

Agenda

## **Advanced Criminal Procedure for Magistrates**

November 10-11, 2015

School of Government, Chapel Hill

### **Tuesday, November 10 Room 2401**

- 8:30-10:15**     **Determining Probable Cause—105 min**  
Jeff Welty, School of Government
- 10:15-10:30**     **Break**
- 10:30-12:15**     **Issuing Process – 105 min**  
John Rubin, School of Government
- 12:15-1:15**     **Lunch**
- 1:15-2:45**     **Probation, Post-Release Supervision, and Extradition –90 min**  
Jamie Markham, School of Government
- 2:45-3:00**     **Break**
- 3:00-4:00**     **The Relationship between Magistrates and Law Enforcement Officers – 60 min**  
Dona Lewandowski, School of Government
- 4:00-4:15**     **Break**
- 4:15-5:00**     **Dealing with Difficult Defendants and Complainants –45 min**  
Jeff Welty, School of Government  
Julie Antonelli, Guilford County  
Don Paschall, Durham County  
Katrina Watson, Mecklenburg
- 5:30-7:00**     **Group Dinner**

### **Wednesday, November 11 Room 2401**

- 8:30-10:00**     **Setting Bonds**  
Jeff Welty, School of Government
- 10:00-10:15**     **Break**
- 10:15-11:45**     **Taking Bonds –90 min**  
Tory Page, Administrative Office of the Courts
- 11:45-12:45**     **Lunch**
- 12:45-2:45**     **Initial Appearances in Impaired Driving Cases—120 min**  
Shea Denning, School of Government
- 2:45-3:00**     **Break**
- 3:00-4:15**     **Ethics and Fairness –75 min**  
Jim Drennan, School of Government

**Magistrate CLEs: 13 Hours / NC Bar CLEs applied for: 1.25 Ethics & 10.75 General Hours**



## **FACULTY BIOGRAPHIES**

### **Shea R. Denning**

Professor of Public Law and Government  
919.843.5120  
[denning@sog.unc.edu](mailto:denning@sog.unc.edu)

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

#### **Fields of Expertise**

Driver's License Revocations  
Driving While Impaired  
Motor Vehicle Law

### **Jim Drennan**

Professor of Public Law and Government (part-time)  
919.966.4160  
[drennan@sog.unc.edu](mailto:drennan@sog.unc.edu)

Jim Drennan joined the School of Government (then the Institute of Government) in 1974. He teaches and advises on court administration issues, judicial ethics and fairness, criminal sentencing, and judicial leadership. Drennan is also responsible for the School's educational programs for clerks of superior court and court administrators. While on leave from 1993 through 1995, he served as director of the North Carolina Administrative Office of the Courts. He is a member of the North Carolina State Bar, the American Bar Association, and the National Association of State Judicial Educators. Drennan earned a BA from Furman University and a JD from Duke University, where he served on the editorial board of the *Duke Law Journal*.

#### **Fields of Expertise**

Courts  
Judicial Education  
North Carolina Constitution  
Sentencing Law

**Dona G. Lewandowski**

Lecturer of Public Law and Government

919.966.7288

[lewandowski@sog.unc.edu](mailto:lewandowski@sog.unc.edu)

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

**Fields of Expertise**

Landlord-Tenant Law

Magistrates

Small Claims Court

**James M. Markham**

Albert and Gladys Hall Coates Distinguished Term Associate Professor

919.843.3914

[markham@sog.unc.edu](mailto:markham@sog.unc.edu)

Jamie Markham joined the School of Government faculty in 2007. His area of interest is criminal law and procedure, with a focus on the law of sentencing, corrections, and the conditions of confinement. He was named Albert and Gladys Coates Distinguished Term Associate Professor for 2015–2017. Markham earned a bachelor's degree with honors from Harvard College and a law degree with high honors, Order of the Coif, from Duke University, where he was editor-in-chief of the *Duke Law Journal*. He is a member of the North Carolina Bar. Prior to law school, Markham served five years in the United States Air Force as an intelligence officer and foreign area officer. He was also a travel writer for Let's Go Inc., contributing to the Russia and Ukraine chapters of *Let's Go: Eastern Europe*.

**Fields of Expertise**

Community Corrections

Criminal Law and Procedure

Jails

Probation and Parole

Sentencing Law

Sex Offender Registration



**Troy D. Page**

Assistant Legal Counsel, Administrative Office of the Courts

919.890.1323

[Troy.D.Page@nccourts.org](mailto:Troy.D.Page@nccourts.org)

Troy Page has been with the Administrative Office of the Courts as assistant legal counsel since 2008, rejoining the AOC after three years on the staff of the NC Sentencing and Policy Advisory Commission. His first period with the AOC was spent as a business analyst, working primarily on civil applications (including the bond forfeiture subsystem in VCAP, the Civil Case Processing System) and security administration. Prior to his time with AOC, he served for two years as an assistant public defender in Robeson County, District 16B. He holds a BA in Political Science from NC State University and a JD from the UNC School of Law.

**John Rubin**

Albert Coates Professor of Public Law and Government

919.962.2498

[rubin@sog.unc.edu](mailto:rubin@sog.unc.edu)

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

**Fields of Expertise**

Bail and Pretrial Release  
Collateral Consequences (Criminal Convictions)  
Criminal Law and Procedure  
Domestic Violence  
Evidence  
Expunction  
Indigent Defense Education  
Public Defender Training  
Sentencing Law  
Sex Offender Registration  
Subpoenas

**Jeffrey B. Welty**

Associate Professor of Public Law and Government

919.843.8474

[welty@soq.unc.edu](mailto:welty@soq.unc.edu)

Jeff Welty joined the School of Government in 2008. He was named Albert and Gladys Hall Coates Distinguished Term Assistant Professor for 2012–2014. Prior to that, he completed a federal judicial clerkship, spent eight years in private practice, and served as a lecturing fellow at Duke Law School. Welty earned a bachelor's degree from the University of California at Berkeley and a master's degree in economics and a JD, with highest honors, from Duke University, where he was executive editor of the *Duke Law Journal*.

**Fields of Expertise**

Bail and Pretrial Release

Criminal Law and Procedure

Evidence

Police Attorneys

Prosecutor Training

**Advanced Criminal Procedure for Magistrates  
UNC School of Government  
Chapel Hill, NC  
November 10-11, 2015**

**EVALUATION**

**SESSION EVALUATION**

**TUESDAY, NOVEMBER 10, 2015**

**Determining Probable Cause**

Jeff Welty, School of Government

	<i>Strongly Disagree</i>			<i>Strongly Agree</i>	
Please rate your instructor's teaching:					
1. The instructor presented the material clearly.	1	2	3	4	5
2. The instructor was knowledgeable and well-prepared.	1	2	3	4	5
3. The instructor's pace was appropriate.	1	2	3	4	5
4. Overall, the session was skillfully done.	1	2	3	4	5

Please share any additional comments about the instructor's teaching. If you indicated that you were dissatisfied with one or more aspects of the instructor's teaching, we are particularly interested in learning how he or she can do better in the future:

	<i>Strongly Disagree</i>			<i>Strongly Agree</i>	
Please rate the session content:					
1. The session content is important for my professional development.	1	2	3	4	5
2. Was the content appropriate for your level of knowledge?	Too difficult		About right		Too easy

**Issuing Process**

John Rubin, School of Government

	<i>Strongly Disagree</i>			<i>Strongly Agree</i>	
Please rate your instructor's teaching:					
1. The instructor presented the material clearly.	1	2	3	4	5
2. The instructor was knowledgeable and well prepared.	1	2	3	4	5
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	<i>Strongly Disagree</i>		<i>Strongly Agree</i>		
Please rate the session content:					
1. The session content is important for my professional development.	1	2	3	4	5
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**Probation, Post-Release Supervision, and Extradition**

Jamie Markham, School of Government

	<i>Strongly Disagree</i>			<i>Strongly Agree</i>	
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	<i>Strongly Disagree</i>		<i>Strongly Agree</i>		
Please rate the session content:					
1. The session content is important for my professional development.	1	2	3	4	5
2. Was the content appropriate for your level of knowledge?	Too difficult		About right		Too easy

**The Relationship between Magistrates and Law Enforcement Officers**

Dona Lewandowski, School of Government

	<i>Strongly Disagree</i>				<i>Strongly Agree</i>
Please rate your instructor’s teaching:					
1. The instructor presented the material clearly.	1	2	3	4	5
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Please rate the session content:					
1. The session content is important for my professional development.	1	2	3	4	5
2. Was the content appropriate for your level of knowledge?	Too difficult		About right		Too easy

**Dealing with Difficult Defendants and Complainants-Panel**

Jeff Welty, School of Government, Julie Antonelli, Guilford County, Don Paschall, Durham County, and Katrina Watson, Mecklenburg County

	<i>Strongly Disagree</i>				<i>Strongly Agree</i>
Please rate your instructor’s teaching:					
1. The instructor presented the material clearly.	1	2	3	4	5
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	<i>Strongly Disagree</i>				<i>Strongly Agree</i>
Please rate the session content:					
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2. Was the content appropriate for your level of knowledge?	Too difficult		About right		Too easy

**WEDNESDAY, NOVEMBER 11, 2015**

**Setting Bonds**

Jeff Welty, School of Government

	<i>Strongly Disagree</i>			<i>Strongly Agree</i>		
Please rate your instructor's teaching:						
1. The instructor presented the material clearly.	1	2	3	4	5	
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	<i>Strongly Disagree</i>		<i>Strongly Agree</i>			
Please rate the session content:						
1. The session content is important for my professional development.	1	2	3	4	5	
2. Was the content appropriate for your level of knowledge?	Too difficult		About right		Too easy	

**Taking Bonds**

Troy Page, Administrative Office of the Courts

	<i>Strongly Disagree</i>			<i>Strongly Agree</i>		
Please rate your instructor's teaching:						
1. The instructor presented the material clearly.	1	2	3	4	5	
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## Initial Appearances in Impaired Driving Cases

Shea Denning, School of Government

	<i>Strongly Disagree</i>			<i>Strongly Agree</i>	
Please rate your instructor's teaching:					
1. The instructor presented the material clearly.	1	2	3	4	5
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2. Was the content appropriate for your level of knowledge?	Too difficult		About right		Too easy

## Ethics and Fairness

Jim Drennan, School of Government

	<i>Strongly Disagree</i>			<i>Strongly Agree</i>	
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Please rate the session content:					
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2. Was the content appropriate for your level of knowledge?	Too difficult		About right		Too easy

## COURSE EVALUATION

### Course Content

Please rate the usefulness and length of each session:

	Usefulness		Session Length		
	Keep Session	Omit Session	Too Short	Just Right	Too Long
Determining Probable Cause					
Issuing Process					
Probation, Post-Release Supervision, and Extradition					
Relationship Between Magistrates and Law Enforcement Officers					
Dealing with Difficult Defendants and Complainants					
Setting Bonds					
Taking Bonds					
Initial Appearances in Impaired Driving Cases					
Ethics and Fairness					

Are there any topics that we should add to the course?

Please rate the course content:

1. The course (as a whole) will be useful to me.
2. The course materials will be useful to me.

*Strongly Disagree*

*Strongly Agree*

1 2 3 4 5  
1 2 3 4 5

Additional comments about course content:

Please rate the logistics of the course:

1. Registering for the course was simple and straightforward.
2. Before attending the course, I received appropriate and timely information about course logistics.
3. The room set-up was appropriate for this class.
4. On-site School of Government staff was informed and helpful.

*Disagree*

*Agree*

1 2 3 4 5  
1 2 3 4 5  
1 2 3 4 5  
1 2 3 4 5

Additional comments about course logistics:

How did you find out about the course? (please check all that apply)

- Postcard Announcement  
 Email Announcement  
 School of Government Flyer  
 School of Government Website  
 School of Government Listserv

Please specify: \_\_\_\_\_  
 Referral from Colleagues  
 Web Search  
 School of Government Blog



Tab:

Determining

Probable Cause

**PROBABLE CAUSE**

Jeff Welty  
School of Government

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**A Widely Used Standard**

- Required to issue arrest warrants and other criminal process
  - G.S. 15A-304(d)
- Required to issue search warrants
  - U.S. Const. Am. IV
  - G.S. 15A-245
- Other

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**Important to Get It Right**

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

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### What Is Probable Cause?

- Is a “fluid concept . . . not readily, or even usefully, reduced to a neat set of legal rules”
  - Illinois v. Gates, 462 U.S. 213 (1983)
- Requires a “substantial basis”
  - Id.
- Means a “reasonable ground for belief”
  - State v. Weakley, 176 N.C. App. 642 (2006)

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### Comparing Standards

- Beyond a reasonable doubt
- Clear and convincing evidence
- Preponderance of the evidence
- Probable cause
- Reasonable suspicion

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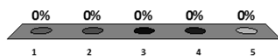
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### Quantifying Probable Cause

What degree of likelihood is required to establish probable cause?

1. 90%
2. 60%
3. 51%
4. 40%
5. 20%



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### Same Standard for All Crimes?

- Should you require the same probability when officers are looking for a kidnapped child as when they are looking for counterfeit Gucci purses?

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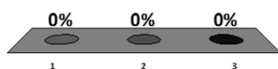
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### Same Standard for All Crimes?

Would you require more certainty to issue a search warrant in a kidnapping case than a counterfeit merchandise case, less certainty, or the same amount?

1. More
2. Less
3. Same



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### What You May Consider

- Evidence that has been illegally seized
  - Cf. United States v. Calandra, 414 U.S. 338 (1974)
- Evidence that will be inadmissible at trial, such as hearsay
  - Brinegar v. United States, 338 U.S. 160 (1949)

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## What You May Not Consider

- Defenses
  - Examples: insanity, entrapment
  - Possible exception for slam dunks, such as misdemeanor statute of limitations?
- Self-defense?

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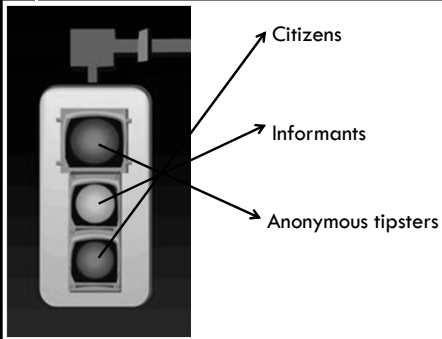
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## Types of Witnesses



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## Witness Credibility

A witness who does not make eye contact with me is more likely to be lying than a witness who looks me in the eye.

1. True
2. False



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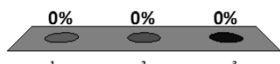
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### Witness Credibility

My ability to determine whether someone is telling me the truth is:

- 1. Above average
- 2. Average
- 3. Below average



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### Witness Credibility

- Factors approved by the courts
  - Factors concerning the content of the witness's testimony
  - Factors concerning the witness's demeanor
- What social science research shows

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### Scenario 1

- An officer stops a minivan for speeding. The officer sees a small bag of marijuana in the front passenger footwell. There are five adults in the minivan, all of whom deny ownership of the drugs. Is there probable cause to arrest all of the occupants for possession of marijuana?

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### Scenario 1

Is there probable cause?

1. Yes
2. No



A 3D pie chart with two slices. The first slice is labeled '0%' and '1'. The second slice is labeled '0%' and '2'.

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### Scenario 2

- An officer applies for a search warrant, stating
  - He is an experienced officer assigned to investigate property crimes
  - Someone broke into a school within the last two weeks and stole two expensive microscopes
  - Within the last week, a "confidential and reliable informant," not further described, contacted the officer to report that the stolen microscopes are in the suspect's house
- Is there probable cause to issue the search warrant?

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### Scenario 2

Is there probable cause?

1. Yes
2. No



A 3D pie chart with two slices. The first slice is labeled '0%' and '1'. The second slice is labeled '0%' and '2'.

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### Scenario 3



00:03:25:22

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### Scenario 3

Is there probable cause?

1. Yes
2. No



0% 0%

1 2

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### Scenario 4



00:00:00:00

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### Scenario 4

Is there probable cause?

- 1. Yes
- 2. No



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### Scenario 5



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### Scenario 5

Is there probable cause?

- 1. Yes
- 2. No



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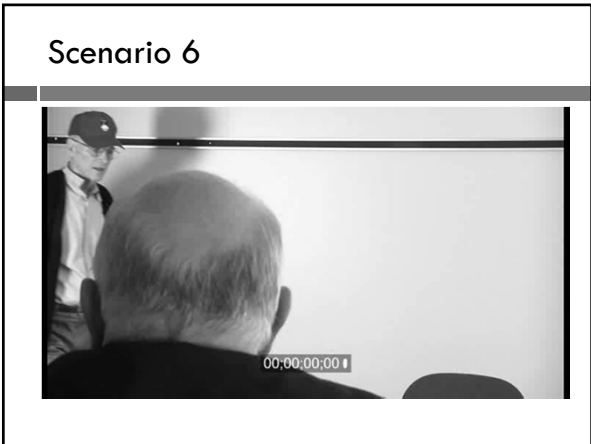
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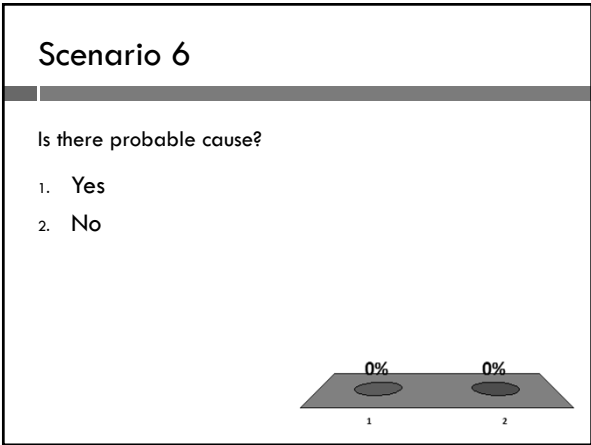
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### Scenario 7

Is there probable cause?

- 1. Yes
- 2. No



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**PROBABLE CAUSE**

Jeff Welty  
School of Government

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## Probable Cause: What to Consider

### Proper considerations.

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

### Improper considerations.

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

## Probable Cause: Types of Witnesses

Jeff Welty  
School of Government  
November 2013

### Citizen witnesses.

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

### Confidential informants.

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

### Anonymous tipsters.

- Even less reliable than known informants. *Florida v. J.L.*, 529 U.S. 266 (2000).
- If they have first-hand information that is sufficiently detailed, it may amount to probable cause if
  - An officer has corroborated enough of their information. *State v. Bone*, 354 N.C. 1 (2001).
- A witness who has placed his or her anonymity at risk should normally be considered a citizen witness, not an anonymous tipster. *State v. Maready*, 362 N.C. 614 (2008).

# Tab: Issuing Process

# **Issuing Process: Questions on Issuing, Deferring, and Denying Process**

John Rubin  
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November 2013





### **Policy Question No. 1: Felonies (as a class)**

A local resident, Bob Smith, comes to you and says that yesterday he was approached by Jimmy Jones, who had done some work at Bob's house. Bob says that Jimmy was acting a little odd and demanded money. When Bob said no, Jimmy hit him in the face, knocked him to the ground, and took his wallet. Bob's face is bruised and his back pocket torn.

### **Questions**

1. What is your office's policy on issuing felony process?
2. Does your policy defer issuance of process or deny it?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy? For example, if you require law enforcement investigation before issuing process for a felony, do you contact law enforcement or is that the complaining witness's responsibility? If the latter, do you do any follow-up with law enforcement or the complaining witness? After law enforcement investigates, who can seek process from you?
6. Please write out the policy.

## **Policy Question No. 2: Law Enforcement Officers (as a class)**

Ray Phillips comes to you and says that yesterday he was assaulted by city police officer Perkins. Ray and other students were outside the administration building of a local college, protesting various budget cuts. Ray and other students were arrested and handcuffed. After being cuffed, Ray said to Officer Perkins, "This is bulls—t." Ray says that Officer Perkins punched him twice in the stomach and shoved him into the police car, banging Ray's head and raising a visible welt.

### **Questions**

1. What is your office's policy on issuing process against law enforcement officers?
2. Does your policy defer issuance of process, deny it, or have some other effect (such as authorizing a summons but not a warrant)?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy?
6. Please write out the policy.

### **Policy Issue No. 3: Delay (Table No. 1)**

John Hunter comes to you and says that one of his son's friends, Rob Wilson, was over at the house and stole some baseball cards from John's baseball card collection. The value of the stolen cards was about \$400. John confronted the friend about it, who admitted that he took them and sold them. The friend was supposed to pay John back but never did. The theft occurred about six months ago, when the friend was 17, and John is still mad about it.

### **Questions**

1. Does your office have a policy on issuing process when a citizen witness has delayed seeking charges?
2. Does your policy defer issuance of process, deny it, or have some other effect?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy?
6. Please write out the policy.

**Policy Question No. 4: Venue (Table No. 2)**

Law enforcement officer Williams comes to you seeking a warrant for Rick Sanders, who lives in your county. Officer Williams provides you with probable cause that Sanders is in possession of a stolen vehicle, which is parked at Sanders' house. Sanders carjacked the car from an adjoining county, brandishing a gun at the driver, forcibly pulling him from the car, and pushing him to the ground.

**Questions**

1. What is your office's policy on issuing process when a person is alleged to have committed part of a crime or crimes in your county and part in another county?
2. Does your policy defer issuance of process, deny it, or have some other effect?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy?
6. Please write out the policy.

**Policy Issue No. 5: Civil (Table No. 3)**

Ben Stone comes to you and says that he bought a \$3,000 used car on ebay and paid the seller half the selling price, but the seller never delivered the car. Stone has sued the seller for return of his money. Stone has learned that the seller has pulled this stunt before, taking money on ebay without delivering the goods. Assume that law enforcement verifies Stone's allegations. Stone wants process against the seller for obtaining money by false pretenses.

**Questions**

1. What is your office's policy on issuing process for matters that give rise to civil liability?
2. Does your policy defer issuance of process, deny it, or have some other effect?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy?
6. Please write out the policy.

**Policy Issue No. 6: Unauthorized Use of a Motor Conveyance (Table No. 4)**

Sharon Bryson comes to you at noon and says she loaned her car to Mike Wright yesterday and told him to get it back to her by 9 am today. He hasn't returned it and didn't pick up his phone when she called him. Sharon wants you to issue process for unauthorized use of a motor conveyance.

**Questions**

1. What is your office's policy on issuing process for unauthorized use in the circumstances described above? Are there other offenses when you would delay issuing process to see whether the matter would be resolved?
2. Does your policy defer issuance of process, deny it, or have some other effect?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy?
6. Please write out the policy.

### **Policy Issue No. 7: Multiple Offenses (Table No. 5)**

Law enforcement officer Garvey comes to you and asks for a warrant for statutory sex offense. He provides you with probable cause that the defendant, age 17, engaged in an oral sex act with the victim, age 12. The defendant's act also constitutes indecent liberties and crime against nature, which are not lesser offenses of statutory sex offense. For what offenses would you issue process?

#### **Questions**

1. What is your office's policy on issuing process for multiple offenses for the same act? Does your policy differ depending on the type of the offense?
2. Does your policy defer issuance of process, deny it, or have some other effect?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy?
6. Please write out the policy.

### **Policy Issue No. 8: Cross Warrants (all tables)**

John Prince is in your office. He alleges that three hours ago his girlfriend, Jill Johnson, hit him with a baseball bat on his legs. He shows you large purple bruises where he says she hit him. Mr. Prince is accompanied by his mother, a Sunday school teacher, who says she saw the confrontation between Ms. Johnson and her son. She corroborates his allegations. An hour earlier, Ms. Johnson was in your office with her sister, and you issued criminal process charging Mr. Prince with assaulting Ms. Johnson. Ms. Johnson showed you a black eye that she alleged that Mr. Prince had given her. Ms. Johnson's sister corroborated Ms. Johnson's account.

### **Questions**

1. What is your office's policy on issuing cross-process in domestic violence cases?
2. Does your policy defer issuance of process, deny it, or have some other effect?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy?
6. Please write out the policy.



### **Policy Issue No. 9: Drinking (as a class)**

Mary Watts is before you, alleging that her boyfriend threatened to kill her, and she is afraid that he will. You can tell she's had something to drink, but she is rational and coherent. Ms. Watts says that she was sitting on the porch earlier this evening when her boyfriend came home, agitated and upset. He said, "I know you've been hooking up with Aaron Spivey again. Don't f—g move. I'm getting my gun from my brother's house. You're dead." The boyfriend left, and Ms. Watts came directly to your office. She knows that her boyfriend has a handgun at his brother's house. You check the records and see that the boyfriend has been convicted of assault on a female once before.

### **Questions**

1. What is your office's policy on issuing process if the complainant has had something to drink?
2. Does your policy defer issuance of process, deny it, or have some other effect?
3. Why do you have the policy? If the newspaper called, how would you defend it?
4. Are there any exceptions to the policy?
5. What practical steps do you need to take to implement the policy?
6. Please write out the policy.



## **Substance of G.S. 15A-301(b1) and (b2)**

Charges against school employees

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

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

**Procedure:** Before issuing misdemeanor process, the magistrate must [obtain the approval of the DA's office] [obtain the approval of the magistrate appointed by the chief district court judge to review such cases]. If the DA has declined to review such cases and an appointed magistrate is unavailable to review the case, the magistrate may proceed as in other cases.

## **Substance of G.S. 7A-38.5(e)**

### Citizen Warrants

**Basic rule:** Except as described below, a citizen-initiated misdemeanor warrant must be referred to the local mediation center before further prosecution.

**Exceptions:** This policy does not apply to domestic violence cases or cases in which the judge or district attorney determines that mediation is inappropriate. It also does not apply if the county does not have a mediation center or the district attorney elects not to participate in the program.

**Procedure:** If the case is not resolved within 30 days after referral to the mediation center, the criminal prosecution may proceed.

Tab:  
Probation,  
Post-Release  
Supervision,  
Extradition

# Probation, Post-Release Supervision, and Extradition

*Advanced Criminal Procedure for Magistrates*

Jamie Markham

November 2015



UNC  
SCHOOL OF GOVERNMENT

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



# Overview

- Probation
- Post-release supervision & Parole
- Extradition
- Interstate Compact



# Probation





# Probation (p. 29-30)

- Probation violation
  - Order for Arrest
  - “Authority to arrest” (DCC-12)
  - “Orderless” arrest

North Carolina Department of Public Safety, Division of Adult Correction, Community Corrections DCC-12  
05/13

**STATE OF NORTH CAROLINA** File Number \_\_\_\_\_  
County \_\_\_\_\_ In the General Court of Justice

District  Superior Court Division

<b>STATE VERSUS</b> Name of Defendant _____	<b>AUTHORITY TO ARREST</b> <a href="#">G.S. 15A-1345</a>
------------------------------------------------	-------------------------------------------------------------

**TO ANY OFFICER AUTHORIZED BY LAW TO MAKE ARRESTS- GREETINGS:**  
Under authority of General Statutes of North Carolina (G.S. 15A-1345), you are hereby requested to arrest and safely keep \_\_\_\_\_, if to be found in your County, that \_\_\_\_\_ may be returned to the court, there to answer a charge of violation of probation in willful disregard of a court order.

You are **DIRECTED** to take the defendant into custody and bring the defendant before a judicial official for the purpose of determining conditions of release, and for commitment if the defendant is unable to comply.

The undersigned Probation/Parole Officer states that he/she has probable cause to believe that the above-named probationer has willfully and without lawful excuse violated the terms and conditions of his/her probation conditions as set forth on the attached Violation Report.

Issued this \_\_\_\_\_ day of \_\_\_\_\_.

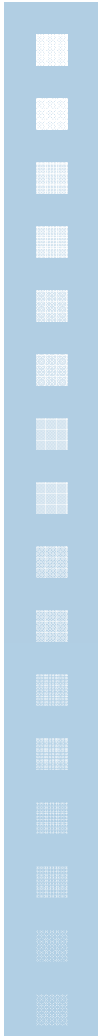
# Probation (p. 29-30)

- In general, arrested probationers are entitled to conditions of release

- State v. Hilbert, 145 N.C. App. 440

<input type="checkbox"/> 6. PROBABLE CAUSE THAT DEFEI [G.S. 15A-305(b)(9); 5A-16] this Court has initiated plenary pro G.S. 5A-16, has issued a show ca not appear as required in respons	
<input checked="" type="checkbox"/> 7. PROBATION VIOLATION [G.S. 1 the probation officer has provided alleging that the defendant has vio the written statement is attached.	
<input type="checkbox"/> 8. Other: (specify)	
Date Defendant Failed To Appear	
Amount Of Bond	Type Of Bond
\$ 100,000.00	SECURED

issuance of a probation violation warrant.”



# Probation (p. 29-30)

- Exceptions to the right to release:
  - Pending felony charges
  - Sex offenders
- For these probationers, magistrate must first assess “danger to public”:
  - If dangerous, deny release pending violation hearing
  - If not dangerous, set conditions as usual
  - If insufficient information, retain defendant in custody for up to seven days to obtain sufficient information



# Probation (p. 29-30)

- Pending felony charges: statewide search
- Sex offenders:
  - Search registry
  - Check criminal history



Name And Address Of Defendant



# CONDITIONS OF RELEASE AND RELEASE ORDER

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

#

Amount Of Bond

\$

Offenses And Additional File Numbers

See Attachment

Location Of Court

Date

Time

District  Superior

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. You also may be arrested without a warrant if you violate any condition of release in this Order or in any document incorporated by reference.

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

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(a1) or (a2).  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 \_\_\_\_\_.

# STATE OF NORTH CAROLINA

County

File No.

In The General Court Of Justice  
 District  Superior Court Division

## STATE VERSUS

Name Of Defendant

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

G.S. 15A-1345(b1)

**NOTE:** Use this form in conjunction with form AOC-CR-200, Conditions Of Release And Release Order.

## FINDINGS AND DETENTION ORDER

The undersigned, having found on the attached AOC-CR-200, incorporated herein by reference, that the defendant has been arrested for a violation of probation with a pending felony charge or a prior conviction requiring registration under G.S. 14, Article 27A, hereby finds in addition that (*check only one*)

- 1. the defendant poses a danger to the public, and therefore release is denied pending the defendant's probation revocation hearing as ordered on the attached AOC-CR-200 and pursuant to G.S. 15A-1345(b1)(1).
- 2. the defendant does not pose a danger to the public, and therefore conditions of release are set on the attached AOC-CR-200 as otherwise provided in G.S. Chapter 15A, Article 26.
- 3. there is insufficient information to determine whether the defendant poses a danger to the public, and therefore enters the following Detention Order. (**NOTE:** A date and time for production of the defendant *must* be set in No. 3.b. when making this finding.)
  - a. The undersigned ORDERS that the custodian of the detention facility named on the attached AOC-CR-200 detain the defendant pursuant to G.S. 15A-1345(b1)(3), in order for the court to obtain sufficient information to determine whether the defendant poses a danger to the public.
  - b. It is further ORDERED that, if conditions of release have not been set based upon the receipt of additional information by \_\_\_\_\_ (date) at \_\_\_\_\_ am  pm (no later than 7 days from arrest), the custodian shall bring the defendant immediately before **any** judicial official at that time to set conditions of release.

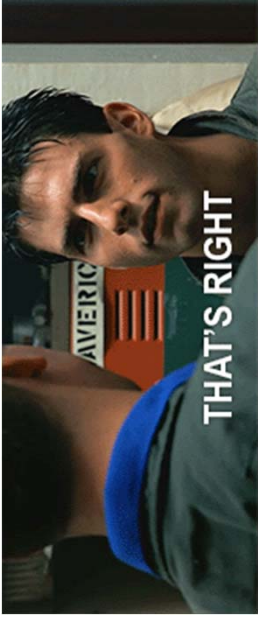
Date

Signature Of Judicial Official

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



# Probation (p. 37)



- Defendant charged with felony while on probation for prior offense
- Magistrate must determine whether defendant is “danger to the public” before releasing
  - If not dangerous, set conditions as usual
  - If dangerous, secured bond or bond + EHA
  - If insufficient information, detain pending hearing within 96 hours



**STATE OF NORTH CAROLINA**

File No.

County

In The General Court Of Justice  
 District  Superior Court Division

**STATE VERSUS**

Name Of Defendant

[Redacted Name]

**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: [Redacted]

b. The undersigned further finds that the following additional information is necessary to make that determination: [Redacted]

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



# “Quick Dip” Delegated Authority

- 2-3 days
- No more than 6 days per month
- Used in no more than three separate calendar months of a person’s probation



# Delegated Authority Usage

	Quick Dip Confinement	High risk Delegated Authority	Other Delegated Authority	Total Delegated Authority
2012	42	47	466	555
2013	670	536	1,223	2,429
2014	1,856	794	1,802	4,452
2015*	3,169	1,259	2,052	6,480
Total	5,737	2,636	5,543	13,916

*\*Data through August 31, 2015*

# Post-Release Supervision (p. 29)

## Offender Population

Nov 9, 2015

Prison Inmates	38,017
Probationers	89,830
Post Release/Parole	10,175
<b>Total</b>	<b>138,022</b>



# Post-Release Supervision

- No release for PRS violators



# Post-Release Supervision

G.S. 15A-1368.6(b1) Bail Following Arrest for Violation of Post-Release Supervision if Releasee Is a Sex Offender. - Notwithstanding subsection (b) of this section, if the releasee has been convicted of an offense that requires registration under Article 27A of Chapter 14 of the General Statutes and is arrested for a violation in accordance with this section, the releasee shall be detained without bond until the preliminary hearing is conducted.



# Parolees

- No release for parole violators



# Parolees

27 March 1975

**Subject:** Parole; Parole Commission; Bond

**Requested by:** Mr. James E. Cline  
Parole Commissioner

**Question:** May a parolee who is in custody by virtue of a warrant issued by the Parole Commission pursuant to G.S. 148-61.1 be released on bond?

**Conclusion:** No.



# Extradition (p. 51)





# Extradition

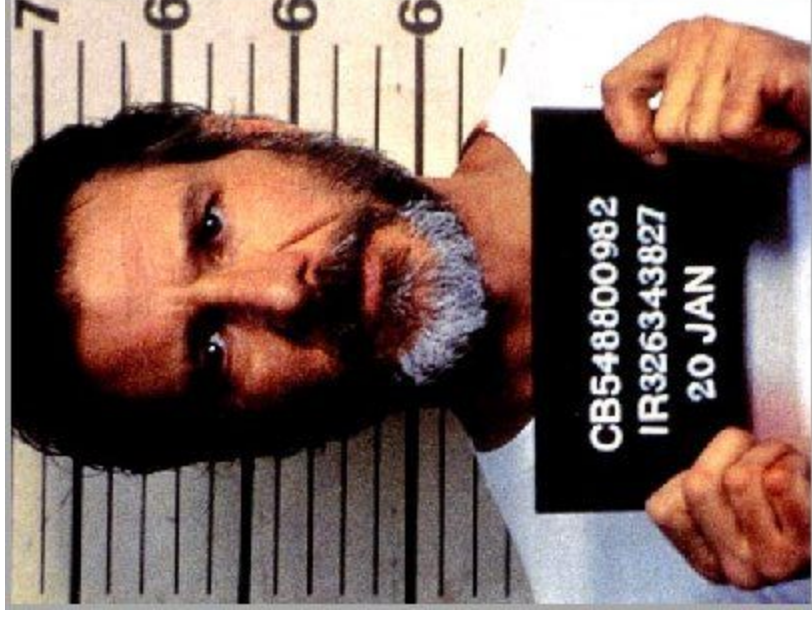
“A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.”

-- U.S. Constitution, Article IV, Sec. 2



# Fugitives

- Charged with a crime and fled from justice
- Escaped from incarceration
- Violated probation/parole by leaving the state



# Extradition

- Two possible scenarios:
  - Fugitive from another state found in NC
  - Fugitive from NC found in another state



# Fugitive Found in NC

**Officer goes to magistrate,  
obtains arrest warrant  
for fugitive**

**Officer decides to arrest  
without a warrant**



# Fugitive Found in NC

Officer goes to magistrate,  
obtains arrest warrant  
for fugitive

- Magistrate determines proper grounds for issuance (p. 53)
- **Based on reliable information that person has been charged in the other state**
- **DO NOT** evaluate probable cause for the underlying offense
- Complete fugitive warrant and fugitive affidavit

The image shows a legal form titled "WARRANT FOR ARREST FOR FUGITIVE" from the State of North Carolina. The form is partially filled out with blue text. At the top, it says "STATE OF NORTH CAROLINA" and "In The General Court of Justice". Below that, it says "County". The form includes a section for the defendant's name, date of birth, and sex. It also has a section for the offense, with checkboxes for "has been charged with the commission of that crime and has fled from justice" and "has broken the terms of his/her bail, probation and parole". At the bottom, there is a section for the magistrate's name and signature, and a date field. The form number "AOC-CR-910M" is printed at the bottom right.

AOC-CR-910M

# Fugitive Found in NC

**Officer goes to magistrate,  
obtains arrest warrant  
for fugitive**

**Officer decides to arrest  
without a warrant**



# Fugitive Found in NC

- Permissible only when crime punishable by death or more than one year in prison
- Determine whether there is reliable information that person has been charged in the other state
- DO NOT evaluate probable cause for the underlying offense
- Complete magistrate's order for fugitive and fugitive affidavit

**Officer decides to arrest without a warrant**

STATE OF NORTH CAROLINA		County		In The General Court Of Justice District Court Division	
<b>MAGISTRATE'S ORDER FOR FUGITIVE</b>					
I, the undersigned, find that the defendant named above has been arrested without a warrant and the defendant's detention is justified because the crime named above is punishable by death or imprisonment for more than one year in prison.					
The Magistrate's Order is issued pursuant to Section 15A-734 of the North Carolina General Statutes upon information furnished under oath by the arresting officer(s) shown. A copy of this Order has been delivered to the defendant.					
THE STATE OF NORTH CAROLINA VS.					
County of residence of defendant	Magistrate No.				
Name	Sex	Age at Birth	Age		
State of residence	County of residence	County of arrest	County of residence		
Name of defendant's attorney	Address				
County of residence of defendant	County of residence of defendant				
Name of State of residence of defendant	County of residence of defendant				
Name of State of residence of defendant	County of residence of defendant				
AOC-CR-909M, Rev. 1/197					
1107 Administrative Office of the Courts					

**AOC-CR-909M**

# Fugitive Found in NC

**Officer goes to magistrate,  
obtains arrest warrant  
for fugitive**

**Officer decides to arrest  
without a warrant**

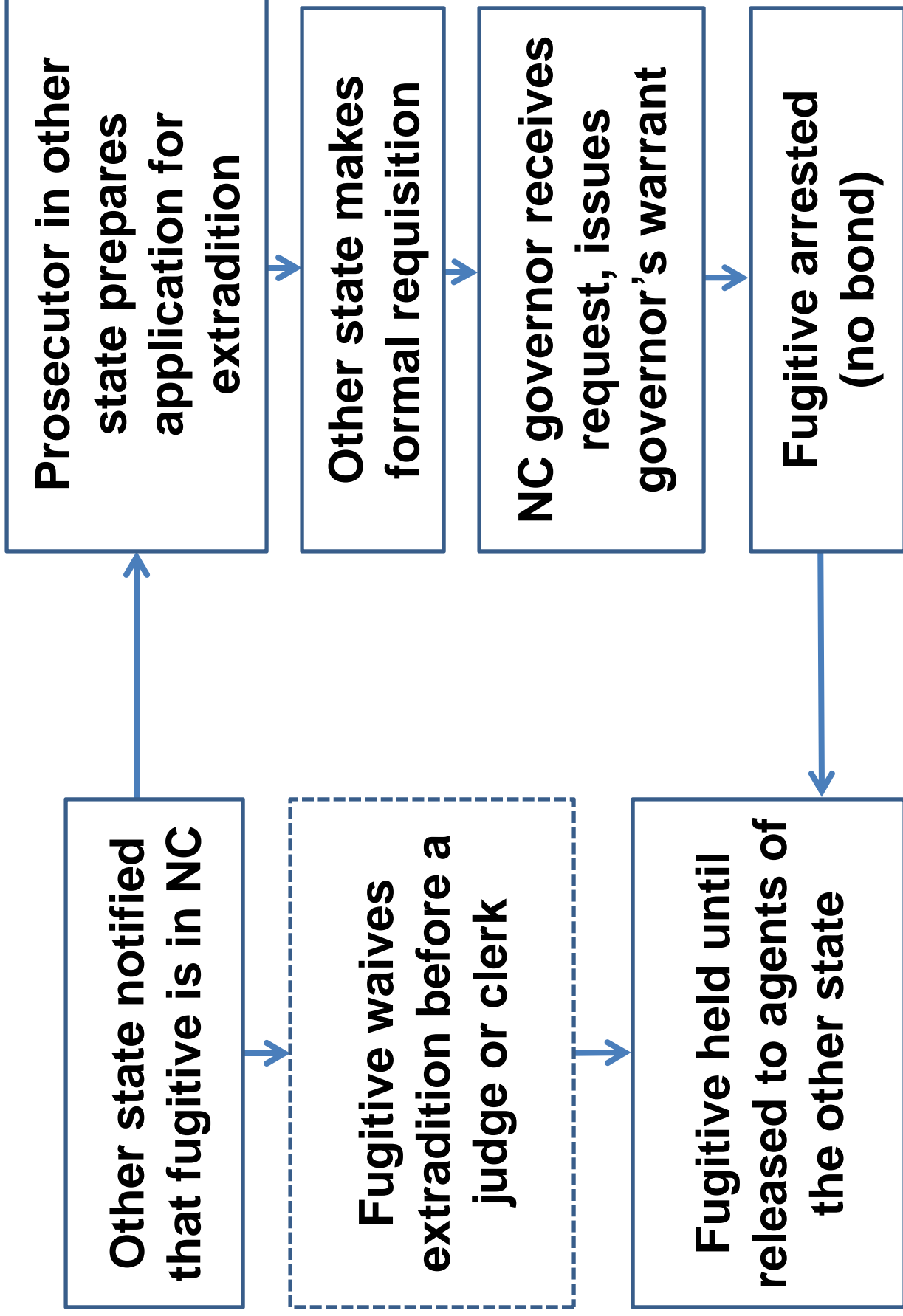




# Appearance Procedure

- Set release conditions
  - Bail allowed except for crimes punishable by death or life in prison
  - Must be “by bond, with sufficient sureties”
  - Check and follow local policy
- Order district court appearance
  - A magistrate cannot accept a waiver of extradition





# Arrest on a governor's warrant

- Inform of rights
- No bond authorized
- Order district court appearance
  - Habeas corpus hearing possible



# Fugitive Found in NC Before Being Charged in Other State

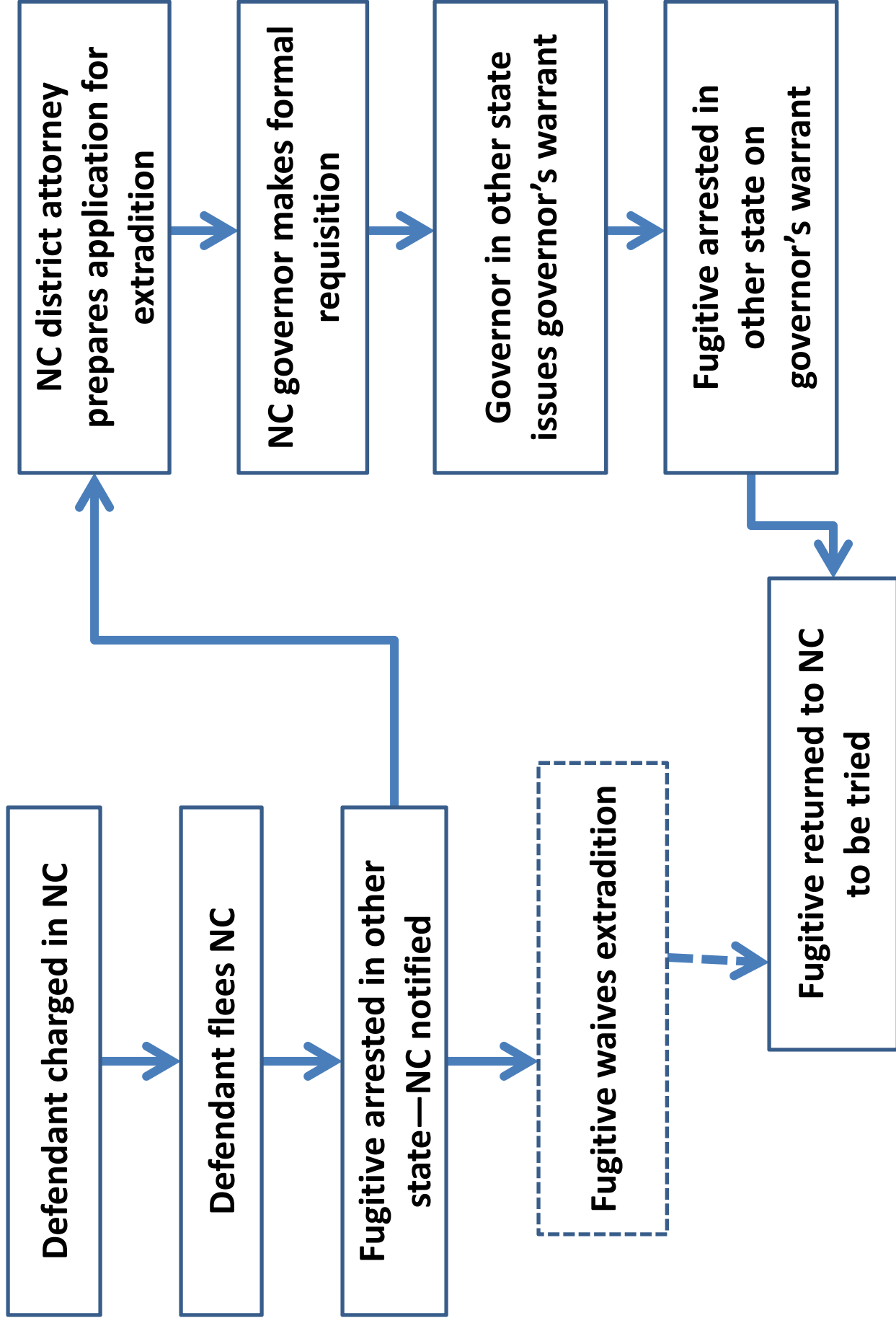
- P. 53
- NC officer may arrest, with warrant
- Magistrate should use regular NC arrest warrant (not fugitive warrant)
- Magistrate *does* evaluate probable cause for the out-of-state crime



# Extradition

- Two possible scenarios:
  - Fugitive from another state found in NC
  - **Fugitive from NC found in another state**





# NC Fugitive in Other State

- Magistrate's role limited
- May be asked to issue new warrant & affidavit
- Certify documents with Form GOV-1-A



# Interstate Compact for Adult Offender Supervision





# Interstate Compact

- Allows offenders to transfer supervision
- Must abide by both “sending state” and “receiving state” rules
- Sending state retains legal jurisdiction
- Offenders must waive extradition in advance





# State Board of

Form 18-1, Inmate Warrant  
Form Approved by  
SC Attorney General  
Section 17-13-160  
March 18, 1978

## STATE OF SOUTH CAROLINA COUNTY OF MARLBORO

TO ANY LAW ENFORCEMENT OFFICER OF THE  
MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there  
violate the criminal laws of the State of South Carolina

Joel Williams violated conditions 1, 2, 3, 5, 8, 9, 10  
County Court of General Sessions on 03/11/2008

Now, therefore, you are empowered and directed  
according to law. A copy of this Arrest Warrant  
COLUMBIA, S. C. this 3 day of September, 2009.

**County of MARLBORO**  
**STATE OF SOUTH CAROLINA**  
personally appeared before me, one Victoria  
date on the 3 day of September, 2009. Violat

Joel Williams violated conditions 1, 2, 3, 5, 8  
County Court of General Sessions on 03/11/

The affiant states that there is probable  
cause is based on the following facts:  
is evidenced by the *offense*



North Carolina Department of Corrections  
**DIVISION OF COMMUNITY CORRECTIONS**  
Inmate Compact for Adult Probation/Parole  
2020 Yearbook: RJ - 4329 MISC - Raleigh, N.C. 27699-4329  
Phone: (919) 716-3160 Fax: (919) 716-3999

### AUTHORITY TO DETAIN AND HOLD

TO ANY OFFICER AUTHORIZED BY LAW TO DETAIN AND HOLD:

\_\_\_\_\_ is an out-of-state offender from the State of

(Name)

\_\_\_\_\_ who is presently being supervised by the North Carolina Division of

(State)

\_\_\_\_\_

Based on facts presented to this Office, there is probable cause to believe that said out-of-state offender has  
violated the terms or conditions of supervision and restrictions to be obtained and held pending a probable cause hearing  
on the above.

Pursuant to section 142-85.8 of the General Statutes of North Carolina and the rules of the Interstate Compact  
Agreement for the Supervision of Adult Offenders granted by Congress, (48 Stat 808, 4 U.S.C. Section 112), you are  
hereby authorized and directed to detain and hold:

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Address)

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

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

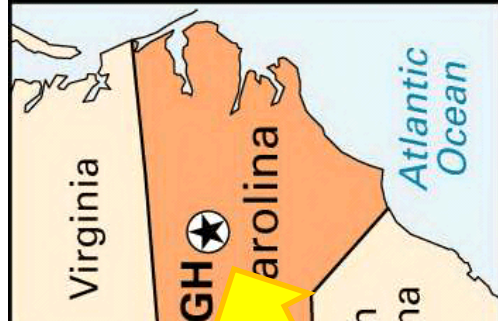
A probable cause hearing will be held within 15 days from the date placed in custody unless such hearing is waived by the  
offender. Upon conclusion of the probable cause hearing the offender is not entitled to any judicial proceedings in North  
Carolina. All legal requirements to obtain extradition of fugitives from justice are expressly waived.  
Immediately call this Office at (919) 716-3160 when said offender is taken into custody.

\_\_\_\_\_

\_\_\_\_\_   
Anne L. Reycine, Compact Administrator  
NC Division of Community Corrections  
Office: 919-716-3160  
Fax: 919-716-3999

**DO NOT RELEASE THIS OFFENDER BEFORE CONTACTING THE COMPACT ADMINISTRATOR**

Attachment: Out of State Warrant Violation Report  
Application for Offender Transfer



# Interstate Compact

- When a Compact offender is before you:
  - Inform of alleged violation and rights
  - Under ICAOS rules and state law, NO RELEASE
  - Commit the offender to the jail
- Contact probation or NC Compact Administrator who will schedule a probable cause hearing
  - Should occur within 15 days



# Interstate Compact

- Distinguishing Compact offenders from fugitives



# Interstate Compact

- Distinguishing Compact offenders from fugitives
  - Authority to Detain and Hold form
  - Arrested by probation officer
- If unsure:
  - Contact local probation office
  - Contact Compact Administrator in Raleigh
  - Search online







NORTH CAROLINA

# DEPARTMENT OF PUBLIC SAFETY

PREVENT. PROTECT. PREPARE.

- Home
- About
- Citizens
- Employees
- Offender Search
- News
- Staff
- Contact
- Jobs



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Receive



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Aid for I  
Storm L



# North Carolina Department of Correction Offender Public Information

Offender Search

Offender Search

Escapes/Captures

Absconders

Inmate Releases

Downloads

Enter one or more search criteria to search for offenders. For more detailed help, see the [help gu](#)

Offender Status:  All  Active Inmate  Active Probationer/Parolee  Inactive

Last Name:  First Name:  M.I.:

Last Name Sounds Like

Offender ID:

Gender:

Race:

Ethnic Group:

Age Range:  min  max

Search

Clear Selections







# North Carolina Department of Correction Offender Public Information

[View Offender](#)

- [Offender Search](#)
- [Escapes/Captures](#)
- [Absconders](#)
- [Inmate Releases](#)
- [Downloads](#)

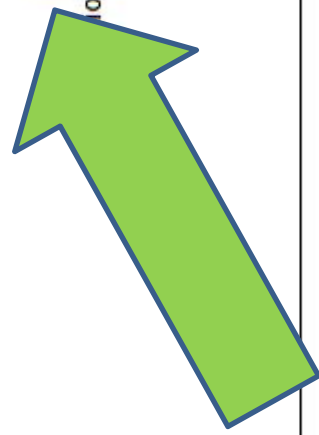
[Back To Search Results](#)

## Offender Information

**No  
Photo  
Available**

### **DANNY ANDREW COSTNER**

DOC Number: 0663147  
 Probation/Parole/Post Release Status: ACTIVE  
 Gender: MALE  
 Race: WHITE  
 Ethnic Group: EUROPEAN/N.AM./AUSTR  
 Age: 35  
 Interstate Compact Offender  
 Probation/Parole Office: DISTRICT 26 UNIT D



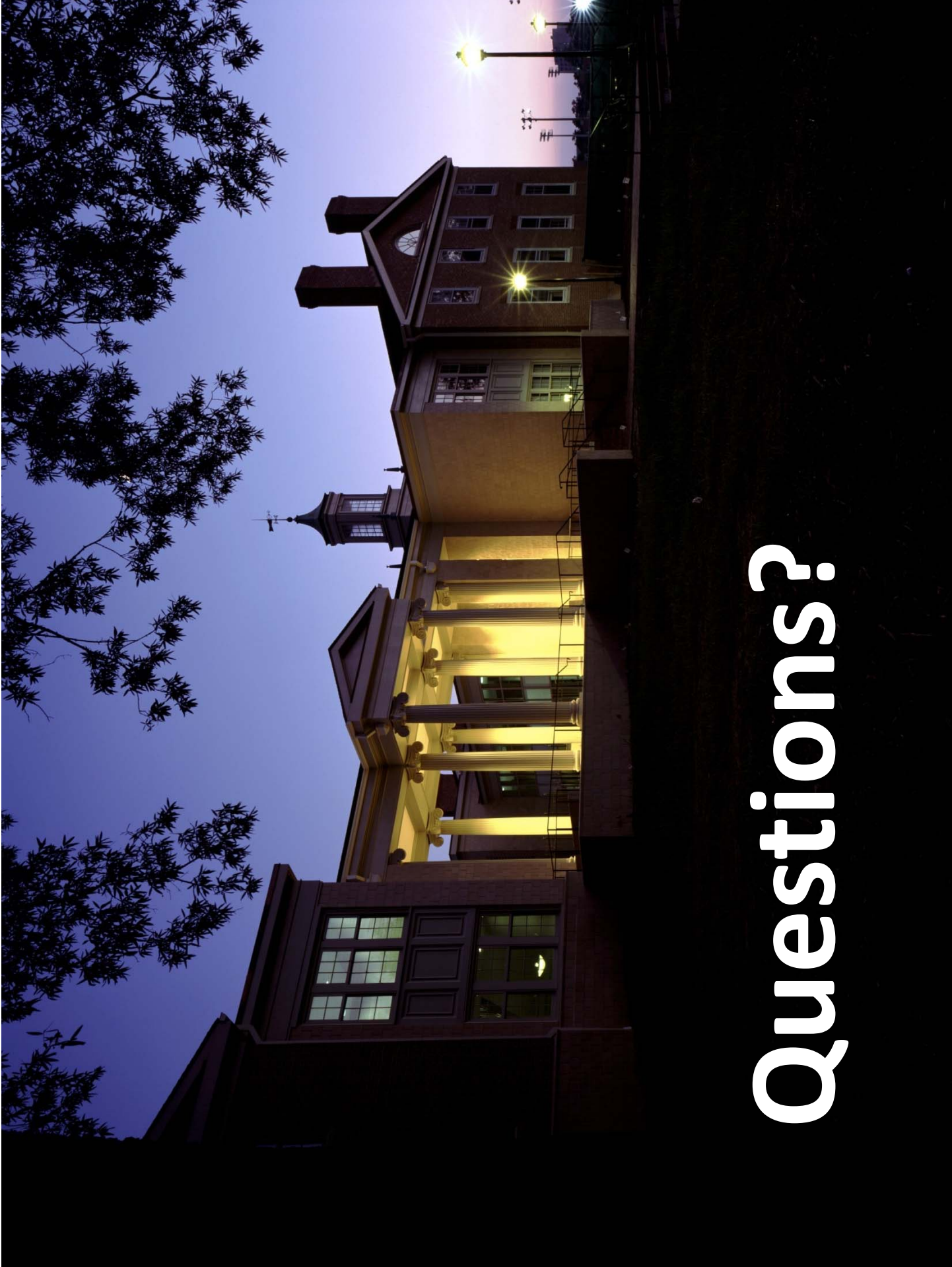
[Printable Version](#)



# Resources

- Extradition Manual (reprinted in back of *Annotated Rules of North Carolina*)
- *Criminal Procedure for Magistrates Bulletin*





Questions?

Tab:  
Magistrate-L.E.O.  
Relationship

Tab:

Ugwkpí 'Dqpf u'



**BAIL BONDS**  
888-GET-BAIL

CONSIDERATIONS IN  
SETTING BOND

Jeff Welty · School of Government · Nov. 2015

### Rave Reviews!

“Very dry.”

“Not relevant. . . . Magistrates already know all this..”

“Stick with your blog.”


“Mr. Welty . . . has NO Knowledge on what really happens .”

“[A]most an insult.”



### Why This Matters

- Your decisions are important to the community
  - ▣ Detention is expensive
  - ▣ Community safety is at stake
  - ▣ Victims care about pretrial release decisions

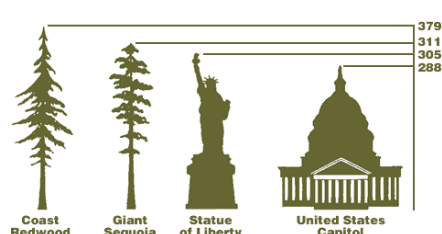


### Why This Matters

- Your decisions are important to defendants
  - ▣ Secured bond is expensive
  - ▣ Detention risks job loss and family crisis
  - ▣ Detention affects case outcomes

### Why This Matters

- Your decisions “anchor” any future decisions by judges



Landmark	Height
Coast Redwood	379'
Giant Sequoia	311'
Statue of Liberty	305'
United States Capitol	288'

## The Law Favors Release

- “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”
  - United States v. Salerno, 481 U.S. 739 (1987)

## Purposes of Release

- “This traditional right to freedom before conviction permits **unhindered preparation of a defense**, and serves to **prevent the infliction of punishment prior to conviction**. Unless this right to bail is preserved, the **presumption of innocence** secured only through centuries of struggle, would lose its meaning.”
  - Stack v. Boyle, 342 U.S. 1 (1951)

## Purposes of Conditions of Release

- “[T]he foremost goal of the bond system is the production of the defendant in court.”
  - State v. Gonzalez-Fernandez, 170 N.C. App. 45 (2005)
- “There is no doubt that preventing danger to the community is a legitimate regulatory goal” that may be considered in the pretrial release process.
  - United States v. Salerno, 481 U.S. 739 (1987)

## Statutory Right to Release

- Subject to a few exceptions, “[a] defendant charged with a noncapital offense must have conditions of pretrial release determined.”
  - G.S. 15A-533(b)

## Exceptions

- Capital cases (release is discretionary, only judge may release, 15A-534(c))
- Certain drug trafficking defendants (rebuttable presumption of no release, 15A-534(d), only judge may release)
- Certain defendants charged with gang offenses (rebuttable presumption of no release, 15A-534(e), only judge may release)
- Certain defendants charged with gun offenses (rebuttable presumption of no release, 15A-534(f), only judge may release)
- Meth users charged with meth offenses, 15A-534.6 (rebuttable presumption of no release)
- DV cases, 15A-534.1 (only judge may determine release for first 48 hours)
- Impaired driving holds, 15A-534.2 (impaired drivers may be denied release for up to 24 hours if release would pose a danger, unless a sober, responsible adult assumes responsibility)

## Change to 48 Hour Rule

- When “the defendant is charged with assault [or another covered offense] upon a spouse or former ~~spouse or spouse~~, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of [a 50B] order . . . the judicial official who determines the conditions of pretrial release shall be a judge” unless no judge acts within 48 hours.
- S.L. 2015-62 (effective for crimes committed on or after 12/1/15).



### Basic Conditions of Release

- Written promise
- Unsecured
- Custody
- Secured
- House arrest with electronic monitoring (requires secured bond also)

### Choosing a Basic Condition

- Prefer written promise, unsecured bond, or custody release. Impose secured bond or house arrest only if lesser conditions are inadequate. G.S. 15A-534(b).
- When secured bond or house arrest is imposed, reasons must be recorded in writing. Id.

### Factors to Consider

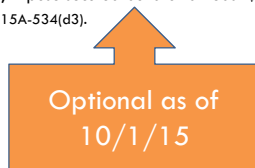
- Nature of offense charged
- Weight of evidence
- Family ties
- Employment
- Financial resources
- Character
- Mental condition
- Intoxication
- Length of residence
- Prior convictions
- Prior FTA
- “[A]ny other evidence relevant to the issue of pretrial release”

### Special Rules (I)

- Defendants rearrested after FTA:
  - Impose the conditions recommended in OFA.
  - If none, impose a secured bond of at least double the previous bond.
  - If no previous bond, impose a secured bond of at least \$1000.
    - G.S. 15A-534(d1).
- Defendants charged with felonies while on probation, or defendants charged with probation violations who have pending felony charges (or are sex offenders) :
  - Determine whether “the defendant poses a danger to the public,” and if so, impose a secured bond or house arrest.
    - G.S. 15A-534(d2); G.S. 15A-1345(b1).

### Special Rules (II)

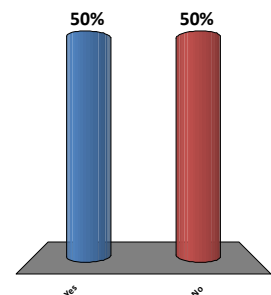
- Defendants arrested for new offense while on pretrial release for another offense:
  - Impose secured bond of at least double previous bond.
  - If none, impose secured bond of at least \$1000.
    - G.S. 15A-534(d3).


  
Optional as of  
10/1/15

### Bond Doubling

Did making the “new charge” bond doubling provision optional solve any problems you had regarding bond doubling?

- A. Yes
- B. No





### Additional Conditions

- A “judicial official may also place restrictions on the travel, associations, conduct, or place or abode of the defendant as conditions of pretrial release.”
  - G.S. 15A-534(a)
- Additional conditions are required when a defendant is charged with a sex crime against a child or a violent crimes against a child.
  - G.S. 15A-534.4
- Additional conditions likely must be “reasonably related” to a “legitimate governmental purpose.”
  - Bell v. Wolfish, 441 U.S. 520 (1979)

### Pretrial Release Policies

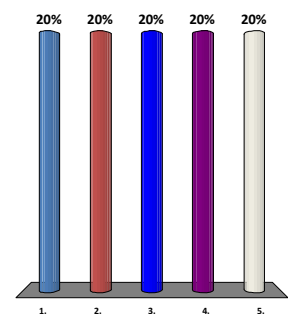
- Senior resident superior court judge must issue
  - G.S. 15A-535
- Vary widely between districts
  - “The following are guidelines only. . . [You are] fully empowered to require a higher or lower appearance bond . . . based solely on [your] judgment.”
  - “Unless very unusual circumstances present themselves, the suggested guidelines shall be followed.”

### Rates of Release

- In some jurisdictions, less than 30% of defendants are released pending trial. In others, more than 80% are released.
  - Shima Baradaran & Frank L. McIntyre, *Predicting Violence*, Tex. L. Rev. (2012).

In your county, what percentage of felony defendants are released within a week of their initial appearance?

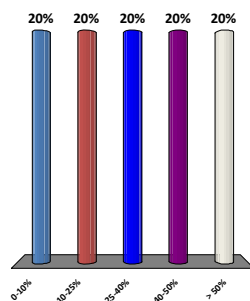
1. Less than 20%
2. 20-40%
3. 40-60%
4. 60-80%
5. More than 80%



### Misconduct on Release

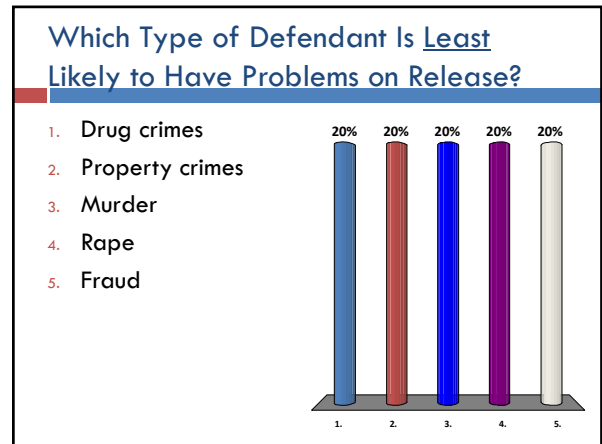
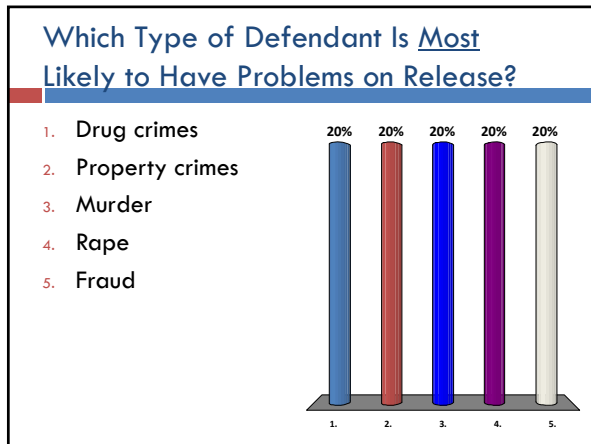
In your county, what percentage of felony defendants FTA or are rearrested while on pretrial release?

- A. 0-10%
- B. 10-25%
- C. 25-40%
- D. 40-50%
- E. > 50%



### Misconduct on Release

- Results of national studies
  1. 33% of felony defendants in state court FTA or rearrested
  2. 16% of all felony defendants rearrested
  3. 20% of federal felony defendants violated conditions of release (including technical violations)

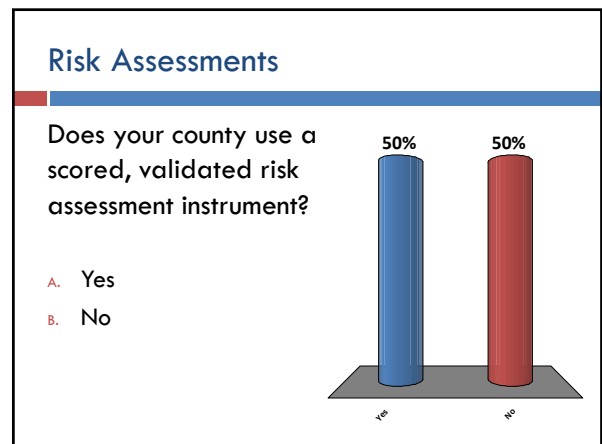


### What the Studies Say

Study 1	Study 2
<input type="checkbox"/> Property	<input type="checkbox"/> Drug
<input type="checkbox"/> Drug	<input type="checkbox"/> Property
<input type="checkbox"/> Murder, Rape (tie)	<input type="checkbox"/> Fraud
<input type="checkbox"/> Fraud	<input type="checkbox"/> Rape
	<input type="checkbox"/> Murder

- ### What the Studies Say
- Studies are mixed on some factors, like race and age
  - "The six factors that studies have most consistently found to increase a defendant's risk of pretrial misconduct if released are: prior failures to appear, prior convictions, having a pending case other than the arrest offense, being charged with a felony, being unemployed, and having a history of drug abuse."
    - Cynthia A. Mamalian, *State of the Science of Pretrial Risk Assessment*, Pretrial Justice Institute (2011)

- ### Risk Assessments
- "[S]tudies . . . have repeatedly demonstrated that the use of actuarial risk assessments results in a higher predictive validity than . . . professional judgment alone."
    - Kristin Bechtel et al., *Identifying the Predictors of Pretrial Failure: A Meta-Analysis* (2011)
  - Mecklenburg County is piloting PSA-Court
  - What tools do you use to assess risk?



### Which Conditions Work?

- “[D]efendants on financial release were more likely to make all scheduled court appearances [than defendants released on a promise to appear]. Defendants released on an unsecured bond . . . were most likely to have a bench warrant issued because they failed to appear in court.”
  - Cohen & Reaves, *Pretrial Release of Felony Defendants in State Courts*, Bureau of Justice Statistics Special Report (Nov. 2007)
- Unsecured bonds “achieve the same public safety and court appearance rates [as secured bonds] while using far fewer jail beds.”
  - Jones, *Unsecured Bonds* (Pretrial Justice Institute 2013)

### Which Conditions Work?

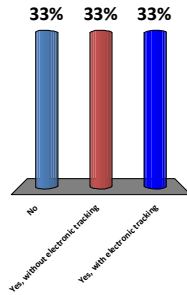
- “Several studies have concluded that pretrial supervision is not effective at discouraging pretrial misconduct, but there is not enough research yet to settle the question.”
  - David Levin, *Examining the Efficacy of Pretrial Release Conditions, Sanctions and Screening with the State Court Processing Statistics Databases*, Pretrial Justice Institute
- Studies from Miami, Milwaukee, and Portland found supervision reduced FTA and rearrest rates.
- GPS monitoring may improve the efficacy of supervision.



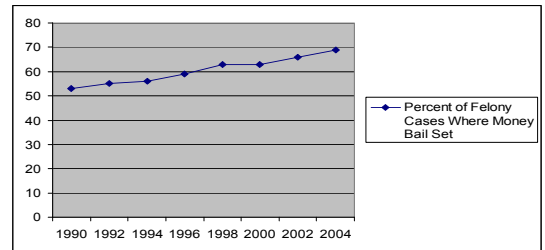
### Supervision Options

Does your county offer a program for releasing defendants under supervision?

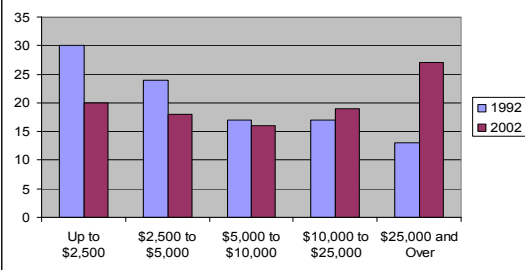
- A. No
- B. Yes, without electronic tracking
- C. Yes, with electronic tracking



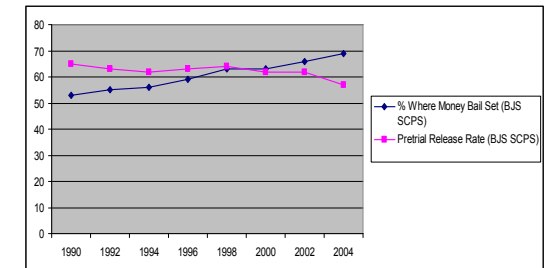
### Rise in Use of Financial Bail



### Average Bail Amounts Rising



### Relationship Between Setting Money Bail and Pretrial Release Rates



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Durham mayor wants probe of 'revolving door' at jail

Trying to stop jails revolving door

Fayetteville Police don't like revolving door justice either (Video)

Posted on April 17, 2015 by Susan Q. Saperstein | Comments Off

Stanford LawSchool | Stanford Criminal Justice Center

Realigning the Revolving Door

'Revolving door' open again?  
Bond availability for drug suspects irks some

Is Bail Unconstitutional?

Our broken system keeps the poor in jail and lets the rich walk free.

The Opinion Pages | OP-ED CONTRIBUTOR

Too Many People in Jail? Abolish Bail

Guilty Until Proven Innocent: The Problem with Money Bail

Lawsuit Aims To End San Francisco's Money-Based Bail System

October 29, 2015 11:28 PM

It's Time to Abolish Money Bail

Joshua Morbin, New York Law Journal

"GIVE US FREE": ADDRESSING RACIAL DISPARITIES IN BAIL DETERMINATIONS

Cynthia E. Jones\*

Public Pressure

Are you seeing more public and media concern about the "revolving door" or about excessive bail?

1. Revolving door

2. Excessive bail

50% 50%

Category	Percentage
1. Revolving door	50%
2. Excessive bail	50%

Bond Schedules

ONE SIZE FITS ALL

ONE SIZE DOES NOT FIT ALL

Bond Schedules

- "The following are guidelines only. . . [You are] fully empowered to require a higher or lower appearance bond . . . based solely on [your] judgment."
- "Unless very unusual circumstances present themselves, the suggested guidelines shall be followed."

Do You Have a Bond Schedule in Your District?

1. Yes

2. No

3. Officially no, but unofficially, yes

4. If I told you, I'd have to kill you

25% 25% 25% 25%

Category	Percentage
1. Yes	25%
2. No	25%
3. Officially no, but unofficially, yes	25%
4. If I told you, I'd have to kill you	25%


### Bond Schedules

	A	B	C	D	E	F	G	H	I	J	K	L
C	500K	75K	100K	50K	40K-100K	15K-250K	100K-200K	25K-75K	15K-50K	20K-30K	10K-50K	15K-50K
H	25	10K	15K	2	5K-25K	0-10K	2500-5K	1K-5K	0-2500	100-500	1500-5K	1500-5K
I	300	1000	200	100-400	0-1000	100-500	0-1000	0-500	300-400	0-1000	0-1000	0-1000

in evaluating the constitutionality of Clanton's bail practices. It is the position of the United States that, as courts have long recognized, any bail or bond scheme that mandates payment of pre-fixed amounts for different offenses in order to gain pre-trial release, without any regard for indigence, not only violates the Fourteenth Amendment's Equal Protection Clause, but also constitutes bad public policy.

### Other Considerations

- Pressure from officers?
- Pressure from the jail?



### Current Practice

Offense	Class	Written Promise	Unsecured Bond	Secured Bond
Simple Assault	2	28%	29%	43%
PDP	1	13%	13%	74%
OPFP	H (or C)	8%	21%	71%
Felon in Possession of Firearm	G	4%	9%	87%
Armed Robbery	D	1%	2%	97%

### Current Practice: Simple Assault

- Average bond, selected counties with >10 charges
  - Northampton: \$418
  - New Hanover: \$830
  - Hertford: \$1,811
  - Moore: \$1,895

### Current Practice: PDP

- Average bond, selected counties with >10 charges
  - Guilford: \$213
  - Pitt: \$757
  - Forsyth: \$5,364

### Current Practice: OPFP

- Average bond, selected counties with >10 charges
  - ▣ Carteret: \$1,045
  - ▣ Wayne: \$3,882
  - ▣ Edgecombe: \$119,800

### Current Practice: Felon in Possession

- Average bond, selected counties with >10 charges
  - ▣ Nash: \$7,063
  - ▣ Lenoir: \$21,607
  - ▣ Guilford: \$48,152
  - ▣ [Martin: \$316,667, only 6 charges]

### Current Practice: Armed Robbery

- Average bond, selected counties with >10 charges
  - ▣ Cumberland: \$20,846
  - ▣ Forsyth: \$60,381
  - ▣ Durham: \$277,391

### Problems for Discussion




## CONSIDERATIONS IN SETTING BOND

Jeff Welty · School of Government · Nov. 2015


Tab:

Taking

Bonds

 NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the COURTS*

**Taking Bail Bonds**  
Advanced Criminal Procedure for Magistrates  
UNC School of Government  
Wednesday, November 11, 2015  
Prepared by Troy D. Page




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**Agenda**

- I. Taking Bonds – General Provisions**
- II. Secured Bonds – Cash**
- III. Secured Bonds – Mortgage by Defendant**
- IV. Secured Bonds – Sureties**
  - A. Surety Bonds – General Provisions
  - B. Surety Bonds – Licensed Sureties
  - C. Surety Bonds – Accommodation Bondsmen
- V. Stacking and Splitting Bonds**
- VI. Bonds and ICE Detainers**

 NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the COURTS* 2 Taking Bonds | Advanced Criminal Procedure for Magistrates | Nov. 2015

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**Taking Bonds**  
General Provisions

- Reference Material:
  - *North Carolina Clerk of Superior Court Procedures Manual (SOG)*.
    - See Chapter 22 (taking secured bonds).
    - Accessed via Juno login in the "AOC Manuals" application.
  - *Criminal Proceedings before North Carolina Magistrates (SOG 2014)*.
    - Appendix, "Outline of Procedures for Taking Bail Bonds"

 NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the COURTS* 3 Taking Bonds | Advanced Criminal Procedure for Magistrates | Nov. 2015

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**Taking Bonds**

General Provisions

- Any judicial official "must effect the release of [the defendant] upon satisfying himself that the conditions of release have been met." G.S. 15A-537(a).
- Meeting a monetary condition of release, unsecured or secured, **requires** execution of an Appearance Bond (AOC-CR-201).
  - The Appearance Bond is the defendant's (and surety's) contract with the State, permitting forfeiture of the bond if the defendant doesn't appear.
  - The Release Order (AOC-CR-200) no longer contains contractual terms that would support forfeiture of the bond.
- Defendant must **always** sign the Appearance Bond, whether secured or unsecured, even if secured by a surety's property.



4 Taking Bonds | Advanced Criminal Procedure for Magistrates | Nov. 2015

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**Taking Bonds**

General Provisions

- Unsecured Bonds
  - Requires no more proof of defendant's solvency than a written promise.
- Secured Bonds
  - Bond can be secured by:
    - Cash (possibly the defendant's).
    - Mortgage (only the defendant's).
    - "At least one solvent surety."
  - A bond can be "secured" by a surety's promise, alone.



5 Taking Bonds | Advanced Criminal Procedure for Magistrates | Nov. 2015

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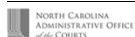
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**Taking Bonds**

Secured Bonds – Cash

- An Appearance Bond can be secured by "a cash deposit of the full amount of the bond."
- When "Cash" means "CA\$H (only)"
  - "Cash only" Release Orders are not uncommon, but their legal basis is uncertain in most cases.
  - When a Release Order specifies cash, bond posted by an insurance company (via a bail agent) or a professional bondsman (personally or via a runner) "is considered the same as a cash deposit."
  - But "[c]ash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash." G.S. 15A-531(4).



6 Taking Bonds | Advanced Criminal Procedure for Magistrates | Nov. 2015

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**Taking Bonds**

Secured Bonds – Cash – Ownership (“Who gets the refund?”)

- Cash deposited by defendant
  - Appearance Bond should be executed in defendant’s name, only.
  
- Cash deposited by third party
  - If the third party wants to preserve ownership of the cash, prepare as a “ Surety Appearance Bond” with “ Cash Deposited by Surety.”
    - The third party **must** sign the Appearance Bond as surety to preserve ownership of the cash and other rights as a surety.
  - If third party does not want to sign as surety, prepare the Appearance Bond as a “ Cash Appearance Bond” (i.e., by defendant).



7 Taking Bonds | Advanced Criminal Procedure for Magistrates | Nov. 2015

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**Taking Bonds**

Secured Bonds – Cash Over \$10,000

- The clerk must report cash in excess of \$10,000 received as a bail bond to the IRS and Financial Crimes Enforcement Network (FinCEN) and to the US Attorney.
  - A single report to the IRS satisfies both the IRS and FinCEN.
- Includes anyone receiving money on behalf of the clerk (e.g., magistrates).
- Required only for certain offenses: drugs, racketeering, and money laundering.
- “Cash” means any combination of:
  - Actual currency, and
  - Negotiable instruments (e.g., money orders) for \$10,000 or **less**.



8 Taking Bonds | Advanced Criminal Procedure for Magistrates | Nov. 2015

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**Taking Bonds**

Secured Bonds – Cash Over \$10,000

- Cash bonds must be counted in the aggregate unless for “separate bail requirements.”
  - Bond for multiple charges arising from the same event should be counted in the aggregate.
- Suspicious transactions.
  - A cash bond transaction that doesn’t require reporting should be reported anyway if it is “suspicious.”
  - “Suspicious” means a transaction in which the payment is structured in an attempt to avoid reporting.
- Report on IRS Form 8300; guidance is in IRS Publication 1544.
  - Note: Publication 1544 is now dated Sep. 2014.
  - Update p. 68 of your 2014 crim. pro. book – No. (2) at top of page.



9 Taking Bonds | Advanced Criminal Procedure for Magistrates | Nov. 2015

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### Taking Bonds

Secured Bonds – Cash Over \$10,000 – IRS Form 8300

- Must include information on defendant and any third party posting cash, **even if the third party does not sign the Appearance Bond as surety.**
- Official taking bond **must** verify identity of any third party providing the cash by some official documentation.
  - For cash provided by alien – passport, alien ID card, or other document showing nationality or residence.
  - Oct. 1 - HB 318/SB 119 and the matricula consular
  - For anyone else – any ID normally accepted when cashing a check.



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### Taking Bonds

Secured Bonds – Cash Over \$10,000 – IRS Form 8300

- Parties' Taxpayer ID Number (TIN) (generally a social security number) is required.
  - Failure to include is a common reason for Form 8300's return to the clerk and assessment of penalties.
- "Suspicious" transactions are noted by check-box 'b' in the form heading.
- IRS regulations require reporting by "the clerk," but local practice may have the magistrate complete Part IV for the recipient (clerk).



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### Taking Bonds

Secured Bonds – Mortgage by Defendant

- A defendant may post a mortgage to his own property for an Appearance Bond.
- Most counties require a deed of trust, rather than an actual mortgage.
- Use " Defendant's Property Appearance Bond" on AOC-CR-201 for a bond posted by mortgage or deed of trust to property owned solely by the defendant.
- One unique feature of bonds secured by a true "mortgage" - they require an affidavit of the property's value from a disinterested witness.

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**Taking Bonds**

Secured Bonds – Surety Bonds – General Provisions

- Surety: "one who, with the principal [defendant], is liable for the amount of the bail bond upon forfeiture of the bail." G.S. 58-71-5(10).
  
- Upon forfeiture, defendant and surety are jointly and severally liable to the State for the amount of the bond.
  
- A surety must be one of three entities:
  - Professional Bondsman
  - Insurance Company
  - Accommodation Bondsman
  - [Actually, there's a fourth – a Motor Club.]



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**Taking Bonds**

Secured Bonds – Surety Bonds – General Provisions

- A surety must be "solvent."
  - Determining that a defendant's conditions of release have been met "includes determining if sureties are sufficiently solvent to meet the bond obligation." G.S. 15A-537(a).
- Methods of determining a surety's solvency generally are reflected in local bond policies.
  - Frequently expressed as a threshold bond amount at which specific collateral (like a deed of trust) will be required.
- Solvency of licensed sureties is tracked by the Department of Insurance but is not available to review when taking a bond.



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**Taking Bonds**

Secured Bonds – Surety Bonds – Licensed Sureties

- Professional Bondsmen and Insurance Companies.
- Licensed by the Department of Insurance to do bail bond business.
- Runners and Bail agents (surety bondsmen), are sureties' agents; they are **not** sureties.
  - An agent may not execute bonds outside the scope of his license.
  - *E.g.*, If a runner's professional bondsman also is a bail agent (holding two licenses), the runner may **not** execute bonds for his employer's insurance company unless licensed as a bail agent of that company, himself.



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### Taking Bonds

#### Secured Bonds – Surety Bonds – Licensed Sureties

- Any surety whose license is not suspended, cancelled or revoked may execute bonds in **any** county in the State.
- However, a surety with an unsatisfied forfeiture judgment in a county may not execute new bonds for that county's cases.
- A surety prohibited from executing new bonds (by DOI or by unsatisfied judgment) will be omitted from the county's *Surety Report*.
  - If not on the report for a county, the surety can **not** execute a bond for that county's cases.
  - An agent executing a bond **must** be listed on the current *Surety Report* as affiliated with the surety on whose behalf he wants to sign the bond.
- Each county's current *Surety Report* is online on AOC's web site.
  - Printed reports may be out of date.



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### Taking Bonds

#### Secured Bonds – Surety Bonds – Licensed Sureties

- Affidavit required for every bond.
  - Every licensed surety executing a bond must "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).
  - This is the affidavit on Side Two of the Appearance Bond (AOC-CR-201).
  - The affidavit "shall" include details of any premium paid (or to be paid) or collateral received in exchange for posting the bond.
- No blank bonds.
  - Licensed sureties may not execute "blank" bonds to be executed by another person. G.S. 58-71-110.
- Violation of any provision of Article 71 of G.S. Chapter 58 is a Class 1 misdemeanor. G.S. 58-71-185.



17 Taking Bonds | Advanced Criminal Procedure for Magistrates | Nov. 2015

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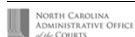
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### Taking Bonds

#### Secured Bonds – Surety Bonds – Licensed Sureties

- Professional Bondsmen
  - Like a defendant, a professional bondsman is **personally** liable for a bond.
  - Bonds may not be executed in a professional bondsman's business name (e.g., "XYZ Bail Bonds"), because the Department of Insurance licenses bondsmen **only** in their personal capacities.
- Bondsmen's deposits – "solvency" of a professional bondsman.
  - A professional bondsman may not have outstanding at any time bonds exceeding:
    - Eight times his/her total deposits with DOI, G.S. 58-71-145, or
    - One-fourth of his total deposits posted for a single defendant. G.S. 58-71-175.
  - DOI does not have bondsmen deposits online for real-time verification.



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**Taking Bonds**

Secured Bonds – Surety Bonds – Licensed Sureties

- Insurance Companies
  - An insurance company can execute bonds only through a bail agent currently affiliated with that company on the *Surety Report*.
  - Mere possession of a company's POA certificate does **not** mean the agent is currently permitted to sign bonds for that company, so check the *Report*.
- The POA certificate – the "solvency" of an insurance company.
  - Like professional bondsmen, insurance companies maintain deposits held in trust by the Commissioner of Insurance, but the company's authority to execute an individual bond is not linked to those deposits.
  - "Solvency" is determined by the face value of the company's POA certificate; it must be enough to cover the bond.



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**Taking Bonds**

Secured Bonds – Surety Bonds – Motor Club Bonds

- Motor club bonds are secured by an insurance company licensed to business in the State, but not necessarily to do *bail bond business*.
- Authorized to post appearance bonds for traffic offenses, up to \$1,500, except for an impaired driving offense or any felony. G.S. 58-69-55.
- Beware disclaimers of liability on a motor club bond, such as:
  - dollar amount limitations lower than \$1,500;
  - excluded offenses; or
  - **expiration dates**.
- Motor clubs are not on the *Surety Report* or in NC AWARE.
  - Workaround: Prepare as a " Surety Appearance Bond" with the motor club's information entered as an "Accommodation Bondsman."



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**Taking Bonds**

Secured Bonds – Surety Bonds – Accommodation Bondsmen

- Accommodation bondsman – Any surety other than one regulated by the Department of Insurance.
- Definition/Qualifications, G.S. 15A-531(1); G.S. 58-71-1(1)
  - Natural person (*i.e.*, no corporations, non-profits, partnerships, etc.)
  - 18 years of age
  - Resident of the State
  - Receives no compensation for executing the bond.
  - Endorses the bail bond (*i.e.*, must sign the Appearance Bond)
  - Provides proof of solvency to satisfy the bond.
- **NOT** a judicial or criminal justice official or attorney, except for defendants who are close relatives. G.S. 15A-541; G.S. 58-71-105.



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**Taking Bonds**

Secured Bonds – Surety Bonds – Accommodation Bondsmen

- "Solvency" of an accommodation bondsman:
  - "satisfactory evidences of ownership, value and marketability of real or personal property ... sufficient to assure that the full principal sum of the bond will be realized." G.S. 15A-531(1).
- Official taking the bond can be satisfied about the surety's solvency without requiring that specific property (cash or land) be encumbered for the bond.
- The surety's assets or equity in property must be enough to satisfy the bond **after** deducting the value of his/her constitutional exemptions (\$1,000 in real property; \$500 in personal property).
  - Statutory exemptions in Chapter 1C don't apply. G.S. 1C-1601(e)(2).



22 Taking Bonds | Advanced Criminal Procedure for Magistrates | Nov. 2015

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**Taking Bonds**

Secured Bonds – Surety Bonds – Specific Security

- Local bond policy generally sets the threshold amount at which specific security (cash or land) must be posted to satisfy a bond.
- The bond policy of the county where the **charge** is pending should be followed whenever possible.
- Cash is always acceptable.
  - Local school boards will prefer cash; collection is easier.



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**Taking Bonds**

Secured Bonds – Property Bonds

- A property bond is the encumbrance of specific real property in order to secure the appearance bond.
- **All** owners of an interest in the property must execute both the deed of trust and the Appearance Bond.
  - If the property is owned by sureties, **each** owner must meet all the qualifications of an accommodation bondsman.
  - So no property owned in whole or in part by a non-person (e.g., business, church, charity), by a minor, or by a non-resident may be used to post bond.



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**Taking Bonds**  
Secured Bonds – Property Bonds

- Be cautious of rented residential property; buyers at foreclosure might have to honor existing leases, which might impair the property’s marketability.
- Federal law previously required that purchasers at foreclosure honor certain leases. That legislation expired December 31, 2014.
  - Update your 2014 crim pro book, p. 79: the three dashed bullets under “Judicial officials should be cautious...” are out of date. Instead:
- General Assembly enacted limited protections for residential tenants, effective October 1, 2015. S.L. 2015-178 (HB 174).
- See Meredith Smith, *New(ish) Protections for Tenants Occupying Foreclosed Property*, ON THE CIVIL SIDE (Oct. 9, 2015, 12:25 PM), <http://civil.sog.unc.edu/newish-protections-for-tenants-occupying-foreclosed-property/>

NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS      25 Taking Bonds | Advanced Criminal Procedure for Magistrates | Nov. 2015

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**Taking Bonds**  
Secured Bonds – Property Bonds – Common Questions

- “Case in County A, property in County B.”
- Bond policies of the county where the **charge** is pending should be followed whenever possible.
- Clerk of the charging county must be made trustee and hold the court’s copy of all bond documentation (including the deed of trust).
- Jointly-owned property.
  - Local rules may prohibit bonds secured by property owned jointly by defendant and another person (e.g., a spouse).
  - If not prohibited by local rule, any bond secured thereby should be collectible if the Appearance Bond and deed of trust are executed by both owners, and the deed indicates the grantors are spouses.

NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS      26 Taking Bonds | Advanced Criminal Procedure for Magistrates | Nov. 2015

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**Taking Bonds**  
Stacking and Splitting Bonds

- **Stacking:** Posting a **single** Appearance Bond to satisfy the monetary condition of a release order, using multiple (“stacked”) forms of security, none of which individually covers the full amount of the bond.
  - e.g., a bail agent and the defendant’s girlfriend sign a **single** bond (CR-201) to satisfy a \$100,000 condition of release, attaching a POA certificate from agent’s insurance company worth \$60,000 and a deed of trust to girlfriend’s property for \$40,000.
- Sureties should not be allowed to stack security for a bond.
  - By signing the same bond, the sureties are jointly and severally liable for the entire amount, but **neither** has proved solvency for the entire amount.
  - Insurance companies present an additional problem when stacking: power of attorney certificates often are void if joined with other security for the same bond or same defendant.

NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS      27 Taking Bonds | Advanced Criminal Procedure for Magistrates | Nov. 2015

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### Taking Bonds

#### Stacking and Splitting Bonds

- **Splitting:** Posting **multiple** bonds (multiple CR-201s) to satisfy the total amount required, with each bond secured by separate security.
  - e.g., a bail agent and the defendant's girlfriend execute **separate** CR-201s to satisfy a \$100,000 condition of release, one with a \$60,000 POA certificate from an insurance company and one with a \$40,000 deed of trust to the girlfriend's property.
- There is no statutory guidance on splitting (for or against), but it may be prohibited by local policy.
- Beware splitting that is really "stacking" in disguise (e.g., a bail agent wants to sign two bonds, with a POA certificate from the same company on both).



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### Taking Bonds

#### Bonds and ICE Detainers

- Immigration and Customs Enforcement (ICE) detainers authorize law enforcement with custody of a person to continue holding the person for 48 hours after he is "not otherwise detained." 8 CFR § 287.7.
- Detainer has no bearing on a defendant's eligibility for release on a State proceeding, including the ability to post bond.
  - A judicial official asked to take a bond for a defendant with a detainer should process the bond as if the detainer did not exist.
  - May wish to inform the defendant/surety that the bond will **not** secure the defendant's immediate release.
- Defendant/surety is **not** entitled to cancel the bond, obtain a refund, or retrieve a bondsman's seal or POA due to the detainer. Once executed, the bond (and documentation) is a record of the court.



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LAW AND JUSTICE




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# Report of Cash Payments Over \$10,000 Received in a Trade or Business

Department of the Treasury  
Internal Revenue Service

▶ See instructions for definition of cash.  
▶ Use this form for transactions occurring after August 29, 2014. Do not use prior versions after this date.

OMB No. 1506-0018  
Department of the Treasury  
Financial Crimes  
Enforcement Network

For Privacy Act and Paperwork Reduction Act Notice, see the last page.

1 Check appropriate box(es) if: a  Amends prior report; b  Suspicious transaction.

### Part I Identity of Individual From Whom the Cash Was Received

2 If more than one individual is involved, check here and see instructions

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) M M D D Y Y Y Y

9 City 10 State 11 ZIP code 12 Country (if not U.S.) 13 Occupation, profession, or business

14 Identifying document (ID) a Describe ID c Number b Issued by

### Part II Person on Whose Behalf This Transaction Was Conducted

15 If this transaction was conducted on behalf of more than one person, check here and see instructions

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) Employer identification number

21 Address (number, street, and apt. or suite no.) 22 Occupation, profession, or business

23 City 24 State 25 ZIP code 26 Country (if not U.S.)

27 Alien identification (ID) a Describe ID c Number b Issued by

### Part III Description of Transaction and Method of Payment

28 Date cash received M M D D Y Y Y Y 29 Total cash received \$ .00 30 If cash was received in more than one payment, check here  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 a  Personal property purchased f  Debt obligations paid  
b  Real property purchased g  Exchange of cash  
c  Personal services provided h  Escrow or trust funds  
d  Business services provided i  Bail received by court clerks  
e  Intangible property purchased j  Other (specify in item 34) ▶  
34 Specific description of property or service shown in 33. Give serial or registration number, address, docket number, etc. ▶

### Part IV Business That Received Cash

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 \_\_\_\_\_ Authorized official Title \_\_\_\_\_

43 Date of signature M M D D Y Y Y Y 44 Type or print name of contact person 45 Contact telephone number

Multiple Parties

(Complete applicable parts below if box 2 or 15 on page 1 is checked.)

Part I Continued—Complete if box 2 on page 1 is checked

Form section for Part I, first entry. Fields include: 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.), 13 Occupation, profession, or business, 14 Identifying document (ID) with sub-fields a Describe ID, c Number, and b Issued by.

Form section for Part I, second entry. Fields include: 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.), 13 Occupation, profession, or business, 14 Identifying document (ID) with sub-fields a Describe ID, c Number, and b Issued by.

Part II Continued—Complete if box 15 on page 1 is checked

Form section for Part II, first entry. Fields include: 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), Employer identification number, 21 Address (number, street, and apt. or suite no.), 22 Occupation, profession, or business, 23 City, 24 State, 25 ZIP code, 26 Country (if not U.S.), 27 Alien identification (ID) with sub-fields a Describe ID, c Number, and b Issued by.

Form section for Part II, second entry. Fields include: 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), Employer identification number, 21 Address (number, street, and apt. or suite no.), 22 Occupation, profession, or business, 23 City, 24 State, 25 ZIP code, 26 Country (if not U.S.), 27 Alien identification (ID) with sub-fields a Describe ID, c Number, and b Issued by.

Comments – Please use the lines provided below to comment on or clarify any information you entered on any line in Parts I, II, III, and IV

Five horizontal lines provided for entering comments.

Tab: Initial  
Appearances  
In Impaired  
Driving Cases

## Civil License Revocations & Motor Vehicle Seizures

Shea Denning  
School of Government  
November 2015



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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 2011 Highway Safety Countermeasure Guide at 1-11)



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

Remedial highway safety measure – not punishment



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**State v. Oliver,  
343 NC 202 (1996)**  
“Any deterrent effect”  
“merely incidental to  
overriding purpose of  
protecting the public’s  
safety”



UNC

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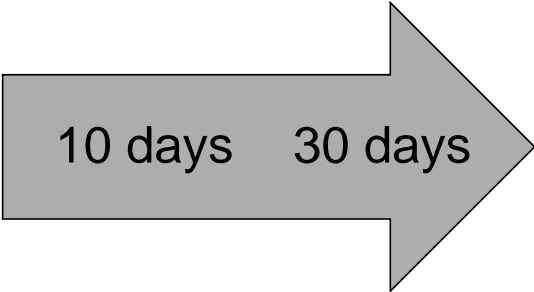
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Minimum CVR period



10 days 30 days

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**State v. Evans,  
145 NC App 324 (2001)**

- Purpose still is “remov[ing]  
from our highways drivers who  
either cannot or will not  
operate a motor vehicle safely  
and soberly”

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**State v. Reid,  
148 NC App 548 (2002)**

- 30 day civil revocation of commercial driver's license was exercise of reasonable regulatory authority
- Not criminal punishment that prevents subsequent prosecution on underlying DWI



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**State v. McKenzie,  
367 NC 112 (2013)**

- 1-year commercial driver's license disqualification based on CVR for DWI in noncommercial vehicle car is civil sanction rather than criminal punishment
- CDL disqualification does not bar subsequent criminal prosecution



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

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



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## G.S. 20-16.5

### 2. Person is charged with that offense

- 4. A law enforcement officer charged the driver with the implied-consent offense of  G.S. 20-138.1;  Other Implied-Consent Offense: \_\_\_\_\_ and the driver has one or more pending offenses in the following county(ies) \_\_\_\_\_ for which the driver's license had been or is revoked under G.S. 20-16.5.



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## G.S. 20-16.5

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



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## Compliance with procedures

- 5. After the driver was charged, I took the driver before \_\_\_\_\_, a chemical analyst authorized to administer a test of the driver's breath.
- 6. I am a chemical analyst and possess a current permit issued by the Department of Health and Human Services authorizing me to conduct chemical analyses of the breath utilizing the Intox ECIR II.
- 7. I informed the driver, orally and also gave notice in writing of the rights specified in G.S. 20-16.2(a). I completed informing the driver of the rights as indicated on the attached DHHS 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. For blood or urine, I directed the taking of a blood or urine sample by a person qualified under G.S. 20-139.1.
- 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.
- 11. The driver submitted to a chemical analysis of his/her breath. I administered the chemical analysis to the driver in accordance with the methods/rules approved by the Department of Health and Human Services using an Intox ECIR II, and I printed the results of the driver's chemical analysis on the attached test record, DHHS 4082, which is made part of this Affidavit. The most recent preventive maintenance was performed on this Intox ECIR II on the \_\_\_\_\_ day of \_\_\_\_\_ as shown on the preventive maintenance record. I provided the driver with a copy of the attached test record before any trial or proceeding in which the results of the chemical analysis may be used.



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North Carolina Department of Health and Human Services  
**Rights of Person Requested to Submit to a Chemical  
Analysis to Determine Alcohol Concentration or  
Presence of an Impairing Substance Under N.C.G.S. 20-16.2(a)**

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*Last*                      *First*                      *MI*

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*Driver License Number / State*                      *Date of Birth*                      *Citation Number*

**Breath**    **Blood**    **Subsequent Test**

1. You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.
2. The test results, or the fact of your refusal, will be admissible in evidence at trial.
3. Your driving privilege will be revoked immediately for at least 30 days if you refuse any test or the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.
4. After you are released, you may seek your own test in addition to this test.
5. You may call an attorney for advice and select a witness to view the testing procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time you are notified of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

Date \_\_\_\_\_ Time \_\_\_\_\_ [ ] a.m. [ ] p.m.                      Signature of Person Charged \_\_\_\_\_

Did defendant call an attorney and/or witness? [ ] NO [ ] YES Time \_\_\_\_\_ [ ] a.m. [ ] p.m.

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### G.S. 20-139.1

- (b): Chemical analysis of breath admissible if done pursuant to DHHS rules by person with permit
- (b2): preventative maintenance
- (b3): at least duplicate sequential breath samples
  - results may not differ by more than 0.02
  - refusal to give second sample makes first result admissible
- (b5): may be asked for blood or urine too

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### Intoximeter: Intox EC/IR II

**10A NCAC 41B .0322 INTOXIMETERS: MODEL INTOX EC/IR II**  
The operational procedures to be followed in using the Intoximeters, Model Intox EC/IR II are:

- (1) Insure instrument displays time and date;
- (2) Insure observation period requirements have been met;
- (3) Initiate breath test sequence;
- (4) Enter information as prompted;
- (5) Verify instrument accuracy;
- (6) When "PLEASE BLOW" appears, collect breath sample;
- (7) When "PLEASE BLOW" appears, collect breath sample; and
- (8) Print test record.

If the alcohol concentrations differ by more than 0.02, a third or fourth breath sample shall be collected when "PLEASE BLOW" appears. Subsequent tests shall be administered as soon as feasible by repeating steps (1) through (8), as applicable.

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

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### Exception: G.S. 20-16.5(n)

- Currently revoked DL
- No LDP
- Not eligible for restoration during period of CVR
- Then not required to issue CVR
- If exception applies, and no CVR issued, must file copy of documentary evidence and set out in writing other evidence

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### AOC-CVR-02: Revocation Order

STATE OF NORTH CAROLINA  
 County: \_\_\_\_\_ In The General Court Of Justice  
 District Court Division

IN THE MATTER OF \_\_\_\_\_  
**REVOCATION ORDER  
 WHEN PERSON PRESENT**  
 G.S. 20-16.5

**FINDINGS FOR PROBABLE CAUSE**

The undersigned judicial official finds probable cause to believe that:

1. A law enforcement officer had reasonable grounds to believe that the above named person committed an offense subject to the imprisonment 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 analysis complied with the provisions of G.S. 20-16.2 and 20-138.1 in requiring the above named person's submission to or procuring a chemical analysis;
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 an alcohol concentration of 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) \_\_\_\_\_ in which the person's driver's license had been or is revoked under G.S. 20-16.5.

**ORDER**

It is ORDERED that the above named person's driver's license 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 which the person's driver's license to the Court, or demonstrates that he/she is not currently licensed to drive;
3. the date when a hearing for Probable Cause No. 1 takes place checked The date he/she surrenders his/her driver's license to the Court, or demonstrates that he/she is not currently licensed to drive and establishes, upon a final judgment, including appeals, has been entered for the current offense and for all pending offenses for which he/she driver's license 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 \$50 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: \_\_\_\_\_ Sign: \_\_\_\_\_  
 Judge or judicial official

NOTE: See reverse for supplemental findings and order, and for disposition of:  
 ADP  Popovise  
 Deeds CDC  Assistant CDC  Clerk Of Superior Court

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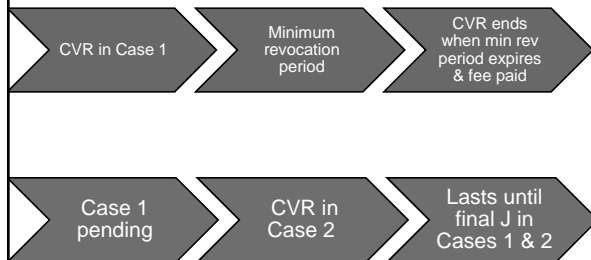
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### Revocation period if pending offense




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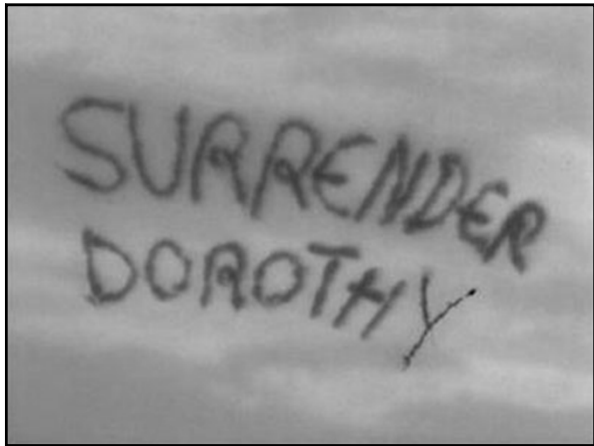
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- Let's take a look at NCAWARE

UNC  
University of North Carolina

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**Affidavit - No License**  
AOC-CVR-8

STATE OF NORTH CAROLINA

County \_\_\_\_\_

In the General Court of Justice  
District Court Division

Know full address: \_\_\_\_\_

**AFFIDAVIT - NO LICENSE**

State of Residence \_\_\_\_\_ S.S. 20-163

**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 the 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 the 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** \_\_\_\_\_

Date: \_\_\_\_\_

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### Multiple Offenses

Danielle Driver is charged with driving while impaired (G.S. 20-138.1) and driving after consuming by a person under 21 (G.S. 20-138.3). All of the requirements for civil license revocation under G.S. 20-16.5 are satisfied.

Do you order one revocation or two?



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

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

STATE OF NORTH CAROLINA

NOTE: A comment box is provided for the officer to enter a comment regarding the case.

Name: \_\_\_\_\_ City of Justice  
 Address: \_\_\_\_\_ State of North Carolina  
 City: \_\_\_\_\_ Department of Transportation  
 Place: \_\_\_\_\_ (G.S. 20-138.1)  
 Sex: \_\_\_\_\_

The undersigned \_\_\_\_\_, a law enforcement officer, believes the above named person, hereinafter referred to as driver, operated a vehicle \_\_\_\_\_ in the above named county upon \_\_\_\_\_ while committing \_\_\_\_\_ consent offense in that \_\_\_\_\_.

2. The driver has a drivers license restriction:  alcohol concentration  ignition interlock  conditional restoration (G.S. 20-16.5)

3. The driver violated a drivers license restriction by:  refusing to be transported for testing  not having an operable ignition interlock on the vehicle being driven  failing to personally activate the ignition interlock on the vehicle being driven  exceeding the driver's alcohol concentration limitation.

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

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 \_\_\_\_\_.

The driver violated a drivers license restriction by . . .



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### What about violation of an ignition interlock restriction?

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



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### What about Daniel?

- Daniel is 17. He has a full provisional license.
- He is charged with speeding 82 in a 65 mph zone on January 5, 2012.
- Must Daniel be arrested for this offense?
- Is Daniel's license subject to revocation?



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### What about Lilly?



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



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### Daniel is back . . .

- Daniel is stopped 14 days after the provisional licensee CVR is issued
- He is charged with DWI and DWLR
- He refuses to provide a breath sample
- Is Daniel's license subject to civil revocation?
- Under what provision?



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### What about Christopher?

- Christopher is 17. He has a full provisional license.
- He is charged with DWI and driving after consuming while under 21.
- He submits to a breath test.
- The result is 0.00.
- He submits to a request for a blood draw.
- Is Christopher subject to a civil license revocation?
- Under what provision?



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



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

- A motor vehicle driven by a person charged with a *an offense involving impaired driving* is subject to seizure if
  - At the time of the violation, the person's license was revoked as a result of a prior impaired driving license revocation, *or*
  - At the time of the violation, the person was driving without a valid drivers license and was not covered by an automobile insurance policy



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# Offenses involving impaired driving

**III. OFFENSES INVOLVING IMPAIRED DRIVING**

G.S. 20-4.01(24a) defines "offense involving impaired driving" to include the following:

- impaired driving under G.S. 20-138.1;
- any offense set forth under G.S. 20-141.4 based on impaired driving;
- first or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when the charge is based on impaired driving;
- impaired driving in a commercial vehicle under G.S. 20-138.2;
- habitual impaired driving under G.S. 20-138.5.




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# Prior impaired driving license revocation

**IV. IMPAIRED DRIVING LICENSE REVOCATIONS - G.S. 20-28.2(a)**

Under G.S. 20-28.2(a), the revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to any of the following statutes:

- G.S. 20-13.2 - Driving After Consuming Alcohol/Drugs While Less Than 21
- G.S. 20-16(a)(8) - Military Driving While Impaired
- G.S. 20-16.2 - Refused Chemical Test
- G.S. 20-16.5 - Civil Revocation
- G.S. 20-17(a)(2) - Driving While Impaired
  - Driving While Impaired In Commercial Motor Vehicle
- G.S. 20-132.5 - 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.




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

- A motor vehicle driven by a person charged with a *an offense involving impaired driving* is subject to seizure if
  - At the time of the violation, the person's license was revoked as a result of a prior impaired driving license revocation, or
  - At the time of the violation, the person was driving without a valid drivers license and was not covered by an automobile insurance policy




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Driving While Not Covered by an Automobile Liability Policy



Horizontal lines for notes

Exceptions to Seizure

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



Horizontal lines for notes

Affidavit for Seizure and Impoundment AOC-CR-323

STATE OF NORTH CAROLINA OFFICER'S AFFIDAVIT FOR SEIZURE AND IMPOUNDMENT AND MAGISTRATE'S ORDER



Horizontal lines for notes



**2009-2010**  
More than 4,000 cars seized



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



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**Net proceeds to county schools**  
~\$340,000 in 2010-2011



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### Purpose?

“[K]eeping impaired drivers and their cars off the roads”

*State v. Chisholm*, 135 N.C. App. 578, 584 (1999)

Vehicle impoundment for DWI offenders

“reduces recidivism while the vehicle is in custody and to a lesser extent after the vehicle has been released.”

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



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### Release to innocent owner

Did not know/no reason to know  
Defendant's DL was revoked or  
Defendant did not have DL and  
Insurance

Defendant drove without permission  
Owner filed police report for  
unauthorized use and agrees to  
prosecute

Vehicle reported stolen

Rents vehicles

Defendant not authorized driver

Leases vehicles, no knowledge of  
defendant's revocation



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### Release to Lienholder

- Default
- Lienholder entitled to possession
- Agrees to sell
- Not to defendant or owner
- No previous release of this MV to this lienholder if seizure involved same defendant or owner



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### DWI Seizure and Impoundment

- No waiver of towing and storage fees!
- G.S. 20-28.3(c): if requirements for seizure not met, the magistrate must order motor vehicle released to owner “upon payment of towing and storage fees”
- G.S. 20-28.3(e1): release to lienholder “conditioned upon payment of all towing and storage costs”
- G.S. 20-28.3(e1): release to innocent owner “conditioned upon payment of all towing and storage charges”




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- any offense set forth under G.S. 20-141.4 based on impaired driving;
- first or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when the charge is based on impaired driving;
- impaired driving in a commercial vehicle under G.S. 20-138.2;
- habitual impaired driving under G.S. 20-138.5.




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- 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.




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# Impaired Driving Holds & Implied Consent Offense Notices

Shea Denning  
School of Government  
November 2015



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## Impaired Driving Holds

### § 15A-534.2. Detention of impaired drivers.

(a) A judicial official conducting an initial appearance for an offense involving impaired driving, as defined in G.S. 20-4.01(24a), must follow the procedure in G.S. 15A-511 except as modified by this section. This section may not be interpreted to impede a defendant's right to communicate with counsel and friends.

(b) If at the time of the initial appearance the judicial official finds by clear and convincing evidence that the impairment of the defendant's physical or mental faculties presents a danger, if he is released, of physical injury to himself or others or damage to property, the judicial official must order that the defendant be held in custody and inform the defendant that he will be held in custody until one of the requirements of subsection (c) is met; provided, however, that the judicial official must at this time determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.



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## Offenses involving impaired driving

- Impaired driving under G.S. 20-138.1
- Habitual impaired driving under G.S. 20-138.5
- Impaired driving in commercial vehicle under G.S. 20-138.2
- Any offense under G.S. 20-141.4 (felony and misdemeanor death by vehicle and serious injury by vehicle) based on impaired driving
- First- or second-degree murder under G.S. 14-17 based on impaired driving
- Involuntary manslaughter under G.S. 14-18 based on impaired driving
- Substantially similar offenses committed in another state or jurisdiction



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## Impaired Driving Holds

**§ 20-38.4. Initial appearance.**  
 (a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.

(3) **If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.**

(4) The magistrate shall also:

a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and

b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article. (2006-253, s. 5.)

UNC  
 Division of Administration

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## Impaired Driving Holds

**§ 20-38.4. Initial appearance.**  
 (a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.

(3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.

(4) The magistrate shall also:

a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and

b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article. (2006-253, s. 5.)

AOC shall adopt forms

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 Division of Administration

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## AOC-CR-270: Detention of Impaired Driver

STATE OF NORTH CAROLINA

County: \_\_\_\_\_

STATE VERSUS \_\_\_\_\_

**DETENTION OF IMPAIRED DRIVER**

Case No. \_\_\_\_\_

Date of Entry \_\_\_\_\_

G.S. 15A-534.2, 20-334

**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(1)(2)(4).

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 reason): \_\_\_\_\_

**DETENTION ORDER**

Based upon the foregoing findings, the undersigned judicial official (JUDGE) finds 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 knowledgeable, 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:  AM  PM

Signature of Judicial Official: \_\_\_\_\_

By: \_\_\_\_\_

Witness: \_\_\_\_\_

UNC  
 Division of Administration

Reasons why impairment presents danger

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

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

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

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State v. Labinski,  
188 N.C. App. 120 (2008)

~~Because I think anyone charged with DWI who blows 0.08 or more on the breath test would possibly hurt himself or someone else, I’m imposing a hold.~~

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### G.S. 15A-534.2(c)

(c) A defendant subject to detention under this section has the right to pretrial release under G.S. 15A-534 when the judicial official determines either that:

- (1) The defendant's physical and mental faculties are no longer impaired to the extent that he presents a danger of physical injury to himself or others or of damage to property if he is released; or
- (2) A sober, responsible adult is willing and able to assume responsibility for the defendant until his physical and mental faculties are no longer impaired. If the defendant is released from the custody of another, the judicial official may impose any other condition of pretrial release authorized by G.S. 15A-534, including a requirement that the defendant execute a secured appearance bond.

The defendant may be detained under this section for a period no longer than 24 hours, but may be released only upon meeting the conditions of pretrial release under G.S. 15A-534. If the defendant is detained for more than 24 hours, a judicial official must determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.

**No longer impaired to extent that he presents danger**

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

**No longer than 24 hours**

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

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### G.S. 15A-534.2(d)

(d) In making his determination whether a defendant detained under this section remains impaired, the judicial official may request that the defendant submit to periodic tests to determine his alcohol concentration. Instruments acceptable for making preliminary breath tests under G.S. 20-16.3 may be used for this purpose as well as instruments for making evidentiary chemical analyses. Unless there is evidence that the defendant is still impaired from a combination of alcohol and some other impairing substance or condition, a judicial official must determine that a defendant with an alcohol concentration less than 0.05 is no longer impaired. The results of any periodic test to determine alcohol concentration may not be introduced in evidence:

- (1) Against the defendant by the State in any criminal, civil, or administrative proceeding arising out of an offense involving impaired driving; or
- (2) For any purpose in any proceeding if the test was not performed by a method approved by the Commission for Public Health under G.S. 20-139.1 and by a person licensed to administer the test by the Department of Health and Human Services.

The fact that a defendant refused to comply with a judicial official's request that he submit to a chemical analysis may not be admitted into evidence in any criminal action, administrative proceeding, or a civil action to review a decision reached by an administrative agency in which the defendant is a party. (1983, c. 435, s. 4; 1997-443, s. 11A.118(a); 2007-182, s. 2.)

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### May request periodic breath tests



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

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- Let's review how to impose an impaired driving hold in NCAWARE.

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

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### State v. Haas, 131 N.C. App. 113 (1998)

- Magistrate had no duty to release defendant to custody of an adult who was a passenger in the car driven by defendant when officer informed magistrate that the adult was extremely intoxicated 80 minutes earlier




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### State v. Daniel, 208 N.C. App. 364 (2010)

- No statutory violation when magistrate refused at 11 p.m. to release defendant to adult who earlier in evening had odor of alcohol and who said he had beer with dinner
- Defendant met with friend for 8 minutes during crucial period of time after her arrest, so no prejudice




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### Implied Consent Offense Notice

**§ 20-38.4. Initial appearance.**  
 (a) Appearance Before a Magistrate. — Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

(1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.

(2) In determining whether there is probable cause to believe a person is

- (4) The magistrate shall also:
- Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and
  - Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article. (2006-253, s. 5.)




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# Procedures for Access

**§ 20-38.5. Facilities.**  
 (a) The Chief District Court Judge, the Department of Health and Human Services, the district attorney, and the sheriff shall:

- (1) Establish a written procedure for attorneys and witnesses to have access to the chemical analysis room.
- (2) Approve the location of written notice of implied-consent rights in the chemical analysis room in accordance with G.S. 20-16.2.
- (3) Approve a procedure for access to a person arrested for an implied-consent offense by family and friends or a qualified person contacted by the arrested person to obtain blood or urine when the arrested person is held in custody and unable to obtain pretrial release from jail.

(b) Signs shall be posted explaining to the public the procedure for obtaining access to the room where the chemical analysis of the breath is administered and to any person arrested for an implied-consent offense. The initial signs shall be provided by the Department of Transportation, without costs. The signs shall thereafter be maintained by the county for all county buildings and the county courthouse.

(c) If the instrument for performing a chemical analysis of the breath is located in a State or municipal building, then the head of the highway patrol for the county, the chief of police for the city or that person's designee shall be substituted for the sheriff when determining signs and access to the chemical analysis room. The signs shall be maintained by the owner of the building. When a breath testing instrument is in a motor vehicle or at a temporary location, the Department of Health and Human Services shall alone perform the functions listed in subdivisions (a)(1) and (a)(2) of this section. (2006-253, s. 5.)



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# Procedures for Access

**Procedures for the Observation of Prisoners  
 Charged with Implied Consent Offenses  
 Pursuant to N.C.G.S. 20-38.5**

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



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# Implied Consent Offense Notice

**§ 20-38.4. Initial appearance.**  
 (a) Appearance before a Magistrate. — Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.

- (1) A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.
- (2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.
- (3) If there is a finding of probable cause, the magistrate shall consider whether that the provisions of G.S. 15A-534.2

AOC shall adopt forms

of the established procedure to have  
 give his condition or to administer an  
 if the person is unable to make bond,  
 him

- b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

(b) The Administrative Office of the Courts shall adopt forms to implement this Article. (2006-253, s. 5.)



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- Implied consent offense notice form is available in NCAWARE.



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What's the big deal?



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# Tab: Ethics & Fairness

**Ethics for Magistrates**  
**James Drennan**  
**UNC School of Government**  
**November, 2015**

- 1) Magistrate is public officer—not a regular employee
  - a) Distinction between officer and employee. As a public officer, magistrates:
    - i) Take oath of office
    - ii) Have terms of office to promote independence
    - iii) Exercise sovereign power of the state
    - iv) Are subject to limited removal procedure
      - (1) Discipline is by judicial proceeding, not by hiring authority
        - (a) Grounds are statutory
- 2) Disciplinary procedure
  - a) Impeachment—very, very rare
  - b) Removal procedure GS 7A-173
    - i) Complaint reviewed by chief district judge
      - (1) Probable cause standard
      - (2) May order suspension pending hearing, with pay
    - ii) Hearing by superior court judge
      - (1) “Grounds for removal are the same as for a judge” GS 7A-173, 7A-376, *State v. Greer*, 308 NC 515; *In Re Kiser*, 126 NC App. 206
        - (a) Willful misconduct in office
          - (i) Improper and wrong conduct acting in official capacity;
          - (ii) Done intentionally and knowingly (or with gross unconcern for the conduct);  
and
          - (iii) In bad faith.
          - (iv) Examples—dishonesty, corruption, or knowing misuse of office, or to accomplish purpose beyond the legitimate exercise of his or her authority. *In Re Edens*, 290 NC 299; *In Re Stuhl*, 292 NC 239; *In Re Nowell*, 293 NC 235
            1. Not limited to time in court
            2. Improper sexual activity between judge and defendant included
            3. Generally criminal charges against judge will also constitute willful misconduct
        - (b) Willful and persistent failure to perform his duties
        - (c) Habitual intemperance
        - (d) Conviction of crime involving moral turpitude
        - (e) Conduct prejudicial to administration of justice
          - (i) Less serious than willful misconduct

- (ii) Often taken in good faith, but still appears to objective observer that conduct is un-judicial and lowers public esteem for the office
  - (iii) Motive doesn't matter; conduct does
  - (iv) Personal benefit not required
  - (v) Can't use inexperience or lack of training
  - (vi) Private matters also covered
  - (vii) *Edens, Stuhl, Nowell, supra; In Re Crutchfield, 289 NC 597; In Re Peoples, 296 NC 109; In Re Martin, 295 NC 292*
- (2) Remedy for violation
  - (a) Judges may be censured, and may lose retirement benefits if removed
  - (b) Removal is only remedy for magistrates and is mandatory if grounds found to exist
    - (i) *Does not involve retirement forfeiture*
- 3) Relationship of Code of Judicial Conduct to magistrate discipline
  - a) Code is only applicable directly to judges
  - b) "A violation of the Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office in disrepute, or willful misconduct in office, or otherwise as grounds for disciplinary proceedings . . . No other code or proposed code shall be relied upon in the interpretation and application of this Code of Judicial Conduct."
    - Preamble to Code of Judicial Conduct*
  - c) Since magistrates subject to same standard of conduct in removal hearing, standards of the Code apply to magistrates
- 4) Code of Judicial Conduct
  - a) Purpose is to provide certainty, accountability and professional identity ; can be aspirational or prohibitive or both
  - b) Also provides safe harbors in difficult areas
  - c) Newly amended to make less aspirational and more like a code
  - d) Divided into "Canons"; most directly relevant are:
    - i) Canon 1—Uphold integrity and independence of the judiciary
    - ii) Canon 2—Avoid impropriety in all activities
      - (1) No longer the appearance of impropriety
      - (2) Use of prestige of office; personal references; character evidence; membership in organizations
    - iii) Canon 3—Impartiality and diligence
      - (1) Order, dignity, courtesy
      - (2) Ex parte communications
        - (a) Prohibited in pending cases, unless authorized by law
      - (3) Promptness
      - (4) Comments on merits of pending cases
      - (5) Administrative duties and duty to report violations
      - (6) Recusal
    - iv) Canons 4 and 5—Outside activities to improve the system or the community

- (1) Don't do it if it casts doubt on your ability to be impartial
- (2) Community activities, but no fundraising
  - (a) Organization can't be frequent litigator
- (3) Financial activities
  - (a) Business dealings
    - (i) Don't do if interferes with duties as magistrate, or exploit judicial position or frequently involves interaction with litigants or lawyers who appear in court
  - (b) Gifts
    - (i) Ordinary social hospitality
    - (ii) Not from parties to a proceeding
    - (iii) Reports of gifts over \$500
  - (c) Estates of relatives—may serve
- (4) Service on commissions and committees
  - (a) Limited to justice system, cultural, historical or educational activities
- 5) Ethics is also a matter of personal integrity. Aim high in matters of personal and professional ethics

