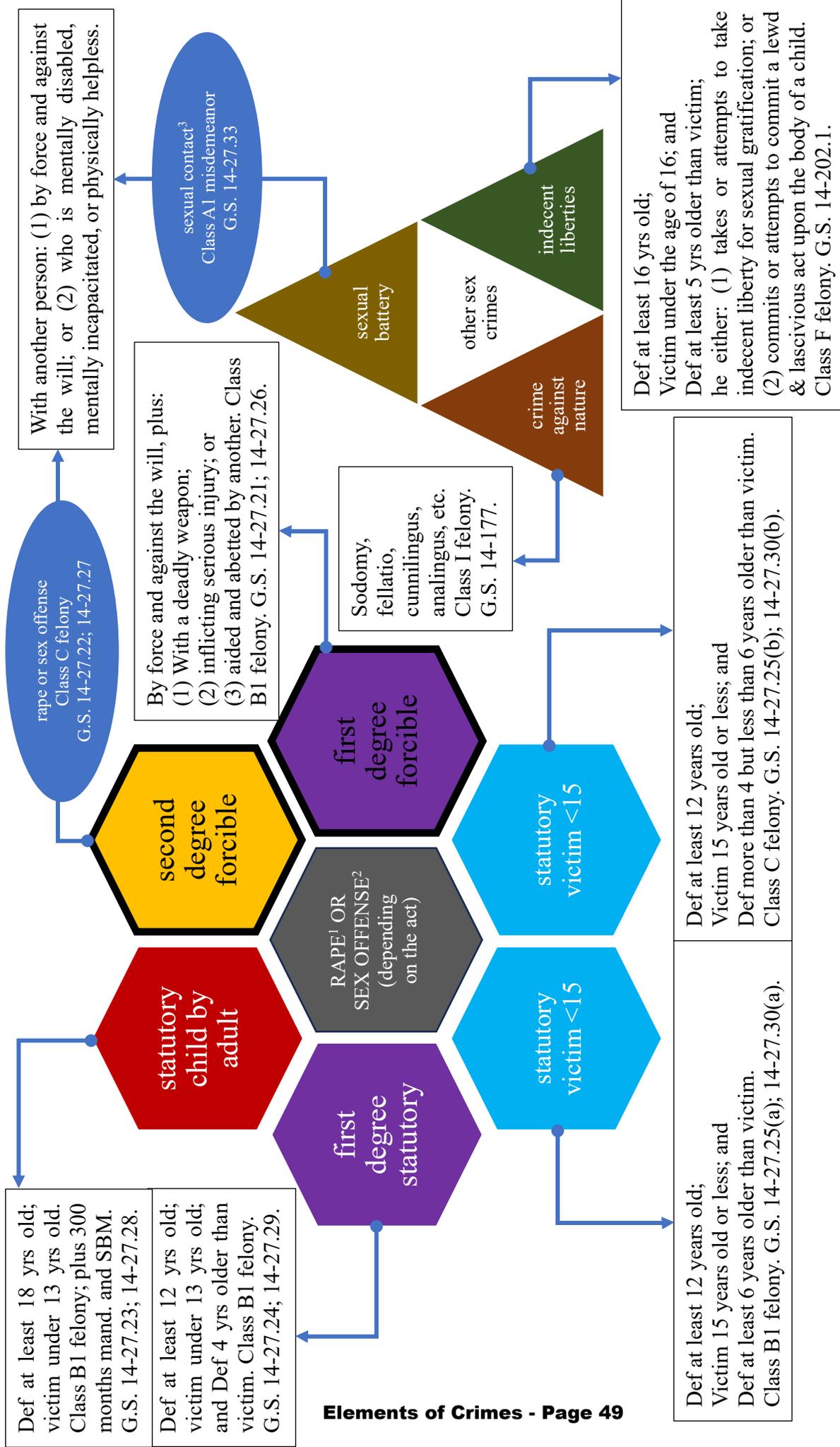
Which assault offense(s) from Chapter 7 would be proper to charge under these facts?

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?



**Elements of Crimes - Page 49**

1. Rape requires vaginal penetration. See e.g., G.S. 14-27.21(a)(forcible); 14-27.24 (statutory); cf. G.S. 14-27.36 (penetration “however slight”).

2. Sexual offense requires a “sexual act,” defined as cunnilingus, fellatio, analingus, anal intercourse, or the penetration, however slight, by any object into the genital or anal opening of another person’s body, but not vaginal intercourse. G.S. 14-27.20(4).

3. Sexual contact is: (a) touching the sexual organ, anus, breast, groin, or buttocks of any person; (b) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks; or (c) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person. G.S. 14-27.20(5).



## NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON SEXUAL ASSAULTS

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

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

7. On August 1, a 17 year-old male (whose birthday is on July 15) has sexual intercourse with a 13 year-old female (whose birthday is on August 21) with her consent.
  
8. On April 22, a 16 year-old male (whose birthday is on January 2) makes a 12 year-old female (whose birthday is on March 15) have sexual intercourse with him by holding a knife to her throat and threatening to kill her.
  
9. A 17 year-old male holds a 12 year-old female down and has sexual intercourse with her against her will.
  
10. A 22 year-old man commits fellatio with a 15 year-old female with her consent.
  
11. A 26 year-old man gives his date, a 25 year-old woman, a great deal to drink during the evening. After she passes out, he has sexual intercourse with her.
  
12. Same facts as #11 except that he has cunnilingus with her instead of intercourse.
  
13. A man and woman are husband and wife, but they have been separated for a year and a half without a written agreement. One night the man comes over to his wife's apartment and forces her to have sexual intercourse with him.
  
14. A 28 year-old woman has consensual sexual intercourse with a 12 year-old male.

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



## ELEMENTS OF CRIMES: TRESPASS

Joseph L. Hyde

Assistant Professor of Public Law and Government



[www.sog.unc.edu](http://www.sog.unc.edu)

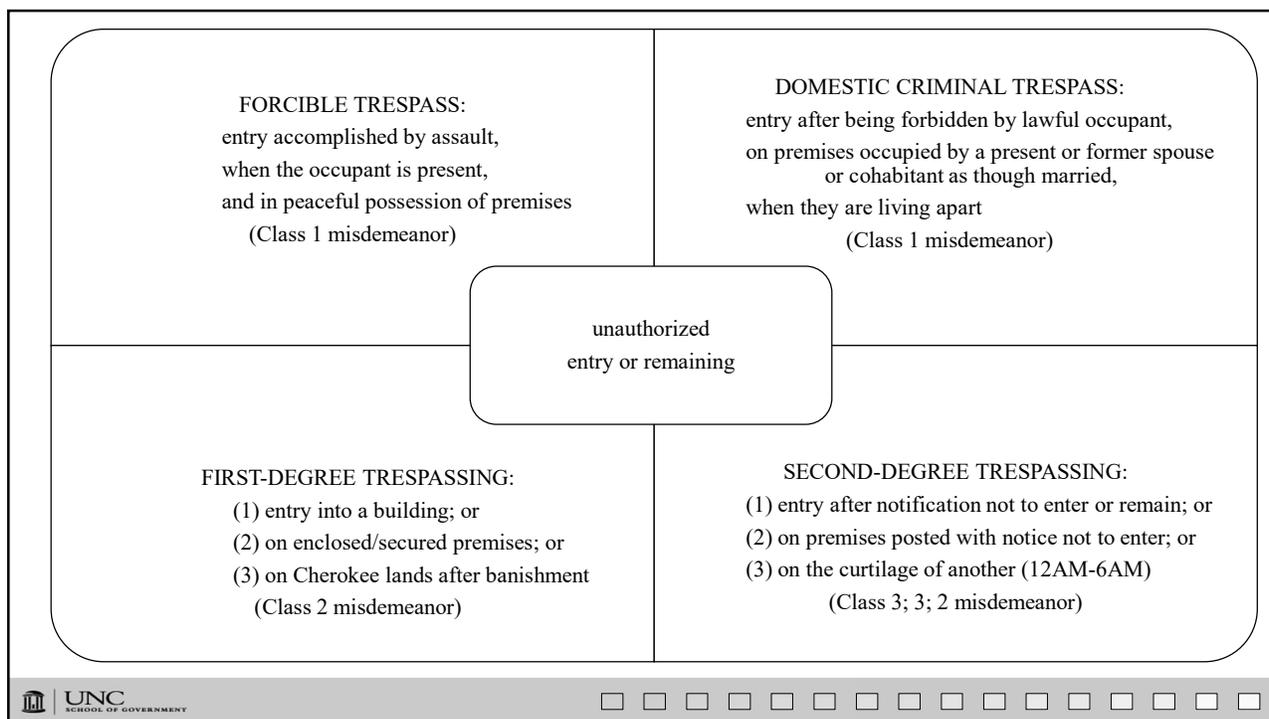
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### Offenses covered by this session:

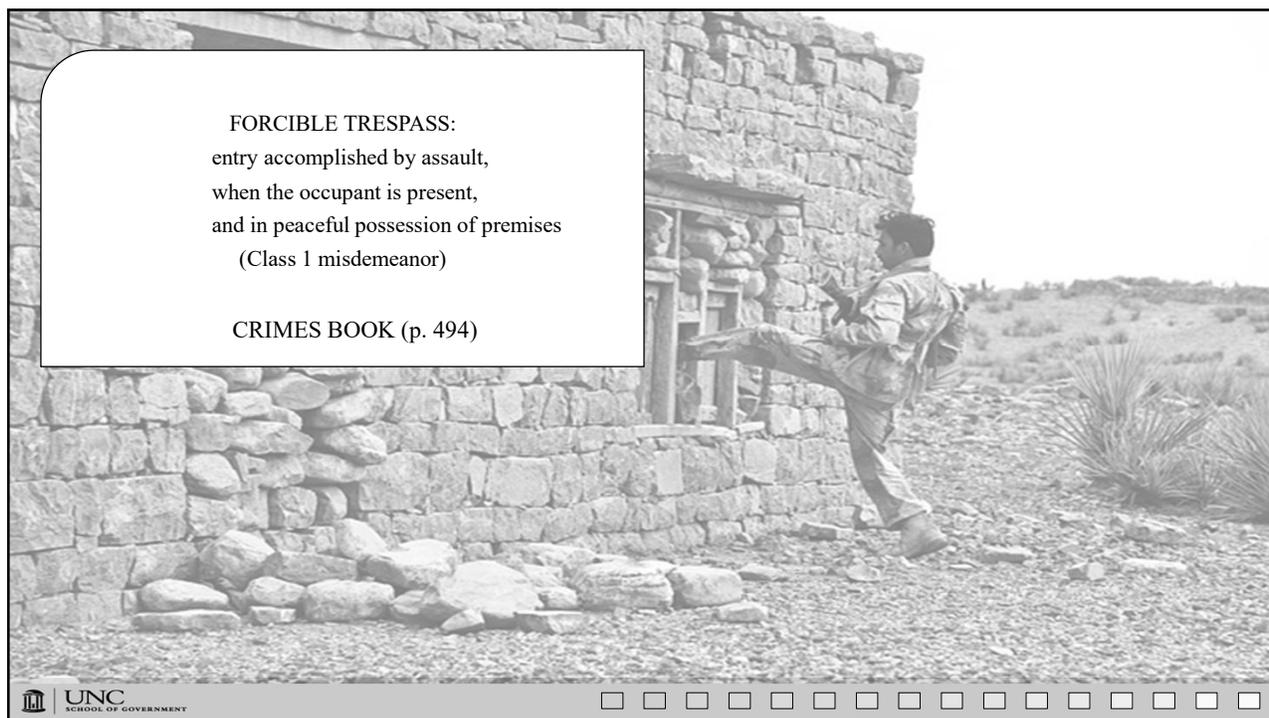
1. Forcible Trespass
2. Domestic Criminal Trespass
3. First-degree Trespass
4. Second-degree Trespass
5. Trespass for hunting, etc., without written consent
6. Third-degree trespass
7. Injury to real property
8. Injury to personal property
9. Malicious damage to occupied property by explosive or incendiary
10. Malicious damage to real or personal property by explosive or incendiary

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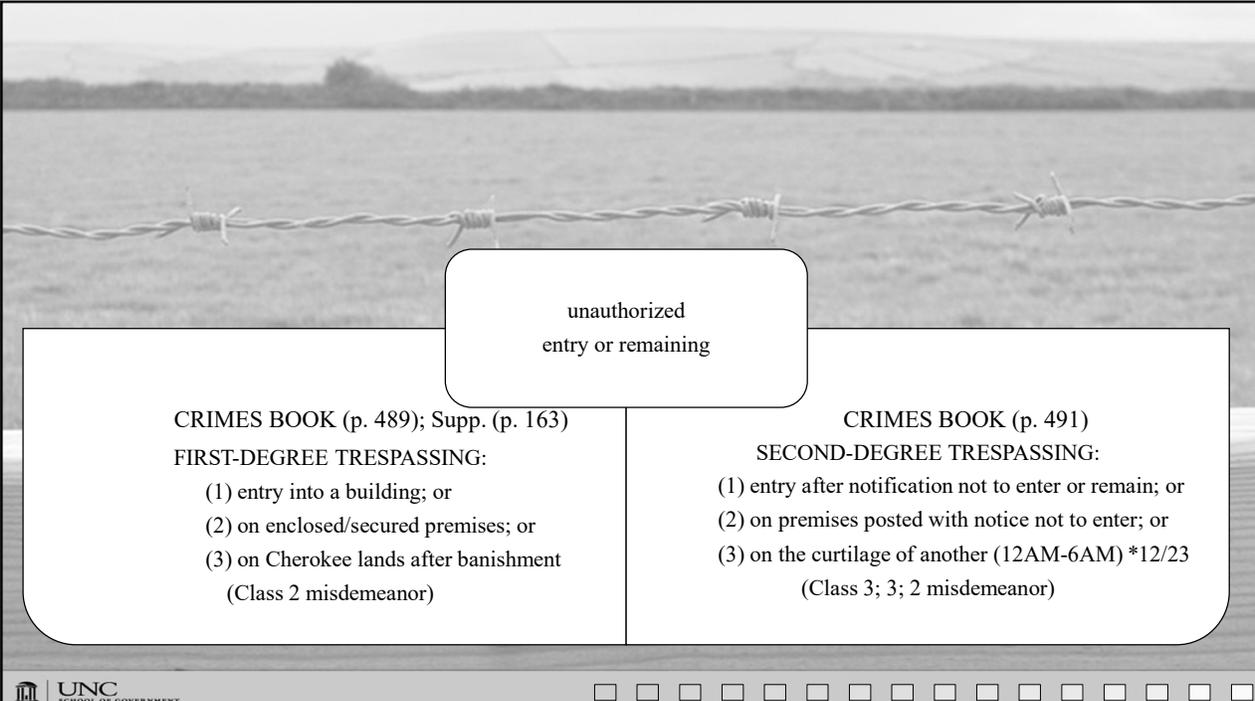
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3



4



unauthorized  
entry or remaining

|  |   |
|--|---|
| <p>CRIMES BOOK (p. 489); Supp. (p. 163)</p> <p><b>FIRST-DEGREE TRESPASSING:</b></p> <ul style="list-style-type: none"> <li>(1) entry into a building; or</li> <li>(2) on enclosed/secured premises; or</li> <li>(3) on Cherokee lands after banishment</li> </ul> <p style="text-align: center;">(Class 2 misdemeanor)</p> | <p>CRIMES BOOK (p. 491)</p> <p><b>SECOND-DEGREE TRESPASSING:</b></p> <ul style="list-style-type: none"> <li>(1) entry after notification not to enter or remain; or</li> <li>(2) on premises posted with notice not to enter; or</li> <li>(3) on the curtilage of another (12AM-6AM) *12/23</li> </ul> <p style="text-align: center;">(Class 3; 3; 2 misdemeanor)</p> |
|--|---|



5



**DOMESTIC CRIMINAL TRESPASS:**

entry after being forbidden by lawful occupant,  
on premises occupied by a present or former spouse  
or cohabitant as though married,  
when they are living apart

(Class 1 misdemeanor)

CRIMES BOOK (p. 492); Supp (p. 165)



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### DOMESTIC CRIMINAL TRESPASS

Evidence that the parties are living apart includes:

- A judicial order of separation
- A court order directing defendant to stay away
- A separation agreement (written or oral)
- The fact that parties have separate residences



### TRESPASS FOR HUNTING, FISHING, TRAPPING, WITHOUT WRITTEN CONSENT

CRIMES BOOK (p. 491)

Property must be posted as provided by statute:

notices, signs, or posters measuring at least 120 sq. inches located every 200 yards; or

purple paint on trees or posts vertical lines at least 8 inches long located every 100 yards.

**THIRD-DEGREE TRESPASSING**  
CRIMES BOOK (p. 490)

Applies to only five counties:  
Rowan, Wilkes, Yadkin, Iredell, Davidson

entering the premises of another  
without written permission  
for hunting, fishing, trapping, or ATVing  
(class 3 misdemeanor)

unauthorized  
entry or remaining

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**Injury to real property**  
CRIMES BOOK (p. 495)

Anyone who:

- willfully & wantonly
- damages or destroys
- another's property

Class 1 misdemeanor.

**Injury to personal property**  
CRIMES BOOK (p. 497)

Anyone who:

- willfully & wantonly
- damages or destroys
- another's property

Class 1 misdemeanor if damage is >\$200  
otherwise, Class 2 misdemeanor

**Malicious damage to occupied property**  
CRIMES BOOK (p. 537)

Anyone who:

- willfully & maliciously
- damages property
- by explosive or incendiary device

Class D felony

**Malicious damage to real / personal property**  
CRIMES BOOK (p. 538)

Anyone who:

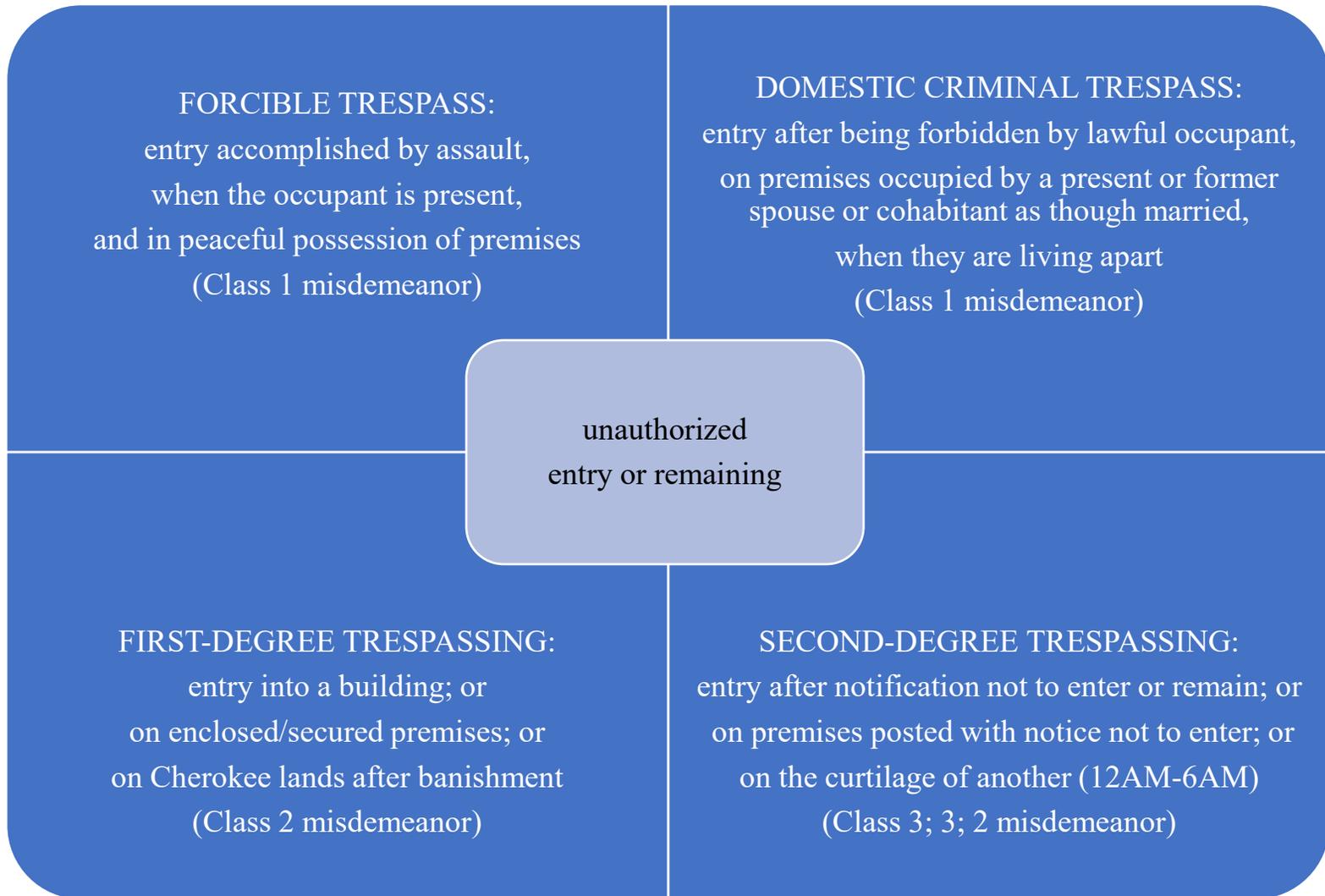
- willfully & maliciously
- damages property
- by explosive or incendiary device

Class G felony

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\* Trespass for hunting upon posted property: hunting, fishing, trapping without written permission (Class 2 misdemeanor)

\*\* Third-degree trespassing: hunting, fishing, trapping, etc., in enumerated five counties (Class 3 misdemeanor)



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

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

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

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

Tab:  
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## SEARCH WARRANTS

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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.”<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> G.S. 15A-241.

<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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

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<sup>3</sup> 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.

<sup>4</sup> G.S. 15A-244.

the magistrate's county.<sup>5</sup> 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* (5<sup>th</sup> 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.

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<sup>5</sup> 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.<sup>6</sup> Once the warrant has been executed, the officer must provide a list of items seized to the person from whom they were taken,<sup>7</sup> and must return the warrant to the clerk along with a copy of the list.<sup>8</sup>

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<sup>6</sup> G.S. 15A-248.

<sup>7</sup> G.S. 15A-254.

<sup>8</sup> 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.

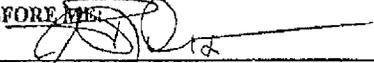
Due to these complaints, this applicant began an investigation that included surveillance and the use of a Confidential Informant.

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.   | <b>STATE OF NORTH CAROLINA</b>   |   |                         | In The General Court Of Justice<br>District/Superior Court Division                                     |
| <b>SEARCH WARRANT</b>  | _____ County   |   |                         |   |
| <b>IN THE MATTER OF</b>  | To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:  |   |                         |   |
| Name Of Applicant  | 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.  |   |                         |   |
| Name Of Additional Affiant(s)  | 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.  |   |                         |   |
| <b>RETURN OF SERVICE</b>   | 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.   |   |                         |   |
| I certify that this Search Warrant was received and executed as follows:   | This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.   |   |                         |   |
| Date Received  | Time Received  | <input type="checkbox"/> AM <input type="checkbox"/> PM | Date Issued             |   |
| Date Executed  | Time Executed  | <input type="checkbox"/> AM <input type="checkbox"/> PM | Time Issued             | <input type="checkbox"/> AM <input type="checkbox"/> PM   |
| <input type="checkbox"/> I made a search of _____  | Name (type or print)   |   | Signature               |   |
| _____  | <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> CSC <input type="checkbox"/> Magistrate <input type="checkbox"/> District Ct. Judge <input type="checkbox"/> Superior Ct. Judge  |   |                         |   |
| _____ as commanded.  | <b>NOTE:</b> 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).  |   |                         |   |
| <input type="checkbox"/> I seized the items listed on the attached inventory.  | 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. |   |                         |   |
| <input type="checkbox"/> I did not seize any items.  | Date   |   | Time                    | Name Of Magistrate (type or print)  |
| <input type="checkbox"/> This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed. | <input type="checkbox"/> AM <input type="checkbox"/> PM  |   | Signature Of Magistrate |   |
| Name Of Officer Making Return (type or print)  | This Search Warrant was returned to the undersigned clerk on the date and time shown below.  |   |                         |   |
| Signature Of Officer Making Return   | Date   |   | Time                    | Name Of Clerk (type or print)   |
| Department Or Agency Of Officer  | Incident Number  | <input type="checkbox"/> AM <input type="checkbox"/> PM |                         | Signature Of Clerk  |
|  |  |   |                         | <input type="checkbox"/> Dep. CSC<br><input type="checkbox"/> Asst. CSC<br><input type="checkbox"/> 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:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

|   |  |
|---|--|
| <b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b> | <i>Date</i>                              |
| <i>Date</i>                                       | <i>Name Of Applicant (type or print)</i> |
| <i>Signature</i>                                  | <i>Signature Of Applicant</i>            |

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

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

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

This testimony has been *(check appropriate box)*  reduced to writing  
 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.   | <b>STATE OF NORTH CAROLINA</b>   |   |  | In The General Court Of Justice<br>District/Superior Court Division                                     |
| <b>SEARCH WARRANT</b>  | _____ County   |   |  |   |
| <b>IN THE MATTER OF</b>  | To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:  |   |  |   |
| Name Of Applicant  | 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.  |   |  |   |
| Name Of Additional Affiant(s)  | 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.  |   |  |   |
| <b>RETURN OF SERVICE</b>   | 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.   |   |  |   |
| I certify that this Search Warrant was received and executed as follows:   | This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.   |   |  |   |
| Date Received  | Time Received  | <input type="checkbox"/> AM <input type="checkbox"/> PM |  |   |
| Date Executed  | Time Executed  | <input type="checkbox"/> AM <input type="checkbox"/> PM |  |   |
| <input type="checkbox"/> I made a search of _____  | Date Issued  | Time Issued   | <input type="checkbox"/> AM<br><input type="checkbox"/> PM | Name (type or print) _____<br>Signature _____   |
| _____  | <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> CSC <input type="checkbox"/> Magistrate <input type="checkbox"/> District Ct. Judge <input type="checkbox"/> Superior Ct. Judge  |   |  |   |
| _____ as commanded.  | <b>NOTE:</b> 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).  |   |  |   |
| <input type="checkbox"/> I seized the items listed on the attached inventory.  | 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. |   |  |   |
| <input type="checkbox"/> I did not seize any items.  | Date   | Time  | <input type="checkbox"/> AM<br><input type="checkbox"/> PM | Name Of Magistrate (type or print) _____<br>Signature Of Magistrate _____                               |
| <input type="checkbox"/> This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed. | This Search Warrant was returned to the undersigned clerk on the date and time shown below.  |   |  |   |
| Name Of Officer Making Return (type or print)  | Date   | Time  | <input type="checkbox"/> AM<br><input type="checkbox"/> PM | Name Of Magistrate (type or print) _____<br>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  | Date  | Time   | Name Of Clerk (type or print) _____<br>Signature Of Clerk _____   |
|  |  |   | <input type="checkbox"/> AM<br><input type="checkbox"/> PM | <input type="checkbox"/> Dep. CSC<br><input type="checkbox"/> Asst. CSC<br><input type="checkbox"/> 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:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

|   |  |
|---|--|
| <b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b>   | <i>Date</i>                              |
| <i>Date</i>   | <i>Name Of Applicant (type or print)</i> |
| <i>Signature</i>  | <i>Signature Of Applicant</i>            |
| <input type="checkbox"/> <i>Magistrate</i> <input type="checkbox"/> <i>Dep. CSC</i> <input type="checkbox"/> <i>Asst. CSC</i> <input type="checkbox"/> <i>Clerk Of Superior Court</i> <input type="checkbox"/> <i>Judge</i> |  |

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.*



# Tab: Impaired Driving



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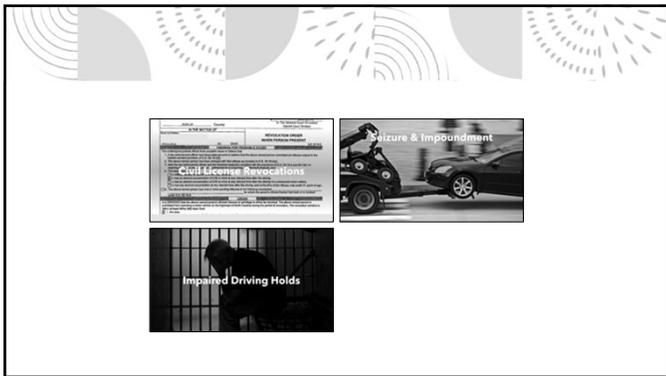
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|---|--|--|--|
| DUPLIN County   |  | In The General Court Of Justice<br>District Court Division |  |
| IN THE MATTER OF  |  | REVOCATION ORDER<br>WHEN PERSON PRESENT                    |  |
| Name And Address<br>WALLACE NC 28466  |  | G.S. 20-16.5   |  |
| 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 provision of G.S. 20-16.2(a);  |  |  |  |
| 2. The above named person has been charged with that offense as provided in G.S. 20-18.2(a);  |  |  |  |
| 3. Both the law enforcement officer and the chemical analyst(s) complied with the provisions of G.S. 20-18.2 and 20-139.1 in requiring the above named person to submit to or procure a chemical analysis; and  |  |  |  |
| 4. The above named person:  |  |  |  |
| <input type="checkbox"/> a. willfully refused to submit to or procure a chemical analysis;  |  |  |  |
| <input checked="" type="checkbox"/> b. had an alcohol concentration of 0.08 or more at any relevant time after the driving;   |  |  |  |
| <input type="checkbox"/> c. had an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle;  |  |  |  |
| <input type="checkbox"/> 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.  |  |  |  |
| <input type="checkbox"/> 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: |  |  |  |
| <input checked="" type="checkbox"/> 1. this date.   |  |  |  |

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## Five Step Protocol

1. Determine probable cause.
2. Set conditions of release.
3. Does person's impairment pose a danger?
4. Is the motor vehicle subject to seizure?
5. Must person's license be revoked?

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## What Is a CVR?

- License revocation that is entered by the magistrate at the person's initial appearance for an implied consent offense
- Lasts for at least 30 days
- Begins with an affidavit and revocation report filed by the officer and chemical analyst

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## Why impose a CVR?

### 1. Deterrence: Laws

| Countermeasure  | Effectiveness | Cost   | Use     | Time   |
|---|---------------|--------|---------|--------|
| 1.1 Administrative License Revocation or Suspension (ALR/ALS) | ★★★★★         | \$\$\$ | High    | Medium |
| 1.2 Open Container  | ★★★           | \$     | High    | Short  |
| 1.3 High-BAC Sanctions  | ★★★           | \$     | Medium  | Short  |
| 1.4 BAC Test Refusal Penalties                                | ★★★           | \$     | Unknown | Short  |
| 1.5 Alcohol-Impaired Driving Law Review                       | ☆☆            | \$\$   | Unknown | Medium |

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## 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 2020 Highway Safety Countermeasure Guide at 1-16)



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## Why is it a *civil* license revocation?

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## Four Conditions

1. LEO had reasonable grounds to believe person committed implied consent offense.
2. Person was charged with offense.
3. Statutory procedures for chemical analysis were followed.
4. Person
  - a. Willfully refused;
  - b. Had AC of 0.08 or more;
  - c. Had AC of 0.04 or more if commercial motor vehicle; or
  - d. Had any AC if under 21.

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## Keep in Mind

- When you issue a CVR, it is effective immediately
- CVR will last for at least 30 days and does not end until person pays \$100 fee to clerk.
- Countdown of days begins upon license surrender
- If the person has a pending offense for which the person's license is or was revoked under G.S. 20-16.5, then the revocation lasts for at least 30 days and until final judgment in both cases

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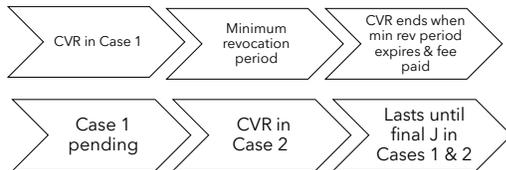
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## Revocation period if pending offense



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The magistrate must require the person to surrender his or her driver's license, including a license from another jurisdiction.



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## License Surrender

- One of the following will happen:
  1. Person may turn over license and accomplish surrender
  2. Person may demonstrate that he or she has no license (because it is revoked or because the person lost it) and accomplish surrender
    1. If license is lost, person must file affidavit
  3. Person may not be able to surrender because person does not have the license on hand
    - Such a person must surrender the license later to the clerk
- Magistrate must note on AOC-CVR-2 which of the above occurred

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## Right to Review

- The magistrate must tell person that they have the right to ask for a hearing to review the revocation.
- Person may make request at initial appearance or within 10 days using AOC-CVR-5.
- Hearing must be held
  - in 3 working days if before magistrate
  - in 5 working days if before district court judge

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## 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

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**Five Step Protocol**

1. Determine probable cause.
2. Set conditions of release.
3. Does person's impairment pose a danger?
4. Is the motor vehicle subject to seizure?
5. Must person's license be revoked?

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**Motor Vehicle Seizure & Impoundment**

- A motor vehicle driven by a person charged with **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
  - The person was driving without a valid driver's license *and* was not covered by an automobile insurance policy

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| <b>DWI Seizure &amp; Impoundment</b> | <p>No waiver of towing and storage fees!</p> <hr/> <p>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"</p> |
|--------------------------------------|---|

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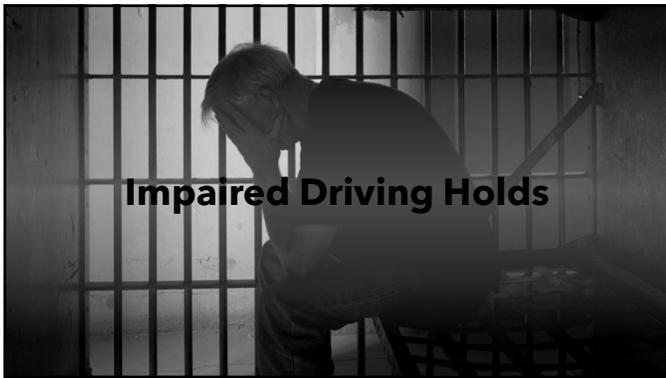
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**Five Step Protocol**

1. Determine probable cause.
2. Set conditions of release.
3. Does person's impairment pose a danger?
4. Is the motor vehicle subject to seizure?
5. Must person's license be revoked?

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**Factors to consider:**

- Nature and circumstances of offense
- Weight of the evidence
- Family ties, employment, financial resources, character, and mental condition
- Whether D is intoxicated to such a degree that he would be endangered by being released without supervision
- Length of residence in community
- Record of convictions
- History of flight or failure to appear
- Any other relevant evidence

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**When May a Magistrate Impose a Hold?**  
G.S. 15A-534.2

At an initial appearance for an offense involving impaired driving

Where the magistrate finds by clear and convincing evidence that the person's impairment would make the person a danger if the person were released

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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. 20-401(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.

Clear and convincing evidence that the impairment presents a danger

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| <p><b>Offenses involving impaired driving</b></p> | <ul style="list-style-type: none"> <li>➤ Impaired driving under G.S. 20-138.1</li> <li>➤ Habitual impaired driving under G.S. 20-138.5</li> <li>➤ Impaired driving in commercial vehicle under G.S. 20-138.2</li> <li>➤ Any offense under G.S. 20-141.4 (felony and misdemeanor death by vehicle and serious injury by vehicle) based on impaired driving</li> <li>➤ First- or second-degree murder under G.S. 14-17 based on impaired driving</li> <li>➤ Involuntary manslaughter under G.S. 14-18 based on impaired driving</li> <li>➤ Substantially similar offenses committed in another state or jurisdiction</li> </ul> |
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When is a defendant impaired to extent he or she presents a danger?

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**AOC-CR-270**

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**When does hold end?**

§ 15A-534.2. Detention of impaired drivers.

(a) A judicial official conducting an initial appearance for an offense involving... procedure in G.S. 15A-511... 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 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 property, the judicial official must order that the defendant be held in custody and defendant that he will be held in custody until one of the requirements of subsection provided, however, that the judicial official must at this time determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.

(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 to 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 denied pretrial release under this section for a period no longer than 24 hours, and after such detention may be released only upon meeting the conditions of pretrial release set in accordance with G.S. 15A-534. If the defendant is detained for 24 hours, a judicial official must immediately determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.

Sober, responsible adult willing and able to assume responsibility for defendant until no longer impaired

No longer impaired to extent that he presents danger

No longer than 24 hours

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

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

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**Remember**

- Only a judicial official may release a defendant from an impaired driving hold
- AOC-CR-270

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**Implied Consent Offense Notice**

- In any implied consent case in which a defendant is detained following his or her appearance, the magistrate must:
  1. Ask the defendant to fill out the Implied Consent Offense Notice (AOC-CR-271); and
  2. Give the defendant a copy of the local procedures for contacting witnesses from the detention center.

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**Implied Consent Offense Notice**

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).

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Tab:

# Motor Vehicle Offenses

**MOTOR VEHICLE Law**

Elements of Motor Vehicles Offenses .....Motor Vehicle Law-Page 1  
Self-Test.....Motor Vehicle Law-Page 13



# Elements of Motor Vehicle Offenses

Basic School for Magistrates  
 Shea Denning, School of Government  
 August 2024

| DWI Offenses                                   |  | Elements  | Items to note        |
|--|--|---|----------------------|
| DWI: G.S. 20-138.1                             |  | <ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3.</li> <li>4. While impaired               <ol style="list-style-type: none"> <li>a.</li> <li>b.</li> <li>c.</li> </ol> </li> </ol>                       | p. 29 of yellow book |
| Misdemeanor sentenced under G.S. 20-179        |  | <ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3. Street/highway or PVA</li> <li>4. While impaired               <ol style="list-style-type: none"> <li>a.</li> <li>b.</li> <li>c.</li> </ol> </li> </ol> | p. 68 of yellow book |
| DWI in commercial motor vehicle: G.S. 20-138.2 |  | <ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3. Street/highway or PVA</li> <li>4. While impaired               <ol style="list-style-type: none"> <li>a.</li> <li>b.</li> <li>c.</li> </ol> </li> </ol> |                      |
| Misdemeanor sentenced under G.S. 20-179        |  | <ol style="list-style-type: none"> <li>1. DWI</li> <li>2.</li> </ol>  | p. 52 of yellow book |
| Habitual impaired driving: G.S. 20-138.5       |  |   |                      |
| Class F felony                                 |  |   |                      |

| Zero Tolerance Offenses   | Elements  | Items to Note   |
|---|---|---|
| <p>Driving after consuming by person &lt; 21: G.S. 20-138.3</p> <p>Class 2 misdemeanor</p>  | <ol style="list-style-type: none"> <li>1. Less than 21</li> <li>2. Drive</li> <li>3.</li> <li>4.               <ol style="list-style-type: none"> <li>a. While consuming alcohol;</li> <li>b. At any time while person has remaining in his or her body any alcohol previously consumed; or</li> <li>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</li> </ol> </li> </ol> | <p>p. 75 of yellow book</p> <p>Not a lesser included offense of DWI, but punishment limitations apply.</p>  |
| <p>Operating commercial motor vehicle after consuming: G.S. 20-138.2A</p> <p>Class 3 misdemeanor</p>  | <ol style="list-style-type: none"> <li>1. Drive</li> <li>2. Commercial motor vehicle*</li> <li>3. Street, Highway, or PVA</li> <li>4. While consuming alcohol or while alcohol remains in body</li> </ol>   | <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> |
| <p>Driving school bus/child care vehicle/ambulance/EMS vehicle/firefighting vehicle/LE Vehicle after consuming: G.S. 20-138.2B</p> <p>Class 3 misdemeanor</p> | <ol style="list-style-type: none"> <li>1. Drive</li> <li>2. School bus, school activity bus, child care vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle</li> <li>3. Street, Highway, or PVA</li> <li>4. While consuming alcohol or while alcohol remains in body</li> </ol>   | <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)<br>Class 3 misdemeanor                       | <ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3.</li> <li>4. While driver's license or privilege to drive in NC is revoked</li> <li>5.</li> </ol>             | p. 101 of Pulled Over  |               |
| Driving while license revoked for impaired driving: G.S. 20-28(a1)<br>Class 1 misdemeanor | <ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3.</li> <li>4. While driver's license or privilege to drive in NC is revoked</li> <li>5.</li> <li>6.</li> </ol> | <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)<br>Class 3 misdemeanor                                | <ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3.</li> <li>4. Without a valid license</li> </ol>   | p. 98 of Pulled Over   |               |
| Failure to comply with license restriction: G.S. 20-7(e)<br>Class 3 misdemeanor           | <ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3.</li> <li>4. In violation of license restriction</li> </ol>   | <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)<br><i>Carelessly and heedlessly</i><br><br>Class 2 misdemeanor       | <ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3.</li> <li>4. Carelessly and heedlessly</li> <li>5. In willful or wanton disregard</li> <li>6. Of the rights and safety of others</li> </ol>   | p. 133 of Pulled Over   |
| Reckless driving: G.S. 20-140(b)<br><i>Endangering persons or property</i><br><br>Class 2 misdemeanor | <ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3.</li> <li>4. Without due caution and circumspection</li> <li>5. At a speed or in a manner</li> <li>6. That endangers or is likely to endanger any person or property</li> </ol>   | p. 133 of Pulled Over<br><br>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)<br><br>Class 1 misdemeanor                                       | <ol style="list-style-type: none"> <li>1. Drive</li> <li>2.</li> <li>3. Carelessly and heedlessly in willful or wanton disregard of the rights or safety of others</li> <li>4. Street/highway or PVA</li> <li>5. In violation of speed restrictions in G.S. 20-141 or speed restrictions in school zones in G.S. 20-141.1</li> </ol> | p. 144 of Pulled Over<br><br>Reckless driving is a lesser-included offense of aggressive driving.   |

|   |   |  |
|---|---|--|
| <p>Hit and run: G.S. 20-166(a1)<br/> <i>Failure to stop, remain at scene when injury occurs</i><br/> Class H felony</p>   | <ol style="list-style-type: none"> <li>6. Drive</li> <li>7. Vehicle</li> <li>8. Street/highway or PVA</li> <li>9. Involved in crash</li> <li>10. Causing injury</li> <li>11. Knows or reasonably should that vehicle was involved in crash causing injury</li> <li>12. Willfully <ol style="list-style-type: none"> <li>a. Fails to _____</li> <li>b. Fails to _____</li> <li>c. _____</li> </ol> </li> </ol>   | <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)<br/> <i>Failure to give information or assistance when injury, serious bodily injury, or death occurs</i><br/> Class 1 misdemeanor</p> | <ol style="list-style-type: none"> <li>1. Drive</li> <li>2. Vehicle</li> <li>3. Street/highway or PVA</li> <li>4. Involved in crash</li> <li>5. Causing injury, serious bodily injury, or death</li> <li>6. Knows or reasonably should that vehicle was involved in crash causing injury, serious bodily injury, or death</li> <li>7. Driver fails to <ol style="list-style-type: none"> <li>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</li> <li>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</li> </ol> </li> </ol> | <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<br/>If violation causes death, Class H felony</p> | <p>1. Drive<br/>2. _____<br/>3. _____<br/>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<br/>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"> <li>1. Speeding more than 15 m.p.h. over the legal speed limit;</li> <li>2. Person's faculties are grossly impaired while driving due to: <ol style="list-style-type: none"> <li>a. consumption of an impairing substance; or</li> <li>b. BAC of 0.14 or more;</li> </ol> </li> <li>3. Reckless driving under G.S. 20-140;</li> <li>4. Negligent driving leading to an accident causing: <ol style="list-style-type: none"> <li>a. property damage of more than \$1,000; or</li> <li>b. personal injury;</li> </ol> </li> <li>5. Driving while driver's license is revoked;</li> <li>6. Driving over speed limit on school property, in school zone, or in a highway work zone;</li> <li>7. Passing a stopped school bus under G.S. 20-217; or</li> <li>8. Driving with a child under 12 in the vehicle.</li> </ol> | <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.<br/>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"> <li>1. Killing</li> <li>2. Another person</li> <li>3. With malice</li> </ol>   | <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"> <li>1. Kill</li> <li>2. Another person</li> <li>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</li> </ol> | <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)<br/>Class D felony</p>  | <ol style="list-style-type: none"> <li>1. Unintentionally cause death of another</li> <li>2. While engaged in offense of (a) _____ or (b) _____</li> <li>3. _____ is proximate cause of death</li> </ol>  | <p>p. 61 of yellow book</p> |
| <p>Aggravated felony death by vehicle: G.S. 20-141.4(a5)<br/>Class D felony (sentenced in aggravated range)</p> | <ol style="list-style-type: none"> <li>1. Felony death by vehicle</li> <li>2. Prior conviction for offense involving impaired driving within 7 years</li> </ol>   | <p>p. 62 of yellow book</p> |
| <p>Repeat felony death by vehicle: G.S. 20-141.4(a6)<br/>Class B2 felony</p>                                    | <ol style="list-style-type: none"> <li>1. Felony death by vehicle</li> <li>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</li> </ol>   | <p>p. 63 of yellow book</p> |
| <p>Misdemeanor death by vehicle: G.S. 20-141.4(a2)<br/>Class A1 misdemeanor</p>                                 | <ol style="list-style-type: none"> <li>1. Unintentionally cause death of another</li> <li>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</li> <li>3. Traffic offense is proximate cause of death</li> </ol> | <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)<br><br>Class F felony               | <ol style="list-style-type: none"> <li>1. Unintentionally cause serious injury to another person</li> <li>2. While engaged in DWI or DWI in commercial motor vehicle</li> <li>3. DWI is proximate cause of serious injury</li> </ol> | <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:<br>G.S. 20-141.4(a4)<br><br>Class E felony | <ol style="list-style-type: none"> <li>1. Felony serious injury by vehicle</li> <li>2. Previous conviction for offense involving impaired driving within 7 years of offense</li> </ol>   | <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 2024**

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:  
Contempt

**CONTEMPT**

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# 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.

There also are specific rules for addressing **contempt by a juvenile** that are discussed further below.

## 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.

## **Contempt by a Juvenile**

A magistrate may conduct a summary proceeding in response to direct criminal contempt by a juvenile six years old or older. G.S. 5A-32(a) requires that the magistrate do all the following before imposing sanctions for criminal contempt against a juvenile:

- (1) Give the juvenile summary notice of the contempt allegation and a summary opportunity to respond.
- (2) Appoint an attorney to represent the juvenile and allow time for the juvenile to confer with the attorney.**
- (3) Find facts supporting the adjudication of direct criminal contempt and the facts must be established beyond a reasonable doubt.

A magistrate may orally order that a juvenile being charged with direct contempt be taken into custody and retrained to the extent necessary to assure the juvenile's presence for the summary proceedings or notice of plenary proceedings. G.S. 5A-32(e).

Indirect criminal contempt by a juvenile must be adjudicated by a district court judge pursuant to the juvenile delinquency provisions found in Subchapter II of Chapter 7B of the General Statutes. G.S. 5A-33.

If a magistrate decides not to proceed summarily for direct criminal contempt by a juvenile but decides to initiate a plenary proceeding for criminal contempt, the magistrate must appoint an attorney for the juvenile and enter a show cause order directing the juvenile to appear before a judge in a juvenile delinquency proceeding. G.S. 5A-32(b).

If a magistrate determines in a summary proceeding that a juvenile has committed direct criminal contempt, the magistrate may order any or all the following:

- (1) That the juvenile be detained in a juvenile detention facility for up to 5 days.
- (2) That the juvenile perform up to 30 hours of supervised community service as arranged by a juvenile court counselor.
- (3) That the juvenile be required to undergo any evaluation necessary for the court to determine the needs of the juvenile.

Contempt by a juvenile who is married or otherwise emancipated, or who previously was convicted in superior court of any criminal offense, is adjudicated as an adult would be adjudicated. G.S. 5A-34.

# Criminal Contempt

## Before the Magistrate

Cheryl Howell

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

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

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

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# 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.  
(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



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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.*



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- *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



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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."*



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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----"*.



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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)?  
AOC form CR-200, Order of Commitment



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# Punishment



"I'm not sure it was worth it, but it certainly was the world's best judge joke."



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# 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."

-5A-12(c)



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## North Carolina Criminal Law

A UNC School of Government Blog

### Consecutive Sentences for Criminal Contempt

Posted on Aug. 11, 2016, 3:57 pm by James Mathison • 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 I to Class E. The jury found an aggravating factor. The judge found that it outweighed the time mitigating factor and sentenced the defendant from the top of the aggravated range for Prior Record Level V: 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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**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

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**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.”

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**“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

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## “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[.]”*



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## *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



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## *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



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## 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.”



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## AOC-CR-219

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## Appeal

Magistrate → Superior Court  
(*de novo* appeal)

Bail hearing required

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



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**Contempt by Juvenile**



- GS 5A- 31
  - Exclusive grounds
- GS 5A-32
  - Direct contempt
  - Summary proceeding
    - Notice and an opportunity to respond
    - **Appoint a lawyer and allow lawyer and juvenile time to confer**
    - Find facts beyond a reasonable doubt
  - Or, initiate plenary proceeding
    - **Appoint a lawyer for the juvenile**
    - Issue a show cause order for juvenile to appear before a juvenile court judge
    - Give copy of show cause order to lawyer and to juvenile

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**Contempt by Juvenile**



GS 5A-32

(c) After a determination ... that a juvenile has committed direct contempt, the court may order any or all of the following:

- (1) That the juvenile be detained in a juvenile detention facility for up to five days.
- (2) That the juvenile perform up to 30 hours of supervised community service as arranged by a juvenile court counselor.
- (3) That the juvenile be required to undergo any evaluation necessary for the court to determine the needs of the juvenile.

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**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).

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## 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/](http://civil.sog.unc.edu/))
- Numerous blog posts at Criminal Law Blog ([nccriminallaw.sog.unc.edu](http://nccriminallaw.sog.unc.edu))



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Tab:  
Initial  
Appearance

## **INITIAL APPEARANCE**

|  |         |
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| Exceptions to Pretrial Release Procedures Table .....                      | Page 1  |
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## 2023 Legislation Affecting Criminal Law and Procedure

Brittany Bromell

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(Last updated July 23, 2023)

Below are excerpts of summaries of 2023 legislation affecting criminal law, criminal procedure, and motor vehicle law. To obtain the text of the legislation, click on the link provided below or go to the General Assembly's website, [www.ncleg.gov](http://www.ncleg.gov). Be careful to note the effective date of each piece of legislation.

**[S.L. 2023-6 \(H 40\)](#), as amended by section 4 of **[S.L. 2023-71 \(S 626\)](#): Rioting.** Effective for offenses committed on or after December 1, 2023, section 4 of this act adds new G.S. 15A-534.8 which requires pretrial release conditions for rioting and looting offenses to be determined by a judge. Pursuant to the new statute, the judge must consider the defendant's criminal history when setting the conditions of release but must not unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the defendant's criminal history report. The judge must act within 24 hours of arrest of the defendant, and if a judge has not acted, then a magistrate must act. In addition to the pretrial release provisions of G.S. 15A-534, the following provisions apply:**

- (1) If the judge determines that the immediate release of the defendant will pose a danger of injury to others and that the execution of an appearance bond will not reasonably assure that the injury will not occur, the judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.
- (2) A judge may order the defendant to stay away from specific locations or property where the offense occurred. This condition may be imposed in addition to requiring that the defendant execute a secured appearance bond.
- (3) In the event that the defendant is mentally ill or a substance abuser and dangerous to himself or herself or others, the provisions of Article 5 of Chapter 122C of the General Statutes apply.

**[S.L. 2023-75 \(H 813\)](#): Pretrial Integrity Act.** Effective for offenses committed on or after October 1, 2023, Section 2 of this act expands G.S. 15A-533(b) regarding right to pretrial release to provide that a judge must determine in the judge's discretion whether a defendant charged with any of the following crimes may be released before trial:

- (1) G.S. 14-17 (First or second degree murder) or an attempt to commit first or second degree murder.
- (2) G.S. 14-39 (First or second degree kidnapping).
- (3) G.S. 14-27.21 (First degree forcible rape).
- (4) G.S. 14-27.22 (Second degree forcible rape).
- (5) G.S. 14-27.23 (Statutory rape of a child by an adult).
- (6) G.S. 14-27.24 (First degree statutory rape).
- (7) G.S. 14-27.25 (Statutory rape of person who is 15 years of age or younger).

- (8) G.S. 14-27.26 (First degree forcible sexual offense).
- (9) G.S. 14-27.27 (Second degree forcible sexual offense).
- (10) G.S. 14-27.28 (Statutory sexual offense with a child by an adult).
- (11) G.S. 14-27.29 (First degree statutory sexual offense).
- (12) G.S. 14-27.30 (Statutory sexual offense with a person who is 15 years of age or younger).
- (13) G.S. 14-43.11 (Human trafficking).
- (14) G.S. 14-32(a) (Assault with a deadly weapon with intent to kill inflicting serious injury).
- (15) G.S. 14-34.1 (Discharging certain barreled weapons or a firearm into occupied property).
- (16) First degree burglary pursuant to G.S. 14-51.
- (17) First degree arson pursuant to G.S. 14-58.
- (18) G.S. 14-87 (Robbery with firearms or other dangerous weapons).

If the judge determines that release is warranted for a defendant charged with any of the crimes listed above, the judge shall set conditions of pretrial release in accordance with G.S. 15A-534. A defendant charged with a noncapital offense that is not listed above must otherwise have conditions of pretrial release determined in accordance with G.S. 15A-534.

The act also enacts new G.S. 15A-533(h) to provide that if a defendant is arrested for a new offense allegedly committed while the defendant was on pretrial release for another pending proceeding, the judicial official who determines the conditions of pretrial release for the new offense must be a judge. The judge must consider the defendant's criminal history when setting conditions of pretrial release but must not unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the defendant's criminal history report. A magistrate may set the conditions of pretrial release at any time if the new offense is a violation of Chapter 20 of the General Statutes, other than a violation of G.S. 20-138.1, 20-138.2, 20-138.2A, 20-138.2B, 20-138.5, or 20-141.4. Under this statute, a defendant may be retained in custody not more than 48 hours from the time of arrest without a judge making a determination of conditions of pretrial release. If a judge has not acted within 48 hours from the time of arrest of the defendant, the magistrate shall set conditions of pretrial release in accordance with G.S. 15A-534.

# Domestic Violence Crimes and the 48-Hour Rule

Jeff Welty  
UNC School of Government  
December 2019

## Overview

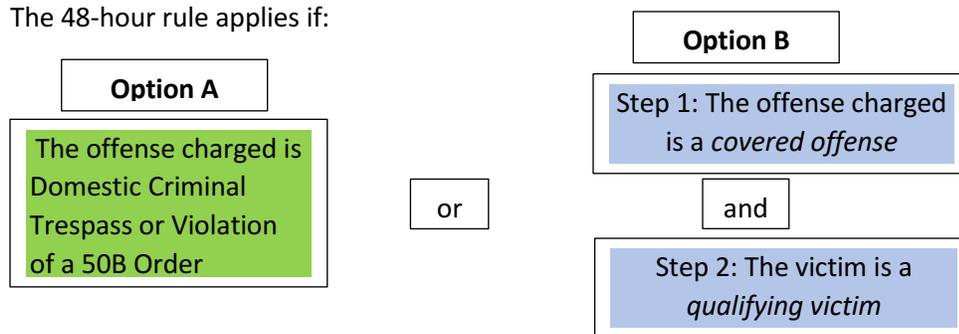
G.S. 15A-534.1 provides that, for certain domestic violence crimes, only a judge may set conditions of release in the first 48 hours after the defendant’s arrest. A magistrate is empowered to set conditions only if 48 hours pass without a judge setting conditions. For example, if a defendant is arrested 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. Thompson*, 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.<sup>1</sup>

## 48-Hour Rule Flow Chart

The 48-hour rule applies if:



<sup>1</sup> 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].”<sup>2</sup> 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.<sup>3</sup>

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<sup>2</sup> 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”).

<sup>3</sup> 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

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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 property<sup>4</sup>
- G.S. 14-277.7: Communicating a threat of mass violence at a place of religious worship<sup>5</sup>

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<sup>4</sup> 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.

<sup>5</sup> 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.”<sup>6</sup>

## 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.

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<sup>6</sup> 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 SELECTING THE PROPER CHARGE AND SETTING PRETRIAL  
RELEASE CONDITIONS**

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*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 88 months |
| Class B1..... 144 months to life without parole | Class F..... 10 to 59 months  |
| Class B2..... 94 to 552 months                  | Class G ..... 8 to 47 months  |
| Class C..... 44 to 231 months                   | Class H ..... 4 to 39 months  |
| Class D..... 38 to 204 months                   | Class I..... 3 to 24 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.

**Maintaining dwelling and possession with intent to sell and deliver (Class I felonies)**

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.

**Unauthorized use of conveyance (Class 1 misdemeanor)**

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

**Sale of heroin (Class G felony) and possession with intent (Class H felony)**

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

**Felony breaking and entering and felony larceny (Class H felonies); possession of firearm by felon (Class G felony)**

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

**Burning personal property (Class H felony); malicious use of incendiary device (Class G felony)**

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

**Accessory after the fact of armed robbery (Class F felony)**

7. Officer Jesse Wilson appears at your office with Ron Z. Float, 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.

**Worthless check (Class 3 misdemeanor)**

### PROBLEMS IN DETERMINING THE CONDITIONS OF PRETRIAL RELEASE

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[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 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 Crouse 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 “she'll pay for this when I hit the street tonight.” 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 specified reasonable period of time.
  - d. Commit him to jail for 12 hours.
  - e. Commit him to jail because only a judge may set release conditions for the period of 48 hours from Will Jones' arrest.
7. Pierre 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?
- a. Yes
  - b. No
8. Otis 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?
- a. Set release conditions as usual.
  - b. 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.
  - c. 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?

- a. Yes
- b. No

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

- a. Yes
- b. No

10. 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

# The Pretrial Integrity Act

Brittany Bromell

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[Brittany Bromell](#) is an assistant professor of public law and government who specializes in criminal law and procedure, with expertise in pretrial release proceedings and domestic violence.

During the 2023 legislative session, the North Carolina General Assembly made significant changes to the state’s pretrial release laws in a bill informally known as the “Pretrial Integrity Act.”<sup>1</sup> Its provisions, which took effect on October 1, 2023, most notably limit magistrates’ authority to set conditions of release for defendants arrested for a new offense while on pretrial release and for defendants charged with certain high-level felony offenses, and makes pretrial release for defendants charged with the same high-level offenses discretionary. This bulletin details the newly enacted changes, how they are affected by different charging documents, the impact of the new provisions on existing pretrial release laws, and potential challenges in implementation.

## I. New Statutory Provisions

### A. Holds for Certain High-Level Felonies

G.S. 15A-533(c) has provided that if a defendant is charged with a capital offense, only a judge may determine whether the defendant may be released pretrial.<sup>2</sup> If the judge determines release is warranted, he or she sets conditions of release pursuant to G.S. 15A-534.<sup>3</sup> Before October 1, 2023, a defendant charged with a noncapital offense was ordinarily entitled to have conditions of release set by any judicial official.<sup>4</sup>

Effective for offenses committed on or after October 1, 2023, G.S. 15A-533(b) was amended to expand the list of offenses for which only a judge may set conditions of pretrial release. It now will apply to the following offenses:

- first- and second-degree murder, G.S. 14-17, and attempts to commit those offenses;
- first- and second-degree kidnapping, G.S. 14-39;
- first-degree forcible rape and sexual offense, G.S. 14-27.21 and -27.26;
- second-degree forcible rape and sexual offense, G.S. 14-27.22 and -27.27;
- statutory rape of and sexual offense with a child by an adult, G.S. 14-27.23 and -27.28;
- first-degree statutory rape and sexual offense, G.S. 14-27.24 and -27.29;
- statutory rape of and sexual offense with a person 15 years old or younger, G.S. 14-27.25 and -27.30;
- human trafficking, G.S. 14-43.11;
- assault with a deadly weapon with intent to kill inflicting serious injury, G.S. 14-32(a);
- discharging barreled weapons or a firearm into occupied property, G.S. 14-34.1;
- first-degree burglary, G.S. 14-51;
- first-degree arson, G.S. 14-58; and
- armed robbery, G.S. 14-87.<sup>5</sup>

1. S.L. 2023-75 (H.B. 813).

2. G.S. 15A-533(c) (right to pretrial release in capital and noncapital cases).

3. *Id.*

4. G.S. 15A-533(b) (2022), *amended by* S.L. 2023-75. (right to pretrial release in capital and noncapital cases).

5. *See* S.L. 2023-75, § 2.

A magistrate conducting an initial appearance after the arrest of a defendant charged with any of the above-listed offenses must deny conditions of release and order the defendant to be taken before a judge at the earliest reasonable opportunity. For any defendant charged with an offense not listed above, the existing rule of G.S. 15A-533(b) still applies: the defendant generally must have conditions of release set in accordance with G.S. 15A-534 by any judicial official.

For the listed offenses, the statute sets no time limit on when a judge must rule on pretrial release, although in-custody defendants are entitled to a first appearance before a judge within seventy-two hours after arrest.<sup>6</sup> There is no provision in G.S. 15A-533(b) for a magistrate to act when a judge has not acted.

### **1. Time of Offense**

If a defendant is arrested for one of the listed offenses, and the offense is alleged to have been committed before October 1, 2023, then a magistrate presiding at the initial appearance is still authorized upon the arrest to set the conditions of release.

### **2. Inchoate Offenses**

With a few exceptions, G.S. 15A-533(b) applies only to completed crimes and not inchoate versions of the listed offenses (solicitation, conspiracy, attempt). The list explicitly includes attempts to commit first- and second-degree murder but does not explicitly include attempts to commit any of the other offenses. This scheme indicates that the General Assembly did not intend to allow inchoate offenses to fall within the scope of the amended statute. The statute would, however, apply to attempts under G.S. 14-34.1 (discharging barreled weapons or a firearm into occupied property) and G.S. 14-87 (armed robbery) because those offenses encompass both completed acts and attempts as variants of the crime. If a defendant is arrested for conspiracy under G.S. 14-2.4, attempt under G.S. 14-2.5, solicitation under G.S. 14-2.6, or accessory after the fact under G.S. 14-7 in relation to any of the felonies listed under amended G.S. 15A-533(b), the magistrate should set conditions of release rather than holding the defendant for the judge to set conditions. These offenses are separate from the completed offenses and are not listed in the statute as ones for which only a judge may set conditions of pretrial release.

The pretrial procedures for a defendant charged under an alternative theory of principal liability—such as acting in concert, aiding and abetting, or accessory before the fact—should probably be conducted as if the defendant were charged with the offense itself. Under each of the theories of principal liability, a person arrested and charged for an offense is punished as provided for the underlying offense.<sup>7</sup> So, if a defendant is arrested as an alternate principal for any of the offenses listed under G.S. 15A-533(b), then a judge should be the judicial official to set conditions of pretrial release.

## **B. Holds under the Forty-Eight-Hour Provision**

Also effective for offenses committed on or after October 1, 2023, new G.S. 15A-533(h) limits a magistrate's authority to set conditions of release for a defendant arrested for a new offense while on pretrial release for another pending proceeding.<sup>8</sup> In these cases, only a judge may

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6. G.S. 15A-601(c) (first appearances).

7. See G.S. 14-5.2 (accessory before fact punishable as principal felon); *State v. Small*, 301 N.C. 407 (1980) (noting that principals in the first degree and those in the second degree are equally guilty of the offense committed and punished the same).

8. See S.L. 2023-75, § 2.

set conditions of release within the first forty-eight hours after arrest for the new offense. A magistrate may set conditions within the first forty-eight hours after arrest for new offenses involving violations of Chapter 20 of the General Statutes, except for Chapter 20 offenses involving impaired driving or death, namely

- impaired driving, G.S. 20-138.1;
- impaired driving in a commercial vehicle, G.S. 20-138.2;
- operating a commercial vehicle after consuming alcohol, G.S. 20-138.2A;
- operating a school bus, school activity bus, child care vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle after consuming alcohol, G.S. 20-138.2B;
- habitual impaired driving, G.S. 20-138.5; and
- death or injury by vehicle, G.S. 20-141.4.

Procedures under new G.S. 15A-533(h) are substantially similar to the existing forty-eight-hour provisions under G.S. 15A-534.1 (pretrial release for certain domestic violence offenses) and G.S. 15A-534.7 (pretrial release for communicating a threat of mass violence on educational property or place of religious worship). For offenses subject to G.S. 15A-533(h), the judicial official (a judge in the first forty-eight hours and a magistrate thereafter) must direct a law enforcement officer, pretrial services program, or district attorney to provide a criminal history report and risk assessment, if available, for the defendant and must consider the defendant's criminal history when setting conditions of pretrial release. After conditions are set, the report must be returned to the entity that provided it. The judicial official may not unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the criminal history report. What constitutes an unreasonable delay is not defined in the statute, but this language suggests that where a criminal history report is unlikely to be promptly produced, conditions of release should be set even in its absence.

G.S. 15A-533(h) does not provide additional authorization for a judicial official to detain the defendant if the official determines the defendant is dangerous. In contrast, under G.S. 15A-534.1 and -534.7 a judicial official may detain a person for an additional reasonable period of time if the official determines “that the immediate release of the defendant will pose a danger of injury to persons” and “that the execution of an appearance bond as required by G.S. 15A-534 will not reasonably assure that such injury will not occur.”<sup>9</sup>

### 1. *Bond Considerations*

The existing statutory provision regarding bond doubling is unchanged by the new law. When conditions of pretrial release are being determined for a defendant charged with an offense and currently on pretrial release for a prior offense, the judicial official may, but is not required to, impose a secured appearance bond in an amount at least double that of the most recent previous secured or unsecured bond for the charges.<sup>10</sup> If no bond has yet been required for the charges, the judicial official may impose a secured appearance bond of at least one thousand dollars.<sup>11</sup>

9. G.S. 15A-534.1(a)(1), -534.7(a)(1).

10. G.S. 15A-534(d3) (determining conditions of pretrial release).

11. *Id.*

## 2. *Out-of-County Defendants*

Being arrested on an out-of-county charge is not a basis for denying or delaying the setting of pretrial release conditions. In out-of-county arrests, a magistrate must conduct the initial appearance as usual, regardless of where the offense occurred. There is no authority to order that the person arrested be held for pickup by the charging county. Similarly, for offenses covered by G.S. 15A-533(h), an out-of-county defendant must be taken before a judge in the custodial county at the earliest reasonable opportunity within forty-eight hours after arrest.

If an out-of-county defendant satisfies pretrial conditions and is released, he or she then appears in court in the charging county on the court date provided to him or her. If an out-of-county defendant cannot satisfy conditions of release, the involved counties must coordinate the transportation of the defendant, since the first appearance must be held in the county where the charges are pending.<sup>12</sup>

## 3. *Determination of Pretrial Release*

To commit a criminal defendant to a detention facility pursuant to G.S. 15A-533(h), a magistrate must determine whether that defendant is on pretrial release. To learn this information, a magistrate can use the Criminal Justice Law Enforcement Automated Data Services (CJLEADS) database and conduct a statewide search of a defendant's criminal history, including pending proceedings. If the defendant has a pending criminal proceeding, the magistrate should determine what process was issued. If the proceeding was initiated by a citation or summons, the defendant would not have been out on pretrial release, and the magistrate may set conditions as usual.

## 4. *Documentation of Holds*

Form AOC-CR-200 (Conditions of Release and Release Order)<sup>13</sup> has been updated to include holds covered by the provisions of the Pretrial Integrity Act. Under the Order of Commitment section is a box to indicate charges covered by G.S. 15A-533(h), -534.1, -534.7, or -534.8. Because a single check box covers all these statutes, a judge or subsequent magistrate may not know under which one the defendant was being held. The magistrate holding the initial appearance should consider any local policies regarding documenting the appropriate statute but may want to note in the Additional Information box the specific statute being applied.

## 5. *Time of Offense*

Magistrates should note the alleged date of offense for the new charge for two reasons. First, the offense must be alleged to have been committed on or after October 1, 2023, for the Pretrial Integrity Act provisions to apply. If the date of the offense was before October 1, 2023, the magistrate has immediate authority to set conditions of release, regardless of whether the defendant was out on pretrial release. Second, to trigger G.S. 15A-533(h), the offense must be alleged to have been committed while the defendant was on pretrial release for another pending proceeding. This language signifies that the offense must have been committed *after* the defendant was arrested and released. Consider a defendant who commits two breaking or entering offenses. The defendant is arrested for one of the offenses and is released on pretrial

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12. G.S. 15A-601(a) (first appearances).

13. N.C. Administrative Office of the Courts (AOC), form AOC-CR-200, Conditions of Release and Release Order, [https://www.nccourts.gov/assets/documents/forms/cr200\\_1.pdf](https://www.nccourts.gov/assets/documents/forms/cr200_1.pdf).

release. A later arrest for the other breaking or entering offense, if the offense is alleged to have been committed before the defendant's release, will not trigger G.S. 15A-533(h), since the offense was not alleged to have been committed while the defendant was on pretrial release for another pending proceeding. The defendant was merely arrested for the offense while on pretrial release. Even if there is a release order in effect, a defendant would not be considered to be on pretrial release until he or she has satisfied the conditions of release and is no longer in custody. As a result, if a defendant has a pending charge for which he or she is still in custody and gets served with another charge, G.S. 15A-533(h) does not apply, and a magistrate has immediate authority to set conditions for the new charge.

## II. Types of Process and Pleadings

### A. Charges Initiated by Citation or Summons

A citation may be used for any misdemeanor or infraction, though it is used most often for traffic cases.<sup>14</sup> A criminal summons may be used for any felony, misdemeanor, or infraction.<sup>15</sup> A criminal summons consists of a statement of the crime or infraction charged and an order directing the accused to appear in court and answer any charges. Neither a citation nor a criminal summons authorizes a law enforcement officer to take the defendant into custody, although a judge may issue an order for arrest for a defendant who fails to appear in court if the citation or summons charges a crime.<sup>16</sup>

There are two scenarios to consider when charges are initiated by citation or summons. One is when a defendant was initially charged by citation or summons, then commits a new offense and is arrested. Because citations and summonses do not authorize a law enforcement officer to take the defendant into custody, a defendant charged by either of those instruments cannot be considered to be on pretrial release for the charged offenses, since they were neither taken into nor released from custody. Accordingly, an arrest for a subsequent charge would not trigger the forty-eight-hour provision under G.S. 15A-533(h) because the defendant was not on pretrial release.

The second situation is when a defendant is on pretrial release and is charged with a new offense by citation or summons. In this scenario the defendant will not be taken into custody, and the forty-eight-hour provision will not apply.

### B. Charges Initiated by Indictment

An indictment is used to charge a person with the commission of one or more criminal offenses.<sup>17</sup> Indictments can be returned for new charges and for charges initiated by a warrant or other process. If an indictment is returned for the same charge as an earlier arrest in the case and the defendant has been released from custody on pretrial release conditions, then an order for arrest should not be issued. Thus, a magistrate would be unlikely to encounter a

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14. G.S. 15A-302(b) (citation).

15. G.S. 15A-303(a) (criminal summons).

16. G.S. 15A-302(f); -303(e)(2)-(3); -305(b)(3).

17. G.S. 15A-641(a) (indictments).

scenario in which a defendant is on pretrial release for a charge and is being arrested again after an indictment is returned for only that same charge. In these cases, the only requirement is to provide the defendant with notice of the indictment.<sup>18</sup>

If a charge is initiated by indictment, then the court may issue an order for arrest.<sup>19</sup> This arrest triggers G.S. 15A-533(h) only if the defendant was already out on pretrial release for another pending proceeding (that is, not the charges initiated by the indictment). In some cases, the district attorney might dismiss charges in district court before securing an indictment. An order for arrest may be issued if an indictment is later returned for the dismissed charges. If an order for arrest is issued and the defendant is on pretrial release as a result of another pending proceeding, then G.S. 15A-533(h) will apply, even if the defendant was already held for forty-eight hours when he or she was first arrested for the dismissed charges. While the law makes discretionary whether to issue an order for arrest on the indicted charges, it does not offer the same flexibility in following the necessary pretrial release procedures if the order for arrest is, in fact, issued.

If an indictment is returned for the same charge as an earlier arrest and charges additional offenses, then the court may issue an order for arrest and require new pretrial release conditions.<sup>20</sup> Generally, an indictment that charges additional offenses will add charges that are transactionally related to the original charges (i.e., part of the original criminal episode). Such offenses would not have been committed while the defendant was on pretrial release, so G.S. 15A-533(h) would not apply to them. In the rare circumstance that the additional offenses are alleged to have been committed while the defendant was on pretrial release from the earlier arrest, the pretrial release conditions for the new offenses would need to be set by a judge within the first forty-eight hours after arrest.

### C. Orders for Arrest for Failing to Appear

If a defendant is on pretrial release and is later arrested for failing to appear in court, a magistrate ordinarily has authority to set conditions of release during the initial appearance. The reason is that failing to appear is not a new offense unless it is specifically charged as such, a relatively rare occurrence.<sup>21</sup>

Special bond rules apply when a defendant is arrested for failing to appear. The magistrate must at a minimum impose the conditions of pretrial release recommended in the order for the arrest.<sup>22</sup> If no conditions are recommended, the magistrate must require the execution of a secured appearance bond in an amount at least double that of the most recent previous secured or unsecured bond for the charges.<sup>23</sup> If no bond has yet been required for the charges, the secured bond must be at least one thousand dollars.<sup>24</sup> Once the defendant satisfies the conditions of release, he or she is considered to be on pretrial release. If the defendant is later arrested for a new offense, G.S. 15A-533(h) would apply and conditions of release for the new offense would need to be set by a judge within the first forty-eight hours of arrest.

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18. G.S. 15A-630 (notice to defendant of true bill of indictment).

19. See G.S. 15A-305(b)(1) (order for arrest may be issued when grand jury has returned indictment against a defendant who is not in custody and has not been released from custody on pretrial release).

20. *Id.*

21. See G.S. 15A-543 (penalties for failure to appear).

22. G.S. 15A-534(d1) (determining conditions of pretrial release).

23. *Id.*

24. *Id.*

### III. Impact on Existing Pretrial Release Laws

#### A. Probation Violations

##### 1. *Probation Violation as New Offense*

Under G.S. 15A-533(h), if a defendant is arrested for a new offense allegedly committed while the defendant was on pretrial release for another pending proceeding, a judge must be the official to set pretrial release conditions within the first forty-eight hours. A probation violation probably does not constitute a “new offense” within the meaning of G.S. 15A-533(h) because a probation violation alone is not a new offense.

An exception may be the probation violation based on the “commit no criminal offense” condition.<sup>25</sup> Even if the probation violation is based on the commission of a new crime, whether the probation violation itself would trigger G.S. 15A-533(h), or whether the offense on which the probation violation is based must be charged separately to trigger the statute, is uncertain. It seems to be the more reasonable interpretation that unless the latter has occurred, a probation violation will not subject a case to G.S. 15A-533(h). In other words, if a defendant out on pretrial release for a pending proceeding is arrested on an order for arrest for a probation violation, the magistrate will likely have the immediate authority to set release conditions at the initial appearance. If, however, charges are filed and the defendant is arrested on a warrant issued for the underlying offense, then G.S. 15A-533(h) applies, and the conditions of release for the new offense must be set by a judge within forty-eight hours after arrest.

##### 2. *Probation Violation as Pending Proceeding*

G.S. 15A-533(h) likely applies to a person released in advance of a probation violation hearing who is charged for a new offense because “pending proceeding” probably includes probation violation proceedings. G.S. 15A-1345(b) provides that when a probationer is arrested for a probation violation, conditions of release are “set in the same manner as provided in G.S. 15A-534.” If conditions of release are set for a probationer subject to the “danger to the public” review under G.S. 15A-1345(b1), the conditions likewise are “imposed as otherwise provided in Article 26.” Given the language in these probation-related statutes, a defendant with pre-hearing conditions of release for a probation violation proceeding most likely is on “pretrial release” for the purposes of G.S. 15A-533(h). Thus, if a defendant is out on pretrial release for a probation violation and is arrested for a new offense allegedly committed while on pretrial release, G.S. 15A-533(h) applies, and the conditions of release for the new offense must be set by a judge within forty-eight hours of the arrest.

#### B. Pretrial Release for Impaired Driving Offenses

##### 1. *Implied Consent Offense Notice*

Initial appearances for defendants charged with an offense involving impaired driving are governed by G.S. 15A-534.2 and 20-38.4. Pursuant to these provisions, if the defendant 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 his or her condition or to administer an additional chemical analysis<sup>26</sup> and (2) require the defendant to list the name and telephone numbers of all people he or she wishes to contact, on a form that sets forth the procedure for

25. G.S. 15A-1343(b)(1) (regular conditions of probation).

26. G.S. 20-38.4(a)(4)a. (initial appearance for implied-consent offenses).

contacting the persons listed.<sup>27</sup> The names and telephone numbers should be provided on the form AOC-CR-271 (Implied Consent Offense Notice). If a defendant charged with an impaired driving offense and subject to G.S. 15A-533(h) has his or her initial appearance before a magistrate, then that defendant by definition initially will be “unable to make bond,” since the magistrate is not authorized to set a bond within the first forty-eight hours of arrest. Therefore, the magistrate should provide the AOC-CR-271 form in any impaired driving case that triggers G.S. 15A-533(h).

## **2. Impaired Driving Hold**

At the initial appearance for an impaired driving charge, generally a magistrate would determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.<sup>28</sup> If there is a finding of probable cause to believe a person is impaired, the magistrate must also consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.<sup>29</sup> Because of the Pretrial Integrity Act, a magistrate is no longer authorized to set conditions of release in the first forty-eight hours after arrest for a defendant charged with an impaired driving offense and subject to G.S. 15A-533(h).

Although a magistrate cannot set conditions, he or she may still be required by statute to enter the impaired driving hold in these cases. Practically speaking, this hold may be futile since the defendant will be evaluated by another judicial official before being released. If the judge determines that the defendant is still too impaired to be safely released, the judge may maintain the hold for up to twenty-four hours after arrest. If no judge is available within the first twenty-four hours, the defendant likely will have to appear before the magistrate at the twenty-four-hour mark to have the hold lifted. The defendant would still remain in custody awaiting an appearance before a judge pursuant to G.S. 15A-533(h) for up to forty-eight hours after arrest.

## **3. Conditions of Release**

After forty-eight hours, a magistrate may set conditions of release for a defendant charged with an impaired driving offense and subject to G.S. 15A-533(h). Because the offense is an impaired driving offense, the magistrate must set conditions in accordance with G.S. 15A-534.2, as discussed above. A magistrate would unlikely need to make determinations about the defendant’s impairment at the forty-eight-hour mark because a hold can last only up to twenty-four hours following arrest.

Despite the delayed authority to set conditions of pretrial release, a magistrate may still be required to complete other tasks at the initial appearance, including considering whether the defendant’s license is subject to civil revocation pursuant to G.S. 20-16.5, ordering that the vehicle driven by the defendant be seized and impounded, and informing the defendant of the procedure for having witnesses appear at the jail to observe his or her condition or perform additional chemical analyses.<sup>30</sup>

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27. G.S. 20-38.4(a)(4)b. (initial appearance for implied-consent offenses).

28. G.S. 15A-534.2(b) (detention of impaired drivers).

29. G.S. 20-38.4(a)(3) (initial appearance for implied-consent offenses).

30. For more on the magistrate’s duties at an initial appearance for an implied-consent offense, see SHEA RIGGSBEE DENNING, *THE LAW OF IMPAIRED DRIVING AND RELATED IMPLIED CONSENT OFFENSES IN NORTH CAROLINA* (UNC School of Government, 2014).

### C. Pretrial Release for Domestic Violence Offenses

As a special approach to setting conditions of pretrial release, a judge, rather than a magistrate, must set a defendant's pretrial release conditions during the first forty-eight hours after arrest for certain domestic violence offenses.<sup>31</sup> A defendant may be arrested on a charge that triggers the forty-eight-hour provision under both G.S. 15A-534.1 and 15A-533(h). In these situations, the statutes apply simultaneously, meaning that the defendant is subject to only one forty-eight-hour window. Additionally, both statutes authorize a magistrate to act after forty-eight hours. So, regardless of the statute applied, a magistrate is authorized to set conditions of release forty-eight hours after the arrest if a judge has not done so.

Because many of the felony offenses listed in G.S. 15A-533(b) are also covered in G.S. 15A-534.1, a defendant's conduct may fall within the scope of both statutes. In those situations, G.S. 15A-533(b) will control. The defendant will not be entitled to pretrial release by a magistrate, and a judge will have discretion to determine whether release is warranted for these offenses. Additionally, these cases will not be sent back before a magistrate to consider pretrial release. Sometimes in domestic violence cases, a delayed appearance before a judge—when a judge was available—can result in a dismissal of charges.<sup>32</sup> Because G.S. 15A-533(b) does not impose a time frame during which a judge must set conditions, there is no forty-eight-hour limitation as with G.S. 15A-534.1, and a defendant may not have the same *Thompson* remedy available for a delayed appearance.<sup>33</sup>

### D. Other Offenses for Which a Judge Must Set Conditions

Like the forty-eight-hour rule in domestic violence cases, both G.S. 15A-534.7 and -534.8 provide that a judge—rather than a magistrate—must set a defendant's pretrial release conditions within a certain time frame after arrest for certain offenses. For cases in which a defendant is charged with communicating a threat of mass violence on educational property in violation of G.S. 14-277.6 or communicating a threat of mass violence at a place of religious worship in violation of G.S. 14-277.7, a judge must set a defendant's pretrial release conditions during the first forty-eight hours after arrest.<sup>34</sup> The arrest of a defendant on pretrial release who communicates a threat of mass violence will trigger the forty-eight-hour provision under both G.S. 15A-534.7 and G.S. 15A-533(h). In these situations, the statutes apply simultaneously, meaning that the defendant is subject to only one forty-eight-hour window. Additionally, both statutes authorize a magistrate to act after forty-eight hours. So, regardless of which statute is applied, a magistrate is authorized to set conditions of release forty-eight hours after the arrest if a judge has not done so.

Similarly, G.S. 15A-534.8, as enacted by S.L. 2023-6 (H.B. 40), provides a twenty-four-hour window during which a judge must set conditions of release for defendants arrested for rioting or looting under G.S. 14-288.2 or -288.6. This provision is effective for offenses committed on or after December 1, 2023. The arrest of a defendant on pretrial release who commits a rioting or looting offense will trigger both G.S. 15A-534.8 and -533(h). Where both statutes apply, the

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31. G.S. 15A-534.1 (pretrial release for crimes of domestic violence).

32. *See State v. Thompson*, 349 N.C. 483, 492 (1998).

33. For more on pretrial release in domestic violence cases, see Brittany Bromell, [Pretrial Release in Criminal Domestic Violence Cases](#), ADMIN. OF JUST. BULL. No. 2023/02 (UNC School of Government, 2023).

34. G.S. 15A-534.7 (pretrial release for communicating a threat of mass violence).

forty-eight-hour window under G.S. 15A-533(h) will prevail. The magistrate should note on the AOC-CR-200 that the defendant is being held pursuant to G.S. 15A-533(h). The magistrate is not authorized to set conditions until forty-eight hours after the arrest if a judge has not done so.

## IV. Constitutional Challenges

### A. Delayed Appearances for Defendants Arrested for Certain High-Level Felonies

Amended G.S. 15A-533(b) expands the list of offenses for which only a judge may consider conditions of pretrial release. While this revised statute does not impose a time frame during which a judge must set conditions (twenty-four hours, forty-eight hours, and so forth), defendants arrested for those offenses are entitled to a timely first appearance in accordance with G.S. 15A-601. These in-custody defendants must be brought before a district court judge within seventy-two hours of arrest or at the first regular session of district court in the county, whichever occurs first.<sup>35</sup> If the courthouse is closed for longer than seventy-two hours (for example, on holiday weekends), the first appearance before a district court judge must be held within ninety-six hours after arrest.

While a judge has discretion to determine whether release is warranted for the offenses listed in G.S. 15A-533(b), he or she does not have discretion to delay or deny a first appearance altogether. The failure to hold a timely first appearance and consider conditions, as required by G.S. 15A-601, could violate due process in the same way that a failure to meet the specific time limits in domestic violence cases has been found by our courts to violate due process.

Whether our courts would extend *Thompson* beyond the domestic violence context is uncertain. Also uncertain is whether the courts would find a violation of due process for delayed first appearances in situations where no specific time limits control when a judge must act. A third issue concerns whether a delay in the first appearance for these higher-level felonies, at which a judge may deny pretrial release altogether under G.S. 15A-533(b), is comparable to cases in which a defendant has the right to pretrial release conditions, such as in *Thompson*. While there are not yet clear answers to these questions, these defendants should be brought before a judge as soon as practicable to effectuate and reduce the risk of violating the defendants' rights.

Many counties offer court sessions dedicated to first appearances, during which a judge reviews defendants' conditions of release as set by the magistrate. During these sessions judges also set conditions of release for defendants who did not have conditions set by a magistrate at the initial appearance. While initial appearances and first appearances are different proceedings usually occurring at different times, G.S. 15A-601(b) permits a judge to consolidate these proceedings.

### B. Delayed Appearances for Defendants Subject to the Forty-Eight-Hour Provision

Several pretrial release statutes now deviate from the procedure requiring that pretrial release conditions be determined without unnecessary delay as part of the defendant's initial appearance, typically before a magistrate.<sup>36</sup> Like new G.S. 15A-533(h), two of these statutes require that a judge, rather than a magistrate, set pretrial release conditions within a certain amount of time after arrest. For cases in which a defendant is charged with (1) certain domestic

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35. G.S. 15A-601(c) (first appearances).

36. See G.S. 15A-511 (initial appearance procedures).

violence offenses, (2) communicating a threat of mass violence on educational property in violation of G.S. 14-277.6, or (3) communicating a threat of mass violence at a place of religious worship in violation of G.S. 14-277.7, a judge must set a defendant's pretrial release conditions during the first forty-eight hours after arrest.<sup>37</sup> Similarly, new G.S. 15A-534.8, as enacted by S.L. 2023-6 (H.B. 40), provides a twenty-four-hour window during which a judge must set conditions of release for defendants arrested for rioting or looting under G.S. 14-288.2 or -288.6. This new statute is effective for offenses committed on or after December 1, 2023.

In the domestic violence context, case law has held that the defendant must be brought before a judge at the earliest, reasonable opportunity under G.S. 15A-534.1.<sup>38</sup> A violation of the defendant's right to procedural due process occurs where the defendant is held without conditions of pretrial release and a judge was available to set them.<sup>39</sup> In those cases, the remedy for such violations is dismissal of the charges with prejudice.

The court in *State v. Thompson* did not require a showing of prejudice to preparation of the case; a violation of the requirements of the domestic violence statute supported dismissal. Outside of cases involving domestic violence under G.S. 15A-534.1, the courts have been reluctant to order dismissal for delays in setting pretrial release conditions without a showing of prejudice by the defendant.<sup>40</sup> However, our statutes provide that a trial court must dismiss a charge against a defendant if the court determines that a "defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution."<sup>41</sup>

According to a more recent case, a defendant can demonstrate prejudice by showing he or she would have been released earlier had he or she received a pretrial hearing. In *State v. Tucker*,<sup>42</sup> the defendant was arrested and indicted on several charges, resulting in a \$250,000 bond. The defendant remained in custody on a kidnapping charge subject to G.S. 15A-534.1 for six months without having a pretrial release hearing before a judge. The defendant filed a motion to dismiss his kidnapping charge, arguing G.S. 15A-534.1 required dismissal. The kidnapping charge was consolidated with the other charges into one set of pretrial release conditions and a combined bond of \$250,000. The defendant did not post bond and remained in custody.

On appeal, the Court of Appeals explained that the State's inadvertent failure to produce the defendant for the pretrial release hearing did not excuse the State. Rather, the absence of a flagrant constitutional violation was the relevant factor. The court noted that the defendant did not post bond after his initial arrest, and "even if the State had held a timely pretrial release hearing on the kidnapping charge, the defendant would not have been released."<sup>43</sup> As a result, the defendant could not show irreparable prejudice to the preparation of his case.

A defendant may be able to obtain *Thompson*-like dismissals for a violation of comparable time limits in new G.S. 15A-533(h), -534.7, and -534.8. Still, dismissal of the charges is a drastic remedy our courts may be unwilling to extend without a showing of prejudice, beyond the

37. See G.S. 15A-534.1, -534.7.

38. *State v. Thompson*, 349 N.C. 483 (1998).

39. *Id.*

40. See, e.g., *State v. Pruitt*, 42 N.C. App. 240 (1979) (disapproving of failure to hold first appearance for defendant charged with felony and incarcerated for almost a month but finding no prejudice by the denial of his first appearance rights).

41. G.S. 15A-954(a)(4) (grounds for dismissal).

42. COA22-865, \_\_\_ N.C. App. \_\_\_ (Nov. 21, 2023).

43. *Id.* at 11.

domestic violence context. Even if they did, defendants held pursuant to G.S. 15A-533(b) or (h) who do not have an appearance or have a delayed appearance before a judge may have to show they would have been released earlier had they received a timely pretrial hearing. This showing may be difficult to make in cases in which the defendant has an extremely high bond, as in *Tucker*.

### C. Denial of Release and *Salerno*

The setting of bail may be delayed or denied only if authorized by statute and within constitutional limits.<sup>44</sup> The best guidance on the constitutional parameters of a preventative detention scheme comes from the United States Supreme Court's decision in *United States v. Salerno*, in which the Court upheld the constitutionality of the preventative detention provisions of the federal Bail Reform Act. At the time the case was decided, the Bail Reform Act of 1984 allowed a federal court to detain an arrestee pending trial if the government demonstrated by clear and convincing evidence after an adversarial hearing that no release conditions would "reasonably assure . . . the safety of any other person and the community."<sup>45</sup> Although the *Salerno* decision did not fully define the constitutional parameters of a preventative detention scheme, it held that the federal statute "fully comports with constitutional requirements."<sup>46</sup>

Although neither the North Carolina Constitution nor the General Statutes expressly provide a procedure for it, several statutes in G.S. Chapter 15A, Article 26, authorize some degree of pretrial preventative detention. Given the procedures and parameters discussed in *Salerno*, it is unclear whether G.S. 15A-533(b), allowing pretrial detention for defendants charged with high-level felonies, is constitutional. The statute does not offer guidance on when judges can deny pretrial release and when they cannot. While the lack of detail is not dispositive on the issue of constitutionality, it can be argued that the statute is a substantial deviation from what was upheld in *Salerno*.

Conversely, G.S. 15A-533(b) may comport with *Salerno* because it permits judges to make individualized determinations about the right to pretrial release as opposed to requiring them to impose an automatic detention for defendants charged with these crimes. While the law does not track every issue addressed in *Salerno*, it may withstand a constitutional challenge in that it, among other factors: (1) serves a regulatory purpose in preventing danger to the community, rather than a penal purpose; (2) offers a prompt detention hearing, because defendants are entitled to a first appearance within seventy-two hours of arrest; and (3) is limited in its application to only a set list of offenses.<sup>47</sup>

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44. See *United States v. Salerno*, 481 U.S. 739 (1987) (discussing circumstances in which preventative detention, without bond, is permissible).

45. *Id.* at 741.

46. *Id.*

47. For a more detailed discussion of these parameters, see Jessica Smith, [Bail Reform in North Carolina: Pretrial Preventative Detention](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Apr. 17, 2019).

## V. Administrative Restructuring

Since a defendant's right to due process may be violated if he or she is not provided a timely first appearance before a judge, judicial officials must be vigilant in getting defendants to court. However, judges need not completely reschedule or restructure court sessions to accommodate defendants awaiting a first appearance before a judge.

In *State v. Jenkins*,<sup>48</sup> a domestic violence case, the defendant was arrested at 6:15 a.m. on a Friday and received a hearing before a judge at approximately 1:30 p.m. the same day. While the district court convened at 9:30 a.m. on Friday mornings, the afternoon session was typically devoted to bond hearings. The court of appeals held that no violation of the defendant's constitutional rights occurred even though the defendant was not brought before a judge at the first opportunity that morning. The court held that "[a]lthough defendant was detained for approximately seven hours, we find his bond hearing occurred in a reasonably feasible time and promoted the efficient administration of the court system."<sup>49</sup> Thus, where the delay is short and attributable to the normal pattern of scheduling in the county, the defendant is less likely to prevail on a claim that his or constitutional rights were violated.

The point still remains that a defendant should be seen at the earliest reasonable opportunity. Some districts have implemented the following measures to address the increase in hearings resulting from passage of the Pretrial Integrity Act:

- They hold first appearances twice per day rather than once per day. Some counties have opted to hold first appearances twice a day only on Mondays to accommodate defendants arrested over the weekend.
- They conduct audio-visual hearings with magistrates and defendants by Webex. It is not clear whether judges are conducting these hearings during court sessions or while in chambers when court is not in session.
- They ask magistrates to note recommended conditions of release instead of pre-setting them on the release order. This can be particularly useful given that magistrates are usually able to evaluate and make bond determinations based on the facts presented by the arresting officer or the private citizen who swears out charges.

Additionally, some counties hold criminal court only one day per week. The General Statutes do not limit criminal proceedings to sessions of criminal court. In cases requiring a judge to set conditions of release, a judge presiding over a noncriminal session of court may do so.

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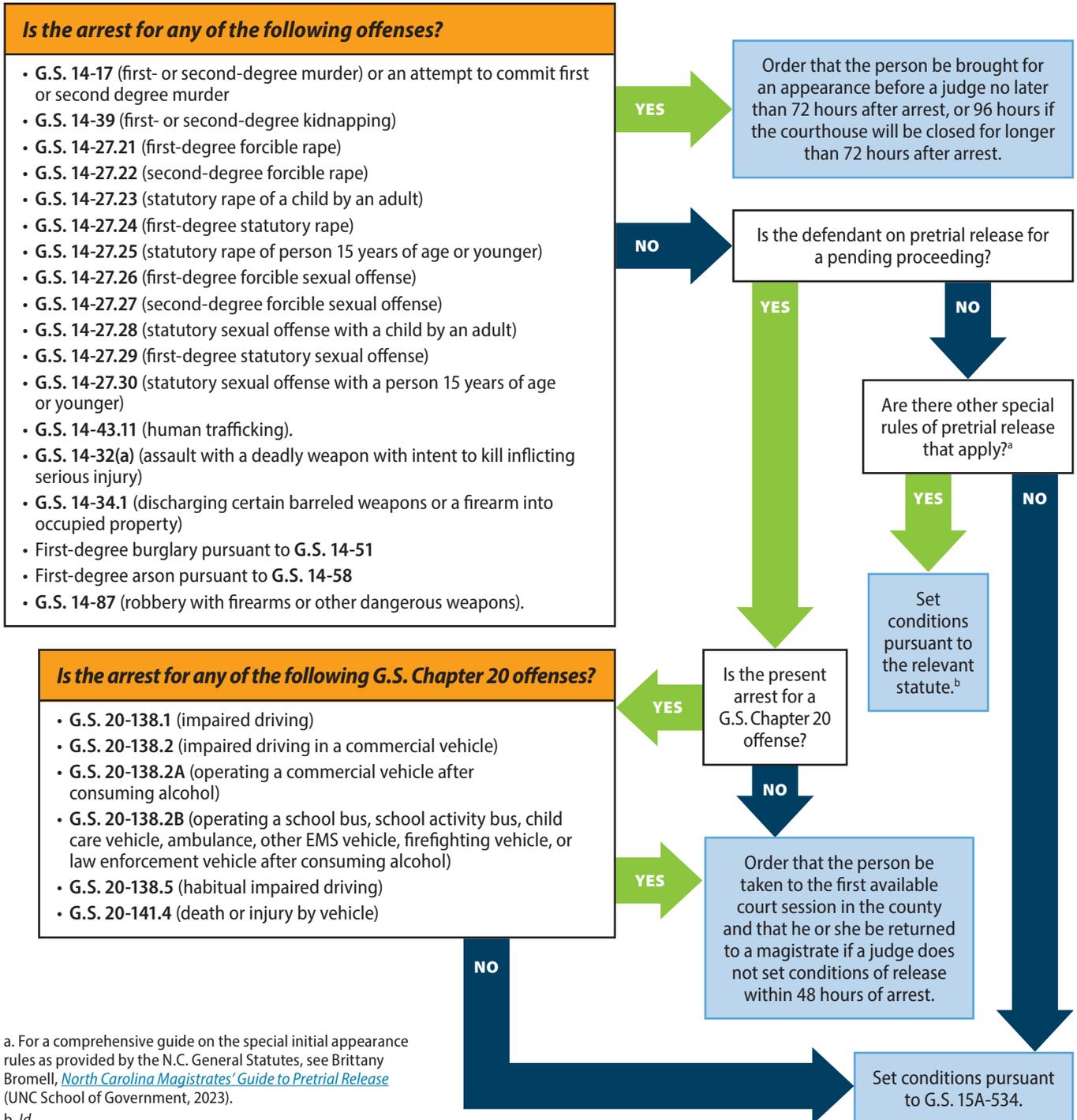
48. 137 N.C. App. 367 (2000).

49. *Id.* at 371.

# Applying the Pretrial Integrity Act

Brittany Bromell

The Pretrial Integrity Act of 2023 made significant changes to the state’s pretrial release laws. The following flowchart sets out the new procedure for determining when and by whom conditions of pretrial release are to be set for newly arrested defendants.



# Tab: Selecting Process

# SELECTING (AND COMPLETING) PROCESS

John Rubin  
UNC School of Government  
August 2024

1

## Three Steps

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Is there probable cause that the offense was committed by the person to be charged?

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What process, if any, should be issued?

---

What is the correct charging language for the offenses to be charged?

2

## I. What Is Probable Cause

“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)



3

## More on 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



## YOUR ROLE

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5



### Evidence from officers

including via remote testimony



### Evidence from citizens



### Hearsay evidence

## Sources of Evidence

6

Credibility

Can you consider  
credibility?

If so, what factors  
should you consider?

7



8

## Credibility

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

9

What  
may/should  
not be  
considered

---

Can you consider whether  
evidence may be excluded  
or suppressed?

---

Can you consider  
defenses? If so, which  
ones? What if a slam dunk?

10

## 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?

11

## Reasons Not to Charge

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Felonies

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School employees. G.S. 15A-301(b1), (b2)

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Patient abuse. G.S. 14-32.2(g)

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Obscenity offenses. G.S. 14-19.20

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Offenses in other counties

12

## II. Purposes of Criminal Process

- Establishes the court's authority to act
- Compels the defendant to come to court
- Gives the defendant notice of the charge
- Provides a record of the case
  - including enabling the defendant to assert double jeopardy if later charged with the same offense

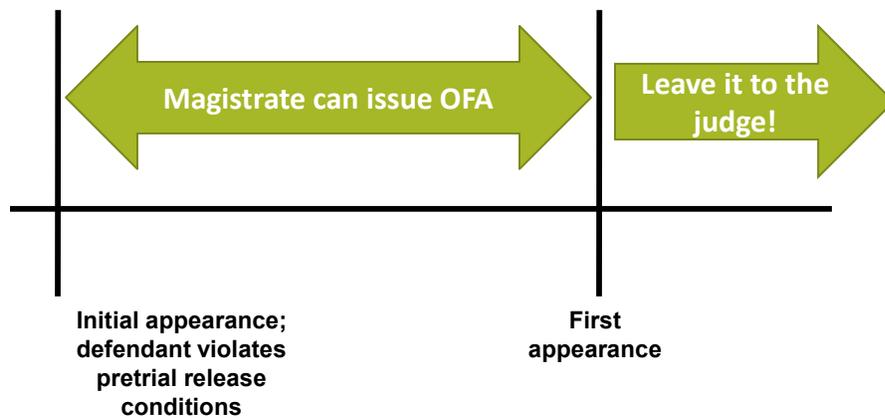
13

## 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              |
| Order for Arrest   | G.S. 15A-305    | Judicial Official | None                       |

14

## Order for Arrest



15

## 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

16

## 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?

17

## 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

18

## 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?

19

## III. Creating Process Correctly

|  |   |  |   |        |
|--|---|--|---|--------|
| Case No.   | Law Enforcement Case No.                                      | LD No.   | SD No.  | FD No. |
| <b>WARRANT FOR ARREST</b>  |   |  |   |        |
| <b>THE STATE OF NORTH CAROLINA VS.</b>   |   |  |   |        |
| Name and address of Defendant  |   | STATE OF NORTH CAROLINA<br>County                          |   |        |
|  |   | In The General Court Of Justice<br>District Court Division |   |        |
| <b>OFFENSE(S)</b> (see ACC-CR-100 Continuations) for charging said   |   |  |   |        |
| Case No.   | Offense   | Offense in Violation Of G.S.                               | Offense Code  |        |
|  |   |  |   |        |
| Name   | Sex   | Date of Birth  | Age   |        |
| Social Security No./N/ N/ No   | Driver License No. & State                                    |  |   |        |
| Name of Defendant's Employer   |   |  |   |        |
| Date of Offense  | Misdemeanor Offense Which Requires Probation in the Region of |  |   |        |
| Date of Arrest & Check Dept No. (if arrest on report card)   |   |  |   |        |
| Complainant Name and Address, if Complainant is an officer   |   |  |   |        |
| Witness Information  |   |  |   |        |
| <p><b>TO ANY OFFICER WITH AUTHORITY AND JURISDICTION TO EXECUTE A WARRANT FOR ARREST FOR THE OFFENSE(S) CHARGED IN THIS WARRANT:</b><br/>                     I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully, and feloniously did commit the offense(s) set forth above and on the attached ACC-CR-100 Continuation(s), which is/are incorporated by reference. This act(s) was in violation of the law referred to in this Warrant For Arrest. This Warrant For Arrest is issued upon information furnished under oath by the complainant herein. You are DIRECTED to arrest the defendant and bring the defendant before a judicial official without unnecessary delay to answer the charge(s) above.</p> |   |  |   |        |
| Date Issued  | Name of Issuing Officer                                       | Signature  | Magistrate <input type="checkbox"/> Deputy CJC <input type="checkbox"/> Assistant CJC <input type="checkbox"/> Clerk of Superior Court <input type="checkbox"/> |        |
| Location Of Court  |   |  | District Court Judge <input type="checkbox"/> Superior Court Judge <input type="checkbox"/>   |        |
|  |   |  | Court Room <input type="checkbox"/> JN <input type="checkbox"/> JN  |        |
| <b>WALVER OF PROBABLE CAUSE HEARING</b>  |   |  |   |        |
| The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.   |   |  |   |        |
| Date Waived  | Signature of Defendant  | Name of Attorney   | Signature of Attorney   |        |
| ACC-CR-100, Rev. 1/03, © 2003 Administrative Office of the Courts (JW1)  |   |  |   |        |

20

# Charging Language

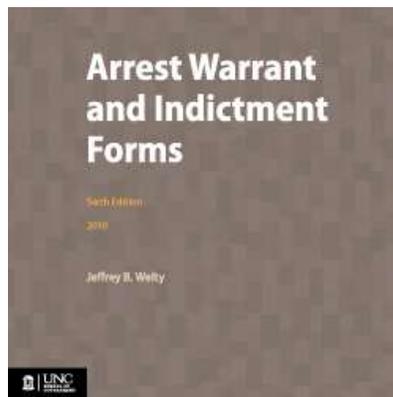
eWarrants



21

# Charging Language

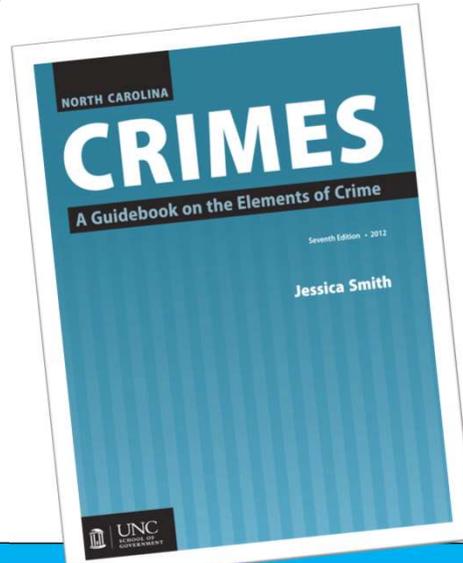
Arrest Warrant &  
Indictment Forms



22

## Charging Language

North Carolina  
Crimes



23

## Charging Language

### General Statutes

**§ 14-10. Secret political and military organizations forbidden.**

If any person, for the purpose of compassing or furthering any political object, or aiding the success of any political party or organization, or resisting the laws, shall join or in any way connect or unite himself with any oath-bound secret political or military organization, society or association of whatsoever name or character; or shall form or organize or combine and agree with any other person or persons to form or organize any such organization; or as a member of any secret political or military party or organization shall use, or agree to use, any certain signs or grips

24

# Charging Language

School of Government Hotline



25

## Requirements for Criminal Process (G.S. 15A-924)

- (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.

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## More Requirements

- Name of victim (when there is one)
- Prior convictions if element of offense
- Feloniously if felony
- Any requirements for particular offense
- And, please do not abb.

27

## Charging Language: Common Problems

- In larceny cases, failing to allege victim's name and, if a business, that it is an entity capable of owning property
- In larceny cases, failing to describe the property stolen accurately
- In drug cases, failing to identify the controlled substance accurately
- In R/D/O cases, failing to include the specific duty the officer was performing

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## Loose Ends re Creating Process

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

Tab:

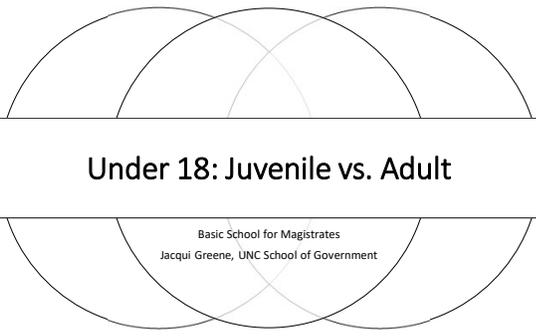
Juvenile vs.

Adult

**UNDER 18: JUVENILE VS. ADULT**

Juvenile vs Adult Presentation .....Page 1  
Blog Post: *No More Minors in Jails*.....Page 7  
Blog Post: *Satisfying Conditions of Pretrial Release When in Juvenile Detention* .....Page 11  
Blog Post: *Change to the Law of Juvenile Jurisdiction and Juvenile Transfer* .....Page 15





**Under 18: Juvenile vs. Adult**

Basic School for Magistrates  
Jacqui Greene, UNC School of Government

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Topics

- Which system for which offenses at age 16 and 17?
- Movement of cases between juvenile and criminal court
- Potential magistrate involvement in posting bond after transfer of cases from juvenile to criminal court
- Place of pretrial confinement for youth under age 18

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**Original Jurisdiction**

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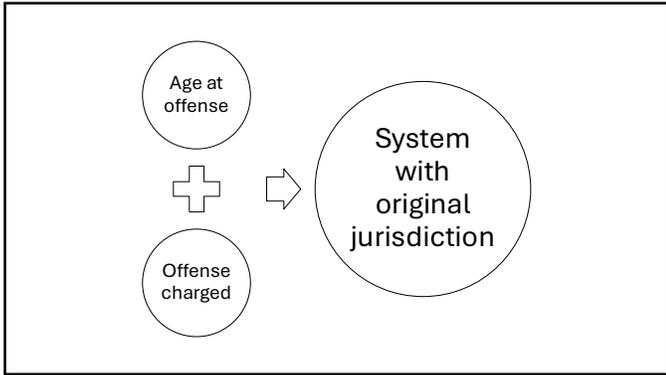
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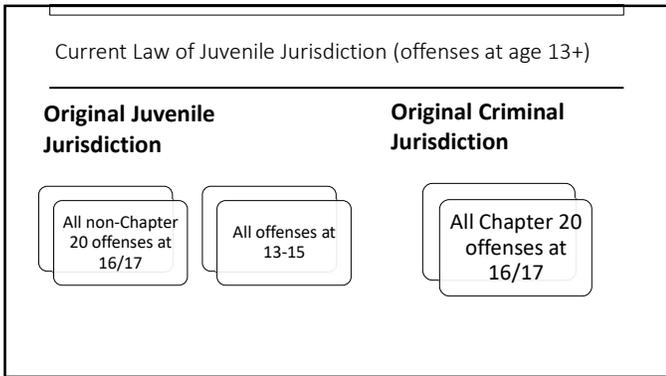
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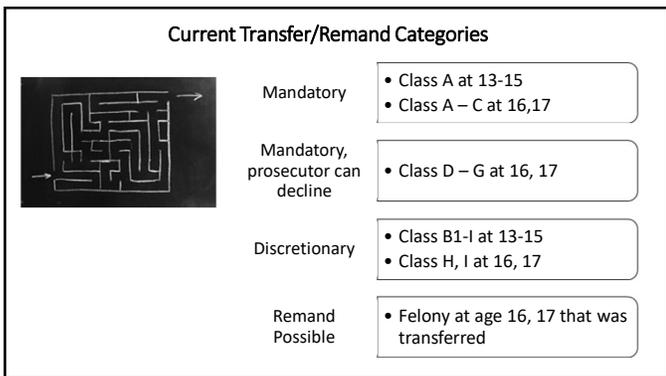
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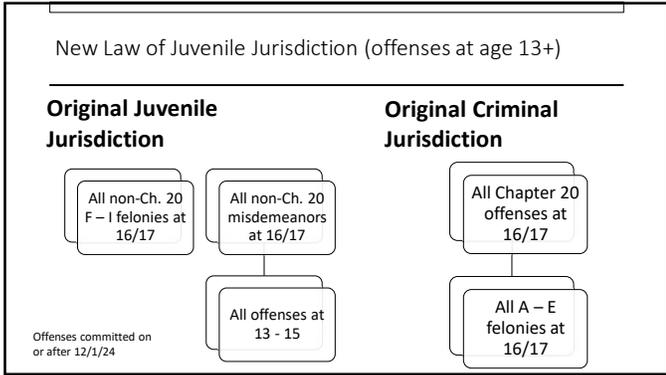
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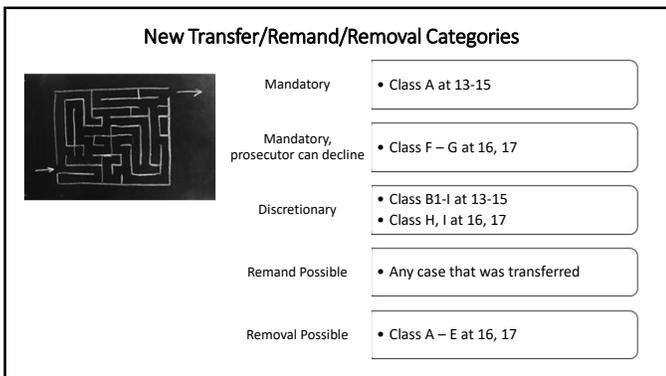
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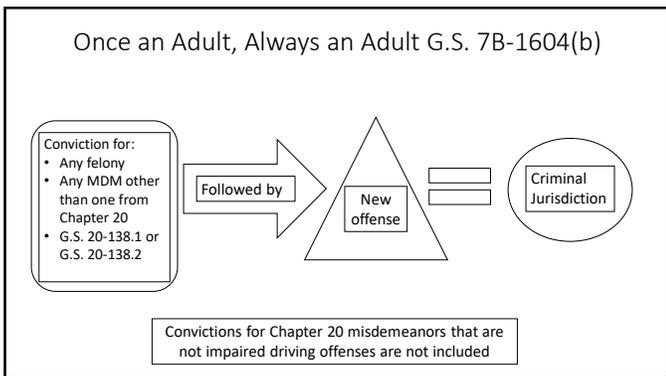
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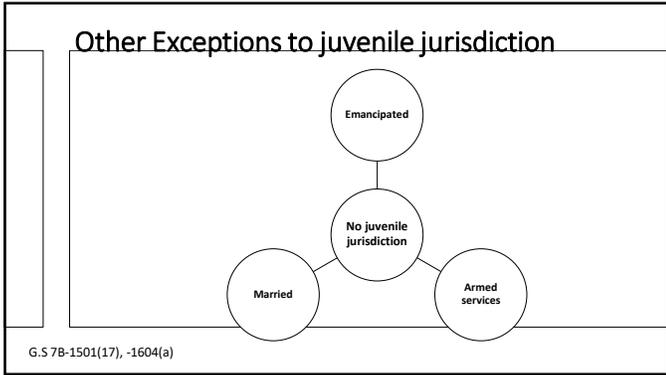
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### Cases That Begin with Criminal Procedure

|   |  |
|---|--|
| <p><b>Current Law</b></p> <ul style="list-style-type: none"> <li>• Chapter 20 offenses at 16/17</li> <li>• Once an adult cases</li> <li>• Other exceptions</li> </ul> | <p><b>Beginning with offenses on 21/1/24</b></p> <ul style="list-style-type: none"> <li>• Chapter 20 offenses at 16/17</li> <li>• Once an adult cases</li> <li>• Other exceptions</li> <li>• Class A – E felonies at 16/17 and their transactionally related offenses</li> </ul> |
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|   |  |                                    |   |
|---|--|------------------------------------|---|
| <p>Length of Juvenile Jurisdiction – without extension for certain YDC commitments G.S. 7B-1601</p> | <p>Offense committed <u>under age 16</u></p> | <p>Youth reaches age <u>18</u></p> |   |
|   | <p>Offense committed <u>at age 16</u></p>    | <p>Youth reaches age <u>19</u></p> |   |
|   | <p>Offense committed <u>at age 17</u></p>    | <p>Youth reaches age <u>20</u></p> |   |
| <p>The court can always terminate jurisdiction sooner by its own order</p>                          |  |                                    | <p>In some limited circumstances, jurisdiction for very serious felonies resulting in a commitment to a YDC can extend to age 19, 20 or 21 (G.S. 7B-1602)</p> |

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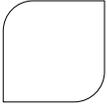
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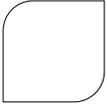
If Transfer Ordered

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**MUST SET BOND**

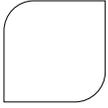
G.S. 7B-2204



**IMMEDIATE APPEAL TO SUPERIOR COURT\***

G.S. 7B-2603

\*only for discretionary transfers beginning with offenses on 12/1/24



**FINGERPRINTING REQUIRED**

G.S. 7B-2201

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AOC-CR-922



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10-Day Appeal Window

**Dispelling Transfer Confusion: 10-Day Appeal Window, Orders for Arrest**

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

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### 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

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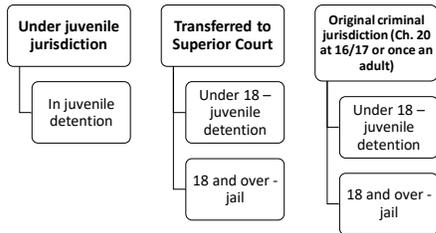
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### Pre-trial Secure Confinement



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Contact Info  
Jacqui Greene  
UNC SOG  
919-966-4327  
[greene@sog.unc.edu](mailto:greene@sog.unc.edu)

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## No More Minors in Jails

Many people assumed that the implementation of raise the age on December 1, 2019 meant the end of confinement of anyone under 18 in a jail. That was not the case. Even under our new legal framework for juvenile jurisdiction, some youth under 18 still have cases that are handled in criminal court from the very beginning. There is currently no legal mechanism to house these youth in a juvenile detention facility instead of a jail. This changes on August 1, 2020, when [Part II of Session law 2020-83](#) takes effect.

### Which youth are impacted by this change?

There are four categories of people under 18 with matters that never fall under juvenile jurisdiction. They are:

1. Youth who are charged with committing a motor vehicle offense under Chapter 20 of the General Statutes at age 16 or 17. [S. 7B-1501\(7\)b.](#)
2. Youth who are alleged to have committed a new offense following a previous conviction in criminal court (other than a previous conviction for a misdemeanor motor vehicle law offense that did not involve impaired driving). [S. 7B-1604\(b\).](#)
3. Youth who are legally emancipated. [S. 7B-1604\(a\).](#)
4. Youth charged as an adult for commission of an offense that occurred prior to December 1, 2019 and at age 16 or 17. The changes to juvenile jurisdiction contained in the Juvenile Justice Reinvestment Act (JJRA) apply to offenses committed on or after December 1, 2019. [L. 2017-57, §16D.4.\(tt\).](#) Anyone aged 16 or 17 charged with a criminal offense that occurred prior to that date was processed, or is still being processed, as an adult from the beginning to the end of their case. The population of these youth who are under 18 diminishes each day as more and more of them turn 18. Eventually, the entirety of this population will reach age 18 and no longer be impacted by Session Law 2020-83.

Because these youth, who I will refer to as “covered youth” in this post, never fall under juvenile jurisdiction, prosecution of their offenses remains in the criminal justice system beginning at the time they are charged. Provisions of the Juvenile Code do not apply to their cases and, prior to enactment of S.L. 2020-83, any local confinement occurred in an adult jail pursuant to criminal law provisions.

This is not the case for youth who are initially charged under juvenile jurisdiction and then have their cases transferred to Superior Court for criminal processing. [G.S. 7B-2200, -2200.5.](#) The process for these youth begins in juvenile court and, following transfer, continues as a criminal matter. While these cases are under juvenile jurisdiction any secure confinement is ordered pursuant to the Juvenile Code and must therefore occur in a juvenile detention facility. [G.S. 7B-1905.](#) Following transfer, any of these youth who are not able to meet their conditions of pretrial release continue to be held in juvenile detention until they turn 18. [G.S. 7B-2204.](#) S.L. 2020-83

does not apply to transferred youth because this statutory structure already provides for their confinement in a juvenile detention setting until they reach the age of 18.

## Place of confinement change

S.L. 2020-83 does apply to the covered youth, as their cases never fall under juvenile jurisdiction despite being under age 18. The overarching structure of the changes in S.L. 2020-83 provides that any covered youth who is ordered to a period of confinement in a local confinement facility must be housed in a juvenile detention setting and not a jail. This change effectively removes all minors who would otherwise remain in jails from the jail setting.

This total removal of minors from jails will be required of all states that receive federal juvenile justice and delinquency prevention funding as of December, 2021. Pursuant to [34 U.S.C. §11133\(a\)\(11\)\(B\)](#), states must ensure that juveniles who are being treated as adults for the purpose of criminal prosecution are not held in any jail for adults. Enactment of S.L. 2020-83 accelerates North Carolina's compliance with this federal requirement.

## Under what circumstances does S.L. 2020-83 apply?

There are a variety of ways that a covered youth might end up serving a period of confinement in a juvenile detention setting. These include:

- Pretrial confinement,
- Active sentences for misdemeanor offenses,
- Probation sanctions, and
- Contempt orders.

S.L. 2020-83 provides for a new bright-line rule regarding the place of confinement for youth under age 18 who are accused of an offense and are being held securely pending resolution of those charges. Regardless of whether the youth is being processed as a juvenile or as an adult, the place of confinement will be a juvenile detention facility. S.L. 2020-83 §8.(c). This does not mean that the arrest of covered youth should be processed by the juvenile system. The adult arrest process will remain the same for covered youth. The only change is the place of confinement. This means that any Order of Commitment in a Release Order should direct that the youth be held in a juvenile detention facility and not a jail. New language added to [G.S. 15A-521\(a\)](#) requires that any covered youth being held pretrial under the new place of confinement requirement must be moved to jail once that youth turns 18. S.L. 2020-83 §8.(c).

Youth who are imprisoned as the result of a misdemeanor conviction and youth who receive some sort of probation sanction that includes or ultimately results in a period of confinement in a local confinement facility are also included in S.L. 2020-83. Active sentences to imprisonment for misdemeanor offenses, including DWI, and nonpayment of fines will now be served in a juvenile

detention facility for covered youth. S.L. 2020-83 §8.(k). Anyone under 18 who is sentenced to an active term of imprisonment on a felony offense will continue to serve that time in the state prison system, as is the current practice. These youth are all housed at the Foothills Correctional Institution and S.L. 2020-83 does not change this practice.

There are a variety of ways that a person sentenced to adult probation can end up serving some time in a local correctional facility. This includes original sentences to probation that include a split sentence or a quick dip (imposed either by the court or by probation under its delegated authority). [G.S. 15A-1343\(a1\)\(3\)](#), [-1343.2\(e\)](#), [-1343.2\(f\)](#), [-1351\(a\)](#). It also includes a defendant ordered to a period of confinement as the result of a probation violation for an underlying misdemeanor offense. [G.S. 15A-1344\(d2\)](#), [-1344\(e\)](#). Under the new law, the place of confinement for any covered youth under these circumstances will be a juvenile detention setting. S.L. 2020-83 §8.(e)-(j).

S.L. 2020-83 also changes the place of confinement for covered youth who are ordered to confinement as the result of contempt. S.L. 2020-83 §8.(b). Any youth under 18 who is ordered to a term of imprisonment as a result of a contempt finding in criminal court will now serve that time in a juvenile detention facility.

## **Practical implications**

While there are a wide variety of ways that covered youth may end up in a juvenile detention setting as a result of this new law, the North Carolina Sentencing and Policy Advisory Commission estimates that only 23 new secure juvenile detention beds will need to be developed across the state to accommodate the new population. As time passes and more and more 16- and 17-year-olds are processed in the juvenile system, the numbers of covered youth will decline. For example, far fewer youth will fall under the ban on juvenile court jurisdiction that follows a criminal conviction as the number of youth who are processed in criminal court declines.

However, implementation of S.L. 2020-83 is not likely to be without its operational challenges. Because covered youth will never touch the juvenile justice system, their cases will not be handled by a juvenile court counselor. Therefore, new processes will need to be developed so that information about each youth flows from the criminal system to the juvenile detention provider, including criminal paperwork ordering the commitment of the youth and information about when youth have criminal court appearances. It will also be less convenient for defense attorneys to meet with their clients when they are housed in a juvenile detention facility that is not close to their home county.

It is also likely that pretrial youth being held at a juvenile detention setting will need a process in place to post bond. Because there is no bond process in the juvenile system, juvenile detention facilities are not structured to process bonds. In addition, because juvenile detention facilities are not available in every county, distance between the locality where the bond should be posted and the juvenile detention facility where the youth is housed can pose challenges. This is an issue that

has proven challenging in the context of transferred youth under raise the age and may only grow under S.L. 2020-83. I hope to be able to write a post about promising practices related to this issue, so please send yours my way if you have them in your locality.

The provision of services to covered youth confined in a juvenile detention setting should not create the same kind of operational challenges that come with moving youth involved in a purely criminal court process into juvenile detention. The reality is that covered youth are the same age and present the same sets of risks and needs as the youth who are already housed in a juvenile detention setting. This was a major reason behind the push to house all of these youth in the same setting. Once they are at the juvenile detention facility, covered youth should receive the same set of educational, vocational, and mental health services as other youth housed at the facility. Moving them into a juvenile detention setting allows them to receive these adolescent-focused services.

## **No time like the present**

S.L. 2020-83 was approved by the Governor on July 1, 2020 and takes effect on August 1, 2020. Our colleagues at the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice are working tirelessly to be ready for the new population with this very short one-month window for implementation. We are supporting that effort at the SOG and, to that end, we created a video that explains the new law. While the video was created primarily for training of detention providers, it provides details about the new law that may be helpful to others. You can access the video, called “H593 Training,” [here](#). It will be important to spread the word about the changes to a wide range of criminal court stakeholders so that the intent of removing all minors from jails is realized.

## Satisfying Conditions of Pretrial Release When in Juvenile Detention

Two changes in the law have led to a new phenomenon—the need for youth under the age of 18 to satisfy conditions of pretrial release while being confined in a juvenile detention facility. First, the Juvenile Justice Reinvestment Act (JJRA) raised the age of juvenile court jurisdiction for offenses committed at ages 16 and 17 on or after December 1, 2019. The JJRA includes a broad mandatory transfer provision, requiring that many felony matters shift from juvenile to superior court jurisdiction. [G.S. 7B-2200.5\(a\)](#). When that happens, the rules of criminal procedure (including those governing pretrial release) apply rather than the rules for juvenile cases. Second, [Part II of Session Law 2020-83](#) required that the few minors who continue to be processed as adults in the criminal system from the outset of their cases be held in juvenile detention instead of adult jails. The release of minors subject to criminal rather than juvenile jurisdiction is governed by the usual criminal process for setting and satisfying conditions for pretrial release. Those conditions sometimes require posting a bond. But juvenile detention facilities are not equipped to process bonds. So how does this work? This post will review the circumstances in which a youth confined in juvenile detention may need to post bond, the impediments to doing so, and potential ways to address those problems.

### **Under what circumstances might a youth be eligible to post bond to be released from a juvenile detention facility?**

The opportunity to post bond to secure release from custody does not exist under the Juvenile Code. If ordered into secure custody in the context of a delinquency proceeding—the term used for detention while a juvenile petition is pending—a juvenile can be released only through an order of the court issued at a hearing on the need for continued custody. [G.S. 7B-1906](#). Bond is not part of this process.

Before enactment of the JJRA and S.L. 2020-83, nearly all youth who were held in juvenile detention were under the jurisdiction of the juvenile court. While it has long been possible to transfer from juvenile to criminal court felony offenses alleged to have been committed at ages 13 – 15, transfer of these cases is rare. Only cases that charge the juvenile with a Class A felony are required to be transferred among this age group. [G.S. 7B-2200](#). Transfer of all other felony offenses are discretionary. According to the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice (DACJJ), 23 juveniles who were alleged to have committed their offenses between ages 13 and 15 had their cases transferred to superior court in FY 2020.

The transfer provisions implemented under the JJRA for offenses committed at ages 16 and 17 are different. Transfer of all Class A – Class G felony offenses is required following a finding of probable cause or the return of an indictment. [G.S. 7B-2200.5](#). Discretion over the transfer decision is only available in matters in which the most serious offense is a Class H or Class I felony.

According to the Juvenile Justice Section of DACJJ, 160 juveniles alleged to have committed a felony offense at age 16 or 17 have had their cases transferred to superior court during the first nine months of implementation (December 1, 2019 – August 31, 2020).

Once a case is transferred to superior court, the matter is no longer under juvenile jurisdiction. It becomes a criminal case governed entirely by the criminal law. After ordering transfer of the case, the district court judge must determine the pretrial release conditions pursuant to [G.S. 15A-533](#) and [G.S. 15A-534](#). See [G.S. 7B-2204\(a\)](#). Form [AOC-CR-922](#) is available for this purpose. Whether or not the youth remains in custody depends on his or her capacity to satisfy any conditions of pretrial release, including posting of a bond. Because any youth under the age of 18 whose case has been transferred and who is not released must be confined in a juvenile detention facility (G.S. 7B-2204), these youth may need to post bond while confined in juvenile detention.

The second group of youth who may need to post bond to be released from a juvenile detention facility are youth under the age of 18 who are charged with an offense that does not fall under juvenile jurisdiction. Chapter 20 motor vehicle offenses alleged to have been committed at ages 16 and 17 remain under the original jurisdiction of the criminal court. [G.S. 7B-1501\(7\)b](#). In addition, any person under 18 with a previous disqualifying criminal conviction is excluded from juvenile jurisdiction. [G.S. 7B-1604\(b\)](#). The pretrial place of confinement for these youth was shifted to juvenile detention facilities for offenses committed on or after August 1, 2020 with the enactment of Part II of S.L. 2020-83. You can find more information on this aspect of the law in a blog post I wrote earlier [here](#). Because these youth have criminal cases, they also may need to post bond while being confined in a juvenile detention facility.

### **Why is posting bond while in juvenile detention complicated?**

There are four reasons why posting bond while confined in a juvenile detention facility presents significant challenges. First and foremost, the juvenile detention facility itself cannot process bonds. As discussed above, bond does not play a role in the juvenile justice system. It is only a function of the criminal justice system. Juvenile detention facilities do not have the personnel or systems that are necessary to process bonds.

Geography presents a second challenge. There are not juvenile detention facilities in every county. According to the [DACJJ website](#), there are 11 juvenile detention facilities throughout the State. This means that the majority of counties do not have local juvenile detention capacity. A youth may therefore have a criminal case pending in one county and be confined in a juvenile detention facility in another county. This creates practical barriers related to the actual processing of the bond as well as the physical release of the youth. The bond needs to be posted in the county where the criminal matter is pending, not in the county where the juvenile is being confined. The fact that the bond has been posted needs to be communicated back to the juvenile detention facility. The youth must also be transported back to his or her home which may be far from the juvenile detention facility.

The physical release of these youth following posting of a bond is also complicated because they are minors and therefore must be released to an adult. This is reflected in the Juvenile Code provisions that address pretrial release following transfer. G.S. 7B-2204(a) requires that “[t]he release order shall specify the person or persons to whom the juvenile may be released.” Minors who are in juvenile detention as a result of a matter that was criminal from the beginning and are therefore not subject to G.S. 7B-2204 must also be released into someone’s custody. Pursuant to the holding in [Shoaf v. Shoaf, 282 N.C. 287, 291 \(1972\)](#), the age of emancipation is fixed at eighteen. Therefore, as long as these youth are not otherwise emancipated (meaning they are either married or have been the subject of a court order of emancipation), they are minors who should be released to the custody of an adult. This can become challenging if the youth is being held in a juvenile detention facility that is far from home.

Finally, the process for these youth to post bond is complicated by federal law that requires sight and sound separation between minors and adult inmates. Many local procedures for satisfying conditions of pretrial release involve processing inside the jail where the youth is likely to come into contact with adult inmates. However, the Juvenile Justice and Delinquency Prevention Act (JJJPA) requires sight and sound separation from adult inmates for any youth under 18 who is housed in a secure facility, regardless of whether the youth is being processed as a juvenile or as a defendant in the criminal system. [34 U.S.C. §11133\(a\)\(11\)\(B\)\(i\)\(I\)](#) (effective December 21, 2021). The JJJPA allows for a minor to be held in an adult jail for up to six hours for processing of the minor’s release. However, if the jail is used to process release, the youth still must have no sight or sound contact with any adult inmate. [34 U.S.C. §11133\(a\)\(13\)\(A\)](#). Therefore, any process used to post bond for youth housed in juvenile detention will need to comply with this sight and sound separation requirement.

### What might help?

On August 31, 2020, the 10<sup>th</sup> Judicial District (Wake County) adopted a [“Policy for Releasing Juveniles Transferred to Superior Court”](#). The policy provides clear, practical guidance about satisfying conditions of pretrial release, including processing bonds, after transfer of cases to superior court. These processes also could be used for youth held in juvenile detention when their cases begin as criminal cases from the outset.

If the youth is ready to satisfy conditions of pretrial release during regular business hours (Monday – Friday, 9am – 5 pm), the following procedures apply:

- Juvenile justice staff transports the youth to the magistrate located in a courtroom of the Wake County Justice Center.
- If all of the conditions are satisfied, the magistrate modifies the original release order (AOC-CR-922) to indicate that all conditions of release have been satisfied and submits the paperwork to the clerk’s office in an envelope for the criminal superior assistant clerk.
- The youth is released from custody at the Wake County Justice Center.

If the youth is ready to satisfy conditions of pretrial release outside of regular business hours:

- Juvenile justice staff transports the youth, along with the original release order (AOC-CR-922), to the magistrate's office located on Hammond Road.
- The youth is kept on the public side of the magistrate's office and is kept separate from any setting in which adult inmates are present.
- The magistrate modifies the original release order (AOC-CR-922) to indicate that all conditions of release have been satisfied and submits the paperwork to the clerk's office.
- The youth is released from the Magistrate's office on Hammond Road.

By weaving together juvenile and criminal system components, this policy addresses some of the impediments to release discussed above. It addresses the basic issue of transportation of juveniles by relying on juvenile justice staff to get juveniles from the detention facility to the official responsible for determining that release conditions have been satisfied. It designates the magistrates responsible for determining that release conditions have been satisfied and ordering release. It allows juveniles to obtain release at any time of day once they meet their release conditions. And, it is mindful of the need for sight and sound separation of youth under 18 from adult inmates.

Former Chief District Court Judge Rader finalized this policy just before his retirement. I am grateful to him for his work on this policy and appreciate Judge Christian's willingness to share it with me and with all of you.

# North Carolina Criminal Law Blog

# Change to the Law of Juvenile Jurisdiction and Juvenile Transfer to Superior Court

July 23, 2024 [Jacquelyn Greene](#)

<https://nccriminallaw.sog.unc.edu/author/jacqui22/>

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## **[Session Law 2024-17](#)**

<https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2023-2024/SL2024-17.pdf>

enacts changes to the law regarding the scope of original juvenile jurisdiction beginning with offenses committed on or after December 1, 2024. Law changes regarding the existing process to transfer a case from juvenile to superior court will also take effect at that time. Read on for a description of the changes.

## **Narrowing of Original Juvenile Jurisdiction for Offenses at Ages 16 and 17**

Under current law, original jurisdiction over all felonies alleged to have been committed at ages 16 and 17, other than motor vehicle offenses, is in juvenile court, though some felonies must, and other felonies may be transferred to criminal superior court. When S.L. 2024-17 takes effect, original jurisdiction for Class A – Class E felonies alleged to have been committed at ages 16 and 17 will lie in criminal court. This includes any offenses that are transactionally related to a Class A – Class E felony offense. Because these matters will fall under original criminal jurisdiction, they will originate in the same way all other criminal matters begin. S.L. 2024-17 § 1.

The one difference between these matters and other criminal matters is the place of confinement when the defendant is under age 18. If the defendant is held pending resolution of the charges and is under the age of 18, that defendant must be housed in a juvenile detention facility. **G.S. 15A-521** [https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_15A/GS\\_15A-521.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_15A/GS_15A-521.pdf). The defendant must be transported by the Division of Juvenile Justice (DJJ) to the custody of the sheriff in the county where the charges are pending when they turn 18.

## New Possibility of Removal to Juvenile Court

While these cases will begin as criminal matters, there will be a new process in the criminal law to shift the cases to juvenile jurisdiction. S.L. 2024-17 §§ 3.(a)-3.(c). This new process is called “removal.”

Removal will be available in any matter in which an indictment has been returned or a criminal information issued for a Class A – Class E felony offense alleged to have been committed at age 16 or 17, except for offenses that are violations of Chapter 20 of the General Statutes (motor vehicle law offenses). The question of removal will be at the discretion of the prosecutor and defense attorney. If the prosecutor and defense attorney file a joint motion for removal, the superior court must remove the case to juvenile court. A removal motion can be filed any time after the return of the indictment or the issuance of a criminal information and before the jury is sworn and impaneled. The prosecutor is required to provide a copy of the motion to DJJ before submitting the motion to the court.

If a removal order is issued:

- The superior court must expunge the criminal charges and superior court record according to the procedure in G.S. 15A-145.8.
- DJJ must file a juvenile petition in the case within 10 calendar days after removal.
- The superior court may issue a secure custody order if the defendant (who is now a juvenile in a delinquency matter) meets the criteria for issuing a secure custody order contained in **S. 7B-1903** [https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_7B/GS\\_7](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7)

[B-1903.pdf](#)>. The prosecutor must give DJJ a copy of any secure custody order issued under these circumstances as soon as possible and no more than 24 hours after the order is issued.

Cases that are removed to juvenile court from superior court must have a first appearance in juvenile court within 10 days of the filing of the petition. S.L. 2024-17 § 2.(a). They will not have a probable cause hearing in juvenile court. S.L. 2024-17 § 2.(e). Therefore, these matters will move from a first appearance in juvenile court to adjudication.

## Changes to Transfer Procedure

### Fewer Cases Eligible for Mandatory Transfer

There are two categories of cases that require transfer from juvenile court to superior court for trial as an adult under current law. They are 1) Class A – G felonies alleged to have been committed and ages 16 and 17 and 2) Class A felonies alleged to have been committed at ages 13, 14, and 15. When the new law takes effect on December 1<sup>st</sup>, the first category of mandatory transfer cases will be narrowed to include Class F and Class G felonies alleged to have been committed at ages 16 and 17. The remaining current mandatory transfer offenses at these ages will no longer originate under juvenile jurisdiction and will therefore not be subject to transfer. They will begin as criminal matters. Under current law the prosecutor can choose not to transfer Class F and G felonies alleged to have been committed at ages 16 and 17 and that will remain true when the new law takes effect. **G.S. 7B-2200.5(a1)**.

[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_7B/GS\\_7B-2200.5.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2200.5.pdf)>

## Standard Probable Cause Timeline in Mandatory Transfer Cases

Under current law a probable cause hearing is required to be held within 90 days of the first appearance in cases that allege that a Class A – Class G felony was committed at ages 16 and 17. **G.S. 7B-2200.5(c)**

[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_7B/GS\\_7B-2200.5.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2200.5.pdf). A probable cause hearing is required within 15 days of the first appearance in the other category of mandatory transfer cases—cases in which a Class A felony is alleged to have been committed at age 13, 14, or 15. **G.S. 7B-2202(a)**

[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_7B/GS\\_7B-2202.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2202.pdf). S. L. 2024-17 adds a new G.S. 7B-2202(b1) to provide one timeline for all mandatory transfer cases. A probable cause hearing will be required to be held within 90 days of the first appearance in cases that allege that a Class F or Class G felony was committed at age 16 or 17 and cases that allege that a Class A felony was committed at age 13, 14, or 15.

## Indictment Return Appearance

Section 2.(f) of S.L. 2024-17 details the procedure to be used when transfer in a mandatory transfer case is triggered by the return of a true bill of indictment. That procedure includes that:

- The prosecutor must notify the district court immediately when a true bill of indictment is returned charging a mandatory transfer offense (a Class F or G felony at age 16 or 17 or a Class A felony at age 13, 14, or 15).
- The district court must calendar the case for an appearance within five business days of the date the true bill of indictment was returned.
- The court proceeding is called an indictment return appearance (not a transfer hearing).
- The court must determine if notice of the indictment charging an offense subject to mandatory transfer was provided as required in **S. 15A-630**  
[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_15A/GS\\_15A-630.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_15A/GS_15A-630.pdf).
- If the court determines that notice of a true bill of indictment charging the commission of a mandatory transfer offense was provided, then the court

must 1) transfer jurisdiction to superior court for trial as an adult and 2) determine conditions of pretrial release as is currently required in **S. 7B-2204**

[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_7B/GS\\_7B-2204.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2204.pdf) .

## Limitation on Right to Interlocutory Appeal of Transfer Order

Under current law there is a right to appeal any transfer order to the superior court after transfer is ordered. **G.S. 7B-2603**

[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_7B/GS\\_7B-2603.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-2603.pdf) . Notice of the appeal may be provided up to ten days after entry of the transfer order. This opportunity for an interlocutory appeal of the transfer order provides the basis for practices that keep cases confidential after transfer is ordered and until the time to appeal has tolled or the appeal is resolved. You can see a previous blog on **Dispelling Transfer Confusion** <https://nccriminallaw.sog.unc.edu/dispelling-transfer-confusion-10-day-appeal-window-orders-for-arrest/> for more detail on these practices.

Section 2.(g) of S.L. 2024-17 removes this right to an interlocutory appeal from mandatory transfer cases. Under the revised law, transfer orders issued in cases in which a Class A felony is alleged to have been committed at age 13, 14, or 15 or in which a Class F or Class G felony is alleged to have been committed at age 16 or 17 will only be appealable to the North Carolina Court of Appeals following a conviction in superior court. The elimination of the right to an interlocutory appeal in these matters will also eliminate the need for practices to keep these cases confidential during the ten-day window to file an interlocutory appeal.

## Remand Expansion

### **Section 8.(a) of Session Law 2019-186**

<https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2019-186.pdf> added the ability to remand back to juvenile court cases that were transferred to superior court for trial as an adult based on an allegation that a Class A – Class G felony was committed at age 16 or 17. This possibility of remand does not include matters transferred based on felony allegations alleged to have been committed at ages 13, 14, or 15.

Section 2.(c) of S.L. 2024-17 adds the possibility of remand for these cases that were omitted from S.L. 2019-186. The new opportunity for remand applies to any case that is transferred to superior court based on an allegation that a felony was committed at age 13, 14, or 15. The procedure is the same as the procedure for remand of cases that involve older youth and includes that:

- Remand is required on the filing of a joint motion in the superior court by the prosecutor and the juvenile’s attorney.
- The prosecutor must provide a copy of the motion to DJJ before submitting the motion to the court.
- The superior court must remand the case on the filing of the joint motion.
- The superior court must expunge the superior court record according to **S. 15A-145.8**  
<[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_15A/GS\\_15A-145.8.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_15A/GS_15A-145.8.pdf)> at the time of remand.
- The superior court may issue a secure custody order at the time of remand if the juvenile meets the criteria for issuing a secure custody order contained in **S. 7B-1903**  
<[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_7B/GS\\_7B-1903.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1903.pdf)> .
- The prosecutor must provide a copy of any secure custody order issued by the superior court to DJJ as soon as possible and no later than 24 hours after the order is issued.

The case returns to juvenile jurisdiction on remand and proceeds to adjudication.

## More to Come

S.L. 2024-17 also contains a handful of other changes related to juvenile delinquency procedure and dispositional alternatives. I will post a blog about those changes in August. If you would like to read up on them now, you can access my summary of the entirety of S.L. 2024-17 **here**  
<<https://nccriminallaw.sog.unc.edu/wp-content/uploads/2024/07/2024-summary.pdf>> .

Changes to existing SOG resources related to juvenile jurisdiction, transfer and removal are in process. This includes a revised Juvenile Law Bulletin on transfer and removal and a revised edition of a juvenile delinquency process flowchart. I will send out information regarding the completed revised materials on our Juvenile Law Listserv. You are welcome to join the Listserv by clicking subscribe on **this page** <<https://www.sog.unc.edu/resources/listservs/recent-nc-court-decisions-juvenile-law-sogjuvenile>>.



Knapp-Sanders Building  
Campus Box 3330, UNC Chapel Hill  
Chapel Hill, NC 27599-3330  
T: (919) 966-5381 | F: (919) 962-0654

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Tab:

DV Procedure

**DOMESTIC VIOLENCE PROCEDURE**

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# North Carolina Criminal Law Blog

## A Closer Look at the New Misdemeanor DV Crime and the 48-Hour Rule

November 7, 2023 by [Brittany Bromell](#)

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

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I previously blogged about the [new misdemeanor crime of domestic violence](#) <https://nccriminallaw.sog.unc.edu/new-misdemeanor-crime-of-domestic-violence/>, which will take effect on December 1, 2023. For the new offense, codified as G.S. 14-32.5, a person is guilty of a Class A1 misdemeanor if that person uses or attempts to use physical force, or threatens the use of a deadly weapon, against another person. The person who commits the offense must have a covered relationship with the victim, as specified by the statute.

While both the new misdemeanor domestic violence statute (G.S. 14-32.5) and the existing domestic violence pretrial release statute ([G.S. 15A-534.1](#) [https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_15A/GS\\_15A-534.1.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_15A/GS_15A-534.1.pdf)) require both a covered offense and a qualifying relationship, the requirements do not mirror one another. This post explores the interplay between the relationships listed under G.S. 14-32.5 and G.S. 15A-534.1.

### Comparing the statutes

The list of relationships for the new misdemeanor crime of domestic violence (referred to in this blog as the new DV offense or a violation of G.S. 14-32.5) is broader than the list of qualifying relationships under the pretrial release statute (referred to here as the 48-hour statute or G.S. 15A-534.1). A person charged with the new DV offense will not necessarily be subject to the 48-hour statute. However, in some instances, a domestic violence scenario involving an assault could result in the defendant being subject to both statutes. Below is a chart comparing the requirements for the two statutes.

|                        | G.S. 15A-534.1 (48-hour statute)   | G.S. 14-32.5 (New DV offense)  |
|------------------------|--|--|
| Offenses               | <ul style="list-style-type: none"> <li>• Assault,</li> <li>• Stalking,</li> <li>• Communicating a threat,</li> <li>• Felony under Article 7B (Rape and Other Sex Offenses),</li> <li>• Felony under Article 8 (Assaults),</li> <li>• Felony under Article 10 (Kidnapping and Abduction),</li> <li>• Felony under Article 15 (Arson and Other Burnings),</li> <li>• Violation of a 50B order*</li> <li>• Domestic criminal trespass*</li> </ul> | <ul style="list-style-type: none"> <li>• Uses physical force,</li> <li>• Attempts to use physical force, or</li> <li>• Threatens the use of a deadly weapon</li> </ul>   |
| Relationships          | <ul style="list-style-type: none"> <li>• A spouse or former spouse,</li> <li>• A person with whom the defendant lives or has lived as if married,</li> <li>• A person with whom the defendant is or has been in a dating relationship</li> </ul>   | <ul style="list-style-type: none"> <li>• A current or former spouse, parent, or guardian of the victim,</li> <li>• A person with whom the victim shares a child in common,</li> <li>• A person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian,</li> <li>• A person similarly situated to a spouse, parent, or guardian of the victim, or</li> <li>• A person who has a current or recent former dating relationship with the victim</li> </ul> |
| *See explanation below |  |  |

A number of offenses are subject to the 48-hour statute only if the defendant is charged with an offense listed in that statute and the defendant and victim are or have been in a relationship described in that statute. Two offenses always trigger the 48-hour rule—domestic criminal trespass and violation of a domestic violence protective order. The 48-hour statute does not require an additional showing of a qualifying relationship for these offenses because the relationship is an inherent part of the offense. Domestic criminal trespass requires a trespass onto property occupied by a present or former spouse or by a person with whom the suspect has lived as if married. Violation of a DVPO requires a knowing violation of a valid protective order, which would have only been issued if the parties had a qualifying personal relationship under the civil domestic violence statute, **G.S. 50B-1**

[https://www.ncleg.gov/enactedlegislation/statutes/pdf/bysection/chapter\\_50b/gs\\_50b-1.pdf](https://www.ncleg.gov/enactedlegislation/statutes/pdf/bysection/chapter_50b/gs_50b-1.pdf).

To trigger the 48-hour statute, the new DV offense will require an additional showing of a qualifying personal relationship under the 48-hour statute. Although a personal relationship is inherent in the offense, the General Assembly has not amended G.S. 15A-534.1 to include G.S. 14-32.5 as an offense automatically subject to the special 48-hour pretrial release rule. For a defendant charged with G.S. 14-32.5 to be subject to the 48-hour statute, the relationship between the defendant and the victim must satisfy the requirements of both statutes. For example, a defendant could be subject to G.S. 14-32.5 if the defendant and victim share a child in common, but in that instance the defendant would not be subject to the 48-hour statute because “child in common” is not a relationship that triggers the provision.

### **Digging into dating relationships**

The 48-hour statute refers to G.S. 50B-1 (civil domestic violence) to define dating relationship. Under G.S. 50B-1(b)(6), a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. The statute specifies that a casual acquaintance or ordinary fraternization between people in a business or social context is not a dating relationship.

The court of appeals has held that the term “dating relationship” in G.S. 50B-1 should be interpreted broadly to cover a wide range of romantic relationships, with “only the least intimate of personal relationships” excluded. *Thomas v. Williams*, 242 N.C. App. 236, 240 (2015). A short-term romantic relationship may therefore still qualify as a “dating relationship” within the meaning of G.S. 50B-1(b)(6). *Id.* Factors to consider in making the determination include:

- how long the alleged dating activities continued prior to the alleged acts of domestic violence;
- the nature and frequency of the parties’ interactions;
- the parties’ ongoing expectations with respect to the relationship, either individually or jointly; and
- whether the parties demonstrated an affirmation of their relationship before others by statement or conduct.

The new DV offense statute specifies that the term “dating relationship” is defined by reference to **18 U.S.C. 921(a)(37)** <https://www.law.cornell.edu/uscode/text/18/921> . Under the federal statute, the term “dating relationship” means “a relationship between individuals who have or have recently had a continuing serious relationship of a romantic or intimate nature.” Determining whether a relationship qualifies requires considering (i) the length of the relationship; (ii) the nature of the relationship; and (iii) the frequency and type of interaction between the individuals involved in the relationship. Like the definition in G.S. 50B-1, a casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a dating relationship. A key difference, however, involves recency.

### **Past dating relationships**

For each of the three past relationships covered under North Carolina’s 48-hour statute—former spouses, a person with whom the defendant has lived as if married, or a person with whom the defendant has been in a dating relationship—no time limit is specified in the statute. A broad interpretation of the statute thus indicates that it applies even to relationships that ended years or decades before the alleged conduct.

This approach is different than the “current or recent former dating relationship” as required for the new DV offense. The use of the word “recent” to describe the past relationship indicates that there is a limit as to how long ago the relationship must have existed. Although the new DV offense statute does not specify the outer limit for recency, it likely excludes relationships that ended years or decades ago.

While neither the new DV offense statute nor the federal statute defines the term “recently,” courts in other jurisdictions have found some relationships did not satisfy the recency requirement without expressly defining a time limit. See *L. L. v. M. B.*, 216 Conn. App. 731, 745 (2022) (concluding that the trial court did not abuse its discretion in determining that a dating relationship which occurred two years prior to the filing of the application was not “recent.”); *Sanchez v. State*, 499 S.W.3d 438, 443 (Tex. Crim. App. 2016) (finding that a period of three years between the end of the dating relationship and the assault “does not fit within the concept of recently.”). Until there is guidance from a higher court, it seems that North Carolina trial courts will have to determine whether a relationship is “recent” within the meaning of the statute.



Knapp-Sanders Building  
Campus Box 3330, UNC Chapel Hill  
Chapel Hill, NC 27599-3330  
T: (919) 966-5381 | F: (919) 962-0654

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# Pretrial Release in Criminal Domestic Violence Cases

Brittany Bromell

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A person arrested for a noncapital criminal offense usually has a right to pretrial release upon the setting of reasonable conditions. Pretrial release is generally ordered by a magistrate at a defendant’s initial appearance. While the North Carolina General Statutes (hereinafter G.S.) provide general rules for considering the pretrial release of a defendant for most offenses, there are some requirements and limitations for specific offenses.

One such set of offenses involves domestic violence charges. As a special approach to setting conditions of pretrial release, the “48-hour rule,” as it is known in domestic violence cases, shifts the responsibility to judges. The rule is set out in G.S. 15A-534.1, which (1) provides that a judge—rather than a magistrate—must set a defendant’s pretrial release conditions during the first forty-eight hours after arrest for certain offenses and (2) lists the offenses subject to the 48-hour rule. Some offenses are subject to the rule based on the offense alone. A greater number of offenses are subject to the rule only if the defendant is charged with an offense listed in the statute *and* the defendant and victim are or have been in a relationship described in the statute.

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[Brittany Bromell](#) is an assistant professor of public law and government who specializes in criminal law and procedure, with expertise in pretrial release proceedings and domestic violence.

The courts have stated that the statute “serves the General Assembly’s legitimate interest in ensuring that a judge, rather than a magistrate, consider[s] the terms of a domestic-violence offender’s pretrial release.”<sup>1</sup> Courts also have held, however, that if a defendant is held without an initial appearance when a judge is available to conduct one, dismissal of the charges may be required.

Through a series of questions and answers, this bulletin examines the special rules of pretrial release for domestic violence cases. The first few sections discuss pretrial release generally and in domestic violence cases. The sections that follow explore the mechanics of the 48-hour rule, the impact of violations of these special pretrial release rules, and questions on limitations of authority.

## I. Pretrial Release Generally

### *How are pretrial release conditions usually set after a defendant’s arrest?*

Upon arrest in both misdemeanor and felony cases, a defendant must be taken without unnecessary delay before a judicial official for an initial appearance.<sup>2</sup> In most instances, the judicial official who sets conditions of pretrial release is a magistrate.

### *What are the basic types of pretrial release?*

There are five basic types of pretrial release:

1. The defendant is released upon signing a written promise to appear.
2. The defendant is released upon executing an unsecured appearance bond in an amount specified by the judicial official.
3. The defendant is placed in the custody of a designated person or organization that has agreed to supervise the defendant.
4. The defendant is required to execute an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage, or by at least one solvent surety.
5. The defendant is ordered on house arrest with electronic monitoring.<sup>3</sup>

In granting pretrial release, a judicial official must impose type 1, 2, or 3 unless he or she determines that such release (a) will not reasonably assure the appearance of the defendant as required; (b) will pose a danger of injury to any person; or (c) is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. If the judicial official finds that one of these exceptions applies, he or she then may impose type 4 or 5 and, if required by local pretrial release policies issued by the senior resident superior court judge, must record the reasons for doing so in writing.<sup>4</sup>

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1. *State v. Thompson*, 349 N.C. 483, 492 (1998) (holding that the statute was regulatory rather than punitive).

2. *See* G.S. 15A-501(2) (police duties upon arrest); 15A-511 (requirements of initial appearance).

3. G.S. 15A-534(a) (types of release).

4. G.S. 15A-534(b) (statutorily preferred release).

***May a judicial official impose other conditions of pretrial release?***

Yes. In addition to any of the five types of pretrial release discussed above, a judicial official may impose other restrictions on a defendant. Some common restrictions include staying away from the alleged victim or the place the alleged offense occurred. In determining which conditions of release to impose, a judicial official must consider the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he or she would be endangered by being released without supervision; the length of the defendant's residence in the community; the defendant's criminal history; the defendant's history of flight to avoid prosecution or his or her failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.<sup>5</sup>

***Are different pretrial release procedures required for certain types of cases?***

Yes. Generally, a defendant charged with a noncapital offense must have conditions of pretrial release determined in accordance with G.S. 15A-534.<sup>6</sup> The usual procedure in such cases is described in the previous questions. However, North Carolina law provides that special pretrial release procedures must be followed for some cases. Examples include cases involving

- crimes of domestic violence,
- detention of impaired drivers,
- detention for communicable diseases,
- sex offenses and crimes of violence against child victims,
- detention to protect public health,
- manufacture of methamphetamine,
- communicating a threat of mass violence, and
- rioting or looting.<sup>7</sup>

In these cases, the authority of a magistrate to set pretrial release conditions is limited. For cases involving domestic violence, communicating a threat of mass violence, and rioting or looting (effective December 1, 2023), a judge must determine the conditions of pretrial release. If a judge has not done so within the applicable statutory time period, then a magistrate must set the conditions. For cases involving impaired drivers and communicable diseases, a judicial official—typically a magistrate—sets a defendant's pretrial release conditions but delays release of the defendant to protect the public. In cases involving certain methamphetamine offenses or violations of public health measures, a judicial official—typically a magistrate—conducts an initial appearance but denies pretrial release if certain criteria are met.

This bulletin examines the variations in domestic violence cases only; variations for other cases are beyond the scope of this publication.

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5. G.S. 15A-534(c) (considerations).

6. G.S. 15A-533(b) (noncapital offenses).

7. See S.L. 2023-6, § 4, effective for rioting or looting offenses committed on or after December 1, 2023 (special pretrial release procedures apply to such offenses); G.S. 15A-534.1–534.8 (covering the other offenses listed to which special pretrial release procedures apply and setting out said procedures).

### ***What happens when a defendant violates conditions of pretrial release?***

A judicial official may revoke a pretrial release order and issue an order for a defendant's arrest if (1) the defendant violates conditions in the order, such as a requirement to stay away from a particular location, and (2) the judicial official has jurisdiction over the case.<sup>8</sup> If a defendant violates pretrial release conditions before he or she appears in court for the first time, a magistrate has jurisdiction to revoke pretrial release and issue an order for arrest.<sup>9</sup> Once a defendant appears in court, a judge at the level of court in which the case is then pending (district or superior) has jurisdiction to revoke release and issue an order for arrest.

Upon arrest for a violation of pretrial release conditions, whether ordered by a magistrate or judge or upon a law enforcement officer's own initiative,<sup>10</sup> a defendant must be taken before a magistrate for an initial appearance, at which time the magistrate must set new pretrial release conditions.<sup>11</sup> This action is necessary because any arrest triggers the requirements of an initial appearance.<sup>12</sup>

## **II. Pretrial Release in Domestic Violence Cases**

### **General Principles**

#### ***How do pretrial release procedures in domestic violence cases differ from the usual procedures?***

Pretrial release conditions are generally set by a magistrate at a defendant's initial appearance. The 48-hour rule applicable in domestic violence cases shifts that responsibility to judges. The rule, set out in G.S. 15A-534.1, provides that a judge—not a magistrate—must set a defendant's pretrial release conditions during the first forty-eight hours after arrest for certain offenses. The practical effect of this rule is that a defendant will not be immediately released but, rather, will be committed to a detention facility until pretrial conditions are set by a judge or until the defendant is returned to a magistrate after forty-eight hours.

Application of this rule raises several additional issues discussed in this bulletin, such as the relationships and offenses to which the rule applies, a defendant's right to due process in such cases, and potential remedies for violation of the defendant's rights, including dismissal of the charges against a defendant.

#### ***How is domestic violence defined for purposes of the 48-hour rule?***

G.S. 15A-534.1 lays out the circumstances under which a defendant is subject to the special forty-eight-hour pretrial release procedures. Some offenses, discussed below, are subject to the 48-hour rule based on the offense alone. A greater number of offenses are subject to the rule only if (1) the offense with which a defendant is charged is listed in the statute *and* (2) the defendant and the victim are or have been in a relationship described in the statute, also discussed below.

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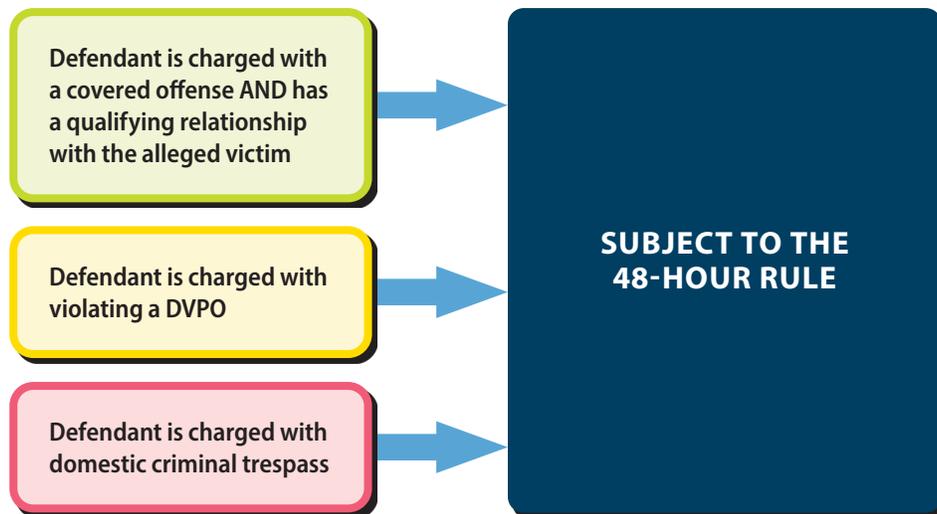
8. See G.S. 15A-534(d) (arrest may be ordered for violation); 15A-534(e) (describing when judicial official has jurisdiction to modify pretrial release order).

9. See G.S. 15A-534(e) (modifying pretrial release order).

10. See G.S. 15A-401(b) (arrest by an officer without a warrant).

11. See G.S. 15A-511(a)(1).

12. G.S. 15A-501(2); 15A-511(a)(1).

**Figure 1. Charges/Circumstances That Trigger Application of the 48-Hour Rule**

### Covered Offenses for Pretrial Release in Domestic Violence Cases

#### *What charges trigger application of the special pretrial release rules in domestic violence cases without an additional showing of a particular relationship?*

All offenses subject to the 48-hour rule are listed in G.S. 15A-534.1. There are two offenses that are subject to the rule based on the offense alone: domestic criminal trespass and violation of a domestic violence protective order (DVPO).<sup>13</sup> The 48-hour rule does not require an additional showing of a certain relationship between a defendant and an alleged victim for the special pretrial release procedures to apply to these two offenses because such a relationship is inherent in the offenses themselves. One element of domestic criminal trespass requires that a person unlawfully enter or remain on premises occupied by a present or former spouse or by a person with whom the person charged has lived as if married.<sup>14</sup> Violation of a DVPO requires a knowing violation of a valid protective order, which would have only been issued if the parties had a personal relationship as described in G.S. 50B-1.

Because violation of a DVPO does not require an additional showing of a particular relationship, it is immaterial that the relationship between a defendant and an alleged victim would not otherwise suffice for purposes of G.S. 15A-534.1. For example, if a mother has a DVPO against her adult son and the son violates the DVPO, he would be subject to the 48-hour rule; it would not matter that the parent/child relationship would not independently subject the son to the 48-hour rule.

13. The offense of violating a domestic violence protective order includes violations of ex parte orders.

14. G.S. 14-134.3 (domestic criminal trespass).

***What charges trigger application of the special pretrial release rules in domestic violence cases only if the defendant and alleged victim have a particular relationship?***

A greater number of offenses are subject to the 48-hour rule only if the defendant is charged with an offense listed in G.S. 15A-534.1 *and* the defendant and alleged victim are or have been in a relationship described in the statute. The covered offenses in this category are assault, stalking, communicating a threat, and the felonies proscribed by G.S. Chapter 14, Articles 7B, 8, 10, or 15, such as rape, kidnapping, and arson.

***Are any other charges subject to special pretrial release rules in domestic violence cases?***

No. The statutory list of covered offenses is exclusive. If an offense is not specifically listed in G.S. 15A-534.1, it is not within the scope of the 48-hour rule. For example, a frequent question is whether the statute's inclusion of "stalking" also includes cyberstalking as defined in G.S. 14-196.3. Because cyberstalking is a different offense than stalking and is not specified in G.S. 15A-534.1, it probably is not subject to the 48-hour rule.<sup>15</sup> Other offenses like interfering with emergency communication under G.S. 14-286.2 or breaking or entering to terrorize or injure an occupant under G.S. 14-54(a1) might sometimes be domestic violence-related. However, because neither offense is covered by G.S. 534.1, a defendant charged only with one of these offenses would not be subject to the 48-hour rule and may have his or her pretrial release conditions set by a magistrate at the initial appearance.

***Is a violation of pretrial release conditions for a domestic violence offense subject to the 48-hour rule?***

No. The consequences for violating pretrial release conditions are consistent regardless of the underlying charges. Upon arrest, whether ordered by a magistrate or judge, a defendant must be taken before a magistrate for an initial appearance, at which time the magistrate must set new pretrial release conditions.<sup>16</sup> Even if the underlying charges were domestic violence offenses covered by G.S. 15A-534.1, the defendant will not be subject to the 48-hour rule when arrested for a violation of pretrial release conditions. This is because violation of release conditions alone is not a new offense, nor is it a circumstance specified in G.S. 15A-534.1 as subject to the 48-hour rule.

***If the State takes a voluntary dismissal on domestic violence charges and then reinstates the charges, will the defendant again be subject to the 48-hour rule?***

Probably. Sometimes the State may opt to voluntarily dismiss and then refile charges against a defendant in a domestic violence case if a witness does not appear in court. Whether or not the defendant will again be subject to the 48-hour rule will largely depend on the process that the magistrate issues. If the magistrate issues an arrest warrant, and the defendant is arrested, then the defendant would likely again be subject to the 48-hour rule on the refiled charges and would have to have a new bond set. If the magistrate instead issues a criminal summons, there would be no arrest and the 48-hour rule would not apply.

If, instead, the State dismisses the charges because of a 48-hour rule violation and refiles, the defendant likely has a strong *Thompson* claim.<sup>17</sup> For further discussion of this issue, refer to the prejudice discussion below.

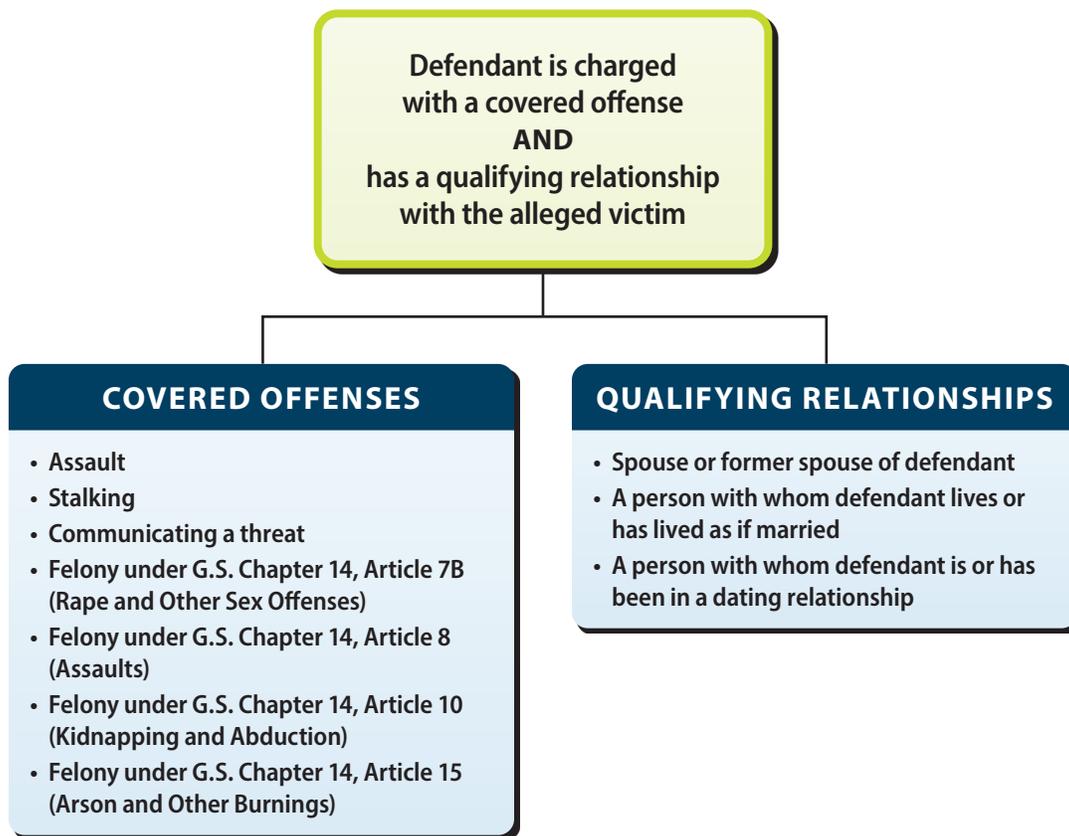
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15. See Jeff Welty, [Cyberstalking and the 48-Hour Rule](#), N.C. CRIM. L.: A UNC SCH. OF GOV'T BLOG (Nov. 28, 2012) (discussing potential counterargument).

16. See G.S. 15A-511(a)(1).

17. Referencing *State v. Thompson*, 349 N.C. 483 (1998), discussed in more detail below.

**Figure 2. Covered Offenses and Qualifying Relationships That Trigger Application of the 48-Hour Rule**



**Covered Relationships for Pretrial Release in Domestic Violence Cases**

***What relationships trigger the application of special pretrial release rules in domestic violence cases?***

The requirement of a covered relationship is met if the offense with which a defendant is charged is against 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 indicated above, charges of domestic criminal trespass and violation of a domestic violence protective order do not require an additional showing of a covered relationship and are automatically subject to the 48-hour rule.

***What does a “dating relationship” mean under the domestic violence laws?***

G.S. 15A-534.1 refers to G.S. 50B-1 to define the term “dating relationship.” Under G.S. 50B-1(b)(6), a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. The statute specifies that a casual acquaintance or ordinary fraternization between people in a business or social context is not a dating relationship.

In a case addressing whether a DVPO was unconstitutionally denied, the North Carolina Court of Appeals held that the term “dating relationship” should be interpreted broadly to cover a wide range of romantic relationships, with “only the least intimate of personal relationships” excluded.<sup>18</sup> A short-term romantic relationship may therefore qualify as a “dating relationship” within the meaning of G.S. 50B-1(b)(6).<sup>19</sup> Factors to consider in making the determination include how long the alleged dating activities continued prior to the alleged acts of domestic violence; the nature and frequency of the parties’ interactions; the parties’ ongoing expectations with respect to the relationship, either individually or jointly; and whether the parties demonstrated an affirmation of their relationship before others by statement or conduct.

This analysis applies whether the defendant and victim are the same sex or opposite sexes. Nothing in the definition of “dating relationship” requires the parties to be of different sexes. Under G.S. 50B-1(b), 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” because G.S. 15A-534.1 uses that term only; it does not refer to and does not require the existence of a “personal relationship.”<sup>20</sup>

***Is there a limit as to how long ago the defendant and alleged victim had to be in a relationship for it to qualify as a covered relationship under law?***

No. There is no specified time limit for any of the three past relationships listed in G.S. 15A-534.1—former spouse of the defendant, a person with whom the defendant has lived as if married, or a person with whom the defendant has been in a dating relationship. A broad interpretation of the statute thus indicates that it applies even to relationships that ended years or decades before the alleged conduct.

Note that the interpretation is different for the “current or recent former dating relationship” required by the new misdemeanor crime of domestic violence, discussed below. The use of the word “recent” to describe the past relationship indicates that there is a limit as to how long ago the relationship must have existed for it to be a covered relationship. Although the new statute does not specify the outer limit for recency, it likely excludes relationships that ended years or decades ago.<sup>21</sup>

## **Other Domestic Violence Statutes**

***Is the definition of domestic violence under G.S. 15A-534.1 the same as in other North Carolina statutes on domestic violence?***

No. Other statutes define domestic violence differently.

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18. Thomas v. Williams, 242 N.C. App. 236, 240 (2015).

19. *Id.* at 241.

20. Jeff Welty, *Domestic Violence Crimes and the 48-Hour Rule* (Dec. 2019), available for download from the UNC School of Government’s NC Magistrate’s microsite at [sog.unc.edu/resources/microsites/nc-magistrates/domestic-violence-48-hour-rule-paper](https://sog.unc.edu/resources/microsites/nc-magistrates/domestic-violence-48-hour-rule-paper). See also sources cited *infra* note 23 and accompanying text (discussing appellate rulings holding that exclusion of same-sex dating relationships from domestic violence protection order protections is unconstitutional).

21. See *infra* note 23.

***Are there any civil domestic violence statutes?***

Yes. G.S. 50B-1 is a civil statute rather than a criminal one and governs eligibility for a civil order of protection against domestic violence. Under G.S. 50B-1, domestic violence is defined as the commission of a certain act upon a victim or upon a minor child residing with or in the custody of the victim, by a person with whom the victim has or has had a personal relationship. Under this statute, the covered offenses are fewer than under G.S. 15A-534.1, and the qualifying relationships are more expansive than those addressed in G.S. 15A-534.1. For an act to be considered domestic violence under G.S. 50B-1, there must be a qualifying act committed and a qualifying relationship between the victim and the defendant. A qualifying act is one or more of the following:

- Attempting to cause bodily injury or intentionally causing bodily injury to the victim
- Placing the victim or a member of the victim's family or household in fear of imminent serious bodily injury
- Continued harassment that rises to such a level as to inflict substantial emotional distress
- Committing rape or any other sex offense(s)

In addition to one of the listed acts, a personal relationship must exist between the victim and defendant. A personal relationship is one in which the parties

1. are current or former spouses;
2. are people of the 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;
4. have a child in common;
5. are current or former household members; or
6. are people of the opposite sex who are in a dating relationship or have been in a dating relationship.

Although G.S. 50B-1(b)(6), in defining the term "personal relationship," uses the language "persons of *the opposite sex* who are in a dating relationship," the North Carolina Court of Appeals ruled in *M.E. v. T.J.*<sup>22</sup> that the exclusion of complainants in same-sex relationships from domestic violence protective order (DVPO) protection was unconstitutional. Thus, same-sex couples are now covered under this type of personal relationship.

Where both a qualifying act and a personal relationship are present, the victim qualifies under G.S. 50B-1 for a DVPO against the defendant. While G.S. 50B-1 and G.S. 15A-534.1 each require both a covered offense and a qualifying relationship, the requirements do not mirror one another. Even so, in some instances, a domestic violence scenario could meet the requirements for both the issuance of a DVPO and the defendant being subject to the 48-hour rule.

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22. 275 N.C. App. 528 (2020).

***Are there any other criminal domestic violence statutes?***

Yes. Effective December 1, 2023, G.S. 14-32.5 proscribes a new misdemeanor crime of domestic violence. Under this statute, a person is guilty of a Class A1 misdemeanor if that person uses or attempts to use physical force, or threatens the use of a deadly weapon, against another person. The person who commits the offense must have one of the following relationships with the victim:

1. The person is a current or former spouse, parent, or guardian of the victim
2. The person shares a child in common with the victim
3. The person is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian
4. The person is similarly situated to a spouse, parent, or guardian of the victim
5. The person has a current or recent former dating relationship with the victim<sup>23</sup>

While G.S. 14-32.5 and G.S. 15A-534.1 each require both a covered offense and a qualifying relationship, the requirements do not mirror one another. The list of qualifying relationships in G.S. 14-32.5 is broader than the list of qualifying relationships in G.S. 15A-534.1, so a person charged with this offense will not necessarily or automatically be subject to the 48-hour rule. Even so, in some instances, a domestic violence scenario involving an assault could result in the defendant being charged with the misdemeanor offense and being subject to the 48-hour rule.

***Are there any other forty-eight-hour pretrial release rules that could coincide with the usual procedures in domestic violence cases?***

Yes. A new pretrial release provision, G.S. 15A-533(h), was enacted effective for offenses committed on or after October 1, 2023, limiting a magistrate's authority to set conditions of release for a defendant who is arrested for a new offense that is alleged to have been committed while the defendant was on pretrial release for another pending proceeding. In these cases, the general rule is that only a judge may set conditions of release within the first forty-eight hours after arrest for the new offense.

A defendant may be arrested on a charge that triggers the forty-eight-hour provision under both G.S. 15A-534.1 and 15A-533(h). In these situations, the statutes apply simultaneously, meaning that the defendant is subject to only one forty-eight-hour window. Additionally, both statutes authorize a magistrate to act after forty-eight hours. So, regardless of which statute is applied, a magistrate has the authority to set conditions of release forty-eight hours after the arrest of a defendant if a judge has not done so.

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23. New G.S. 14-32.5(b) specifies that the term "dating relationship" is defined as it is in 18 U.S.C. § 921(a)(37). Under the federal statute, the term "dating relationship" means a relationship between individuals who have or have *recently* had a continuing serious relationship of a romantic or intimate nature (emphasis added). The statute does not define the term "recently," and because it is a newly enacted provision (June 25, 2022), there has yet to be any case law or other guidance as to what constitutes "recently." Courts in other jurisdictions have found that the requirement of recency was not met without expressly defining a time limit. *See* L. L. v. M. B., 286 A.3d 489, 498 (Conn. App. Ct. 2022) (concluding that the trial court did not abuse its discretion in determining that a dating relationship which occurred two years prior to the filing of the application was not recent); *Sanchez v. State*, 499 S.W.3d 438, 443 (Tex. Crim. App. 2016) (finding that a period of three years between the end of the dating relationship and the assault "does not fit within the concept of recently").

***Are there other special pretrial release rules that could take precedence over the usual procedures in domestic violence cases?***

Yes. Effective for offenses committed on or after October 1, 2023, G.S. 15A-533(b) was amended to expand the list of offenses for which only a judge may consider conditions of pretrial release. Previously, this provision applied only to first-degree murder cases. It now will apply to the following offenses:

- First- and second-degree murder (G.S. 14-17) and attempts to commit those offenses
- First- and second-degree kidnapping (G.S. 14-39)
- First-degree forcible rape and sexual offense (G.S. 14-27.21; G.S. 14-27.26)
- Second-degree forcible rape and sexual offense (G.S. 14-27.22; 14-27.27)
- Statutory rape of and sexual offense with a child by an adult (G.S. 14-27.23; 14-27.28)
- First-degree statutory rape and sexual offense (G.S. 14-27.24; 14-27.29)
- Statutory rape of and sexual offense with a person 15 years old or younger (G.S. 14-27.25; 14-27.30)
- Human trafficking (G.S. 14-43.11)
- Assault with a deadly weapon with intent to kill inflicting serious injury (G.S. 14-32(a))
- Discharging barreled weapons or firearms into occupied property (G.S. 14-34.1)
- First-degree burglary (G.S. 14-51)
- First-degree arson (G.S. 14-58)
- Armed robbery (G.S. 14-87)

Given that many of these offenses are also covered under G.S. 15A-534.1, it is possible that a defendant's conduct may fall within the scope of both G.S. 15A-534.1 and 15A-533(b). In those situations, G.S. 15A-533(b) will control. The defendant will not be entitled to pretrial release, and a judge will have discretion to determine whether release is warranted for these offenses. Additionally, these cases will not be sent back before a magistrate to consider pretrial release. Because G.S. 15A-533(b) does not impose a time frame during which a judge must set conditions, there is no forty-eight-hour limitation as with G.S. 15A-534.1, and a defendant may not have recourse for a delayed appearance before a judge as in cases subject to G.S. 15A-534.1.<sup>24</sup>

### **III. Mechanics of the 48-Hour Provision**

#### **Issues During the First Forty-Eight Hours**

***What is the magistrate's role when a defendant is arrested for a domestic violence offense within the meaning of 15A-534.1?***

The magistrate should conduct the initial appearance as usual except for the setting of pretrial release conditions. The magistrate must inform the defendant of the charges, the right to communicate with counsel and friends, and the general circumstances under which pretrial release may be obtained.<sup>25</sup> The magistrate is not authorized to set pretrial release conditions during the first forty-eight hours after arrest. Only a judge may do so.

24. See *infra* Part IV, Violations and Their Impact.

25. G.S. 15A-511(b) (statement by the magistrate).

During the initial appearance, the magistrate should order that the defendant be taken to the first available court session in the county for a first appearance before a judge. In some instances, this may include a court session that is already in progress. The magistrate should also order that the defendant be returned to a magistrate if a judge does not set pretrial release conditions within forty-eight hours after arrest. If a judge has not set conditions within forty-eight hours after arrest, a magistrate is authorized to do so. The magistrate may retain the defendant for a reasonable period of time while determining pretrial release conditions if the defendant's immediate release poses a danger of injury or intimidation and an appearance bond will not prevent injury or intimidation.<sup>26</sup>

#### ***Does the forty-eight-hour waiting period begin upon arrest or after the initial appearance?***

The forty-eight-hour period begins to run at the time of arrest, not at the later time when the defendant initially appears before a magistrate.<sup>27</sup> The distinction is important, as it reduces the likelihood that the defendant will spend more time in custody than necessary. The length of time between arrest and initial appearance before a magistrate could be affected by several factors, including the distance from the jail, traffic, and the number of other arrestees awaiting an initial appearance, which could result in an additional hour or more in custody if the forty-eight-hour period were to start running at the time the initial appearance is held.

#### ***What does "first available judge" mean?***

As mentioned above, a person arrested for a domestic violence offense may be briefly detained while awaiting a hearing on pretrial release held by the first available judge. During the first forty-eight hours after arrest, a defendant must be brought before a judge at the earliest reasonable opportunity.<sup>28</sup> In some instances, this may include a court session that is already in progress. In *State v. Thompson*,<sup>29</sup> the defendant was arrested on a Saturday at 3:45 p.m. and was not brought before a judge until Monday at 3:45 p.m., even though judges were available to set pretrial release conditions as of 9:00 a.m. on Monday. In assessing availability, the *Thompson* court took judicial notice of both district and superior court sessions in the county and of the start times of those sessions. The court concluded that as long as a session of either superior or district court has convened in a county, a judge is considered available for purposes of G.S. 15A-534.1.<sup>30</sup>

#### ***Are there any circumstances under which a defendant may be held in custody for longer than forty-eight hours?***

Yes. G.S. 15A-534.1(a)(1) allows a judge (or a magistrate, when applicable) to delay the setting of pretrial release conditions for a reasonable period of time if (1) the defendant's immediate release poses a danger of injury to the victim or another person or is likely to result in intimidation of the victim and (2) an appearance bond is inadequate to protect against the injury or intimidation. Thus, where the defendant has been brought before a judge at the earliest reasonable opportunity within forty-eight hours after arrest, the judge still may hold the

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26. G.S. 15A-534.1(a)(1) (hold for risk of injury or intimidation).

27. G.S. 15A-534.1(b) (magistrate's authority).

28. *See, e.g., State v. Thompson*, 349 N.C. 483 (1998).

29. *Id.*

30. *Id.* at 498 (noting district and superior court sessions that convened in the county prior to the time pretrial release conditions were set).

defendant in custody without bond for a reasonable additional period.<sup>31</sup> In *State v. Gilbert*, the defendant was taken in at a detention facility at around 9:00 p.m. and received a hearing before a judge at 9:00 a.m. the next morning, at which time the judge imposed an unsecured bond but ordered that the defendant not be released until after 2:00 p.m. that afternoon. The court held that the additional five-hour delay was not an unconstitutional application of G.S. 15A-534.1.<sup>32</sup>

This type of hold predated the General Assembly's enactment of the 48-hour law and, as a practical matter, should now be used sparingly because the defendant will already have been held for some time before appearing before a magistrate.

### ***When both domestic violence and non-domestic violence offenses are charged, can a magistrate set conditions for the non-domestic violence charges?***

While practices vary across the state in these situations, it usually comes down to one of two options. If domestic violence offenses and non-domestic violence offenses are charged on the same process, magistrates sometimes apply the 48-hour rule to all the offenses and leave the determination of pretrial release conditions to the judge. If the domestic violence offenses and non-domestic violence offenses are charged on different processes, magistrates sometimes apply the 48-hour rule to the former and proceed to set pretrial release conditions on the latter.

Barring any preexisting county-specific practices, magistrates might consider setting conditions for non-domestic violence offenses before committing the defendant to jail for domestic violence offenses in both same- and different-process cases. This reduces the risk of any error in delaying pretrial release for the non-domestic violence offenses.

## **Other Issues for Magistrates**

### ***Can a magistrate order that a defendant be held for forty-eight hours?***

No. The 48-hour rule is sometimes erroneously referred to as a "48-hour hold." This misnomer suggests that a defendant should always be held without conditions being set, by a judge or magistrate, for forty-eight hours. This interpretation is incorrect.

The 48-hour rule does not authorize a hold for any reason other than the unavailability of a judge. If a judge is available, then a defendant should not be held and should be taken promptly before the judge. If a defendant is held for forty-eight hours even though a judge has been available in the interim, dismissal of the charges is warranted.<sup>33</sup>

### ***Can a magistrate set conditions to take effect immediately if it is clear that a judge will not be available within forty-eight hours?***

No. G.S. 15A-534.1(b) is clear and unambiguous that a magistrate cannot act within the first forty-eight hours of arrest. In some situations, it is evident that a judge will not be available for forty-eight hours, such as when a defendant is arrested on a Friday evening. The question often arises as to whether it is permissible in that instance for a magistrate to set pretrial release conditions to take effect immediately. Even then, the statute does not allow a magistrate to do so.

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31. See *State v. Gilbert*, 139 N.C. App. 657 (2000).

32. *Id.* at 669.

33. Jeff Welty, [Domestic Violence Cases and the 48 Hour Rule](#), N.C. CRIM. L.: A UNC SCH. OF GOV'T BLOG (Sep. 7, 2011).

Some defendants have raised constitutional questions about whether there is a valid purpose for “holding” a defendant for forty-eight hours when it is evident that a judge will not be available, such as with Friday evening arrests. That question should be raised with the trial court rather than with the magistrate. A magistrate may not “rule” on the constitutionality of G.S. 15A-534.1 by choosing to not comply with it. Until a higher court rules otherwise, a magistrate’s authority does not take effect until a defendant has been in custody for more than forty-eight hours without pretrial release conditions having been set by a judge.

***Can a magistrate preset conditions to take effect in forty-eight hours if it is clear that a judge will not be available within forty-eight hours?***

Probably not. In some cases, statutes allow magistrates to preset conditions for a delayed release. For example, in cases involving impaired driving, if a magistrate has determined by clear and convincing evidence that a defendant is so impaired as to present a danger to themselves or others were they to be released, the magistrate is authorized to set pretrial release conditions and order the defendant into custody, for up to twenty-four hours, until they are no longer impaired to a dangerous extent.<sup>34</sup> In cases involving communicable diseases, if a magistrate finds probable cause that an individual was exposed to a person in a nonsexual manner that poses a significant risk of transmission of AIDS or Hepatitis B, the magistrate is authorized to set pretrial release conditions and order the person into temporary custody for up to twenty-four hours for testing.<sup>35</sup>

Under the domestic violence statutes, there are no circumstances described in the statute under which a magistrate may preset conditions and delay release in domestic violence cases. The fact that no such circumstances were expressed in the law might signify that it was not the General Assembly’s intent to allow magistrates to take such actions.

***Can a magistrate set conditions of confinement, rather than conditions of release, to take effect immediately?***

Probably. This approach finds some support in *State v. Mitchell*.<sup>36</sup> In *Mitchell*, the court determined that a condition of no contact with the victim, imposed by a magistrate at the start of the forty-eight-hour period and twice readopted by a judge, was binding on the defendant even though the defendant remained in jail.<sup>37</sup> The court concluded that the defendant’s violation of the no-contact conditions in the judge’s orders could be used to support a later charge of felony stalking while a court order is in effect.

The trial judge imposed the no-contact condition on the “Conditions of Release and Release Order” form,<sup>38</sup> despite what the title suggests. In addition to establishing conditions of release, the orders issued in *Mitchell* committed the defendant to a detention facility; noted that he was subject to a domestic violence hold; directed when he was to again be produced before a judicial official; and, for one of the orders, required that he provide fingerprints.

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34. G.S. 15A-534.2 (detention of impaired drivers).

35. G.S. 15A-534.3 (detention for communicable diseases).

36. 259 N.C. App. 866 (2018).

37. For further analysis, see Shea Denning, [Does a No Contact Order Apply While the Defendant Is in Jail?](#), N.C. CRIM. L.: A UNC SCH. OF GOV’T BLOG (June 6, 2018).

38. N.C. Administrative Office of the Courts (AOC), form AOC-CR-200, [Conditions Of Release And Release Order](#).

The court noted that such orders “memorialize[] the trial court’s determinations governing the defendant, whether the defendant is held in a detention facility or released.”<sup>39</sup> The court explained that some of the terms of such an order apply whether a defendant is committed or released, while others apply only in one circumstance or another. The court stated that the directive in *Mitchell* ordering that the defendant have no contact with the victim contained no language indicating that the provision applied only upon the defendant’s release. Thus, the court concluded, contact with the victim was barred as long as the orders were in effect, and the orders were in effect until the charges were disposed of, whether the defendant remained confined in jail or was released.<sup>40</sup>

It is important to note that the orders specifically at issue in *Mitchell* were issued by a judge, so *Mitchell* is clear on the point that judges have the authority to set conditions of confinement to take effect immediately. However, given that a magistrate is required to complete the “Conditions of Release and Release Order” form to commit a defendant to a detention facility,<sup>41</sup> and the magistrate in *Mitchell* initially entered a no-contact order on that form, it is reasonable to assume that such conditions are effective immediately and remain in effect until amended or adopted by a judge. The alternative interpretation—that a defendant is not bound by conditions of confinement set by a magistrate—would allow conduct such as contact with the victim to go unrestricted, which could exacerbate the circumstances under which a defendant was arrested in the first place.

## Matters for Judicial Officials (Judges and Magistrates) to Consider

### *Is there anything a judicial official is obligated to consider in setting pretrial release conditions in domestic violence cases?*

Yes. In determining which conditions of release to impose, a judicial official must consider the same factors as in other cases. The judicial official must consider

- the nature and circumstances of the offense charged;
- the weight of the evidence against the defendant;
- the defendant’s family ties, employment, financial resources, character, and mental condition;
- whether the defendant is intoxicated to such a degree that he or she would be endangered by being released without supervision;
- the length of the defendant’s residence in the community;
- the defendant’s history of flight to avoid prosecution or failure to appear at court proceedings; and
- any other evidence relevant to the issue of pretrial release.<sup>42</sup>

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39. *Mitchell*, 259 N.C. App. at 873.

40. For more on the court’s ruling and analysis, see the blog post cited *supra* note 37.

41. G.S. 15A-521(a) (commitment to a detention facility pending trial); 15A-511(e) (commitment or bail).

42. G.S. 15A-534(c).

The judicial official must also (1) direct a law enforcement officer or a district attorney to provide a criminal history report for the defendant and (2) consider the defendant's criminal history when setting conditions of release. However, the judicial official may not unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the defendant's criminal history report.<sup>43</sup>

***What conditions of pretrial release may a judicial official impose in a domestic violence case?***

In addition to the conditions of release that may be imposed in other cases, a judicial official may impose the following conditions on pretrial release in domestic violence cases:

- That the defendant stay away from the home, school, business, or place of employment of the alleged victim
- That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim
- That the defendant refrain from removing, damaging, or injuring specifically identified property
- That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge
- That the defendant abstain from alcohol consumption, as verified by the use of a continuous alcohol monitoring system, and that any violation of this condition be reported by the monitoring provider to the district attorney.<sup>44</sup>

***Should a judicial official set pretrial release conditions for an out-of-county defendant who is subject to the 48-hour rule?***

Yes. Being arrested on an out-of-county charge is not a basis for denying or delaying the setting of pretrial release conditions. In out-of-county arrests for non-domestic violence offenses, a magistrate must conduct the initial appearance as usual, regardless of where the offense occurred. There is no authority to order that the person arrested be held for pick up by the charging county. Similarly, for domestic violence offenses, an out-of-county defendant must be taken before a judge in the custodial county at the earliest reasonable opportunity within forty-eight hours after arrest. After forty-eight hours, a magistrate in the custodial county must act.

If an out-of-county defendant satisfies pretrial conditions and is released, he or she then appears in court in the charging county on the court date provided to him or her. If an out-of-county defendant is unable to satisfy conditions of release, the involved counties must coordinate the transportation of the defendant, since the first appearance must be held in the county where the charges are pending.<sup>45</sup>

***Does a judge have authority to set pretrial release conditions for an out-of-county defendant?***

Yes. There may be concern about whether district court judges have the authority to set pretrial release conditions in domestic violence cases because ordinarily, district court judges have venue only over offenses alleged to occur within their counties.<sup>46</sup> However, venue rules do

43. G.S. 15A-534.1(a).

44. G.S. 15A-534.1(a)(2).

45. G.S. 15A-601(a) (first appearances).

46. G.S. 15A-131(a); *see also* G.S. 15A-131(b) (venue for pretrial proceedings in cases within the original jurisdiction of the superior court lies in the superior court district or set of districts embracing the county where venue for trial lies).

not apply to initial appearances and therefore do not prohibit a judge from acting under these circumstances.<sup>47</sup> In setting pretrial release conditions in a case subject to the 48-hour law, a judge is essentially stepping into the shoes of a magistrate and completing the initial appearance. A magistrate has venue to hold an initial appearance anywhere in North Carolina.<sup>48</sup> This facilitates holding prompt initial appearances after arrest. Judges are authorized in general to hold initial appearances<sup>49</sup> and are required to handle the pretrial release component in domestic violence cases during the first forty-eight hours after arrest.<sup>50</sup>

## IV. Violations and Their Impact

### The Holding in *State v. Thompson*

#### ***What happens when the special pretrial release rules are not followed in domestic violence cases?***

G.S. 15A-534.1 does not give a judicial official unfettered authority to hold a defendant for forty-eight hours after arrest. The defendant must be brought before a judge at the earliest reasonable opportunity.<sup>51</sup> A violation of procedural due process occurs when a defendant is held without conditions of pretrial release and a judge was available to set them.<sup>52</sup> If a judge has not acted within forty-eight hours of arrest, then a magistrate must set the conditions of pretrial release. A defendant also has a claim for violation of procedural due process rights when no judge was available to set conditions of pretrial release and the defendant was held for more than forty-eight hours rather than brought back before a magistrate. The remedy for a violation under either scenario is dismissal.

#### ***What was the holding in State v. Thompson?***

The defendant in *Thompson* was arrested and charged with second-degree trespass, assault on a female, and assault inflicting serious injury, the latter being the offense that subjected him to the 48-hour rule under G.S. 15A-534.1. The defendant was arrested on a Saturday at 3:45 p.m. and was not brought before a judge until Monday at 3:45 p.m., even though judges were available to set pretrial release conditions as of 9:00 a.m. on Monday. The *Thompson* court held that “[t]he failure to provide defendant with a bond hearing before a judge at the first opportunity on Monday morning, and the continued detention of defendant well into the afternoon, was unnecessary, unreasonable, and thus constitutionally impermissible.”<sup>53</sup>

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47. See G.S. 15A-131(f) (“pretrial proceedings are proceedings occurring *after* the initial appearance”) (emphasis added).

48. See G.S. 7A-273(7) (any magistrate may hold an initial appearance).

49. G.S. 15A-511(f) (initial appearance powers not limited to magistrate).

50. G.S. 15A-534.1 (crimes of domestic violence).

51. *State v. Thompson*, 349 N.C. 483 (1998).

52. *Id.*

53. *Id.* at 500.

### ***What was the basis of the Thompson court's holding?***

The court noted the State's legitimate interest in providing that a legally trained judge must perform individualized determinations of bail and set conditions of release in domestic violence cases. In finding a due process violation, the *Thompson* court cited G.S. 15A-954, which authorizes dismissal for constitutional violations, among other grounds. The court found dismissal warranted in that "[t]he constitutional violation deprived defendant of liberty unreasonably, well beyond any time period necessary to serve any governmental interest in detaining him without a hearing for regulatory purposes."

### ***What does it mean for a defendant to have a "timely" pretrial release hearing?***

During the first forty-eight hours after arrest, a defendant must be brought before a judge at the earliest reasonable opportunity. In some counties, this may include a court session that is already in progress. The question of whether a defendant's procedural due process rights have been violated by a delay will generally hinge on (1) when a judge became available to set conditions of pretrial release and (2) how long after that point the defendant was held without conditions.

Where the delay is short and attributable to the normal pattern of scheduling in the county, the defendant is less likely to prevail on a *Thompson* claim. In *State v. Jenkins*,<sup>54</sup> the defendant was arrested at 6:15 a.m. on Friday and received a hearing before a judge at approximately 1:30 p.m. the same day. While the district court convened at 9:30 a.m. on Friday mornings, the afternoon session was typically devoted to bond hearings. The court of appeals found that no violation of the defendant's constitutional rights occurred even though he was not brought before a judge at the first opportunity in the morning. The court held that "[a]lthough defendant was detained for approximately seven hours, we find his bond hearing occurred in a reasonably feasible time and promoted the efficient administration of the court system."

The point remains that a defendant must be seen at the earliest reasonable opportunity, but that standard is likely met when defendants are held for court sessions that are specifically dedicated to first appearances or general criminal court, provided that those sessions are scheduled for that afternoon, as in *Jenkins*, or for the next morning.

### ***How does the Thompson remedy differ from the remedies for other types of delays?***

The remedy afforded by *Thompson* is an unusual one. Courts have provided a similar remedy in the impaired driving context but in few others. In impaired driving cases, violation of pretrial release procedures may interfere with a defendant's ability to obtain evidence for his or her defense and therefore warrant dismissal. The remedy for a violation in this context—called a *Knoll* violation based on the North Carolina Supreme Court decision on the issue, *State v. Knoll*<sup>55</sup>—is generally dismissal because the violation deprives the defendant of the opportunity to obtain a range of evidence.

Outside of the domestic violence and impaired driving contexts, the courts have been reluctant to order dismissal for delays in setting pretrial release conditions. In *State v. Pruitt*,<sup>56</sup> the defendant was incarcerated for twenty-nine days before being granted a first appearance before a judge. During that time, the defendant was questioned by police on two occasions without an attorney. Although the court expressed its disapproval of the failure to hold a first

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54. 137 N.C. App. 367 (2000).

55. 322 N.C. 535 (1988).

56. 42 N.C. App. 240 (1979).

appearance for the defendant, it found no prejudice affecting the validity of his trial, noting that the defendant had been fully advised of his constitutional rights and had intelligently and voluntarily waived his right to the presence of counsel.

Violation of a defendant's pretrial release in other contexts may provide a basis for dismissal or other remedies if the defendant can show prejudice (as in *Knoll*), a violation of due process (as in *Thompson*), or a violation of other statutory or constitutional requirements.

## Other Potential *Thompson* Issues

### ***Is the dismissal of the charges on a Thompson motion with prejudice or without prejudice?***

With prejudice. The *Thompson* court found a constitutional violation in the unlawful hold and cited G.S. 15A-954 as the basis of the dismissal of the charges against the defendant.<sup>57</sup> Dismissal for a constitutional violation suggests that it necessarily carries some finality. Quite a few of the other violations listed in G.S. 15A-954, both constitutional and statutory, are typically dismissed with prejudice (e.g., statute of limitations has run, violation of right to speedy trial, double jeopardy).<sup>58</sup> The *Thompson* court's citation to G.S. 15A-954 suggests that dismissals under *Thompson* should carry the same kind of remedy.

### ***If a defendant is arrested on both domestic violence and non-domestic violence charges and there is a Thompson violation, should only the domestic violence charge(s) be dismissed?***

If a defendant is simultaneously arrested for both domestic violence and non-domestic violence offenses, the 48-hour rule would still be triggered for the domestic violence offense, and the defendant would have to be brought before a judge at the earliest reasonable opportunity. It is unclear whether, on violation, all charges on which the defendant was arrested would be subject to dismissal with prejudice, as opposed to only the domestic violence charges.

The defendant in *Thompson* was arrested and charged with three misdemeanor offenses: assault inflicting serious injury, assault on a female, and second-degree trespass. The charge of misdemeanor assault inflicting serious injury was the only domestic violence charge, as the other two offenses were committed against a person with whom the defendant did not have a qualifying relationship. All three charges were dismissed due to the violation of the 48-hour rule under 15A-534.1(b), although only one charge triggered the provision.

While dismissal of all charges was the result in *Thompson*, the court did not expressly consider the alternative of dismissing only the domestic violence charge, so the case may not settle the issue. Dismissal of charges with prejudice is a drastic remedy, and one our courts may be unwilling to extend to cases in which a defendant was simultaneously charged with more serious, non-domestic violence offenses.

### ***If a charge is dismissed for a Thompson violation, can different charges be brought based on the same conduct?***

Maybe. In *State v. Clegg*,<sup>59</sup> the defendant was taken into custody around 7:00 p.m. on Saturday, February 28, for a charge of assault on a female. He received a hearing before a judge sometime after 2:00 p.m. on Monday, March 2, although several sessions of court had convened that morning. After receiving information that the victim's injuries were more serious than initially

57. *State v. Thompson*, 349 N.C. 483, 503 (1998).

58. See G.S. 15A-954.

59. 142 N.C. App. 35 (2001).

believed, the State dismissed the assault on a female charge on March 25 and charged the defendant with assault with a deadly weapon inflicting serious injury. Once *Thompson* was decided later that year, the North Carolina Court of Appeals applied its ruling retroactively and held that the defendant was unconstitutionally detained in connection with the original assault on a female charge. The court further held, however, that the defendant was not detained on the superseding felony assault charge and that, to obtain dismissal, he had to show that the detention on the misdemeanor prejudiced his defense of the felony charge.

The court found no prejudice but suggested that it would have reached a different result had the State dismissed the misdemeanor charge and refiled different charges in an effort to avoid the consequences of the earlier unconstitutional detention. This suggests that if there is a *Thompson* violation, the State cannot dismiss and refile the charge before the court rules on the violation. It also suggests that the State can file different charges in some circumstances if the purpose is not to evade the *Thompson* violation.

# Tab: Handling Money



# BASIC SCHOOL FOR MAGISTRATES

RECEIPTING AND HANDLING FUNDS

SUMMER 2024

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## OBJECTIVES

- Safeguarding Funds
- Receipt Books and Receipts
- Collecting Payments
- Submitting Funds to the Clerk
- IRS Form 8300
- Resources



# SAFEGUARDING FUNDS

Magistrates *are personally responsible* for the funds they receipt until both

1. The funds are transferred to the Clerk of Superior Court (CSC) office
- AND**
2. The receipt(s) from the CSC office are in-hand to document the transfer(s)

Funds collected by magistrates should never ever be “comingled” with personal funds. Such action is reportable to the State Bureau of Investigation (SBI) and subject to an audit finding.



# SAFEGUARDING FUNDS

Money collected (collections) must be accounted for at all times.

Collections are subject to review by:

- NC State Auditors
- NCAOC Internal Auditors – Audit schedule emailed by NCJC Internal Audit
- NCAOC Financial Management Analysts
- Clerks of Superior Court



## SAFEGUARDING FUNDS

- Recommended Cash Holding Locations:
  - Locking bank bag
  - Locking cash box
  - Safe
  - Locking file cabinet
  - Locking desk drawer



## RECEIPT BOOKS

- The CSC issues receipt books to magistrates, which must be documented in the CSC Manual Receipt Book Log, [AOC-FS-3700](#).
- Magistrates are required to sign the receipt book log to document all issued receipt books.
- Magistrates should have no more than two receipt books at any given time.
- Once all receipts in a receipt book have been used, the book should be returned to the CSC's office and signed-in to the magistrate receipt book log.
- If a receipt book is lost, the CSC should be notified immediately.

(Note: steps that should be taken for a lost receipt book are detailed in the Financial Procedures Manual on Juno)



# RECEIPT BOOKS

- Only write receipts from a receipt book issued to you - Do not share receipt books.
- Never remove the yellow audit copy.
- Keep receipt books in a secure location at all times.
  - Receipts can be negotiated as payment tendered or “cash.”
- Each receipt book must be completely used before beginning a new one.



# MANUAL RECEIPTS

- Each receipt consists of an original and three copies.
- The copies are distributed as follows:

|                     |                                   |
|---------------------|-----------------------------------|
| Original (white)    | CSC Cashier/Bookkeeping           |
| Payor copy (green)  | Given to payor                    |
| CSC copy (pink)     | Placed in case file at CSC office |
| Audit copy (yellow) | Always stays in receipt book      |



## MANUAL RECEIPTS

- Complete receipts in numerical order– Never skip receipts.
- Make receipts legible for cashiers.
- Immediately notify CSC office of any ‘lost’ receipts.
- NEVER throw away a receipt or any part of a receipt, even if voided.



## MANUAL RECEIPTS

- Complete all relevant information on the receipt, including:
  - Date
  - County
  - Name
  - File number
  - Address when applicable
  - Received of/by
  - Amounts in the correct accounts



# MANUAL RECEIPTS – CURRENT FORM

**CSC/Magistrate Receipt** Total Received \_\_\_\_\_ Receipt # **I -**

Date \_\_\_\_\_ County \_\_\_\_\_

For County \_\_\_\_\_ Cash  Check  MO

File # \_\_\_\_\_ For \_\_\_\_\_

Received of \_\_\_\_\_ Received by \_\_\_\_\_

| <u>Criminal Cost</u>          | Amount | <u>Magistrates</u>                        | Amount | <u>Estate/Special Proceeding</u> | Amount |
|-------------------------------|--------|---|--------|----------------------------------|--------|
| IFC                           | _____  | CRMC                                      | _____  | ESTC                             | _____  |
| IFDA                          | _____  | CTWM                                      | _____  | Other Estate Cost                | 21140  |
| IFTA                          | _____  | IFMC                                      | _____  | Trust                            | 26310  |
| IFTC                          | _____  | IFWM                                      | _____  | SPSC                             | _____  |
| CRDC                          | _____  | MMVM                                      | _____  | Foreclosure                      | 21445  |
| CRTC                          | _____  | SBM                                       | _____  | Surplus Funds                    | 26600  |
| CRDA                          | _____  | Marriage                                  | 21330  | Widows Allowance                 | 21140  |
| CRTA                          | _____  | <b>FOR ALL MAGISTRATE COSTS INDICATE:</b> |        | Upset Bid                        | 26700  |
| CRDS                          | _____  | OFFICER                                   | _____  | <u>Civil Cost</u>                | _____  |
| CRSC                          | _____  | FACILITY                                  | _____  | CVMC                             | _____  |
| MMV                           | _____  | (if municipal facility)                   | _____  | CDDC                             | _____  |
| SB                            | _____  | <u>Magistrates/Clerks</u>                 | _____  | CVDC                             | _____  |
| <b>FOR ALL CRIMINAL COSTS</b> |        | Cash Bond                                 | 26210  | CVSC                             | _____  |
| <b>INDICATE:</b>              |        | Cash Bond-Other Cnty                      | 292XX  | CVBC                             | _____  |
| OFFICER                       | _____  | Purge Pymt                                | 26410  | Judgment                         | 26115  |
| FACILITY                      | _____  | Purge Pymt-Other Cnty                     | 298XX  | Rent Bond                        | 26220  |
| (if municipal facility)       | _____  | Partial Pay                               | 20100  | Alimony                          | 26420  |
| <u>Miscellaneous Receipts</u> |        | Restitution                               | 26110  | Civil Officer Fee                | 22515  |
| AAF                           | _____  | Fines                                     | 22700  | Child Support                    | 26410  |
| BC                            | _____  | Jail Fees                                 | 22600  | <u>Other</u>                     | _____  |
| OSA                           | _____  | Other Officer Fees                        | _____  | Other-                           | _____  |
| Copies                        | _____  | FTA Fee                                   | 21211  | Other-                           | _____  |
| Record Check                  | _____  | FTC Fee                                   | 21213  | Other-                           | _____  |
| Civil Revocation              | _____  | EXP Community Svc                         | 24202  | Other-                           | _____  |
| Bad Ck Restitution            | _____  | Other-                                    | _____  | Other-                           | _____  |



# MANUAL RECEIPTS – HOW TO VOID

- Unused or partially completed receipts must be voided.
- To void a receipt:
  - Write 'VOID' largely across all four copies of the receipt.
  - Leave the green, pink, and yellow copies in the book. If one has already been removed, staple it back to the copies that remain in the book.
  - Staple the white copy to the Magistrate Off-Site Daily Cash Report.



# COLLECTING PAYMENTS

- Acceptable forms of payment:
  - US currency (cash)
  - Money Orders
  - Certified checks
  - Traveler's checks



# COLLECTING PAYMENTS

Tips for collecting money:

- Always count funds more than once.
- Don't let customer impatience distract you.
- Use a counterfeit detection pen to test all bills of \$10 or more.
- Do not put cash away until transaction is complete and payor is satisfied with change received



## COLLECTING PAYMENTS – CASH BONDS

### If the payor is the defendant:

- The 'Received of' line should include:
  - Defendant's name
- The 'For' line should include:
  - Defendant's address

### If the payor is anyone other than the defendant:

- The 'Received of' line should include:
  - Payor's name
  - Payor's address
- The 'For' line should include:
  - Defendant's name



## COLLECTING PAYMENTS – CASH BONDS

### ● Important Notes:

- Cash bonds will be refunded to the defendant or surety as indicated on the Appearance Bond for Pretrial Release form ([AOC-CR-201](#)), ***irrespective of who the manual receipt is issued to.***
- For the bond to be refunded to a surety, the surety must sign the Appearance Bond for Pretrial Release form ([AOC-CR-201](#)).



# COLLECTING PAYMENTS – APPEARANCE BOND FORM CASH DEPOSITED BY DEFENDANT:

|  |                                    |  |   |
|--|------------------------------------|--|---|
| <b>STATE OF NORTH CAROLINA</b>   |                                    | File No.<br>10CR 101   |  |
| YOUR County  |                                    | In The General Court Of Justice<br><input checked="" type="checkbox"/> District <input type="checkbox"/> Superior Court Division |   |
| Name And Mailing Address Of Defendant<br>TEW MANNY BILLS<br>101 MAIN ST<br>RALEIGH, NC 27602   |                                    | <b>APPEARANCE BOND<br/>FOR<br/>PRETRIAL RELEASE</b>  |   |
| Telephone No. Of Defendant   |                                    |  |   |
| Total Bond Required<br>\$ 1,000.00   | Amount Of This Bond<br>\$ 1,000.00 | #  | G.S. 15A-531, 15A-534, 15A-544.2  |
| Offenses And Additional File Numbers   |                                    |  |   |
| <input type="checkbox"/> See Attachment  |                                    |  |   |
| <input type="checkbox"/> <b>Unsecured Appearance Bond</b> - 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.<br><input checked="" type="checkbox"/> <b>Cash Appearance Bond By Defendant (See note on reverse side.)</b> - 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.<br><input type="checkbox"/> <b>Defendant's Property Appearance Bond</b> - 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.<br><input type="checkbox"/> <b>Surety Appearance Bond</b> - We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side. Any undersigned professional bondsman, bail agent, or runner attests that the AFFIDAVIT on the reverse side is complete and true. If a cash deposit is indicated below, surety(ies) has deposited the cash to secure the obligation as surety(ies) on this bond with the understanding that the deposit will be returned to the surety(ies) upon termination of that obligation as provided by law, and that it will NOT be available to satisfy defendant's obligations. (For cash bond, see note on reverse side.) |                                    |  |   |
| Date Of Execution Of Bond  | Signature Of Defendant             |  |   |
| <b>ACCOMMODATION BONDSMAN</b>  |                                    |  |   |



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# COLLECTING PAYMENTS – APPEARANCE BOND FORM CASH DEPOSITED BY DEFENDANT:

## 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.

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# COLLECTING PAYMENTS – MANUAL RECEIPT

## CASH DEPOSITED BY DEFENDANT:

**CSC/Magistrate Receipt** Total Received 1,000.<sup>00</sup> Receipt # 1 -

Date 3-10-14 County YOUP

For County \_\_\_\_\_ Cash  Check  MO

File # 10CR 1001 For Ted Manny Bilk 321 Main St Raleigh, NC 27602

Received of Ted Manny Bilk Received by C. Mueller

| Criminal Cost                 | Amount | Magistrates                               | Amount | Estate/Special Proceeding | Amount |
|-------------------------------|--------|---|--------|---------------------------|--------|
| IFC                           |        | CRMC                                      |        | ESTC                      |        |
| IFDA                          |        | CTWM                                      |        | Other Estate Cost         | 21140  |
| IFTA                          |        | IFMC                                      |        | Trust                     | 28310  |
| IFTC                          |        | IFWM                                      |        | SPSC                      |        |
| CRDC                          |        | MMVM                                      |        | Foreclosure               | 21445  |
| CRTC                          |        | SBM                                       |        | Surplus Funds             | 28600  |
| CRDA                          |        | Marriage                                  | 21330  | Widows Allowance          | 21140  |
| CRTA                          |        | <b>FOR ALL MAGISTRATE COSTS INDICATE:</b> |        | Upset Bid                 | 26700  |
| CRDS                          |        | OFFICER                                   |        | <b>Civil Cost</b>         |        |
| CRSC                          |        | FACILITY                                  |        | CVMC                      |        |
| MMV                           |        | (If municipal facility)                   |        | CDDC                      |        |
| SB                            |        | <b>Magistrates/Clerks</b>                 |        | CVDC                      |        |
| <b>FOR ALL CRIMINAL COSTS</b> |        | Cash Bond                                 | 26210  | CVSC                      |        |
| <b>INDICATE:</b>              |        | Cash Bond-Other Cnty                      | 292XX  | CVBC                      |        |
| OFFICER                       |        | Purge Pymt                                | 26410  | Judgment                  | 28115  |
| FACILITY                      |        | Purge Pymt-Other Cnty                     | 298XX  | Rent Bond                 | 28220  |
| (If municipal facility)       |        | Partial Pay                               | 20100  | Alimony                   | 28420  |
| <b>Miscellaneous Receipts</b> |        | Restitution                               | 28110  | Civil Officer Fee         | 22515  |
| AAF                           |        | Fines                                     | 22700  | Child Support             | 28410  |
| BC                            |        | Jail Fees                                 | 22600  | <b>Other</b>              |        |
| OSA                           |        | Other Officer Fees                        |        | Other-                    |        |
| Copies                        |        | FTA Fee                                   | 21211  | Other-                    |        |
| Record Check                  |        | FTO Fee                                   | 21213  | Other-                    |        |
| Civil Revocation              |        | EXP Community Svc                         | 24202  | Other-                    |        |
| Bad Ck Restitution            |        | Other-                                    |        | Other-                    |        |

AOC-CR REV. 1/14



# COLLECTING PAYMENTS – APPEARANCE BOND FORM

## CASH DEPOSITED BY SURETY:

STATE OF NORTH CAROLINA

YOUR \_\_\_\_\_ County

File No. 10CR 101

In The General Court Of Justice  
 District  Superior Court Division

Name And Mailing Address Of Defendant  
**HUGH BADMAN**  
 101 MAIN ST  
 RALEIGH, NC 27602

Telephone No. Of Defendant \_\_\_\_\_

**APPEARANCE BOND FOR PRETRIAL RELEASE**

Total Bond Required \$ 1,000.00 Amount Of This Bond \$ 1,000.00 # \_\_\_\_\_ G.S. 15A-531, 15A-534, 15A-544.2

Offenses And Additional File Numbers \_\_\_\_\_

See Attachment

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 note on reverse side.) - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, and hereby deposit the cash identified below as security with the understanding that the deposit will be returned upon the Court's determination that the conditions of release have been performed, subject to the conditions of this Bond stated on the reverse side, and that it will be available to satisfy my obligations.

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 note on reverse side.)

Date Of Execution Of Bond \_\_\_\_\_ Signature Of Defendant \_\_\_\_\_

**ACCOMMODATION BONDSMAN**

See attached AOC-CR-201A for additional accommodation bondsmen executing this bond.

Name And Address Of Accommodation Bondsman  
**RAISA BADMAN**  
 300 SOUTH ST  
 RALEIGH, NC 27603

Name And Address Of Accommodation Bondsman \_\_\_\_\_



# COLLECTING PAYMENTS – APPEARANCE BOND FORM

## CASH DEPOSITED BY SURETY:

**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.

AOC-CR-201, Side Two, Rev. 2/21  
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# COLLECTING PAYMENTS – MANUAL RECEIPT

## CASH DEPOSITED BY SURETY:

**CSC/Magistrate Receipt** Total Received 1,000.00 Receipt # 1 -

Date 3-10-14 County Yours Cash  Check  MO

For County \_\_\_\_\_ Cash \_\_\_\_\_ Check \_\_\_\_\_ MO \_\_\_\_\_

File # 10 CR 101 For Hugh Badman

Received of Paolo Badman 300 South St. Raleigh, NC 27603 Received by G. Mullin

| Criminal Cost                 | Amount | Magistrates                        | Amount | Estate/Special Proceeding | Amount |
|-------------------------------|--------|------------------------------------|--------|---------------------------|--------|
| IFC                           | _____  | CRMC                               | _____  | ESTC                      | _____  |
| IFDA                          | _____  | CTWM                               | _____  | Other Estate Cost         | 21140  |
| IFTA                          | _____  | IFMC                               | _____  | Trust                     | 26310  |
| IFTC                          | _____  | IFWM                               | _____  | SPSC                      | _____  |
| CRDC                          | _____  | MMVM                               | _____  | Foreclosure               | 21445  |
| CRTC                          | _____  | SBM                                | _____  | Surplus Funds             | 26600  |
| CRDA                          | _____  | Marriage                           | 21330  | Widows Allowance          | 21140  |
| CRTA                          | _____  | FOR ALL MAGISTRATE COSTS INDICATE: | _____  | Upset Bid                 | 26700  |
| CRDS                          | _____  | OFFICER                            | _____  | <b>Civil Cost</b>         | _____  |
| CRSC                          | _____  | FACILITY                           | _____  | CVMC                      | _____  |
| MMV                           | _____  | (If municipal facility)            | _____  | CDDC                      | _____  |
| SB                            | _____  | <b>Magistrates/Clerks</b>          | _____  | CVDC                      | _____  |
| FOR ALL CRIMINAL COSTS        | _____  | Cash Bond                          | 26210  | CVSC                      | _____  |
| INDICATE:                     | _____  | Cash Bond-Other Cnty               | 292XX  | CVBC                      | _____  |
| OFFICER                       | _____  | Purge Pymt                         | 26410  | Judgment                  | 26115  |
| FACILITY                      | _____  | Purge Pymt-Other Only              | 298XX  | Rent Bond                 | 26220  |
| (If municipal facility)       | _____  | Partial Pay                        | 20100  | Alimony                   | 26420  |
| <b>Miscellaneous Receipts</b> | _____  | Restitution                        | 26110  | Civil Officer Fee         | 22515  |
| AAF                           | _____  | Fines                              | 22700  | Child Support             | 26410  |
| BC                            | _____  | Jail Fees                          | 22600  | <b>Other</b>              | _____  |
| OSA                           | _____  | Other Officer Fees                 | _____  | Other                     | _____  |
| Copies                        | _____  | FTA Fee                            | 21211  | Other                     | _____  |
| Record Check                  | _____  | FTC Fee                            | 21213  | Other                     | _____  |
| Civil Revocation              | _____  | EXP Community Svc                  | 24202  | Other                     | _____  |
| Bad CK Restitution            | _____  | Other                              | _____  | Other                     | _____  |

AOC-CR-201 REV. 9/14



# COLLECTING PAYMENTS – APPEARANCE BOND FORM

## OTHER COUNTY/CASH DEPOSITED BY DEFENDANT:

**STATE OF NORTH CAROLINA** File No. 10CR 301

ANOTHER County In The General Court Of Justice  
 District  Superior Court Division

Name And Mailing Address Of Defendant  
 HUGH BADMAN  
 100 MAIN ST  
 RALEIGH, NC

Telephone No. Of Defendant

**APPEARANCE BOND FOR PRETRIAL RELEASE**

Total Bond Required \$ 1,000.00 Amount Of This Bond \$ 1,000.00 # G.S. 15A-531, 15A-534, 15A-544.2

Offenses And Additional File Numbers

Offense:2  See Attachment

- 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 note on reverse side.)** - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, and hereby deposit the cash identified below as security with the understanding that the deposit will be returned upon the Court's determination that the conditions of release have been performed, subject to the conditions of this Bond stated on the reverse side, and that it will be available to satisfy my obligations.
- 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



# COLLECTING PAYMENTS – MANUAL RECEIPT

## OTHER COUNTY/CASH DEPOSITED BY DEFENDANT:

**CSC/Magistrate Receipt** Total Received 1,000 Receipt # 1 -

Date 3-10-14 County Wake Cash  Check  MO

For County Durham File # 10CR 000301 For Hugh Badman 100 Main St. Raleigh, Nc. 27602

Received of Hugh Badman Received by Cyrmullen

| Criminal Cost                    | Amount | Magistrates                        | Amount | Estate/Special Proceeding | Amount |
|----------------------------------|--------|------------------------------------|--------|---------------------------|--------|
| IFC                              |        | CRMC                               |        | ESTC                      |        |
| IFDA                             |        | CTWM                               |        | Other Estate Cost         | 21140  |
| IFTA                             |        | IFMC                               |        | Trust                     | 26310  |
| IFTC                             |        | IFWM                               |        | SPSC                      |        |
| CRDC                             |        | MMVM                               |        | Foreclosure               | 21445  |
| CRTC                             |        | SBM                                |        | Surplus Funds             | 26600  |
| CRDA                             |        | Marriage                           | 21330  | Widows Allowance          | 21140  |
| CRTA                             |        | FOR ALL MAGISTRATE COSTS INDICATE: |        | Upset Bid                 | 26700  |
| CRDS                             |        | OFFICER FACILITY                   |        | <b>Civil Cost</b>         |        |
| CRSC                             |        | (If municipal facility)            |        | CVMC                      |        |
| MMV                              |        | <b>Magistrates/Clerks</b>          |        | CDDC                      |        |
| SB                               |        | Cash Bond                          | 28210  | CVDC                      |        |
| FOR ALL CRIMINAL COSTS INDICATE: |        | Cash Bond-Other Cnty               | 292XX  | CVSC                      |        |
| OFFICER FACILITY                 |        | Purge Pymt                         | 26410  | CVBC                      |        |
| (If municipal facility)          |        | Purge Pymt-Other Cnty              | 298XX  | Judgment                  | 26115  |
| <b>Miscellaneous Receipts</b>    |        | Partial Pay                        | 20100  | Rent Bond                 | 26220  |
| AAF                              |        | Restitution                        | 28110  | Alimony                   | 26420  |
| BC                               |        | Fines                              | 22700  | Civil Officer Fee         | 22515  |
| OSA                              |        | Jail Fees                          | 22600  | Child Support             | 26410  |
| Copies                           |        | Other Officer Fees                 |        | <b>Other</b>              |        |
| Record Check                     |        | FTA Fee                            | 21211  | Other                     |        |
| Civil Revocation                 |        | FTC Fee                            | 21213  | Other                     |        |
| Bad Ck Restitution               |        | EXP Community Svc                  | 24202  | Other                     |        |
|                                  |        | Other                              |        | Other                     |        |

ADC-A3-REV. 8/14



## COLLECTING PAYMENTS - PURGE PAYMENTS

- A show cause is issued for a defendant/plaintiff who has failed to comply with a monetary obligation in a court order (e.g., payment of child support arrearages).
- At the hearing, a judge enters an adjudication of civil contempt and a commitment order, which specifies action the contemnor can take to “purge” the contempt and be released from the commitment. *E.g.*, for child support contempt, this is the Commitment Order of Civil Contempt of Child Support ([AOC-CV-603](#)) which establishes an amount needed to purge.



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## COLLECTING PAYMENTS - PURGE PAYMENTS

- The defendant/plaintiff may be released upon fulfilling the conditions of the civil contempt order (including receipting a purge payment).
- The case number should be listed on the ‘File #’ line, the amount receipted should be recorded on the Purge Payment line, and the total amount line of the manual receipt.
- A release order should not be prepared. The contempt order is the commitment order that authorizes the Sheriff to hold the contemnor and release the party when conditions have been met.



# COLLECTING PAYMENTS - PURGE PAYMENTS CIVIL CONTEMPT ORDER:

|  |               |  |
|--|---------------|--|
| <b>STATE OF NORTH CAROLINA</b>   |               | Court File No.<br>14CV 000111                                    |
| County   |               | IV-D Case No.  |
| In The General Court Of Justice<br>District Court Division   |               |  |
| Name Of Plaintiff<br>Jane Doe  | <b>VERSUS</b> | <b>COMMITMENT ORDER<br/>FOR CIVIL CONTEMPT<br/>CHILD SUPPORT</b> |
| Name Of Defendant<br>John Doe  |               |  |
| G.S. 5A-21   |               |  |
| This matter was heard before the undersigned Judge on an Order to Show Cause why the <input type="checkbox"/> defendant <input type="checkbox"/> plaintiff should not be held in civil contempt for failure to comply with a child support order previously entered by the Court. The Court finds that the <input checked="" type="checkbox"/> defendant <input type="checkbox"/> plaintiff has willfully failed and refused to comply with the order entered on _____ (date), and that the party has sufficient means and ability to comply or take reasonable measures to comply. The party is, therefore, found to be in civil contempt of this Court. (List additional findings, if applicable.) |               |  |
|  |               |  |
| It is ORDERED that the <input type="checkbox"/> defendant <input type="checkbox"/> plaintiff shall immediately be taken into custody by the sheriff of this county. The party shall remain in custody until he/she purges himself/herself of contempt by paying into the office of the Clerk of Superior Court of this county the sum indicated below, or by complying with other release conditions listed below. When these conditions have been met, the party shall be released.   |               |  |
| Amount Needed To Purge<br>\$ 300.00  |               |  |
| Other Release Conditions   |               |  |



# COLLECTING PAYMENTS - PURGE PAYMENTS MANUAL RECEIPT:

**CSC/Magistrate Receipt** Total Received \$300.00 Receipt # 1 -

Date \_\_\_\_\_ County Your Cash  Check  MO

For County \_\_\_\_\_ File # 18CR 50100 For Wile E Coyote

Received of \_\_\_\_\_ Received by \_\_\_\_\_

| <u>Criminal Cost</u>          | <u>Amount</u> | <u>Magistrates</u>                        | <u>Amount</u> | <u>Estate/Special Proceeding</u> | <u>Amount</u> |
|-------------------------------|---------------|---|---------------|----------------------------------|---------------|
| IFC                           | _____         | CRMC                                      | _____         | ESTC                             | _____         |
| IFDA                          | _____         | CTWM                                      | _____         | Other Estate Cost                | 21140         |
| IFTA                          | _____         | IFMC                                      | _____         | Trust                            | 26310         |
| IFTC                          | _____         | IFWM                                      | _____         | SPSC                             | _____         |
| CRDC                          | _____         | MMVM                                      | _____         | Foreclosure                      | 21445         |
| CRTC                          | _____         | SBM                                       | _____         | Surplus Funds                    | 26600         |
| CRDA                          | _____         | Marriage                                  | 21330         | Widows Allowance                 | 21140         |
| CRTA                          | _____         | <b>FOR ALL MAGISTRATE COSTS INDICATE:</b> |               | Upset Bid                        | 26700         |
| CRDS                          | _____         | OFFICER                                   | _____         | <u>Civil Cost</u>                | _____         |
| CRSC                          | _____         | FACILITY                                  | _____         | CVMC                             | _____         |
| MMV                           | _____         | (If municipal facility)                   | _____         | CDDC                             | _____         |
| SB                            | _____         | <u>Magistrates/Clerks</u>                 | _____         | CVDC                             | _____         |
| <b>FOR ALL CRIMINAL COSTS</b> |               | Cash Bond                                 | 26210         | CVSC                             | _____         |
| <b>INDICATE:</b>              |               | Cash Bond-Other Cnty                      | 292XX         | CVBC                             | _____         |
| OFFICER                       | _____         | Purge Pymt                                | 26410         | Judgment                         | 26115         |
| FACILITY                      | _____         | Purge Pymt-Other Cnty                     | 300.00        | Rent Bond                        | 26220         |
| (If municipal facility)       | _____         | Partial Pay                               | 20100         | Alimony                          | 26420         |
| <u>Miscellaneous Receipts</u> | _____         | Restitution                               | 26110         | Civil Officer Fee                | 22515         |
| AAF                           | _____         | Fines                                     | 22700         | Child Support                    | 26410         |
| BC                            | _____         | Jail Fees                                 | 22600         | <u>Other</u>                     | _____         |
| OSA                           | _____         | Other Officer Fees                        | _____         | Other-                           | _____         |
| Copies                        | _____         | FTA Fee                                   | 21211         | Other-                           | _____         |
| Record Check                  | _____         | FTC Fee                                   | 21213         | Other-                           | _____         |
| Civil Revocation              | _____         | EXP Community Svc                         | 24202         | Other-                           | _____         |
| Bad Ck Restitution            | _____         | Other-                                    | _____         | Other-                           | _____         |

AOC-A2 REV. 1/14



## COLLECTING PAYMENTS - CASH BOND VS PURGE

- What if the OFA (criminal process) states that defendant must make a purge payment (in the 'Other' section of the OFA)?
- Is there a civil contempt order specifying that same purge condition?
  - Yes – Receipt as purge payment
  - No – Treat the arrest the same as you would for service of an OFA in a criminal case. Set conditions of release on a Release Order ([AOC-CR-200](#)). If cash is posted to satisfy the monetary condition of release, process as a cash bond and complete the Appearance Bond for Pretrial Release ([AOC-CR-201](#))



## COLLECTING PAYMENTS – WAIVABLE OFFENSES

- A waivable offense can be receipted by a magistrate upon *full payment* of the monetary obligations.
- The defendant will sign the citation or form AOC-CR-202 stating he or she is pleading guilty/responsible for the charge.
- Use the most recent waiver lists and related codes in order to collect the correct amounts.
- The total amount of the costs can be listed by the related code receipt line on the manual receipt.



## COLLECTING PAYMENTS

- Items Requiring Special Attention
  - 20-day (FTA) or 40-day (FTC) fees
    - FTA – 21211 \$200.00
    - FTC – 21213 \$50.00
  - Officer Fees
    - Highway Patrol, Sheriff, DMV are all considered as ‘County’ Officers
    - City Officers have different receipt codes specific to each municipality
  - Facility Fees
    - County seat and other county owned facilities
    - Magistrate offices in a city owned facility have different receipt codes specific to each municipality



## COLLECTING PAYMENTS

- Multiple charges on a single citation (waiving)
  - Collect highest amount owed for costs
  - Collect highest amount owed for fines
- Court cost change
  - Collect new court costs if FTA is to be assessed (i.e. citation is still “waiverable”)
  - Collect old court costs if waiving before FTA attaches
  - Collect adjudicated amount if there is a judgment (i.e. if FTC has attached)

Note: Prior Court Costs Charts are located at <https://www.nccourts.gov/>  
> Help Topics > Fees and Payments > Prior Court Costs and Waiver Lists



# COLLECTING PAYMENTS – MAGISTRATE RELATED CODES

| MAGISTRATE COURT                           |      |  |          |
|--|------|--|----------|
| Magistrate Court Civil                     |      |  | \$96.00  |
| Magistrate Court Criminal Infractions      | IFMC |  | \$181.00 |
| Magistrate Court Criminal Infract - Chp 20 | IFWM |  | \$191.00 |
| Magistrate Court Criminal Misdemeanors     | CRMC |  | \$183.00 |
| Magistrate Court Criminal Misd - Chp 20    | CTWM |  | \$193.00 |
| Magistrate Court - Seat Belts              | SBM  |  | \$180.00 |
| Magistrate Court - Motorcycle/Moped        | MMVM |  | \$180.00 |

| Magistrate Court Infracton |        |                       |  |
|----------------------------|--------|-----------------------|--|
| 21310                      | 146.55 | MAG Criminal Fee Mag  |  |
| 21314                      | 0.95   | MAG LAA               |  |
| 21700                      | 7.50   | LEOB                  |  |
| 22310                      | 12.00  | Facility Fee Mag      |  |
| 24617                      | 5.00   | IDS Fee               |  |
| 24681                      | 4.00   | Jud Phone Syst Fee    |  |
| OFFCR                      | 5.00   | Officer (22500/235XX) |  |
|                            | 181.00 |                       |  |

| Magistrate Court Infracton-Chp 20 |        |                       |  |
|-----------------------------------|--------|-----------------------|--|
| 21310                             | 146.55 | MAG Criminal Fee Mag  |  |
| 21314                             | 0.95   | MAG LAA               |  |
| 21700                             | 7.50   | LEOB                  |  |
| 21820                             | 10.00  | Chapter 20 MV Offense |  |
| 22310                             | 12.00  | Facility Fee Mag      |  |
| 24617                             | 5.00   | IDS Fee               |  |
| 24681                             | 4.00   | Jud Phone Syst Fee    |  |
| OFFCR                             | 5.00   | Officer (22500/235XX) |  |
|                                   | 191.00 |                       |  |

| Magistrate Court Misdemeanor |        |                       |  |
|------------------------------|--------|-----------------------|--|
| 21310                        | 146.55 | MAG Criminal Fee Mag  |  |
| 21314                        | 0.95   | MAG LAA               |  |
| 21700                        | 7.50   | LEOB                  |  |
| 22310                        | 12.00  | Facility Fee Mag      |  |
| 24322                        | 2.00   | DNA Fee               |  |
| 24617                        | 5.00   | IDS Fee               |  |
| 24681                        | 4.00   | Jud Phone Syst Fee    |  |
| OFFCR                        | 5.00   | Officer (22500/235XX) |  |
| TOTAL                        | 183.00 |                       |  |

| District Court Misdemeanor-Chp 20 |        |                       |  |
|-----------------------------------|--------|-----------------------|--|
| 21310                             | 146.55 | MAG Criminal Fee Mag  |  |
| 21314                             | 0.95   | MAG LAA               |  |
| 21700                             | 7.50   | LEOB                  |  |
| 21820                             | 10.00  | Chapter 20 MV Offense |  |
| 22310                             | 12.00  | Facility Fee Mag      |  |
| 24322                             | 2.00   | DNA Fee               |  |
| 24617                             | 5.00   | IDS Fee               |  |
| 24681                             | 4.00   | Jud Phone Syst Fee    |  |
| OFFCR                             | 5.00   | Officer (22500/235XX) |  |
| TOTAL                             | 193.00 |                       |  |

| Seat Belt - Magistrate Court |        |                                  |  |
|------------------------------|--------|----------------------------------|--|
| 21310                        | 146.55 | MAG Criminal Fee                 |  |
| 21314                        | 0.95   | MAG LAA                          |  |
| 21707                        | 1.50   | Sheriff's Pension Fee            |  |
| 22700                        | 25.50  | Fines                            |  |
| 24681                        | 4.00   | Jud Phone Syst Fee               |  |
| OFFCR                        | 1.50   | Officer - LEO Fee (22507; 237XX) |  |
|                              | 180.00 |                                  |  |

| Motorcycle/Moped - Magistrate Crt |        |                                  |  |
|-----------------------------------|--------|----------------------------------|--|
| 21310                             | 146.55 | MAG Criminal Fee                 |  |
| 21314                             | 0.95   | MAG LAA                          |  |
| 21707                             | 1.50   | Sheriff's Pension Fee            |  |
| 22700                             | 25.50  | Fines                            |  |
| 24681                             | 4.00   | Jud Phone Syst Fee               |  |
| OFFCR                             | 1.50   | Officer - LEO Fee (22507; 237XX) |  |
|                                   | 180.00 |                                  |  |

| Civil Magistrate Court |       |               |  |
|------------------------|-------|---------------|--|
| 21320                  | 79.05 | MAG Civil Fee |  |
| 21324                  | 0.95  | MAG LAA       |  |
| 22320                  | 12.00 | Facility Fee  |  |
| 24681                  | 4.00  | Jud Fac Fee   |  |
| TOTAL                  | 96.00 |               |  |



# COLLECTING PAYMENTS – COUNTY/SHP

**CSC/Magistrate Receipt** Total Received 211.00 Receipt # **I - 708313**

Date 7-8-22 County Your Cash  Check  MO

For County C1234567-D For Heve Foot 123 Main St. Raleigh NC 27604

File # C1234567-D Received by Heve Foot 70-55

| Criminal Cost           | Amount | Magistrates                        | Amount | Estate/Special Proceeding | Amount |
|-------------------------|--------|------------------------------------|--------|---------------------------|--------|
| IFC                     |        | CRMC                               |        | ESTC                      |        |
| IFDA                    |        | CTWM                               |        | Other Estate Cost         | 21140  |
| IFTA                    |        | IFMC                               | 181.00 | Trust                     | 26310  |
| IFTC                    |        | IFWM                               |        | SPSC                      |        |
| CRDC                    |        | MMVM                               |        | Foreclosure               | 21445  |
| CRTC                    |        | SBM                                |        | Surplus Funds             | 28600  |
| CRDA                    |        | Marriage                           | 21330  | Widows Allowance          | 21140  |
| CRTA                    |        | FOR ALL MAGISTRATE COSTS INDICATE: |        | Upset Bid                 | 26700  |
| CRDS                    |        | OFFICER                            | SHP    | Civil Cost                |        |
| CRSC                    |        | FACILITY                           |        | CVMC                      |        |
| MMV                     |        | (if municipal facility)            |        | CVDC                      |        |
| SB                      |        | Magistrates/Clerks                 |        | CVSC                      |        |
| FOR ALL CRIMINAL COSTS  |        | Cash Bond                          | 26210  | CVBC                      |        |
| INDICATE:               |        | Cash Bond-Other Cnty               | 292XX  | Judgment                  | 26115  |
| OFFICER                 |        | Purge Fyrm                         | 26410  | Rent Bond                 | 26220  |
| FACILITY                |        | Purge Fyrm-Other Cnty              | 298XX  | Alimony                   | 26420  |
| (if municipal facility) |        | Partial Pay                        | 20100  | Civil Officer Fee         | 22515  |
| Miscellaneous Receipts  |        | Restitution                        | 26110  | Child Support             | 26410  |
| AAF                     |        | Fines                              | 22700  | Other                     |        |
| BC                      |        | Jail Fees                          | 22600  | Other                     |        |
| OSA                     |        | Other Officer Fees                 |        | Other                     |        |
| Copies                  |        | FTA Fee                            | 21211  | Other                     |        |
| Record Check            |        | FTC Fee                            | 21213  | Other                     |        |
| Civil Revocation        |        | EXP Community Svc                  | 24202  | Other                     |        |
| Bad Ck Restitution      |        | Other                              |        | Other                     |        |

APC-A2 REV. 1/14



# COLLECTING PAYMENTS – MUNICIPALITY

**CSC/Magistrate Receipt** Total Received 180.00 Receipt # **I - 708313**

Date 7-5-02 County Your Cash  Check  MO

For County C0456923-5 For Have Foot 153 Main St Raleigh NC 27601

Received of Have Foot Seat Belt Received by \_\_\_\_\_

| Criminal Cost           | Amount | Magistrates                        | Amount | Estate/Special Proceeding | Amount |
|-------------------------|--------|------------------------------------|--------|---------------------------|--------|
| IFC                     | _____  | CRMC                               | _____  | ESTC                      | _____  |
| IFDA                    | _____  | CTWM                               | _____  | Other Estate Cost         | 21140  |
| IFTA                    | _____  | IFMC                               | _____  | Trust                     | 26310  |
| IFTC                    | _____  | IFWM                               | _____  | SPSC                      | _____  |
| CRDC                    | _____  | MMVM                               | _____  | Foreclosure               | 21445  |
| CRFC                    | _____  | SBM                                | _____  | Surplus Funds             | 26800  |
| CRDA                    | _____  | Marriage                           | 21330  | Widows Allowance          | 21140  |
| CRTA                    | _____  | FOR ALL MAGISTRATE COSTS INDICATE: |        | Upset Bid                 | 26700  |
| CRDS                    | _____  | OFFICER                            | _____  | Civil Cost                | _____  |
| CRSC                    | _____  | FACILITY                           | _____  | CVMC                      | _____  |
| MMV                     | _____  | (if municipal facility)            | _____  | CDDC                      | _____  |
| SB                      | _____  | Magistrates/Clerks                 | _____  | CVDC                      | _____  |
| FOR ALL CRIMINAL COSTS  | _____  | Cash Bond                          | 26210  | CVSC                      | _____  |
| INDICATE:               | _____  | Cash Bond-Other Cnty               | 292XX  | CVBC                      | _____  |
| OFFICER                 | _____  | Purge Pymt                         | 26410  | Judgment                  | 26115  |
| FACILITY                | _____  | Purge Pymt-Other Cnty              | 296XX  | Rent Bond                 | 26220  |
| (if municipal facility) | _____  | Partial Pay                        | 20100  | Alimony                   | 26420  |
| Miscellaneous Receipts  | _____  | Restitution                        | 26110  | Civil Officer Fee         | 22515  |
| AAF                     | _____  | Fines                              | 22700  | Child Support             | 26410  |
| BC                      | _____  | Jail Fees                          | 22600  | Other                     | _____  |
| OSA                     | _____  | Other Officer Fees                 | _____  | Other                     | _____  |
| Copies                  | _____  | FTA Fee                            | 21211  | Other                     | _____  |
| Record Check            | _____  | FTC Fee                            | 21213  | Other                     | _____  |
| Civil Revocation        | _____  | EXP Community Svc                  | 24202  | Other                     | _____  |
| Bad Cr Restitution      | _____  | Other                              | _____  | Other                     | _____  |
| X00A2 REV. 1/14         | _____  |                                    |        |                           |        |



# COLLECTING PAYMENTS – OTHER FMS CODES AND FEES

|  |       |                     |  |  |  |
|--|-------|---------------------|--|--|--|
| Civil Service  |       |                     |  |  |  |
| 22515  | 30.00 | Officer Fees        |  |  |  |
| (could be a city code (23XXX) if CPD performs service)                   |       |                     |  |  |  |
| Performing marriage ceremony   |       |                     |  |  |  |
| 21330  | 50.00 |                     |  |  |  |
| Hearing petition for Year's allowance                                    |       |                     |  |  |  |
| 21330  | 20.00 | (Magistrate's only) |  |  |  |
| Taking a deposition  |       |                     |  |  |  |
| 21330  | 10.00 | (Magistrate's only) |  |  |  |
| Proof of execution or acknowledgment of any instrument                   |       |                     |  |  |  |
| 21330  | 2.00  |                     |  |  |  |
| Performing an other statutory function not incident to civil or criminal |       |                     |  |  |  |
| 21330  | 2.00  |                     |  |  |  |



## SUBMITTING FUNDS TO CSC

- What to submit
  - Funds with receipt copies
  - Off-Site Daily Cash Report ([AOC-FS-3731](#))
  - Paperwork
  
- When to submit
  - End of business day but no later than the close of the next business day.



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## SUBMITTING FUNDS TO CSC - MAGISTRATE OFF-SITE DAILY CASH REPORT

- Information to Capture:
  - Magistrate name
  - County
  - Date
  - Itemize funds collected
  - Record of each receipt issued
  - Total collected by tender type
  - Itemized funds to be distributed to corresponding municipalities
  - Attached copies of receipts



# SUBMITTING FUNDS TO CSC – MAGISTRATE OFF-SITE DAILY CASH REPORT

| STATE OF NORTH CAROLINA |  | MAGISTRATE OFF-SITE DAILY CASH REPORT |                 |
|-------------------------|--|---------------------------------------|-----------------|
| Name of Magistrate      |  | Date Collected                        |                 |
| Name of County          |  | Date Collected                        |                 |
| CODE/ACCOUNT NO.        | ACCOUNT DESCRIPTION                              | QUANTITY                              | TOTAL COLLECTED |
| 21330                   | Special Fees: Marriage                           |                                       |                 |
| 26210                   | Cash Bond  |                                       |                 |
| 262XX                   | Cash Bond – Other County CNTY _____              |                                       |                 |
| 26410                   | Purge Payment                                    |                                       |                 |
| 268XX                   | Purge Payment – Other County CNTY _____          |                                       |                 |
| CRMC                    | Criminal Costs CNTY _____ CITY _____             |                                       |                 |
| CTVM                    | Crim./Traffic Viol. CNTY _____ CITY _____        |                                       |                 |
| IFMC                    | Infraction Costs CNTY _____ CITY _____           |                                       |                 |
| IFTC                    | Infraction/Traffic Viol. CNTY _____ CITY _____   |                                       |                 |
| MM/M                    | Moped/Motorcycle Violation                       |                                       |                 |
| SBM                     | Seatbelt   |                                       |                 |
| 22700                   | Fines  |                                       |                 |
| CVMC                    | Small Claims Filing Fees CNTY _____ CITY _____   |                                       |                 |
| 21140                   | Hearing Petition for Year's Allowance            |                                       |                 |
| 21400                   | Miscellaneous Special Fees                       |                                       |                 |
| 22600                   | Other Service Fees - County                      |                                       |                 |
| 22600                   | Jail Fees  |                                       |                 |
| 2350X                   | Other Service Fees - City<br>Other Details _____ |                                       |                 |
| 20100                   | Partial Pay                                      |                                       |                 |
| 26110                   | Restitution                                      |                                       |                 |
| 21211                   | FTA Fee  |                                       |                 |
| 21213                   | FTC Fee  |                                       |                 |
| 24202                   | Expanded Community Service                       |                                       |                 |
|                         | Other _____                                      |                                       |                 |

| RECEIPT NUMBERS USED | TOTAL COLLECTED    | \$       |
|----------------------|--------------------|----------|
| Beginning: _____     | Total Cash         | \$ _____ |
| Ending: _____        | Total Bank Checks  | \$ _____ |
|                      | Total Money Orders | \$ _____ |
|                      | TOTAL REMITTED     | \$ _____ |



## SUBMITTING FUNDS TO CSC

- The CSC’s office is required to complete the Manual Receipt Log as a way to track receipts and the timeline of when receipts are submitted.
- If you do not submit your receipts in numerical order, the CSC’s office will contact you to determine the status of the ‘missing’ receipt.
- Missing receipts are considered missing state funds until located and are subject to review by NCAOC and the NC State Bureau of Investigation (SBI).



## SUBMITTING FUNDS TO CSC

- A head cashier or cashier should verify the funds in the presence of the magistrate.
- If the magistrate cannot submit funds in person, funds should be counted in the presence of two people prior to securing in a locking bank bag.
- Cashiers are required to have two people present when opening a magistrate's bank bag if the magistrate who is submitting the funds is not present.



## SUBMITTING FUNDS TO CSC

- The CSC cashier cannot accept any amount other than what is showing on the receipt and will return a bag with discrepancies for the magistrate to correct.
- Magistrate should receive a receipt from the CSC for the exact amount of funds submitted.
- The MFCR receipt(s) are the magistrate's proof that funds were submitted to the CSC's office.
- NCAOC recommends magistrates retain these receipts for at least one year.



## IRS FORM 8300 – US INTERNAL REVENUE CODE

- Section 6050I (26 United States Code) and 31 U.S.C. 5331 states “Any clerk of a Federal or State court who receives more than \$10,000 in cash as bail” for specific criminal offenses must use Form 8300.
- If a person receives bail on behalf of a clerk, the clerk is treated as receiving the bail (magistrates).
- The IRS has conducted reviews of these forms and procedures in the Clerk of Court offices.



## IRS FORM 8300 - WHO MUST FILE?

The person receipting the money should complete the Form 8300.

- Example:
  - The magistrate would complete the form when receipting cash bonds that exceed \$10,000.
  - The completed form is then submitted to the CSC office along with the Daily Deposit.
  - The CSC office is responsible for filing the Form 8300 with the IRS.



## IRS FORM 8300 – WHEN TO FILE?

- Specific Criminal Offenses
  - Any Federal offense involving a controlled substance
  - Racketeering
  - Money laundering
  - Any State criminal offense substantially similar to the above
- Cash Received Over \$10,000
- Cash Over \$10,000 received in Single or Related Transactions



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## IRS FORM 8300 – WHEN TO FILE?

- “Cash” more than \$10,000
  - Coins and/or Currency of the United States more than \$10,000.
  - Cashier’s check, money order, bank draft, or traveler’s check having a face amount of \$10,000 or less (which would be submitted in addition to currency to make up the remainder of the payment).
- Cashier’s check, money order, bank draft, or traveler’s check with a face value of more than \$10,000 is not considered cash because the financial institution where it was purchased must report the purchase to the IRS.
- Example:
  - Payor presents three cashiers checks each in the amount of \$4,000 to pay a \$12,000 cash bond



## IRS FORM 8300 – WHEN TO FILE?

### Single or Related Transactions

- One-time payment of \$10,000 or more in cash
- If an individual pays bail in multiple payments, on the exact same case or offense then those payments have to be aggregated once the total (for that same case) exceeds \$10,000. (*if payments are made to satisfy separate bail requirements, no aggregation is required.*)

*Example - if in Month 1 a clerk receives \$6,000.00 in bail for an individual charged with a specified criminal offense, and later, in Month 2, receives \$7,000.00 in bail for that same individual charged with another specified criminal offense, no aggregation is required."*



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## IRS FORM 8300 –REQUIRED INFORMATION

- Payer(s) Information Required
  - Name and Address
  - Taxpayer ID Number
  - Date of Birth
  - Occupation
  - Identifying Documentation
    - Description (e.g. Driver's License)
    - Number on ID (e.g. Driver's License Number)
    - Issuing Agency (e.g. State of NC)

**IMPORTANT:** The form should be completed in full prior to receiving the bond



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## IRS FORM 8300 –REQUIRED INFORMATION

- Defendant's Information - you may skip Part II if the individual named in Part I is conducting the transaction on his or her behalf only.
  - Name and address
  - Taxpayer ID Number
  - Occupation
  - Alien ID Information (if applicable)



## IRS FORM 8300 –REQUIRED INFORMATION

- Cash Transaction Information
  - Date Received
  - Amount
  - Type(s)
- Business that Received Cash
  - Name and address
  - TIN
  - Signature



# IRS FORM 8300

|  |   |  |   |
|--|---|--|---|
| <b>IRS Form 8300</b><br>(Rev. March 2008)<br>OMB No. 1545-0042<br>Department of the Treasury<br>Internal Revenue Service   | <b>Report of Cash Payments Over \$10,000<br/>                 Received in a Trade or Business</b><br>▶ See instructions for definition of cash.<br>▶ Use this form for transactions occurring after March 31, 2008. Do not use prior versions after this date.<br>For Privacy Act and Paperwork Reduction Act Notice, see page 6. | <b>FinCEN Form 8300</b><br>(Rev. March 2008)<br>OMB No. 1550-0018<br>Department of the Treasury<br>Financial Crimes<br>Enforcement Network |   |
| 1 Check appropriate box(es) if: <input type="checkbox"/> a Amends prior report; <input type="checkbox"/> b Suspicious transaction.   |   |  |   |
| <b>Part I Identify Individual From Whom the Cash Was Received</b><br>2 If more than one individual is involved, check here and see instructions <input type="checkbox"/>                                 |   |  |   |
| 3 Last name  | 4 First name  | 5 M.I.   | 6 Taxpayer identification number  |
| 7 Address (number, street, and apt. or suite no.)  |   | 8 Date of birth (see instructions)   |   |
| 9 City   | 10 State  | 11 ZIP code  | 12 Country (if not U.S.)  |
| 14 Identifying document (ID)   |   | 13 Occupation, profession, or business   |   |
| a Describe ID ▶  |   | b Issued by ▶  |   |
| c Number ▶   |   |  |   |
| <b>Part II Person on Whose Behalf This Transaction Was Conducted</b><br>15 If this transaction was conducted on behalf of more than one person, check here and see instructions <input type="checkbox"/> |   |  |   |
| 16 Individual's last name or Organization's name   |   | 17 First name  | 18 M.I.   |
| 19 Taxpayer identification number  |   | 20 Doing business as (DBA) name (see instructions)   |   |
| 21 Address (number, street, and apt. or suite no.)   |   | Employer identification number   |   |
| 22 Occupation, profession, or business   |   |  |   |
| 23 City  | 24 State  | 25 ZIP code  | 26 Country (if not U.S.)  |
| 27 Alien identification ID   |   | 28 Issued by ▶   |   |
| a Describe ID ▶  |   | b Issued by ▶  |   |
| c Number ▶   |   |  |   |
| <b>Part III Description of Transaction and Method of Payment</b>   |   |  |   |
| 28 Date cash received  |   | 29 Total cash received   | 30 If cash was received in more than one payment, check here <input type="checkbox"/> |
| M M D D Y Y Y Y  |   | \$ .00   |   |
| 31 Total price if different from item 29   |   |  |   |
| \$ .00   |   |  |   |
| 32 Amount of cash received (in U.S. dollar equivalent) (must equal item 29) (see instructions):  |   |  |   |
| a U.S. currency  | \$ .00  | (Amount in \$100 bills or higher \$ .00 )  |   |
| b Foreign currency   | \$ .00  | (Country ▶ )   |   |
| c Cashier's check(s)   | \$ .00  | Issuer's name(s) and serial number(s) of the monetary instrument(s) ▶  |   |
| d Money order(s)   | \$ .00  |  |   |
| e Bank draft(s)  | \$ .00  |  |   |
| f Traveler's check(s)  | \$ .00  |  |   |
| 33 Type of transaction   |   | 34 Specific description of property or service shown in 33. Give serial or registration number, address, docket number, etc. ▶             |   |
| a <input type="checkbox"/> Personal property purchased   | f <input type="checkbox"/> Debt obligations paid  |  |   |
| b <input type="checkbox"/> Real property purchased   | g <input type="checkbox"/> Exchange of cash   |  |   |
| c <input type="checkbox"/> Personal services provided  | h <input type="checkbox"/> Escrow or trust funds  |  |   |
| d <input type="checkbox"/> Business services provided  | i <input type="checkbox"/> Bail received by court clerk   |  |   |
| e <input type="checkbox"/> Intangible property purchased   | j <input type="checkbox"/> Other (specify in item 34) ▶   |  |   |
| <b>Part IV Business That Received Cash</b>   |   |  |   |
| 35 Name of business that received cash   |   | 36 Employer identification number  |   |
| 37 Address (number, street, and apt. or suite no.)   |   | Social security number   |   |
| 38 City  | 39 State  | 40 ZIP code  | 41 Nature of your business  |
| 42 Under penalties of perjury, I declare that to the best of my knowledge the information I have furnished above is true, correct, and complete.   |   |  |   |
| Signature ▶  |   | Title ▶  |   |
| Authorized official  |   |  |   |
| 43 Date of signature   | 44 Type or print name of contact person   | 45 Contact telephone number  |   |
| M M D D Y Y Y Y  |   |  |   |
| IRS Form 8300 (Rev. 3-2008) <span style="margin-left: 200px;">Cat. No. 621335</span> <span style="float: right;">FinCEN Form 8300 (Rev. 3-2008)</span>   |   |  |   |



# IRS FORM 8300

|  |   |  |   |
|--|---|--|---|
| <b>Part III Description of Transaction and Method of Payment</b>   |   |  |   |
| 28 Date cash received  |   | 29 Total cash received   | 30 If cash was received in more than one payment, check here <input type="checkbox"/> |
| M M D D Y Y Y Y  |   | \$ .00   |   |
| 31 Total price if different from item 29   |   |  |   |
| \$ .00   |   |  |   |
| 32 Amount of cash received (in U.S. dollar equivalent) (must equal item 29) (see instructions):  |   |  |   |
| a U.S. currency  | \$ .00  | (Amount in \$100 bills or higher \$ .00 )  |   |
| b Foreign currency   | \$ .00  | (Country ▶ )   |   |
| c Cashier's check(s)   | \$ .00  | Issuer's name(s) and serial number(s) of the monetary instrument(s) ▶  |   |
| d Money order(s)   | \$ .00  |  |   |
| e Bank draft(s)  | \$ .00  |  |   |
| f Traveler's check(s)  | \$ .00  |  |   |
| 33 Type of transaction   |   | 34 Specific description of property or service shown in 33. Give serial or registration number, address, docket number, etc. ▶ |   |
| a <input type="checkbox"/> Personal property purchased   | f <input type="checkbox"/> Debt obligations paid        |  |   |
| b <input type="checkbox"/> Real property purchased   | g <input type="checkbox"/> Exchange of cash             |  |   |
| c <input type="checkbox"/> Personal services provided  | h <input type="checkbox"/> Escrow or trust funds        |  |   |
| d <input type="checkbox"/> Business services provided  | i <input type="checkbox"/> Bail received by court clerk |  |   |
| e <input type="checkbox"/> Intangible property purchased   | j <input type="checkbox"/> Other (specify in item 34) ▶ |  |   |
| <b>Part IV Business That Received Cash</b>   |   |  |   |
| 35 Name of business that received cash   |   | 36 Employer identification number  |   |
| 37 Address (number, street, and apt. or suite no.)   |   | Social security number   |   |
| 38 City  | 39 State  | 40 ZIP code  | 41 Nature of your business  |
| 42 Under penalties of perjury, I declare that to the best of my knowledge the information I have furnished above is true, correct, and complete.       |   |  |   |
| Signature ▶  |   | Title ▶  |   |
| Authorized official  |   |  |   |
| 43 Date of signature   | 44 Type or print name of contact person                 | 45 Contact telephone number  |   |
| M M D D Y Y Y Y  |   |  |   |
| IRS Form 8300 (Rev. 3-2008) <span style="margin-left: 200px;">Cat. No. 621335</span> <span style="float: right;">FinCEN Form 8300 (Rev. 3-2008)</span> |   |  |   |



# RESOURCES



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## RESOURCES, SUPPLIES, AND FORMS

- See the Financial Procedures Manual [Magistrates Chapter](#) on Juno for reference, forms, policies, and more.
- See the [Forms Search Page](#) on nccourts.gov to obtain current versions of all forms.
  - Magistrate Offsite Daily Cash Report ([AOC-FS-3731](#))
- Manual Receipt Book (AOC-A-2) – Assigned by CSC’s office
- Counterfeit Detector Pen (available from NCAOC Warehouse)
- Locking bank bag – check with CSC to see if extra bank bags are available.



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# NCAOC FISCAL SERVICES DIVISION (FSD)

○ Danielle Ward  
(919) 890-1017

Chief Fiscal Officer  
[Danielle.J.Ward@nccourt.org](mailto:Danielle.J.Ward@nccourt.org)

○ Jordan Samuel  
(919) 890-1016

Internal Audit Director  
[Jordan.Samuel@nccourts.org](mailto:Jordan.Samuel@nccourts.org)

○ Tony McKinney  
828-385-3599

Financial Analysis and Process Manager  
[Tony.A.Mckinney@nccourts.org](mailto:Tony.A.Mckinney@nccourts.org)



# THANK YOU

Financial Services Division  
Field Accounting Services

Tab:  
Capstone

## Capstone Exercises

Magistrates' Basic School

August 2024

**Instructions.** Break into groups of 4-6. Read each problem and answer each question. One of the questions for each problem asks what criminal charges are possible under the circumstances described in the problem. Answer that question as completely as possible. It is not intended to be easy. You are not limited to offenses we have discussed this week, or to offenses in any particular chapter of *North Carolina Crimes*. After the groups have finished their work, we will discuss each problem as a class.

Good luck!

**Problem 1**

A Highway Patrol Trooper has arrested a driver for attempting to pass a group of bicyclists unlawfully and badly injuring one of them in the process. The trooper explains that the motorist attempted to pass the group of cyclists on a two-lane road in a rural part of the county. There was a double yellow line on the road prohibiting passing. The driver attempted to pass the group anyway. When she saw another car approaching, she swerved back into her lane, hitting the cyclist at the front of the group. The cyclist was thrown from his bicycle. He sustained several broken bones, which will require surgery to repair. The trooper does not believe that the driver was impaired by alcohol or any other substance, and does not have any evidence that the driver was speeding.

**List every criminal charge for which you think there is probable cause:**

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**What charge or charges, if any, would you issue?**

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**If you would issue charges, what sort of pleading would you use?**

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**Problem 2**

A local police officer has arrested the defendant, who was discovered concealing merchandise (three containers of baby formula that retail for \$35 each) under her loose-fitting clothes at the neighborhood grocery store. She was past the register and out the door when the manager stopped her. After a previous shoplifting incident at the same store, the manager had told the defendant not to return to the store.

**List every criminal charge for which you think there is probable cause:**

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**What charge or charges, if any, would you issue?**

---

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---

**If you would issue charges, what sort of pleading would you use?**

---

**Problem 3**

An officer was investigating reports of vandalism at the local high school. Hoping to find evidence of the vandalism, he asked a male student at the school, who is 18, for permission to look at the pictures on the student's cell phone. The student gave his phone to the officer. The officer did not find any photos related to the vandalism incident, but did see two photographs of the student's 16-year-old girlfriend on the phone.

- One shows the girlfriend naked and exiting the shower. The picture was on the phone's "camera roll" and had also been texted to the girlfriend with the caption "Hot!"
- The second shows the girlfriend performing oral sex on a male. The boyfriend admitted that he is the male in the picture and that he took the picture. The picture was on the phone's "camera roll" only.

The officer is seeking issuance of an arrest warrant against the male student.

**List every criminal charge for which you think there is probable cause:**

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---

**What charge or charges, if any, would you issue?**

---

---

---

---

**If you would issue charges, what sort of pleading would you use?**

---

# Tab: Forms

## FORMS

|  |                 |
|--|-----------------|
| Arrest Warrant (AOC-CR-100).....   | Forms – Page 1  |
| Criminal Summons (AOC-CR-113).....   | Forms – Page 11 |
| Magistrate’s Order (AOC-CR-116).....   | Forms – Page 21 |
| Search Warrant (AOC-CR-119).....   | Forms – Page 29 |
| Conditions of Release and Release Order Form (AOC-CR-200).....   | Forms – Page 31 |
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| Additional Accommodation Bondsmen (AOC-CR-201A).....   | Forms – Page 35 |
| Surrender by Surety (AOC-CR-214).....  | Forms – Page 37 |
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| Order of Assignment or Denial of Counsel (AOC-CR-224).....   | Forms – Page 41 |
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| Conditions of Release – Mass Violence (AOC-CR-660).....  | Forms – Page 79 |

**All Forms Used by the AOC can be found at**

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



|  |  |                                 |  |   |  |                         |  |                   |  |  |  |   |  |                     |  |
|--|--|---------------------------------|--|---|--|-------------------------|--|-------------------|--|--|--|---|--|---------------------|--|
| <i>File No.</i>  |  |                                 |  | <i>Law Enforcement Case No.</i>   |  |                         |  | <i>LID No.</i>    |  |  |  |   |  |                     |  |
| <b>WARRANT FOR ARREST</b>  |  |                                 |  | <b>STATE OF NORTH CAROLINA</b><br>In The General Court Of Justice<br>District Court Division<br><br>_____ County  |  |                         |  |                   |  |  |  |   |  |                     |  |
| <b>THE STATE OF NORTH CAROLINA VS.</b>   |  |                                 |  |   |  |                         |  |                   |  |  |  |   |  |                     |  |
| <i>Name And Address Of Defendant</i>   |  |                                 |  | Spoken Language Court Interpreter Needed For Any Party, Victim, Or Witness? (If Yes, identify person(s) and language(s).<br>Interpreters provided for all court proceedings at no cost.)<br><input type="checkbox"/> No <input type="checkbox"/> Yes: (explain) |  |                         |  |                   |  |  |  |   |  |                     |  |
| <b>OFFENSE(S)</b> (see AOC-CR-100 Continuation(s) for charging text)   |  |                                 |  |   |  |                         |  |                   |  |  |  |   |  |                     |  |
| <i>Race</i>  |  | <i>Sex</i>                      |  | <i>Date Of Birth</i>  |  | <i>Age</i>              |  | <b>Count No.</b>  |  | <b>Offense</b>   |  | <b>Offense in Violation Of G.S.</b>                     |  | <b>Offense Code</b> |  |
| <i>Name Of Defendant's Employer</i>  |  |                                 |  |   |  |                         |  |                   |  |  |  |   |  |                     |  |
| <i>Date Of Offense</i>   |  |                                 |  |   |  |                         |  |                   |  |  |  |   |  |                     |  |
| <input type="checkbox"/> <b>Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan</b>   |  |                                 |  |   |  |                         |  |                   |  |  |  |   |  |                     |  |
| <i>Date Of Arrest &amp; Check Digit No. (as shown on fingerprint card)</i>   |  |                                 |  |   |  |                         |  |                   |  |  |  |   |  |                     |  |
| <i>Complainant Name (and address, if Complainant is an officer)</i>  |  |                                 |  |   |  |                         |  |                   |  |  |  |   |  |                     |  |
| <i>Witness Information</i>   |  |                                 |  |   |  |                         |  |                   |  |  |  |   |  |                     |  |
| <p><b>TO ANY OFFICER WITH AUTHORITY AND JURISDICTION TO EXECUTE A WARRANT FOR ARREST FOR THE OFFENSE(S) CHARGED IN THIS WARRANT:</b><br/>                 I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully, and feloniously did commit the offense(s) set forth above and on the attached AOC-CR-100 Continuation(s), which is (are) incorporated by reference. This act(s) was in violation of the law referred to in this Warrant For Arrest. This Warrant For Arrest is issued upon information furnished under oath by the complainant listed. You are DIRECTED to arrest the defendant and bring the defendant before a judicial official without unnecessary delay to answer the charge(s) above.</p> |  |                                 |  |   |  |                         |  |                   |  |  |  |   |  |                     |  |
| <i>Date Issued</i>   |  | <i>Name Of Issuing Official</i> |  |   |  | <i>Signature</i>        |  |                   |  | <input type="checkbox"/> <i>Magistrate</i> <input type="checkbox"/> <i>Deputy CSC</i> <input type="checkbox"/> <i>Assistant CSC</i> <input type="checkbox"/> <i>Clerk Of Superior Court</i><br><input type="checkbox"/> <i>District Court Judge</i> <input type="checkbox"/> <i>Superior Court Judge</i> |  |   |  |                     |  |
| <i>Location Of Court</i>   |  |                                 |  |   |  |                         |  | <i>Court Date</i> |  |  |  | <i>Court Time</i>                                       |  |                     |  |
|  |  |                                 |  |   |  |                         |  |                   |  |  |  | <input type="checkbox"/> AM <input type="checkbox"/> PM |  |                     |  |
| <b>WAIVER OF PROBABLE CAUSE HEARING</b>  |  |                                 |  |   |  |                         |  |                   |  |  |  |   |  |                     |  |
| The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.   |  |                                 |  |   |  |                         |  |                   |  |  |  |   |  |                     |  |
| <i>Date Waived</i>   |  | <i>Signature Of Defendant</i>   |  |   |  | <i>Name Of Attorney</i> |  |                   |  | <i>Signature Of Attorney</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 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 7. Offense:**

Charging Text For This Count

**Count 8. Offense:**

Charging Text For This Count

|   |  |                 |
|---|--|-----------------|
| <b>STATE VERSUS</b>                           | _____ County   | <i>File No.</i> |
| <i>Name Of Defendant</i>                      | <b>NOTE:</b> Use this page to set forth the charging text for each offense listed on the AOC-CR-100. G.S. 15A-924(a)(5). |                 |
| <i>Date Of Issuance Of Warrant For Arrest</i> |  |                 |

|  |                             |  |
|--|-----------------------------|--|
|  | <b>OFFENSES (continued)</b> |  |
|--|-----------------------------|--|

|                                     |  |
|-------------------------------------|--|
| <b>Count 9. Offense:</b>            |  |
| <i>Charging Text For This Count</i> |  |

|                                     |  |
|-------------------------------------|--|
| <b>Count 10. Offense:</b>           |  |
| <i>Charging Text For This Count</i> |  |

**STATE VERSUS**

\_\_\_\_\_ County

File No. 

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

Date Served

Time Served

AM

Date Returned

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

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

Date Served

Time Served

AM

Date Returned

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

County

File No.

Name Of Defendant

Date Of Issuance Of Warrant For Arrest

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).

JUDGMENT

District Attorney

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

Attorney For Defendant

Appointed, Retained

PRIOR CONVICTIONS:

No./Level: 0 I (0) II (1-4) 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: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 2 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 3 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 4 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 5 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 6 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 7 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 8 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 9 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 10 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3

(Over)

|                     |  |   |
|---------------------|--|---|
| <b>STATE VERSUS</b> | _____ County   | File No. <span style="font-size: 2em;">▶</span> |
| Name Of Defendant   | <p><b>*NOTE:</b> Use this Judgment page only if imposing a <b>single</b>, consolidated judgment for all offenses of conviction charged under this file number. Do <b>not</b> 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).</p> |   |

**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. 14-269.
3. remain gainfully and suitably employed, or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment and abide by all rules of the institution.
4. satisfy child support and family obligations, as required by the Court.
5. 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** | 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 on file in this case. | Date | Date Delivered To Sheriff | Signature | <input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC<br><input type="checkbox"/> Clerk Of Superior Court |
|---|------|---------------------------|-----------|--|

|  |            |                      |                                 |   |                |                         |  |                |  |                     |  |  |  |
|--|------------|----------------------|---------------------------------|---|----------------|-------------------------|--|----------------|--|---------------------|--|--|--|
| <i>File No.</i>  |            |                      |                                 | <i>Law Enforcement Case No.</i>   |                |                         |  | <i>LID No.</i> |  |                     |  |  |  |
| <b>CRIMINAL SUMMONS</b>  |            |                      |                                 | <b>STATE OF NORTH CAROLINA</b>  |                |                         |  |                |  |                     |  |  |  |
| <b>THE STATE OF NORTH CAROLINA VS.</b>   |            |                      |                                 | In The General Court Of Justice<br>District Court Division  |                |                         |  |                |  |                     |  |  |  |
| <i>Name And Address Of Defendant</i>   |            |                      |                                 | _____ County  |                |                         |  |                |  |                     |  |  |  |
|  |            |                      |                                 | <i>Spoken Language Court Interpreter Needed For Any Party, Victim, Or Witness? (If Yes, identify person(s) and language(s). Interpreters provided for all court proceedings at no cost.)</i><br><input type="checkbox"/> No <input type="checkbox"/> Yes: (explain) |                |                         |  |                |  |                     |  |  |  |
|  |            |                      |                                 | <b>OFFENSE(S)</b> (see AOC-CR-113 Continuation(s) for charging text)  |                |                         |  |                |  |                     |  |  |  |
|  |            |                      |                                 | <b>Count No.</b>  | <b>Offense</b> |                         |  |                | <b>Offense in Violation Of G.S.</b>  | <b>Offense Code</b> |  |  |  |
| <i>Race</i>  | <i>Sex</i> | <i>Date Of Birth</i> | <i>Age</i>                      |   |                |                         |  |                |  |                     |  |  |  |
| <i>Name Of Defendant's Employer</i>  |            |                      |                                 |   |                |                         |  |                |  |                     |  |  |  |
| <i>Date Of Offense</i>   |            |                      |                                 |   |                |                         |  |                |  |                     |  |  |  |
| <input type="checkbox"/> Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan  |            |                      |                                 |   |                |                         |  |                |  |                     |  |  |  |
| <i>Complainant Name (and address, if Complainant is an officer)</i>  |            |                      |                                 |   |                |                         |  |                |  |                     |  |  |  |
|  |            |                      |                                 |   |                |                         |  |                |  |                     |  |  |  |
|  |            |                      |                                 |   |                |                         |  |                |  |                     |  |  |  |
|  |            |                      |                                 |   |                |                         |  |                |  |                     |  |  |  |
| <i>Witness Information</i>   |            |                      |                                 |   |                |                         |  |                |  |                     |  |  |  |
| <b>TO THE DEFENDANT:</b><br>I, the undersigned, find that there is probable cause to believe that on or about the date of offense shown and in the county named above you unlawfully, willfully, and feloniously did commit the offense(s) set forth above and on the attached AOC-CR-113 Continuation(s), which is (are) incorporated by reference. This act(s) was in violation of the law referred to in this Criminal Summons. This Criminal Summons is issued upon information furnished under oath by the complainant listed. You are ORDERED to appear before the Court at the location, date and time indicated below to answer to the charge(s). If you fail to appear, an order for your arrest may be issued and/or you may be held in CONTEMPT OF COURT. Arrest and/or contempt for failure to appear is in addition to any sentence or penalty which may be imposed for the offense(s) charged.<br><input type="checkbox"/> The undersigned finds the following cause to set a court date more than one month from the issue of this summons: |            |                      |                                 |   |                |                         |  |                |  |                     |  |  |  |
| <i>Date Issued</i>   |            |                      | <i>Name Of Issuing Official</i> |   |                | <i>Signature</i>        |  |                | <input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court<br><input type="checkbox"/> District Court Judge <input type="checkbox"/> Superior Court Judge |                     |  |  |  |
| <i>Location Of Court</i>   |            |                      |                                 |   |                | <i>Court Date</i>       |  |                | <i>Court Time</i>  |                     |  |  |  |
|  |            |                      |                                 |   |                |                         |  |                | <input type="checkbox"/> AM <input type="checkbox"/> PM  |                     |  |  |  |
| <b>WAIVER OF PROBABLE CAUSE HEARING</b>  |            |                      |                                 |   |                |                         |  |                |  |                     |  |  |  |
| The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.   |            |                      |                                 |   |                |                         |  |                |  |                     |  |  |  |
| <i>Date Waived</i>   |            |                      | <i>Signature Of Defendant</i>   |   |                | <i>Name Of Attorney</i> |  |                | <i>Signature Of Attorney</i>   |                     |  |  |  |
|  |            |                      |                                 |   |                |                         |  |                |  |                     |  |  |  |



**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 3. Offense:**

Charging Text For This Count

**Count 4. Offense:**

Charging Text For This Count

|   |  |                 |
|---|--|-----------------|
| <b>STATE VERSUS</b>                         | _____ County   | <i>File No.</i> |
| <i>Name Of Defendant</i>                    | <b>NOTE:</b> Use this page to set forth the charging text for each offense listed on the AOC-CR-113. G.S. 15A-924(a)(5). |                 |
| <i>Date Of Issuance Of Criminal Summons</i> |  |                 |

|  |                             |  |
|--|-----------------------------|--|
|  | <b>OFFENSES (continued)</b> |  |
|--|-----------------------------|--|

|                                     |  |
|-------------------------------------|--|
| <b>Count 5. Offense:</b>            |  |
| <i>Charging Text For This Count</i> |  |

|                                     |  |
|-------------------------------------|--|
| <b>Count 6. Offense:</b>            |  |
| <i>Charging Text For This Count</i> |  |

**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 7. Offense:**

Charging Text For This Count

**Count 8. Offense:**

Charging Text For This Count

|   |  |                 |
|---|--|-----------------|
| <b>STATE VERSUS</b>                         | _____ County   | <i>File No.</i> |
| <i>Name Of Defendant</i>                    | <b>NOTE:</b> Use this page to set forth the charging text for each offense listed on the AOC-CR-113. G.S. 15A-924(a)(5). |                 |
| <i>Date Of Issuance Of Criminal Summons</i> |  |                 |

|  |                             |  |
|--|-----------------------------|--|
|  | <b>OFFENSES (continued)</b> |  |
|--|-----------------------------|--|

|                                     |  |
|-------------------------------------|--|
| <b>Count 9. Offense:</b>            |  |
| <i>Charging Text For This Count</i> |  |

|                                     |  |
|-------------------------------------|--|
| <b>Count 10. Offense:</b>           |  |
| <i>Charging Text For This Count</i> |  |

**STATE VERSUS**

\_\_\_\_\_ County

File No. 

Name Of Defendant

Date Of Issuance Of Criminal Summons

If the Criminal Summons is not served within ninety (90) days or by the date the defendant is directed to appear, whichever is earlier, it must be returned to the Clerk of Court in the county in which it was issued with the reason for the failure of service noted thereon.

**RETURN OF SERVICE**

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

Date Received

Date Served

Time Served

AM

Date Returned

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**

Date

Name Of Clerk (type or print)

Signature Of Clerk

Deputy CSC

Assistant CSC

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:

Date Received

Date Served

Time Served

AM

Date Returned

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



STATE VERSUS

County

File No.

Name Of Defendant

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).

Date Of Issuance Of Criminal Summons

JUDGMENT

District Attorney

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

Attorney For Defendant

Appointed Retained

PRIOR CONVICTIONS:

No./Level: 0 I (0) II (1-4) 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.CL.: A1 1 2 3

Count 2 PLEA: guilty/resp. not guilty/resp. no contest

FINDING/VERDICT: guilty/resp. not guilty/resp.

M.CL.: A1 1 2 3

Count 3 PLEA: guilty/resp. not guilty/resp. no contest

FINDING/VERDICT: guilty/resp. not guilty/resp.

M.CL.: A1 1 2 3

Count 4 PLEA: guilty/resp. not guilty/resp. no contest

FINDING/VERDICT: guilty/resp. not guilty/resp.

M.CL.: A1 1 2 3

Count 5 PLEA: guilty/resp. not guilty/resp. no contest

FINDING/VERDICT: guilty/resp. not guilty/resp.

M.CL.: A1 1 2 3

Count 6 PLEA: guilty/resp. not guilty/resp. no contest

FINDING/VERDICT: guilty/resp. not guilty/resp.

M.CL.: A1 1 2 3

Count 7 PLEA: guilty/resp. not guilty/resp. no contest

FINDING/VERDICT: guilty/resp. not guilty/resp.

M.CL.: A1 1 2 3

Count 8 PLEA: guilty/resp. not guilty/resp. no contest

FINDING/VERDICT: guilty/resp. not guilty/resp.

M.CL.: A1 1 2 3

Count 9 PLEA: guilty/resp. not guilty/resp. no contest

FINDING/VERDICT: guilty/resp. not guilty/resp.

M.CL.: A1 1 2 3

Count 10 PLEA: guilty/resp. not guilty/resp. no contest

FINDING/VERDICT: guilty/resp. not guilty/resp.

M.CL.: A1 1 2 3

(Over)

|                     |  |   |
|---------------------|--|---|
| <b>STATE VERSUS</b> | _____ County   | File No. <span style="font-size: 2em;">▶</span> |
| Name Of Defendant   | <p><b>*NOTE:</b> Use this Judgment page only if imposing a <b>single</b>, consolidated judgment for all offenses of conviction charged under this file number. Do <b>not</b> 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).</p> |   |

**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:\* \_\_\_\_\_ 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:

- commit no criminal offense in any jurisdiction.
- possess no firearm, explosive or other deadly weapon listed in G.S. 14-269.
- 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.
- satisfy child support and family obligations, as required by the Court.
- 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.
- pay to the Clerk the costs of court and any additional sums shown below.

|       |      |               |                |                       |       |                  |
|-------|------|---------------|----------------|-----------------------|-------|------------------|
| Costs | Fine | 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 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 on file in this case. | Date | Date Delivered To Sheriff | Signature | <input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC<br><input type="checkbox"/> Clerk Of Superior Court |
|---|------|---------------------------|-----------|--|

|  |            |                                 |            |   |                         |  |  |  |                                     |                     |  |  |
|--|------------|---------------------------------|------------|---|-------------------------|--|--|--|-------------------------------------|---------------------|--|--|
| <i>File No.</i>  |            |                                 |            | <i>Law Enforcement Case No.</i>   |                         |  |  | <i>LID No.</i>   |                                     |                     |  |  |
| <b>MAGISTRATE'S ORDER</b>  |            |                                 |            | <b>STATE OF NORTH CAROLINA</b>  |                         |  |  |  |                                     |                     |  |  |
| <b>THE STATE OF NORTH CAROLINA VS.</b>   |            |                                 |            | In The General Court Of Justice<br>District Court Division  |                         |  |  |  |                                     |                     |  |  |
| <i>Name And Address Of Defendant</i>   |            |                                 |            | _____ County  |                         |  |  |  |                                     |                     |  |  |
|  |            |                                 |            | <i>Spoken Language Court Interpreter Needed For Any Party, Victim, Or Witness? (If Yes, identify person(s) and language(s). Interpreters provided for all court proceedings at no cost.)</i><br><input type="checkbox"/> No <input type="checkbox"/> Yes: (explain) |                         |  |  |  |                                     |                     |  |  |
| <b>OFFENSE(S)</b> (see AOC-CR-116 Continuation(s) for charging text)   |            |                                 |            |   |                         |  |  |  |                                     |                     |  |  |
|  |            |                                 |            | <b>Count No.</b>  | <b>Offense</b>          |  |  |  | <b>Offense in Violation Of G.S.</b> | <b>Offense Code</b> |  |  |
| <i>Race</i>  | <i>Sex</i> | <i>Date Of Birth</i>            | <i>Age</i> |   |                         |  |  |  |                                     |                     |  |  |
| <i>Name Of Defendant's Employer</i>  |            |                                 |            |   |                         |  |  |  |                                     |                     |  |  |
| <i>Date Of Offense</i>   |            |                                 |            |   |                         |  |  |  |                                     |                     |  |  |
| <input type="checkbox"/> <b>Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan</b>   |            |                                 |            |   |                         |  |  |  |                                     |                     |  |  |
| <i>Date Of Arrest &amp; Check Digit No. (as shown on fingerprint card)</i>   |            |                                 |            |   |                         |  |  |  |                                     |                     |  |  |
| <i>Arresting Officer (name, address or department)</i>   |            |                                 |            |   |                         |  |  |  |                                     |                     |  |  |
|  |            |                                 |            |   |                         |  |  |  |                                     |                     |  |  |
|  |            |                                 |            |   |                         |  |  |  |                                     |                     |  |  |
|  |            |                                 |            |   |                         |  |  |  |                                     |                     |  |  |
| <i>Witness Information</i>   |            |                                 |            |   |                         |  |  |  |                                     |                     |  |  |
| <p>I, the undersigned, find that the defendant named above has been arrested without a warrant and the defendant's detention is justified because there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully, and feloniously did commit the offense(s) set forth above and on the attached AOC-CR-116 Continuation(s), which is (are) incorporated by reference.</p> <p>This act(s) was in violation of the law referred to in this Magistrate's Order. This Magistrate's Order is issued upon information furnished under oath by the arresting officer(s) shown. A copy of this Order has been delivered to the defendant.</p> |            |                                 |            |   |                         |  |  |  |                                     |                     |  |  |
| <i>Date Issued</i>   |            | <i>Name Of Issuing Official</i> |            |   | <i>Signature</i>        |  |  | <input type="checkbox"/> <i>Magistrate</i> <input type="checkbox"/> <i>Deputy CSC</i> <input type="checkbox"/> <i>Assistant CSC</i> <input type="checkbox"/> <i>Clerk Of Superior Court</i><br><input type="checkbox"/> <i>District Court Judge</i> <input type="checkbox"/> <i>Superior Court Judge</i> |                                     |                     |  |  |
| <i>Location Of Court</i>   |            |                                 |            |   | <i>Court Date</i>       |  |  | <i>Court Time</i>  |                                     |                     |  |  |
|  |            |                                 |            |   |                         |  |  | <input type="checkbox"/> AM <input type="checkbox"/> PM  |                                     |                     |  |  |
| <b>WAIVER OF PROBABLE CAUSE HEARING</b>  |            |                                 |            |   |                         |  |  |  |                                     |                     |  |  |
| The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.   |            |                                 |            |   |                         |  |  |  |                                     |                     |  |  |
| <i>Date Waived</i>   |            | <i>Signature Of Defendant</i>   |            |   | <i>Name Of Attorney</i> |  |  | <i>Signature Of Attorney</i>   |                                     |                     |  |  |
|  |            |                                 |            |   |                         |  |  |  |                                     |                     |  |  |

|   |  |                 |
|---|--|-----------------|
| <b>STATE VERSUS</b>                           | _____ County   | <i>File No.</i> |
| <i>Name Of Defendant</i>                      | <b>NOTE:</b> Use this page to set forth the charging text for each offense listed on the AOC-CR-116. G.S. 15A-924(a)(5). |                 |
| <i>Date Of Issuance Of Magistrate's Order</i> |  |                 |

|  |                             |  |
|--|-----------------------------|--|
|  | <b>OFFENSES (continued)</b> |  |
|--|-----------------------------|--|

|                                     |  |
|-------------------------------------|--|
| <b>Count 1. Offense:</b>            |  |
| <i>Charging Text For This Count</i> |  |

|                                     |  |
|-------------------------------------|--|
| <b>Count 2. Offense:</b>            |  |
| <i>Charging Text For This Count</i> |  |

**STATE VERSUS**

\_\_\_\_\_ County

File No.

Name Of Defendant

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 3. Offense:**

Charging Text For This Count

**Count 4. Offense:**

Charging Text For This Count

|  |  |               |
|--|--|---------------|
| <b>STATE VERSUS</b>                    | _____ County   | File No.<br>▶ |
| Name Of Defendant                      | <b>NOTE:</b> 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)**

|                              |
|------------------------------|
| <b>Count 5. Offense:</b>     |
| Charging Text For This Count |
|                              |

|                              |
|------------------------------|
| <b>Count 6. Offense:</b>     |
| Charging Text For This Count |
|                              |

**STATE VERSUS**

\_\_\_\_\_ County

File No.

Name Of Defendant

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 7. Offense:**

Charging Text For This Count

**Count 8. Offense:**

Charging Text For This Count

|  |  |          |
|--|--|----------|
| <b>STATE VERSUS</b>                    | _____ County   | File No. |
| Name Of Defendant                      | <b>NOTE:</b> 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)

|                              |
|------------------------------|
| <b>Count 9. Offense:</b>     |
| Charging Text For This Count |
|                              |

|                              |
|------------------------------|
| <b>Count 10. Offense:</b>    |
| Charging Text For This Count |
|                              |

STATE VERSUS

County

File No.

Name Of Defendant

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).

Date Of Issuance Of Magistrate's Order

JUDGMENT

District Attorney

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

Attorney For Defendant

Appointed, Retained

PRIOR CONVICTIONS:

No./Level: 0 I (0) II (1-4) 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: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 2 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 3 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 4 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 5 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 6 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 7 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 8 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 9 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3
Count 10 PLEA: guilty not guilty no contest VERDICT: guilty not guilty M.CL.: A1 1 2 3

(Over)

|                     |  |   |
|---------------------|--|---|
| <b>STATE VERSUS</b> | _____ County   | File No. <span style="font-size: 2em;">▶</span> |
| Name Of Defendant   | <p><b>*NOTE:</b> Use this Judgment page only if imposing a <b>single</b>, consolidated judgment for all offenses of conviction charged under this file number. Do <b>not</b> 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).</p> |   |

**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:
- commit no criminal offense in any jurisdiction.
  - possess no firearm, explosive or other deadly weapon listed in G.S. 14-269.
  - 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.
  - satisfy child support and family obligations, as required by the Court.
  - 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.
  - pay to the Clerk the costs of court and any additional sums shown below.

|       |      |               |                |                       |       |                  |
|-------|------|---------------|----------------|-----------------------|-------|------------------|
| Costs | Fine | 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 on file in this case. | Date | Date Delivered To Sheriff | Signature | <input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC<br><input type="checkbox"/> Clerk Of Superior Court |
|---|------|---------------------------|-----------|--|

|   |   |  |   |   |
|---|---|--|---|---|
| File No.  | <b>STATE OF NORTH CAROLINA</b>  |  |   | In The General Court Of Justice<br>District/Superior Court Division |
| <b>SEARCH WARRANT</b>   | _____ County  |  |   |   |
| <b>IN THE MATTER OF</b>   | To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:   |  |   |   |
| Name Of Applicant   | 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.   |  |   |   |
| Name Of Additional Affiant(s)   | 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. |  |   |   |
| <b>RETURN OF SERVICE</b>  | 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.  |  |   |   |
| I certify that this Search Warrant was received and executed as follows:      | This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.  |  |   |   |
| Date Received   | Time Received   | <input type="checkbox"/> AM <input type="checkbox"/> PM  |   | Date Issued   |
| Date Executed   | Time Executed   | <input type="checkbox"/> AM <input type="checkbox"/> PM  |   | Time Issued   |
| <input type="checkbox"/> I made a search of _____                             | _____   | _____  | _____   | Name (type or print)  |
| _____ as commanded.   | <input type="checkbox"/> Deputy CSC   | <input type="checkbox"/> Assistant CSC   | <input type="checkbox"/> CSC                            | <input type="checkbox"/> Magistrate                                 |
| <input type="checkbox"/> I seized the items listed on the attached inventory. | <input type="checkbox"/> I did not seize any items.   | <input type="checkbox"/> This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed. | Signature   | <input type="checkbox"/> District Ct. Judge                         |
| Name Of Officer Making Return (type or print)                                 | Date  | Time   | <input type="checkbox"/> AM <input type="checkbox"/> PM | Signature Of Magistrate   |
| Signature Of Officer Making Return  | Date  | Time   | <input type="checkbox"/> AM <input type="checkbox"/> PM | Name Of Magistrate (type or print)                                  |
| Department Or Agency Of Officer   | Incident Number   | Date   | Time  | Name Of Clerk (type or print)                                       |
| _____   | _____   | _____  | _____   | Signature Of Clerk  |
| _____   | _____   | _____  | _____   | <input type="checkbox"/> Dep. CSC                                   |
| _____   | _____   | _____  | _____   | <input type="checkbox"/> Asst. CSC                                  |
| _____   | _____   | _____  | _____   | <input type="checkbox"/> 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:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

|   |  |
|---|--|
| <b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b> | <i>Date</i>                              |
| <i>Date</i>                                       | <i>Name Of Applicant (type or print)</i> |
| <i>Signature</i>                                  | <i>Signature Of Applicant</i>            |

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

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

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

This testimony has been *(check appropriate box)*  reduced to writing  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-533(h), 15A-534.1, 15A-534.7, or 15A-534.8] 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 (for G.S. 15A-534.8, enter date and time 24 hours after arrest; for all others, 48 hours after 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<br><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)

AOC-CR-201, Rev. 2/21

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**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<br>\$             | Date Premium Due     | Amount Of Premium Received<br>\$ | <b>AFFIX BONDSMAN'S SEAL OR<br/>POWER OF ATTORNEY<br/>CERTIFICATE HERE</b> |
| 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  Custodian Of Detention Facility [G.S. 15A-537(c)]  Magistrate  Deputy CSC  Assistant CSC  Clerk Of Superior Court  Custodian Of Detention Facility [G.S. 15A-537(c)]

**ADDITIONAL ACCOMMODATION BONDSMAN**

Name And Address Of Accommodation Bondsman Name And Address Of Accommodation Bondsman

Telephone No. Telephone No.

**SIGNATURE**

Signature Of Surety Signature Of Surety

**SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME** **SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME**

Date Date  
Signature Signature

Magistrate  Deputy CSC  Assistant CSC  Clerk Of Superior Court  Custodian Of Detention Facility [G.S. 15A-537(c)]  Magistrate  Deputy CSC  Assistant CSC  Clerk Of Superior Court  Custodian Of Detention Facility [G.S. 15A-537(c)]

**ADDITIONAL ACCOMMODATION BONDSMAN**

Name And Address Of Accommodation Bondsman Name And Address Of Accommodation Bondsman

Telephone No. Telephone No.

**SIGNATURE**

Signature Of Surety Signature Of Surety

**SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME** **SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME**

Date Date  
Signature Signature

Magistrate  Deputy CSC  Assistant CSC  Clerk Of Superior Court  Custodian Of Detention Facility [G.S. 15A-537(c)]  Magistrate  Deputy CSC  Assistant CSC  Clerk Of Superior Court  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.  | <input type="checkbox"/> See Attachment | Law Enforcement Case No.   | LID No. |
| <b>ORDER FOR ARREST</b>   |   | <b>STATE OF NORTH CAROLINA</b>   |         |
| #   |   | In The General Court Of Justice<br>County <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division   |         |
| <b>THE STATE OF NORTH CAROLINA VS.</b>  |   | Spoken Language Court Interpreter Needed For Any Party, Victim, Or Witness? (If Yes, identify person(s) and language(s).<br>Interpreters provided for all court proceedings at no cost.)<br><input type="checkbox"/> No <input type="checkbox"/> Yes: (explain)  |         |
| Name, Address & Telephone No. Of Defendant  |   | <b>To any officer with authority and jurisdiction to serve an Order For Arrest:</b><br>The Court finds that:   |         |
| Race  | Sex                                     | Date Of Birth  | Age     |
| Name And Address Of Defendant's Employer  |   | <input type="checkbox"/> 1. FTA - RELEASE ORDER [G.S. 15A-305(b)(2)] the defendant has been arrested and released from custody and has failed on the date shown to appear as required by the Release Order.<br><input type="checkbox"/> This is the defendant's second or subsequent failure to appear on these charges.   |         |
| Date Of Offense   |   | <input type="checkbox"/> 2. FTA - CRIMINAL SUMMONS OR CITATION (Do not use for infraction.) [G.S. 15A-305(b)(3)] the defendant has failed on the date shown to appear as required by a duly executed Criminal Summons or by a Citation that charged the defendant with a misdemeanor.  |         |
| Date Defendant Failed To Appear   |   | <input type="checkbox"/> 3. TRUE BILL OF INDICTMENT [G.S. 15A-305(b)(1)] a Grand Jury has returned a true bill of indictment against the defendant, a copy of which is attached. <b>[Note To Arresting Officer: If this option is checked, defendant must be fingerprinted. G.S. 15A-502(a).]</b>  |         |
| Amount Of Bond  | Type Of Bond                            | <input type="checkbox"/> 4. FTA - SHOW CAUSE AFTER FTC [G.S. 15A-305(b)(8)] the defendant has failed on the date shown to appear as required in a Show Cause Order entered in this criminal proceeding.  |         |
| \$  |   | <input type="checkbox"/> 5. FTA - SHOW CAUSE ORDER IN ORIGINAL CRIMINAL JUDGMENT [G.S. 15A-305(b)(8); -1362(c); -1364(a)] the defendant has failed by the date shown to pay a fine or costs or both as required by a judgment entered in this case and has also failed, as required upon such failure, to appear on that date and show cause why the defendant should not be imprisoned. |         |
| Notes   |   | <input type="checkbox"/> 6. PROBABLE CAUSE THAT DEFENDANT MAY FAIL TO APPEAR - CRIMINAL CONTEMPT [G.S. 15A-305(b)(9); 5A-16] this Court has initiated plenary proceedings for contempt against the defendant under G.S. 5A-16, has issued a show cause order and finds probable cause to believe that the defendant will not appear as required in response to that order.               |         |
| <b>OFFENSE(S)</b>   |   |  |         |
| Count No.   | Offense                                 | In Violation of G.S.   | Code    |
| Count No.   | Offense                                 | In Violation of G.S.   | Code    |
|   |   |  |         |
|   |   |  |         |
|   |   |  |         |
|   |   |  |         |
| <b>TRUE BILL OF INDICTMENT ONLY</b>   |   | <b>You are DIRECTED to take the defendant into custody and bring the defendant before a judicial official for the purpose of:</b>  |         |
| Date Of Arrest & Check Digit No. (as shown on fingerprint card)   |   | <input type="checkbox"/> determining conditions of release, and for commitment if the defendant is unable to comply.<br><input type="checkbox"/> commitment since release of the defendant is not authorized.  |         |
| Name Of Issuing Official  |   | Signature Of Issuing Official  |         |
| Date Issued   |   | Location Of Court  |         |
|   |   | Court Date   |         |
|   |   | Court Time <input type="checkbox"/> AM <input type="checkbox"/> PM   |         |
| <input type="checkbox"/> Magistrate <input type="checkbox"/> Deputy CSC <input type="checkbox"/> DC Judge             |   |  |         |
| <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> SC Judge |   |  |         |

|  |              |          |
|--|--------------|----------|
| <b>STATE VERSUS</b>  | _____ County | File No. |
| 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. |              |          |

|                          |
|--------------------------|
| <b>RETURN OF SERVICE</b> |
|--------------------------|

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

|                              |
|------------------------------|
| <b>REDELIVERY/REISSUANCE</b> |
|------------------------------|

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

|   |
|---|
| <b>RETURN FOLLOWING REDELIVERY/REISSUANCE</b> |
|---|

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

AOC-CR-217 Return, Rev. 7/24  
 © 2024 Administrative Office of the Courts

(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

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 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.

2. 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);

List G.S. 7A-451(a) action, felony, or non-Class 3 misdemeanor: \_\_\_\_\_

Therefore, 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.

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.

|      |           |                                     |  |                                    |
|------|-----------|-------------------------------------|--|------------------------------------|
| Date | Signature | <input type="checkbox"/> Judge      | <input type="checkbox"/> Clerk Of Superior Court | <input type="checkbox"/> Asst. CSC |
|      |           | <input type="checkbox"/> Deputy CSC | <input type="checkbox"/> Magistrate              |                                    |

**NOTE:** A magistrate may appoint counsel if designated to do so by the Chief District Court Judge. See G.S. 7A-146(11) and G.S. 7A-292(15).

**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**

Additional File Nos.

County

Name Of Applicant

Street Number And Street Name, Including Apartment Or Unit Number If Applicable

City, State And Zip Code

Full Permanent Mailing Address Of Applicant (if different than above)

Date Of Birth

Defendant  Parent/Guardian/Trustee  \_\_\_\_\_

**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

**Applicant:** (answering this question is optional) Have you ever served in the United States Armed Forces?  Yes  No

**MONTHLY INCOME (money you make)**

**MONTHLY EXPENSES (money you pay out)**

Employment - Applicant \$

Number Of Dependents \_\_\_\_\_

Name And Address Of Applicant's Employer  
(If not employed, state reason; if self-employed, state trade)

Shelter  Buying  Renting \$

Food (including Food Stamps) \$

Utilities (power, water, heating, phone, cable, etc.) \$

Other Income (Welfare, Food Stamps, S/S, Pensions, etc.) \$

Health Care \$

Employment - Spouse \$

Installment Payments  
 Vehicle  Other \$

Name And Address Of Spouse's Employer

Car Expenses (gas, insurance, etc.) \$

Support Payments \$

Other: (specify) \$

**Total Monthly Income** \$

**Total Monthly Expenses** \$

**DESCRIPTION OF ASSETS AND LIABILITIES**

**ASSETS (things you own)**

**LIABILITIES (amounts you owe)**

Cash On Hand And In Bank Accounts  
(list name of bank and account type, do not list account no.)

\$

Money Owed To Or Held For Applicant

\$

Motor Vehicles (list make, model, year)

\$

(Fair Market Value)

\$(Balance Due)

Real Estate

\$

(Fair Market Value)

\$(Balance Due)

Personal Property

\$

(Fair Market Value)

\$(Balance Due)

Other Debts

\$

Last Income Tax Filed 20 \_\_\_\_\_  Refund  Owe

\$

\$

Other

\$

\$

**Total Assets And Liabilities**

\$

\$

Bond Type Amount \$

By Whom Posted

**NOTE:** Read the notice on the reverse side before completing this form.



**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<br><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<br><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

**DETENTION OF IMPAIRED DRIVER**

Date Of Birth

G.S. 15A-534.2, 20-38.4

**FINDINGS**

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

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

**DETENTION ORDER**

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

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

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

|                                |  |  |  |
|--------------------------------|--|--|--|
| Date                           | Time <input type="checkbox"/> AM <input type="checkbox"/> PM | <input type="checkbox"/> Magistrate    | <input type="checkbox"/> Clerk Of Superior Court |
| Signature Of Judicial Official |  | <input type="checkbox"/> Deputy CSC    | <input type="checkbox"/> District Court Judge    |
|                                |  | <input type="checkbox"/> Assistant CSC | <input type="checkbox"/> Superior Court Judge    |

**RELEASE FROM DETENTION ORDER**

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

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

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

|      |                                      |
|------|--------------------------------------|
| Date | Signature Of Sober Responsible Adult |
|------|--------------------------------------|

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

|                                |  |  |  |
|--------------------------------|--|--|--|
| Date                           | Time <input type="checkbox"/> AM <input type="checkbox"/> PM | <input type="checkbox"/> Magistrate    | <input type="checkbox"/> Clerk Of Superior Court |
| Signature Of Judicial Official |  | <input type="checkbox"/> Deputy CSC    | <input type="checkbox"/> District Court Judge    |
|                                |  | <input type="checkbox"/> Assistant CSC | <input type="checkbox"/> Superior Court Judge    |

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

**NOTE:** If a defendant charged with an implied consent offense is unable to make bond, the magistrate must (1) inform the defendant in writing of the established procedure to have others appear at the jail to observe the defendant's condition or administer an additional chemical analysis and (2) require the defendant to list all persons the defendant wishes to contact and their telephone numbers. Use form AOC-CR-271 for this purpose. A copy of this form must be placed in the case file. G.S. 20-38.4(a)(4).

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

Name Of Defendant

Date Of Birth

DETENTION FOR COMMUNICABLE DISEASE TESTING

G.S. 15A-534.3

FINDINGS

The undersigned judicial official conducting an initial appearance or first appearance for the defendant named above finds probable cause that an individual had a nonsexual exposure to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by the defendant to the individual in that (specify reasons):

[NOTE: Do not include any information indicating that the defendant has or may have a communicable disease. Describe only the nature of the exposure that would pose a significant risk of transmission of the AIDS or Hepatitis B virus if the defendant were infected. Note that mere contact of the defendant's bodily fluids with a subject's clothing or unbroken skin does not pose a significant risk of transmission of either virus. A significant risk of transmission occurs when the defendant's bodily fluids come into contact with the subject's broken skin or mucous membranes. For example, a bite by the defendant that does not break the subject's skin does not pose a significant risk of transmission. Contact that may pose a significant risk includes things like a needlestick or a bite that actually breaks the subject's skin.]

DETENTION ORDER

Based upon the foregoing findings, the undersigned judicial official ORDERS that the defendant be detained in the custody of the Sheriff to allow for investigation by public health officials and for testing for AIDS virus infection and Hepatitis B infection if required by public health officials pursuant to G.S. 130A-144 and G.S. 130A-148.

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

Date Time 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.

In The General Court Of Justice
Before The Magistrate

County

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).



STATE OF NORTH CAROLINA

File No.

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.

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

STATE VERSUS

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

G.S. 15A-1345(b1)

Name Of Defendant

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 (time) 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

Spoken Language Court Interpreter Needed For Any Party, Victim, Or Witness? (If Yes, identify person(s) and language(s). Interpreters provided for all court proceedings at no cost.)

No Yes: (explain)

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/APEAL 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



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.)

**In The General Court Of Justice District Court Division**

|   |   |
|---|---|
| <p style="text-align: center;"><b>MAGISTRATE'S ORDER - MISDEMEANOR ONLY</b></p> <p style="text-align: center;"><i>Signature Of Magistrate/Deputy/Assistant/CSC</i></p> <p style="text-align: center;">Date _____</p> <p style="text-align: center;"><b>COURT USE ONLY</b></p> <p style="text-align: center;"><i>Attorney For Defendant At Time Of Trial Or Plea</i></p> | <p style="text-align: center;"><b>PRIOR CONVICTIONS:</b></p> <p>No./Level: 0 <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+)</p> <p>MISD. CLASS: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3</p> <p>MISD. CLASS: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3</p> <p><input type="checkbox"/> V/D</p> <p>VERDICT/ <input type="checkbox"/> guilty/resp. <input type="checkbox"/> not guilty/resp.</p> <p>FINDING: <input type="checkbox"/> guilty/resp. <input type="checkbox"/> not guilty/resp.</p> <p>PLEA: <input type="checkbox"/> guilty/resp. <input type="checkbox"/> no contest</p> <p><input type="checkbox"/> guilty/resp. <input type="checkbox"/> no contest</p> <p><input type="checkbox"/> not guilty/resp.</p> <p><b>JUDGMENT:</b> The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict/finding, it is ORDERED that the defendant: <input type="checkbox"/> pay costs and a fine/penalty of \$ _____, <input type="checkbox"/> be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. <input type="checkbox"/> The Court finds that a longer <input type="checkbox"/> shorter period of probation than specified in G.S. 15A-1343.2(t) is necessary. <input type="checkbox"/> Execution of sentence is suspended and the defendant is placed on unsupervised probation for _____ months, subject to the regular conditions of probation and the following: <input type="checkbox"/> (1) pay costs and a fine/penalty of \$ _____; <input type="checkbox"/> (2) not operate a motor vehicle until properly licensed by DMV; <input type="checkbox"/> (3) complete _____ hours of community service within _____ days and pay the fee; <input type="checkbox"/> (4) Other: _____</p> <p><input type="checkbox"/> It is ORDERED that this: <input type="checkbox"/> Judgment is continued upon payment of costs. <input type="checkbox"/> case be consolidated for judgment with _____</p> <p><input type="checkbox"/> sentence is to run at expiration of sentence in _____</p> <p><input type="checkbox"/> The Court finds just cause to waive costs as ordered on attached <input type="checkbox"/> AOC-CR-618. <input type="checkbox"/> Other: _____</p> <p><input checked="" type="checkbox"/> <b>COMMITMENT:</b> 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.</p> <p><input type="checkbox"/> The defendant in open court, gives notice of appeal to the Superior Court. <input type="checkbox"/> The current pretrial release order is modified as follows: _____</p> |
|---|---|

**NORTH CAROLINA UNIFORM CITATION**

*Defendant Is To Appear In District Court*

N.C.

|   |  |                    |   |  |   |
|---|--|--------------------|---|--|---|
| Day Of Week   | Month  | Day                | Year  | Time   |   |
| <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 | <input type="checkbox"/> AM <input type="checkbox"/> PM  |   |
| <b>THE STATE OF NORTH CAROLINA VS.</b>  |  |                    |   |  |   |
| 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) _____   |  |                    |   |  |   |
| <b>ACKNOWLEDGMENT/NONRESIDENT PERSONAL RECOGNIZANCE FOR APPEARANCE</b>  |  |                    |   |  |   |
| 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 _____   |                    |   |  |   |
| <b>DEPARTMENTAL USE ONLY</b>  |  |                    |   |  |   |
| Officer   | No.  | Troop              | District  |  |   |
| SHP Code  | <input type="checkbox"/> N.C. Patrol <input type="checkbox"/> _____ Police/Sheriff |                    |   |  |   |
| Area  | Wea.   | Vis.               | Traffic   | Accident   | Speed   |
| On Highway No./Street _____   |  |                    |   | <input type="checkbox"/> Injury Or Serious Injury <input type="checkbox"/> Passenger(s) Under 18 |   |
| In Vicinity/City Of _____   |  |                    | At/Near Intersection _____  |  |   |
| Wit.  | Chemical Analyst _____   |                    |   |  | <input type="checkbox"/> AC <input type="checkbox"/> Refused <input type="checkbox"/> Blood |

**STATE OF NORTH CAROLINA** \_\_\_\_\_ **County**

The undersigned officer has probable cause to believe that on or about \_\_\_\_\_ (a.) (p.) m., the \_\_\_\_\_ day of \_\_\_\_\_, in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

1. At a speed of \_\_\_\_\_ MPH in a \_\_\_\_\_ MPH  zone. G.S. 20-141.77.  work zone. G.S. 20-141(j2). **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 \_\_\_\_\_

**WITNESSES**

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Name

---

Address

---

Phone

---

Name

---

Address

---

Phone

---

Name

---

Address

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Phone

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

**In The General Court Of Justice District Court Division**

**MAGISTRATE'S ORDER - MISDEMEANOR ONLY**

Signature Of Magistrate/Deputy/Assistant/CSC

Date

**COURT USE ONLY**

Attorney For Defendant At Time Of Trial Or Plea

District Attorney

**PRIOR CONVICTIONS:**

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

MISD. CLASS:  A1  1  2  3

MISD. CLASS:  A1  1  2  3

V/D

**VERDICT/ FINDING:**

guilty/resp.  guilty/resp.  not guilty/resp.

no contest  no contest  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(t) 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 \_\_\_\_\_  The Court finds just cause to waive costs as ordered on attached  AOC-CR-618.  Other: \_\_\_\_\_

**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.

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

Signature Of Deputy/Assistant/CSC

Date

I certify that this Judgment is a true copy.

Signature Of District Court Judge

Date

File No. \_\_\_\_\_

**NORTH CAROLINA UNIFORM CITATION**

*Defendant Is To Appear In District Court*

N.C.

|             |       |     |      |      |   |
|-------------|-------|-----|------|------|---|
| Day Of Week | Month | Day | Year | Time | <input type="checkbox"/> AM <input type="checkbox"/> PM |
|-------------|-------|-----|------|------|---|

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 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  \_\_\_\_\_ AC  Refused  Blood

**STATE OF NORTH CAROLINA** \_\_\_\_\_ County

The undersigned officer has probable cause to believe that on or about \_\_\_\_\_ (a.) (p.) m., the \_\_\_\_\_ day of \_\_\_\_\_, in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

1. At a speed of \_\_\_\_\_ MPH in a \_\_\_\_\_ MPH  zone. G.S. 20-141.77.  work zone. G.S. 20-141(j2).  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 \_\_\_\_\_

## NOTICE TO DEFENDANT

If you fail to appear in court at the time, place, and location specified on the front side, or to dispose of this case prior to your court date as outlined below, **CRIMINAL PROCESS MAY BE ISSUED AGAINST YOU AND SUBSTANTIAL ADDITIONAL FEES MAY BE ASSESSED**. If you are charged with a motor vehicle offense, your failure to appear **may result in the revocation of your drivers license** until you dispose of this charge, and certain fees may be assessed against you by the North Carolina Division of Motor Vehicles. In addition, if a cash bond is required and posted, it will be forfeited, and your **failure to appear will be treated as a "conviction"** resulting in "points" against your driving and insurance records or **possible license revocation**. If you have any questions regarding your legal rights and obligations, consult a licensed attorney.

### INSTRUCTIONS TO DEFENDANT

*(Only the checked block applies)*

**1. You must appear** in District Court at the time, place, and location specified on the front side. If this is a speeding offense, you may be able to dispose of it **online** without appearing in court at **OnlineServices.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

waive your trial, plead Guilty/Responsible and pay the amounts shown below for fine/penalty (which is a standard amount set by the Chief District Court Judges of North Carolina) and for costs. You may do so by mail or in person so long as your payment is received by 5:00 p.m. on the last working day prior to your scheduled court date.

**Payment By Mail** - Date and sign this Citation in the space provided below, place your payment and this Citation in an envelope, affix a stamp, and mail to: Clerk of Superior Court, \_\_\_\_\_ County Courthouse, \_\_\_\_\_ North Carolina \_\_\_\_\_. Payment must be made by **certified check, cashier's check or money order** payable to the Clerk of Superior Court. **Do not mail cash.**

**PERSONAL CHECKS WILL NOT BE ACCEPTED.**

**Payment In Person** - Deliver your payment and this Citation to the office of the Clerk of Superior Court at the above address during regular business hours or to any Magistrate of the above county. Payment must be made by **cash, certified check, cashier's check or money order** payable to the Clerk of Superior Court. You may also pay by credit card, in person, in the clerk's office.

**PERSONAL CHECKS WILL NOT BE ACCEPTED.**

**3. You do not have to appear** in District Court at the time, place, and location specified on the front side if you waive your trial and plead Guilty. If you wish to do so, **you must appear in person before a Magistrate** of \_\_\_\_\_ County, because of the nature of the charge. Date and sign this Citation in the space provided below, deliver it to the Magistrate, and pay the fine imposed by the Magistrate and the costs shown below. Payment must be made by **cash, certified check, cashier's check or money order** payable to the Clerk of Superior Court.

**PERSONAL CHECKS WILL NOT BE ACCEPTED.**

**If you wish to contest the charge** or appear before a judge, you must appear at the time, place, and location specified on the front side.

**WARNING:** If you decide to plead Guilty/Responsible, you should do so **promptly** to minimize your costs. If you delay in entering your plea and making the specified payment, you may be liable for the costs of serving subpoenas on witnesses plus witness fees.

### WAIVER OF TRIAL/HEARING - PLEA OF GUILTY/RESPONSIBLE - CONSENT TO ENTRY OF JUDGMENT

I acknowledge that I have been charged with the offense/infraction noted herein by the charging officer.

I understand that I am presumed by law to be Not Guilty/Not Responsible until proven Guilty/Responsible beyond a reasonable doubt. Nevertheless, I do hereby waive my constitutional rights to a trial/hearing in open court, to confront the witnesses against me, and to representation by an attorney.

I hereby plead Guilty/Responsible to this offense/infraction and tender to the court the sums listed below as payment of the fine/penalty and costs in this case. I request that the court accept my waiver of trial/hearing, plea of Guilty/Responsible and tender of fine/penalty and costs, and that a verdict/finding of Guilty/Responsible be entered. This request is made with the full understanding that a verdict/finding of Guilty/Responsible will be entered against my record, that if this is a motor vehicle offense, the North Carolina Division of Motor Vehicles (or the licensing authority of any other state that issued my license to drive) will be notified of the verdict/finding, that it will have the same legal effect for all purposes as a verdict/finding of Guilty/Responsible after a trial/hearing, and that it may result in the assessment of points on my driving and insurance records or the suspension or revocation of my drivers license.

|                        |       |       |
|------------------------|-------|-------|
| Amount Of Fine/Penalty | Costs | Total |
| \$                     | \$    | \$    |

|      |                        |
|------|------------------------|
| Date | Signature Of Defendant |
|------|------------------------|

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.)

**In The General Court Of Justice District Court Division**

|   |   |
|---|---|
| <p style="text-align: center;"><b>MAGISTRATE'S ORDER - MISDEMEANOR ONLY</b></p> <p style="text-align: center;"><i>Signature Of Magistrate/Deputy/Assistant/CSC</i></p> <p style="text-align: center;">Date _____</p> <p style="text-align: center;"><b>COURT USE ONLY</b></p> <p style="text-align: center;"><i>Attorney For Defendant At Time Of Trial Or Plea</i></p> | <p><b>PRIOR CONVICTIONS:</b></p> <p>No./Level: 0 <input type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+)</p> <p>MISD. CLASS: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3</p> <p>MISD. CLASS: <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3</p> <p><input type="checkbox"/> V/D</p> <p><b>VERDICT/ FINDING:</b></p> <p><input type="checkbox"/> guilty/resp. <input type="checkbox"/> guilty/resp. <input type="checkbox"/> not guilty/resp.</p> <p><input type="checkbox"/> no contest <input type="checkbox"/> no contest <input type="checkbox"/> not guilty/resp.</p> <p><b>JUDGMENT:</b> The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict/finding, it is ORDERED that the defendant: <input type="checkbox"/> pay costs and a fine/penalty of \$ _____, <input type="checkbox"/> be imprisoned for a term of _____ days in custody of the sheriff. Pretrial credit _____ days served. <input type="checkbox"/> The Court finds that a longer <input type="checkbox"/> shorter period of probation than specified in G.S. 15A-1343.2(t) is necessary. <input type="checkbox"/> Execution of sentence is suspended and the defendant is placed on unsupervised probation for _____ months, subject to the regular conditions of probation and the following: <input type="checkbox"/> (1) pay costs and a fine/penalty of \$ _____; <input type="checkbox"/> (2) not operate a motor vehicle until properly licensed by DMV; <input type="checkbox"/> (3) complete _____ hours of community service within _____ days and pay the fee; <input type="checkbox"/> (4) Other: _____</p> <p><input type="checkbox"/> It is ORDERED that this: <input type="checkbox"/> Judgment is continued upon payment of costs. <input type="checkbox"/> case be consolidated for judgment with _____</p> <p><input type="checkbox"/> sentence is to run at expiration of sentence in _____ <input type="checkbox"/> The Court finds just cause to waive costs as ordered on attached <input type="checkbox"/> AOC-CR-618. <input type="checkbox"/> Other: _____</p> <p><input checked="" type="checkbox"/> <b>COMMITMENT:</b> 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.</p> <p><input type="checkbox"/> The defendant in open court, gives notice of appeal to the Superior Court. <input type="checkbox"/> The current pretrial release order is modified as follows: _____</p> |
|---|---|

**NORTH CAROLINA UNIFORM CITATION**

*Defendant Is To Appear In District Court*

N.C.

|             |       |     |      |      |   |
|-------------|-------|-----|------|------|---|
| Day Of Week | Month | Day | Year | Time | <input type="checkbox"/> AM <input type="checkbox"/> PM |
|-------------|-------|-----|------|------|---|

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 \_\_\_\_\_  AC  Refused  Blood

**STATE OF NORTH CAROLINA** \_\_\_\_\_ County

The undersigned officer has probable cause to believe that on or about \_\_\_\_\_ (a.) (p.) m., the \_\_\_\_\_ day of \_\_\_\_\_, in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area)

1. At a speed of \_\_\_\_\_ MPH in a \_\_\_\_\_ MPH  zone. G.S. 20-141.77.  work zone. G.S. 20-141(j2). **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 \_\_\_\_\_

C

**MAGISTRATE'S ORDER - MISDEMEANOR ONLY**  
Signature Of Magistrate/Deputy/Assistant/CSC

**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.

Date

File No. \_\_\_\_\_

**NORTH CAROLINA UNIFORM CITATION**

*Defendant Is To Appear In District Court*

N.C.

|             |       |     |      |      |  |
|-------------|-------|-----|------|------|--|
| Day Of Week | Month | Day | Year | Time | <input type="checkbox"/> AM<br><input type="checkbox"/> PM |
|-------------|-------|-----|------|------|--|

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 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 \_\_\_\_\_  \_\_\_\_\_ AC  
 Refused  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(j2). 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 \_\_\_\_\_

CONSENT TO TOW, REMOVE OR STORE VEHICLE OR LEAVE VEHICLE AT THE SCENE

I, the undersigned, declare that I am the  registered owner  legal possessor

of the motor vehicle identified on the reverse of this Citation.

(check appropriate block)

I consent to have this vehicle  towed  removed  and stored

by towing service \_\_\_\_\_.

I consent to have this vehicle removed to the shoulder of the road by the undersigned law enforcement officer and left at this location.

Date

Signature

Date

Signature

VIN \_\_\_\_\_

OFFICER'S NOTES

Area with horizontal lines for officer's notes.



# NORTH CAROLINA UNIFORM CITATION (G.S. 15A-302)

## LEGEND

(USE THESE LETTERS, NUMERALS AND WORDS APPROPRIATELY)



**NOTE:** First character of "C" is a "commercial motor vehicle" as defined in G.S. 20-4.01(3d).

Forms - Page 67

| VIOLATION AREA       |  |
|----------------------|--|
| B .....              | Business or Industrial   |
| R .....              | Residential Section  |
| S .....              | School or Playground   |
| OC .....             | Open Country or Undeveloped  |
| WEATHER              |  |
| C .....              | Clear  |
| O .....              | Overcast   |
| R .....              | Rain   |
| S .....              | Sleet, Snow, or Hail   |
| I .....              | Icing Due to Low Temperature   |
| VISIBILITY           |  |
| C .....              | Clear  |
| R .....              | Rain on Windshield   |
| S .....              | Sleet, Snow, or Hail Obscuring   |
| F .....              | Fog, Smoke, or Dust  |
| TRAFFIC VOLUME       |  |
| H .....              | Heavy  |
| M .....              | Medium   |
| L .....              | Light  |
| N .....              | None   |
| ACCIDENT INVOLVEMENT |  |
| F .....              | Fatal (list number killed; if others are injured in the same accident, list I and number)<br>Example F-1<br>I-2      |
| I .....              | Injury (list number injured)   |
| P .....              | Property Damage (list number vehicles damaged) (if damage is under \$500, enter the word No under the other entries) |
| NE .....             | Near Accident (almost collided)  |
| NO .....             | No Accident Involvement  |

| SPEED OF VEHICLE  |                                    |
|---|------------------------------------|
| C .....   | Speed Computer (list speed)        |
| P .....   | Pursuit (list speed)               |
| R .....   | Radar (list speed)                 |
| A .....   | Approximation (list speed)         |
| VICINITY  |                                    |
| Indicate name of community, intersection, or geographical landmark. Write name of street or list highway number preceded by type; that is, US 1, NC 10, RPR 1234 or RUR 5678. |                                    |
| DRIVERS LICENSE CLASS   |                                    |
| A .....   | Class "A" License                  |
| AR .....  | Class "A" License with Restriction |
| B .....   | Class "B" License                  |
| BR .....  | Class "B" License with Restriction |
| C .....   | Class "C" License                  |
| CR .....  | Class "C" License with Restriction |
| LP .....  | Learner's Permit                   |

| VEHICLE TYPE                     |                                       |
|----------------------------------|---------------------------------------|
| AMB .....                        | Ambulance                             |
| BI .....                         | Bicycle                               |
| CAB .....                        | Activity Bus - 16 or More Passengers  |
| CB .....                         | Commercial Bus                        |
| CSB .....                        | School Bus - 16 or More Passengers    |
| CTTT .....                       | Commercial Truck Tractor with Trailer |
| CT2A .....                       | Commercial Truck with Two Axles       |
| CT3A .....                       | Commercial Truck with Three Axles     |
| CT4A .....                       | Commercial Truck with Four Axles      |
| CT5A .....                       | Commercial Truck with Five Axles      |
| CT6A .....                       | Commercial Truck with Six Axles       |
| CVN .....                        | Van - 16 or More Passengers           |
| FE .....                         | Farm Equipment                        |
| FTR .....                        | Farm Tractor                          |
| MC .....                         | Motorcycle                            |
| MP .....                         | Moped                                 |
| MS .....                         | Motor Scooter or Motor Bike           |
| OT .....                         | Other                                 |
| P .....                          | Two or Four Door Sedan (Passenger)    |
| PED .....                        | Pedestrian                            |
| PU .....                         | Pickup Truck                          |
| RV .....                         | Recreational Vehicle, Self-Contained  |
| SW .....                         | Station Wagon (Passenger)             |
| SWT .....                        | Station Wagon (Truck)                 |
| TAXI .....                       | Taxicab                               |
| TRV .....                        | Camper Mounted on Two-Axle Truck      |
| TT .....                         | Truck Tractor Only                    |
| TTT .....                        | Truck Tractor with Trailer            |
| T2A .....                        | Truck with Two Axles                  |
| VN .....                         | Van                                   |
| TRAILER TYPES                    |                                       |
| <b><u>Non-Semi Trailers:</u></b> |                                       |
| BT .....                         | Boat                                  |
| CT .....                         | Camper                                |
| UT .....                         | Utility                               |
| HE .....                         | Horse                                 |
| HS .....                         | House Trailer (Mobile Home)           |
| TV .....                         | Towed Vehicle                         |
| OT .....                         | Other                                 |
| <b><u>Semi Trailers:</u></b>     |                                       |
| 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. 20-179.3(j); 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(1). 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(1).
- 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(a1).

#### 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).

- D.** By driving to the left of the center line upon (the crest of a grade) (a curve) in the highway where such center line had been placed upon the highway by the Department of Transportation and was visible. G.S. 20-150(d).
- E.** By overtaking and passing another vehicle proceeding in the same direction on a portion of the highway marked by the Department of Transportation with signs, markers, or markings clearly indicating passing should not be attempted. G.S. 20-150(e).

#### VIII. FAILURE TO STOP FOR SIREN

- A.** By failing, upon the approach of a (law enforcement vehicle) (fire department vehicle) (public ambulance) (private ambulance) (rescue squad emergency service vehicle) (vehicle operated by the Division of Marine Fisheries of the Department of Environmental Quality that was traveling in response to an emergency and) (vehicle operated by the Division of Parks and Recreation of the Department of Natural and Cultural Resources that was traveling in response to an emergency and) (vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services that was traveling in response to an emergency and) that was giving warning signal by appropriate light and by (bell) (siren) (exhaust whistle), audible under normal conditions from a distance of not less than 1,000 feet, to (drive the defendant's vehicle to a position as near as possible and parallel to the right-hand (edge) (curb), clear of any intersection of streets or highways) (stop the defendant's vehicle). G.S. 20-157(a). For the last two parenthetical options, choose one or both.

#### IX. HANDICAPPED PARKING VIOLATION

- A.** And without privilege (park) (leave standing) a vehicle in a space designated for handicapped persons. G.S. 20-37.6(e). Strike "operate a (motor) vehicle."

#### X. HIT AND RUN (property damage only)

- A.** Fail to stop the vehicle the defendant was driving at the scene of an accident and collision resulting in property damage to (name the vehicle or other property) when the defendant should have known that (his) (her) vehicle was involved in the accident and collision. G.S. 20-166(c). Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- B.** Involved in an accident and collision resulting in property damage to (name vehicle or other property damaged), and the defendant should have known that (his) (her) vehicle was involved in the accident and collision, and the defendant failed to give (his) (her) name, address, drivers license number, and vehicle license plate number to the (drivers and occupants of the other vehicles involved) (the persons whose property was damaged). G.S. 20-166(c1). Strike "on a (street or highway) (public vehicular area)."

#### XI. INTOXICATION AND PROHIBITION VIOLATIONS

- A. Intoxicated And Disruptive In Public:** Appear intoxicated and disruptive in (name public place), a public place, by (specify disruptive acts). G.S. 14-444. Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- B. Liquor In Passenger Area:** Transport (fortified wine) (spirituous liquor) in the passenger area of a motor vehicle in other than in the manufacturer's unopened original container. G.S. 18B-401(a). Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."
- C. Beer Drinking By Driver:** While consuming a (malt beverage) (unfortified wine) in the passenger area of that vehicle. G.S. 18B-401(a).
- D. Transporting After Consuming:** With an open container of alcoholic beverage after drinking. G.S. 20-138.7(a).

#### XII. MISCELLANEOUS

- A. Reckless Driving:** Without due caution and circumspection and at a speed or in a manner so as to endanger persons and property. G.S. 20-140(b).
- B. Left Of Center:** By failing to drive said vehicle upon the right half of the highway that was of sufficient width for more than one lane of traffic. G.S. 20-146.
- C. Motorcyclist To Wear Safety Helmet:** Operate a motorcycle (without wearing a safety helmet) (while a passenger thereon failed to wear a safety helmet). G.S. 20-140.4(a)(2). Strike "operate a (motor) vehicle."
- D. Littering: (No commercial purpose, no hazardous waste, 15 lbs. or less)** And intentionally and recklessly (throw, scatter, spill, place, and dispose of) (cause to be blown, scattered, spilled, thrown, and placed) litter (on property not owned by the defendant) (in the waters of North Carolina) by (describe act). The litter was not deposited on property designated by the State or its political subdivision for disposal of garbage and refuse by a person authorized to use the property for that purpose and not in a litter receptacle as defined in G.S. 14-399(a)(2). G.S. 14-399(c). Strike "operate a (motor) vehicle on a (street or highway) (public vehicular area)."

- 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 Officer:** 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 duly 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(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 states:

- 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.

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. |
|--------------|-----|-----------|--------------|

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<sup>+</sup>:
  - 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.

STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
District Court Division

County

IN THE MATTER OF

Name And Address

REVOCATION ORDER
WHEN PERSON PRESENT

G.S. 20-16.5

Spoken Language Court Interpreter Needed For Any Party, Victim, Or Witness? (If Yes, identify person(s) and language(s). Interpreters provided for all court proceedings at no cost.)

No Yes: (explain)

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.

Original-File Copy-Person Whose License Revoked (Over)

**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<br><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 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 | <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC<br><input type="checkbox"/> Clerk Of Superior Court |
|------|-----------|--|

**DISPOSITION OF LICENSE OR PRIVILEGE**

- 1. Drivers license of person named herein returned to him/her, and receipt by him/her is acknowledged below.
- 2. At the licensee's request, license returned to him/her by mail. License mailed on the date shown below.
- 3. License mailed to Division of Motor Vehicles on date shown below, since the person named herein is not eligible to use the license for the following reason:
  
- 4. Limited driving privilege withheld and record forwarded to \_\_\_\_\_ County.
- 5. Other: \_\_\_\_\_

|                     |   |
|---------------------|---|
| Date                | Signature   |
| Date License Mailed | <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court |

**ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of my license.

|                     |  |
|---------------------|--|
| Date                | Signature Of Licensee  |
| Date \$100 Fee Paid | <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC<br><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



