

# CRIMINAL PLEADINGS AND BOND

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## Criminal Pleadings

- 7 types
  - 5 begin prosecution in district court
    - Citation
    - Criminal Summons
    - Arrest Warrant
    - Magistrate's Order
    - Statement of Charges (used to supersede)
  - 2 begin prosecution in superior court
    - Indictment
    - Information

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## Citation

- **Who:** Officers
- **For:** infractions and misdemeanors
- **Note:** Defendants may object to trial on citation



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## Criminal Summons

- **Who:** Any justice, judge, magistrate, or clerk
- **For:** infractions, misdemeanors, and felonies
  - ▣ Limited use for felonies in practice
- **Note:** Requires probable cause supported by oath or affirmation

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## Arrest Warrant

- **Who:** Any justice, judge, magistrate, or clerk
- **For:** misdemeanors and felonies
  - ▣ Not infractions
- **Notes:**
  - ▣ Requires probable cause supported by oath or affirmation
  - ▣ Requires finding that the defendant should be taken into custody

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## Magistrate's Order

- **Who:** Any justice, judge, magistrate, or clerk
- **For:** misdemeanors and felonies
  - ▣ Not infractions
- **Notes:**
  - ▣ Used when a suspect is arrested without a warrant
  - ▣ Requires probable cause supported by oath or affirmation



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## Statement of Charges

- **Who:** Prosecutor
- **For:** Misdemeanors (and presumably infractions)
- **Notes:**
  - ▣ Supersedes prior charging instruments, must re-allege any charges you want to keep
  - ▣ Usually used prior to arraignment, limited afterwards

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## Indictment

- **Who:** Grand jury
- **For:** Generally, felonies and related misdemeanors
- **Notes:**
  - ▣ Can initiate a prosecution, or continue a prosecution bound over to superior court
  - ▣ Required for felonies unless the defendant waives



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## Information

- **Who:** Prosecutor
- **For:** Any criminal offense, but usually for felonies and related misdemeanors
- **Notes:**
  - ▣ Requires waiver of indictment
  - ▣ Typically used with plea bargains

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## Content of Pleadings

### Requirements in G.S. 15A-924

Defendant's Name	Approximate Date
Separate Count for Each Offense	Concise Factual Statement that Supports Each Element
County	Statutory Citation

### Special rules for certain matters

- Statutory DWI charging language
- Previous convictions
- "Short form" indictments
- Nonstatutory aggravating circumstances in felony cases

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## Pleading Defects: Options

- Do nothing
- Amend
- Supersede
- Dismiss and re-charge



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## Do Nothing

- OK for very minor defects
  - Misspelled names
  - Date or time mistakes
- May correct minor defects even though not required

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## Amend

- Any time
- Can't "change the nature of the offense"
- What does that mean?

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## Amendments

### Forbidden

- Changing victim's from "Faith Temple Church of God" to "Faith Temple Church – High Point, Inc."

### Permitted

- Changing the victim's name from "Gail Hewson Tice" to "Gail Tice Hewson"

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## Amendments

### Forbidden

- Changing victim's from "Faith Temple Church of God" to "Faith Temple Church – High Point, Inc."
- Changing the intended felony in felony B/E

### Permitted

- Changing the victim's name from "Gail Hewson Tice" to "Gail Tice Hewson"
- Changing the underlying violation in misdemeanor death by vehicle

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## Amendments

### Forbidden

- ❑ Changing victim's from "Faith Temple Church of God" to "Faith Temple Church – High Point, Inc."
- ❑ Changing the intended felony in felony B/E
- ❑ Changing drug paraphernalia allegation from pipe to paper bag

### Permitted

- ❑ Changing the victim's name from "Gail Hewson Tice" to "Gail Tice Hewson"
- ❑ Changing the underlying violation in misdemeanor death by vehicle
- ❑ Changing armed robbery allegation from firearm to knife

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## Amendments: General Rules

- ❑ Amendments may not charge a "factually different offense" or a "legally separate offense"
  - Wayne R. LaFare et al., *5 Criminal Procedure* § 19.5(b)
- ❑ Factually different
  - Different event – time/place/parties
  - Different "theory of the case"
- ❑ Legally different
  - Different crime, different elements

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## Supersede

- ❑ Misdemeanors: use a statement of charges
- ❑ Felonies: obtain a new indictment

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## Dismiss and Re-Charge

- No double jeopardy problem if
  - ▣ Pretrial, or
  - ▣ Pleading fatally defective
- Use citation, summons, or warrant, not statement of charges

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## Variations: Proof vs. Pleadings

- Inessential language is “surplusage”
  - ▣ Unnecessary factual allegations
  - ▣ Unnecessary legal theories
- Variations as to surplusage generally not fatal
- Variations as to essential elements are fatal
  - ▣ Because evidence of the charged crime is insufficient
  - ▣ Caution: inessential language can become binding
    - *State v. Silas*, 360 N.C. 377 (2006)

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## Bond: Generally

- Usually set by a magistrate
- Defendant normally entitled to bond
- Possible conditions of release
  1. Written promise to appear
  2. Unsecured bond
  3. Custody release
  4. Secured bond
  5. House arrest with electronic monitoring
- Additional restrictions



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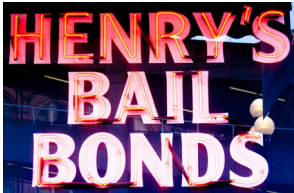
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# Bond: Special Procedures

- Domestic violence cases
- Automatic review
- Motions to modify or revoke



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# CRIMINAL PLEADINGS AND BOND

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November 2022

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